Amafi > Association française des marchés financiers
FINANCIAL MARKET PROFESSIONALS

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European Commission consultation on EMIR revision

AMAFI's Answer

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI has more than 120 members operating for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives. Nearly one-third of its members are subsidiaries or branches of non-French institutions.

AMAFI has been following closely the elaboration and the implementation of EMIR, and fully supports the objectives of this piece of Regulation. We very much welcome the opportunity to provide input into the EU Commission's review of EMIR. We find this type of exercises congruent with the objectives of the Commission in the Smart Regulation Agenda.

However, as set out in the introduction of your consultation document, it is rather unfortunate to consult on these matters while two of the major EMIR reforms are not yet in applied (namely the clearing obligation and the obligation to exchange collateral).

Having said that, we would like to underline the main components of our answer to this consultation:

- CCPs should be given access to central bank liquidity, and a bank status would;
- Consistency over the College processes should be ensured;
- Frontloading, due to critical operational difficulties, should be abandoned;
- Efforts should be made to enforce the obligations in a sufficiently foreseeable calendar.

PART I: QUESTIONS ON ELEMENTS OF EMIR TO BE REVIEWED ACCORDING TO ARTICLE 85(1)(A)-(E)

Question 1.1: CCP Liquidity

i. Is there a need for measures to facilitate the access of CCPs to central bank liquidity facilities?

Yes. AMAFI supports the introduction of measures to facilitate the access of CCPs to central bank liquidity facilities, which is key to ensure their resilience in case of a liquidity crisis.

ii. If your answer to i. is yes, what are the measures that should be considered and why?

In AMAFI's view, the access to central bank liquidity facilities would be a very welcome step, not only in times of stress but also in normal market conditions, since this should enable CCPs to mitigate their exposure to commercial bank risk.

CCPs currently rely on liquidity arrangements with commercial banks, which exposes them to the ability of the commercial banks to provide liquidity, including in particular on intraday basis. Considering that in most cases the commercial banks providing CCP with liquidity are at the same time members of the CCP, there is potential for **negative feedbacks** in case any of the institutions is unable to meets its liquidity obligations. Given the systemic role that the CCPs have acquired following from the global OTC derivatives reform, it is essential for them to be as robust as possible. Access to central bank liquidity would be an important means to that end.

We take this opportunity to recall longstanding AMAFI's opinions with regard to CCPs insertion in the financial system:

- CCPs should be given the status of banks, which would enable them to access central bank liquidity facilities;
- CCPs should be located in the monetary area of the currency of their main operations, so as to ensure they fall under the umbrella of the central bank able to provide them with the currency they use most.

We think these two measures are essential to provide these institutions with an appropriate level of funding in cases of distress.

Moreover, central bank liquidity access would be of particular importance in case a CCP was facing non-default related liquidity problems. A central bank liquidity line would further protect CCP and its users from contagion, as it would only be reasonable not to spread the risk of an ailing CCP risk onto commercial liquidity providers and/or CCP members. In this sense, commercial bank liquidity arrangements for CCPs, whether in stress or not, could represent a wrong way risk for the CCP and its users.

This wrong way risk for liquidity should be avoided particularly when the commercial institution providing liquidity to a CCP is at the same time a Securities Settlement system ("SSS") where the financial instruments posted to the CCP are held on deposit.

Question 1.3: CCP Colleges

(a) What are your views on the functioning of supervisory colleges for CCPs?

AMAFI finds the functioning of supervisory colleges for CCPs lacks transparency and is far too length for users. It does not allow them to prepare sufficiently in advance.

(b) What issues have you identified with respect to the college system during the authorisation process for EU CCPs, if any? How could these be addressed?

AMAFI is of the view that the process could be streamlined, so as to be less time-consuming and more transparent. To make it more specific, we would welcome more transparency towards users concerning the authorisation process of CCPs, as well as concerning the procedures and processes around ensuring ongoing compliance (changes in CCP risk policies [margining, default fund ("DF")] and operational changes) and extending the authorisation (new products and services). We would welcome that the relevant information is disclosed (at least) to the users at the moment when the CCP makes application for the approval of the measures that it envisages to implement.

Moreover, users should also have more visibility of the (re-)authorisation process: at what stage is the application and within which time horizon decisions should be expected.

