



FOCUS

EMIR 3

Created in September 2023

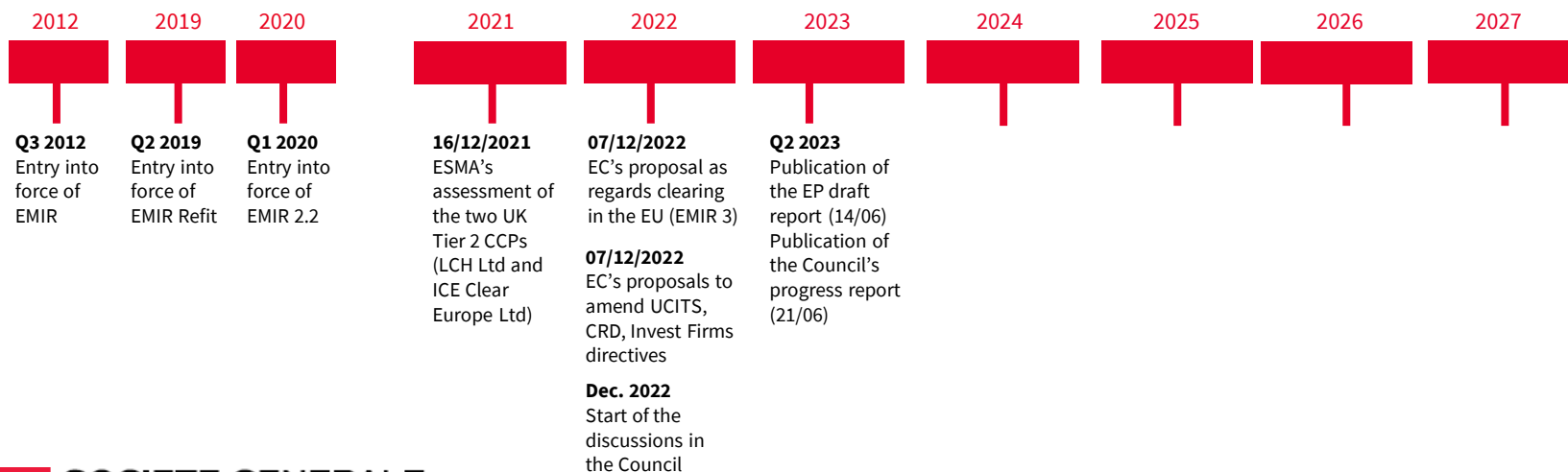
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REGULATORY EVOLUTION

- **The active account:** Financial and non-financial counterparties subject to the clearing obligation (FC+ and NFC+) will be required to clear a portion of the products that have been identified by ESMA as of substantial systemic importance through active accounts at EU CCPs
- **FC+/FC- & NFC+/NFC- rules:** only those derivative contracts that are not cleared at a CCP authorised under article 14 (EU CCPs) or recognised under article 25 (third country CCPs) should be included in the calculation of the position towards the thresholds
- **UCITS and MMF:** derivatives transactions centrally cleared by a CCP will not count in the counterparty risk limits
- **CCP's supervision:** cooperation between authorities as well as the role of ESMA are reinforced
- **Third country (TC) CCPs:** more proportionate cooperation arrangements tailored depending on the jurisdiction. On the other hand, the requirements are reinforced for Tier 2 CCPs

FOCAL POINTS

- The requirement applies only for a specific scope of OTC derivatives
- This a clarification of the EMIR Refit rules
- The condition is to have a CCP recognized or authorized; this addresses an old topic (raised in 2015)
- Creation of Joint Supervisory Teams, of a Joint Monitoring Mechanism ...
- The less strict requirements for Tier 1 CCPs would help the recognition process



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STATEMENT

- The EC's proposal is made of 2 texts: one regulation amending EMIR but also MMFR and CRR and one directive amending UCITS, CRD and IFD
- The EC has issued its proposal end of 2022
- The draft texts are now discussed at the Council and at the Parliament
- The ESRB (European Systemic Risk Board) has already issued comments

FOR YOUR CONSIDERATION

- The main point of attention clearly will be the “active account” and all the criteria to determine which portion of activity will need to be at an EU CCP
- The proposal aims at making the clearing in the EU more attractive; thus, the measures proposed may be beneficial for financial sector participants as well as for CCPs
- The role of ESMA is a key point in EMIR 3
- TC CCPs: to see if under the new rules, the 6 Indian CCPs would have not been derecognized

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