The above considerations are particularly important for those CCP services and products that do not fall under the scope of EMIR, and for which the National Competent Authorities have large discretions as to timelines and the process to follow. Requirements for CCP colleges in Art. 17 EMIR should be extended to authorisation applications for non-EMIR products and services, and more transparency should apply as well.

Moreover, we consider that these processes could be a good means of promoting innovation, and changes to CCPs' risk methodologies, and also supporting effective risk management.

At last, we are of the opinion that efforts should be made to ensure a consistent application of such process among national regulators, to provide a European level playing field.

Question 1.4: Procyclicality

(a) i. Are the requirements under Article 41 EMIR and Article 28 Regulation (EU) No 153/2013 adequate to limit procyclical effects on CCPs' financial resources?

Not totally.

ii. If your answer to i. is no, how could they be improved?

We find that that the current recommendations in Art 28 of the EMIR implementing regulation are too rigid and do not correspond to the specificities of the various products subject to clearing. The regulation should establish principles upon which measures against the pro-cyclicality should be based and not prescribe quantitative standards. The level of margin buffers, the degree of the risk weight adjustment, and the historical period used for the construction of margining methodologies should be specific to the product in question. This is due to the fact that different products can have different inherent product life cycles. For example, certain equity-based products traditionally spike in the dividend season, or energy contracts typically spike around January, but those spikes are not signs of volatility, instead they are natural for the product to occur in the specific time of the year.

The regulation should allow the CCP to manage efficiently the volatility that is fairly predictable and inherent in the product life cycle (micro level pro-cyclicality), as well as to mitigate pro-cyclicality effects at the macro level, taking more complex factors into account. Therefore it is important that CCPs have robust stress-tests and methodologies in place, and use historical and hypothetical scenarios that are most appropriate for the product in question.

(b) i. Is there a need to define additional capacity for authorities to intervene in this area?

AMAFI does not see the need for more supervisory intervention in this context. CCPs should remain responsible for the construction and application of their risk management process, on the basis of the existing minimum requirements established by EMIR, while we are of the view that the role of the supervisors should be to assess CCPs' internal risk management procedures and to approve the methodologies used.

ii. If your answer to i. is yes, what measures for intervention should be considered and why?

Question 1.5: CCP Margins and Collateral

(a) i. Have CCPs' policies on collateral and margin developed in a balanced and effective way?

The CCPs policies on collateral are developed in a balanced way. They allow clearing members to ensure appropriate risk management, both facing the CCP and facing the client, by applying own standards for the collateral accepted from clients which they either post directly to the CCP or which they transform before posting it to the CCP.

We also find that highest quality collateral is necessary in order to enhance both the possibility of a successful liquidation as well as successful porting. The higher the quality of the collateral, the higher its resistance to market volatility, particularly in stress markets. Collateral that is highly resistant to volatility better averts the risks of under-collateralisation or of liquidation at a higher haircut. We therefore believe that there is no need to adjust the provisions on eligible collateral. In addition, CCPs should consider market risk and liquidity risk when performing asset valuation and apply conservative concentration limits in order to avoid wrong-way co-relations.

ii. If your answer to i. is no, for what reasons? How could they be improved?

(b) i. Is the spectrum of eligible collateral appropriate to strike the right balance between the liquidity needs of the CCP and its participants?

AMAFI considers the balance to be sufficient. In line with the answer to point (a) above, we recall the duty of the clearing members to ensure that only high quality collateral is used, and to have in place adequate commercial policies towards their clients that ensure that the requirements on collateral quality at the CCP level are respected .

Also, from the point of view of the risks being pooled at the CCP level, those clearing members who ensure high quality of the collateral should not be exposed to undue risks created by other clearing members accepting from clients and posting to the CCP collateral of lower quality. Safeguarding the right balance in this respect (collateral quality, concentration limits) is largely the responsibility of the CCP.

PART II: GENERAL QUESTIONS

Question 2.1 : Definitions and Scope

i. Are there any provisions or definitions contained within Article 1 and 2 of EMIR that have created unintended consequences in terms of the scope of contracts or entities that are covered by the requirements?

Yes.

ii If your answer to i. is yes, please provide evidence or specific examples. How could these be addressed?

EMIR refers to MiFID for the product scope. The differences in the interpretation of the term "derivative contracts", as based on the definitions of financial instruments provided for in Annexe I Section C, have led to implementation discrepancies across the EU Member States and beyond. This has been at the root of EMIR compliance problems for firms facing counterparties in jurisdictions applying divergent interpretation of the EMIR scope. We are waiting for the clarification regarding in particular the FX spot definition.

While we are aware of the remedy to this situation that could be provided by the MiFID II implementing measures under development, which should hopefully clarify the definitions for derivatives based on currencies and commodities for the firms authorised in the EU, the problem will persist in the future for those firms that will continue dealing with counterparties in third country jurisdictions.

Question 2.2 : Clearing obligations

a) i. With respect to access to clearing for counterparties that intend to clear directly or indirectly as clients; are there any unforeseen difficulties that have arisen with respect to establishing client clearing relationships in accordance with EMIR?

Yes.

ii. If your answer to i. is yes, please provide evidence or specific examples. How could these be addressed?

Indirect clearing mechanism: the portability should not be imposed on clearing members

The purpose of indirect clearing arrangements is to ensure that indirect clients can obtain an equivalent level of protection as direct clients in the case of default (portability requirements).

AMAFI considers that indirect clearing should not become mandatory, for the following reasons:

- An EMIR-compliant indirect clearing offering is not available for legal / regulatory reasons: (i) the jurisdictional scope of indirect clearing remains unclear (i.e. does this offering imply that the central counterparty, the clearing member, the direct and indirect clients are all located in the EU?), (ii) there is a risk of insolvency because of the lack of recognition of indirect clearing arrangements by national insolvency regimes (i.e. EMIR's indirect clearing provisions may be challenged by the insolvency legislations applicable to the direct and indirect clients located within the EU; besides, EU law does not supersede third country jurisdictions and, consequently, if the direct client is located outside EU, the client's local legislation will be applicable);

- An EMIR-compliant indirect clearing offering is not available also for risk and prudential reasons: (i) some clients are less attractive due to the credit risk they raise to the clearing member; consequently, clearing members must not be required to compromise their risk management standards with the sole view of facilitating clearing; (ii) the leverage ratio limits the capacity of clearing members to provide clearing services to clients; consequently, it seems logical for clearing members to prioritise the provisions of such services to their direct clients over any indirect clients;

- Whatever the potential resolution of such legal and prudential issues, AMAFI considers that it is crucial for clearing members to retain the discretion whether or not to offer indirect clearing. Indeed, making the indirect clearing mandatory may result in a large number of clearing members closing their activities if they consider that offering a mandatory indirect clearing is not operationally and economically sustainable (notably on the basis of the leverage ratio). AMAFI considers that EMIR regulation should be adjusted in order to minimise the risk of contraction of the number of clearing services providers.

- Finally, in the acknowledgement that the indirect client clearing offer is inexistent, AMAFI supports the alternative of bilateral margining (i.e. counterparties posting initial and variation margins on a bilateral basis).

b) i. Are there any other significant ongoing impediments or unintended consequences with respect to preparing to meet clearing obligations generally in accordance with Article 4 of EMIR?

Yes.

ii If your answer to i. is yes, please provide evidence or specific examples. How could these be addressed?

AMAFI wants to underline three main difficulties related to the clearing obligation.

Frontloading requirement: the risks linked to this obligation justify its removal

The frontloading requirement creates significant pricing and market risk management challenges:

First, market participants will be unable to accurately price trades that will be cleared at a future date. Indeed, as of today, there are no accepted techniques for determining how to price an OTC derivative which becomes clearable at a future date:

- Clearing houses typically require that the currency of the derivative determines the currency of the mark-to-market collateral posted on a daily basis (variation margin) but OTC derivatives are often subject to various collateral agreements. This implies that derivatives denominated in one currency are collateralised with different currencies, and thus valued using different discount rates;

- Many OTC derivatives traded in the frontloading window will be subject to a re-pricing adjustment at the point when they are frontloaded into a CCP. If this future revaluation is not reflected at trade inception, one of the parties will suffer a loss when the trade is cleared. However pricing a trade, which will be valued differently at a certain point in the future, increases pricing complexity significantly;

- There are different pricing approaches adopted, each of with a varying degree of complexity. As there is no common agreement among market participants as to how to price trades, valuation disputes may be frequent.

Secondly, market participants may face market risks (liquidity and stability) which could be very complicated to address properly:

- Counterparties may not have a clearing arrangement in place at the time when the clearing obligation takes effect. As clearing members are likely to be unwilling to pre-commit to clear the contract, dealers will assign into the pricing a probability that the trade will clear (by widening the bid-offer spread);

- The risk that some counterparties may have been unable to put clearing arrangements in place by the time when the clearing obligation takes effect may entail numerous OTC derivative contracts to be terminated or assigned whereas terminating or assigning the transaction may not be possible if the clients disagree (in which case banks will keep in their books uncleared derivative contracts – while these contracts are eligible for clearing - at the risk of being penalised by supervisors). This requirement would also cause major disruption on the financial markets stability. The legal and operational process surrounding this mass termination exercise would be considerable.

For all these reasons, it will be difficult for counterparties to enter into uncleared OTC derivative contracts that will be affected by the frontloading requirement. Counterparties may need to immediately submit these contracts for clearing and to price their transactions accordingly, which would challenge the value of said phase-in period.

In order to avoid the major side effects above mentioned, AMAFI considers that the frontloading requirement should be removed.

Failing which, AMAFI advocates at least a limitation of the frontloading requirement to the sole transactions entered into with Category 1 counterparties. Indeed, this limitation would substantially reduce uncertainties and risks since, as of today, the huge majority of transactions entered into with these counterparties are already cleared on a voluntary basis.

Client categorisation

Concerning the client categorisation issue (which is partially linked to the frontloading issue), AMAFI wishes to remind that client categorisation is adding an additional layer of complexity for banks. It proved to be highly challenging and resource consuming for banks to get accurate information (if any) from their counterparties on their status and category (categories 2 to 4 counterparties in particular). This is even more difficult for non-EU counterparties which are not necessarily aware of this obligation or willing to abide by an EU regime.

Therefore, it remains very uncertain whether banks would have the capacity, despite many efforts, to classify their counterparties in the appropriate category and start central clearing at the right time with a specific counterparty.

Procedural aspects of the clearing obligation

AMAFI responded to the diverse consultations on the clearing obligations that were published in 2014. We regret the delay taken which is a cause of great uncertainty for financial markets players.

Question 2.3 : Trade reporting

i. Are there any significant ongoing impediments or unintended consequences with respect to meeting trade reporting obligations in accordance with Article 9 of EMIR?

Yes.

ii. If your answer to i. is yes, please provide evidence or specific examples. How could these be addressed?

Trade reporting: requirement to backload historical dead trades should be removed

Pursuant to EMIR, the reporting obligation applies to derivative contracts which (a) were entered into before 16 August 2012 and remain outstanding on that date; or (b) are entered into on or after 16 August 2012. In the draft technical standards under EMIR, ESMA has granted a 3-year transitional period to perform the backloading.

As a result, the backloading of historical "*dead*" trades which expired before February 2014 (date of entry into force of the reporting obligation) but are still subject to EMIR reporting remains a task which many firms have not completed yet.

Since backloading is performed using the same data fields / format as for the reporting of new trades, Trade Repositories apply similar validation rules for both backloaded and for new reports. This situation requires significant efforts: (i) "*dead*" trades must have a trade reference that respects UTI format, (ii) counterparties must be identified through valid counterparty identifiers (example LEI) while they might not have performed any new derivatives trading since February 2014, or not be an active client any more of the firm that is EMIR eligible.

Furthermore, the reporting and storage of the backloadable data are costly (and remains costly also for Trade Repositories as the recordkeeping obligation lasts for 10 years) while the use of this data and the added value it brings to the monitoring of systemic risk is questionable and disproportionate compared to the cost.

Consequently, AMAFI considers that the backloading of historical dead trades should be removed.

Trade reporting: requirement to perform matching/pairing on expired trades must be removed

While we understand the requirement for EMIR transaction reporting to pair and match key data fields related to live trades, we question the benefits of the pairing and matching of expired trades. Indeed, this requirement creates a lot of noise and takes away the focus from the live trades. These detrimental effects may be significant as the number of expired trades will increase – and adding these trades to the matching reports will soon become a technical burden, all the more that reports are already very heavy even with the live transactions only.

There are fundamental reasons explaining why some trades do not match or cannot match, such as inter Trade Repositories trades that are very hard to match. Consequently, the list of unmatched dead trades is unmanageable.

Furthermore, there are technological issues which limit resolution of breaks on "expired" trades: reporting of trades past maturity date might not be reprocessed by the Trade Repositories.

Lastly, transactions that are expired do not present systemic risk. Therefore, firms / Trade Repositories should be entitled to focus instead on the pairing and matching of live transactions.

AMAFI would thus welcome clarification that expired trades should not be included in the Trade Repositories matching and pairing.

ESMA's consultation on the review of the RTS / ITS on reporting: the proposed changes and modifications are confusing

ESMA proposed modifications on RTS and ITS are problematic as (i) they present inconsistencies with the reporting currently carried out to the Trade Repositories and (ii) they would not enable the banks to report properly certain types of transactions (such as these on commodity derivatives), notably due to the inconsistencies above mentioned.

Other professional associations like FBF, ISDA and FIA also clearly underlined these problematic issues.

Conflicting obligations regarding banking secrecy law

EMIR regulation provides for that the reporting of derivative contracts to a trade repository registered (and, consequently, the disclosure of the counterparties' identity) shall not be analysed as a breach of any restriction on disclosure of information imposed by any legislative, regulatory or administrative provisions.

As already highlighted, this exemption from the banking secrecy rules only covers the EU legislation and regulation. Consequently, this exemption does not apply to transactions reported to non-EU trade repositories which have not been deemed equivalent. This is a critical situation for French banks in cases where local (non-EU) banking secrecy law applies and the client refuses to sign a consent to the disclosure of its identity. Indeed, in this case, French banks have to face with conflicting obligations: to comply with their reporting obligation or to comply with the banking secrecy rules. In both cases, the banks would face a regulatory risk (and even, in France, a criminal risk in case of breach of banking secrecy rules).

Currently, this conflict of laws is handled on a case-by-case basis by the individual Member States. We encourage European Commission to provide for a pan-European solution, and for more detailed guidance in cross-border context.

Question 2.4 : Risk mitigation techniques

i. Are there any significant ongoing impediments or unintended consequences with respect to meeting risk mitigation obligations in accordance with Articles 11(1) and (2) of EMIR?

Yes.

ii. If your answer to (i) is yes, please provide evidence or specific examples. How could these be addressed?

Portfolio compression trades: these trades should be exempted from clearing requirements

EMIR imposes the clearing of new trades resulting from systemically risk-reducing processes such as multilateral portfolio compression cycles.

AMAFI is of the view that this requirement should be removed for the following reasons:

- Compression cycles are designed to reduce risk and allow firms to manage exposure more efficiently. Since risks are already reduced with the compression mechanism, clearing compression trades is unnecessary to meet EMIR risk mitigation objective;;

- This requirement may even have a negative impact on market liquidity. Compression cycles, allow firms to manage their exposures more efficiently and as such facilitate banks' ability to provide greater liquidity to the market. Conversely, submitting banks to a clearing requirement for such compression trades may reduce their ability to perform this function;

- With regard to the compression requirement itself, it is worth noting that the efficiency of this risk mitigation technique is dependent upon the final scope of the clearing eligible derivative contracts. This scope is not completely adjusted as of today.

Question 2.5 : Exchange of collateral

i. Are there any significant ongoing impediments or unintended consequences anticipated with respect to meeting obligations to exchange collateral in accordance with Article 11(3) under EMIR?

Yes.

ii. If your answer to i. is yes, please provide evidence or specific examples. How could these be addressed?

On a practical level, we note that for margin posted in cash, cross-currency haircuts prove to be operationally difficult to implement.

Concerning segregation and re-use of the assets posted as initial margins ("IM"), we point to the recently closed second ESAs' consultation on non-cleared margin requirements, and several issues that arise in the context of posting and safekeeping of the posted IM.

The high level requirement of the BCBS-IOSCO Principles (BCBS 261) that margin must be immediately available to collecting party in the event of the counterparty's default and the collected margin must be subject to arrangements that protect the posting party from the collecting party's bankruptcy is neutral in terms of the collateral arrangement chose, i.e. pledge versus title transfer, and enable the collateral to be posted in securities as well as in cash.

The EU regime should follow the BCBS Principles and not impede the choice between the collateral arrangement or the choice of the form of the collateral (cash or securities). The duty to segregate the collateral and the prohibition of its reuse by the collecting party is contrary to the legal construction of the title transfer collateral arrangement, and it is wholly unpalatable for the collateral posted in cash. Cash being fungible, it is a credit claim of the account holder against the relevant account bank and the return of the cash is inherently linked to the solvency of the counterparty holding it. Similarly to the cash collateral issue, securities collateral posted with the title of transfer is by their nature a credit claim and it is simply impossible to eliminate the credit risk without eroding the title transfer. Consequently, duties to segregate and restrictions on re-use are contrary to and hollow the title transfer collateral concept. Against this background, the reference to the custodian risk should be removed from the RTS.

<u>**Question 2.6 : Cross-border activity in the OTC derivative markets**</u>

(a) i. With respect to activities involving counterparties established in third country jurisdictions; are there any provisions or definitions within EMIR that pose challenges for EU entities when transacting on a cross-border basis?

Yes.

ii. If your answer to (i) is yes, please provide evidence or specific examples. How could these be addressed?

Third countries equivalence: a level playing field between jurisdictions is needed to protect the interests of European banks and their counterparties

AMAFI considers that equivalence decisions, particularly for clearing and margin requirements, is crucial (i) to achieve a regulatory level playing field across jurisdictions and (ii) to avoid any competitive disadvantage for the European banks and / or their counterparties (which would be the case, for instance, if margins should be posted and collected multiple times).

That is why AMAFI wishes to highlight the following requests:

- Where EU counterparties trade with non-EU counterparties established in, or subject to the rules of, an EMIR Article 13(2) equivalent jurisdiction, the parties should be entitled to mutually agree on the set of equivalent rules to apply for a specific trade. This would facilitate transactions by and between EU and non-EU counterparties that are required to comply with or that strongly wish to apply another set of rules (notably, the US ones);

- EMIR Article 13(3) should allow the adoption of separate equivalence acts regarding the obligations provided for by Articles 4, 9, 10 and 11 rather than a single all-encompassing equivalence act;

- Given EMIR Article 13 does not provide any guidance with regard to the process or timeline for the delivery of equivalence decisions, AMAFI considers that (i) third countries should not be required to apply for an European Commission equivalence determination (which may not prevent the European Commission from opening discussions with third country regulators) and that (ii) further guidance on the expected timeline for a EU equivalence would be needed to for clarification purposes.

AMAFI wishes to remind that EU firms are very active in most major markets (notably the US; Switzerland, Asia, etc.) and, consequently, that an absence of equivalence decisions may have significant negative impacts on the provision of financial services in those markets to both local entities and EU clients seeking to access such markets.

Notably, an absence of equivalent decisions may incentivise market participants to focus on their trading activities in their local markets. This situation, if any, would result in a liquidity fragmentation and a loss of market efficiencies, which is not the intended policy outcome.

Question 2.7: Transparency

i. Have any significant ongoing impediments arisen to ensuring that national competent authorities, international regulators and the public have the envisaged access to data reported to trade repositories?

AMAFI is aware that some technical problems remain in relation to the amount of data received by NCAs, which are not necessarily equipped to deal with these volumes.

We have taken notice of an ESMA project of a centralised data point for TR data ("The Trade Repositaries Project" according to the press release of 1st April), even if so far the evidence is patchy. In any case, we strongly support such this type of initiatives, and we take this opportunity to reiterate our commitment to the setting up of a European consolidated tape, which should in our view take the form of a public utility constituted after a fair pan-European tender process.

Question 2.10: Additional Stakeholder Feedback

i. Are there any significant ongoing impediments or unintended consequences with respect to any requirements or provisions under EMIR and not referenced in the preceding questions that have arisen during implementation?

Yes.

ii. If your answer to i. is yes, please provide evidence or specific examples. How could these be addressed?

AMAFI is of the view that Article 47.3 of EMIR should be modified so as to allow positively central counterparties to deposit the collateral they received not only with operators of securities settlement systems but also with account-keepers/custodians provided that the latter are subject to regulatory and prudential constraints satisfactory to supervisors.

It is worth recalling that the reference to “an operator of securities settlement system” (“SSS”) as defined by the Settlement Finality Directive (“SFD”) was used in Article 47(3) mainly because the CSD Regulation did not exist when EMIR was discussed and finally adopted. At that time, the only way to identify entities acting as CSDs was the SFD as a CSD operates a securities settlement system.