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This volume, titled “**Advancing Financial Regulation and Supervision**” focuses on the ongoing evolution of financial regulation and supervision as authorities respond to geopolitical developments, technological innovation, and the pursuit of more effective and proportionate oversight. The articles are organized to cover key themes such as cross-border supervision and geopolitical risk, the regulation of emerging technologies and payments, and the advancement of smarter, outcomes-based supervisory practice, reflecting the comprehensive approach needed to support well-functioning, resilient, and inclusive financial markets.



1.1
Academic Article

**From Equivalence to Exposure
Management: EMIR 3.0's
Active Accounts as a Tool of
Cross-Border Supervision**

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Author's Bio



Xenia Seabright is a doctoral candidate at the University of Vienna, Faculty of Law. Her research focuses on international financial regulation, global financial governance, OTC derivatives markets, and post-crisis regulatory reform. She holds an MSc in Law and Finance from the University of Oxford and a Mag. iur. from the University of Vienna. She has professional experience in derivatives, financial regulation, and legal practice, having worked at Goldman Sachs, Morgan Stanley, and PwC.

Abstract

EMIR 3.0 introduces an Active Account Requirement (AAR) obliging certain EU counterparties to maintain and use accounts at EU-based Central Counterparties (CCP) for clearing specific derivative contracts. This measure aims to reduce the EU's excessive reliance on third-country (notably UK) CCPs identified as systemically important. The policy embodies a trade-off between resilience and market fragmentation: it seeks to bolster financial stability by on-shoring a portion of clearing activity into the EU, yet risks fragmenting global liquidity and increasing costs.

This article maps the legal design of the AAR against EMIR's third-country equivalence and recognition framework, especially in light of the European Commission's decision to extend UK CCP equivalence to 30 June 2028 and European Securities and Markets Authority's (ESMA) parallel extension of UK CCP recognition. It then develops a *comity-aware proportionality test* to evaluate when a use-mandate like the AAR is justified despite commitments to equivalence. Economically, I quantify how '*split clearing*', which spreads a portfolio across EU and UK CCPs, can erode netting efficiency, fragment liquidity, and raise initial margin requirements.

Under current research, duplicative clearing of correlated positions can increase total margin needs by about 5–15%, with larger uplifts under stressed correlations. I argue that a calibrated '*equivalence-plus*' approach that leverages robust cooperation mechanisms (data-sharing, crisis coordination, and portability arrangements) under the revised ESMA – Bank of England Memorandum of Understanding (MoU) can achieve the EU's oversight goals with less market disruption than forced relocation (ending UK-CCP equivalence/recognition) or binding clearing quotas under the AAR. The article concludes by proposing a template of targeted safeguards (enhanced reporting channels, default management coordination, client-position portability) to reconcile EU financial stability with international comity through 2028 and beyond.

Keywords: *Central clearing, EMIR 3.0, active account requirement, equivalence, CCP recognition, cross-border supervision, market fragmentation, initial margin*

01

Why Active Accounts, Why Now? EMIR 3.0's Trade-off Between Resilience and Fragmentation

In the wake of Brexit, EU regulators confronted a delicate balance between safeguarding financial stability and avoiding fragmentation of clearing activity and collateral pools. A large share of euro-denominated derivatives has long been cleared in London, at UK CCPs such as LCH Ltd (London Clearing House), which became third-country entities after 2020. To avoid a cliff-edge loss of access from 1 January 2021, the Commission adopted Implementing Decision (EU) 2020/1308 under EMIR Article 25(6), granting time-limited equivalence to the UK CCP regime.¹ This enabled ESMA to recognise UK CCPs so that Union clearing members and clients could continue clearing there.²

However, when extending equivalence, the Commission made clear that Union clearing members should reduce their exposures to systemically important UK CCPs over the coming years.³ In December 2021, ESMA concluded that three clearing services were of substantial systemic importance to the Union: LCH Ltd's SwapClear for euro and Polish zloty IRS, and ICE Clear Europe's euro-denominated CDS (Credit Default Swaps) and STIR (Short Term Interest Rate Derivatives) services. It also concluded that the risks may not be fully mitigated under the current EMIR framework, given limited supervisory tools in crisis scenarios.⁴ In other words, EU authorities feared that a crisis at a London CCP could reverberate through EU markets, beyond the reach of EU oversight tools.

Adopted on 27 November 2024, EMIR 3.0 is the EU's response to over-reliance on third-country CCPs seeking to reduce excessive exposures and make EU clearing more efficient.⁵ Its centerpiece is the new AAR.⁶ A mandate that in-scope EU clearing participants maintain at least one clearing account at an EU-based CCP and use it to clear a minimum, representative volume of certain derivative trades. Recital 11 frames this as reducing excessive exposures to systemically important Tier 2 CCP services.⁷

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- 1 Commission Implementing Decision (EU) 2020/1308 of 14 September 2020 determining, for a limited period of time, that the regulatory framework applicable to central counterparties in the United Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council 2020 (2020/1308 (EU)) 3.
 - 2 Commission Implementing Decision (EU) 2020/1308 of 21 September 2020 determining, for a limited period of time, that the regulatory framework applicable to central counterparties in the United Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council 2020 (Official Journal of the European Union) 1.
 - 3 Commission Implementing Decision (EU) 2022/174 of 8 February 2022 determining, for a limited period of time, that the regulatory framework applicable to central counterparties in the United Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with Regulation (EU) No 648/2012 2022 (Official Journal of the European Union) 40.
 - 4 European Securities and Markets Authority (ESMA), 'ESMA Concludes Tier 2 CCP Assessment Under Article 25(2c) of EMIR' (European Securities and Markets Authority (ESMA) 2021) Public Statement ESMA91-372-1913.
 - 5 Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets 2024 (Official Journal of the European Union).
 - 6 Active Account Requirement (AAR): Under Art. 7a EMIR (as inserted by Reg (EU) 2024/2987), financial and non-financial counterparties that are subject to the clearing obligation and exceed the relevant clearing thresholds must hold at least one active account at a Union-authorized CCP and clear a representative number of trades through that account (operative text uses 'trades').
 - 7 Ibid.

Importantly, the final scope of the AAR was tailored to the specific products that ESMA's 2021 report flagged: primarily OTC interest rate derivatives in EUR and PLN, and short-term interest rate derivatives in EUR.⁸ Notably, euro-denominated CDS were excluded after ICE Clear Europe ceased CDS clearing in October 2023.⁹

This policy push to reduce excessive exposures to Tier 2 CCPs has not been without controversy. Some argue that forcibly relocating trades could fragment global pools of liquidity and increase costs for EU end-users.¹⁰ Maintaining related positions at a single CCP improves netting efficiency. Splitting across CCPs typically raises the total initial margin.¹¹ Splitting trades across CCPs can erode those efficiencies and raise margin requirements, as I explore in Section V.¹² There is also a cross-border regulatory cooperation dimension: the UK's Bank of England remains the primary supervisor of UK CCPs, and the UK has its own robust regulatory regime.¹³

Critics argue the AAR operates as a *de facto* location policy that fragments global clearing and risks undermining cross-border supervisory cooperation.¹⁴ On 17 March 2025, the Bank of England welcomed ESMA's decision to extend EU recognition of UK CCPs until 30 June 2028.¹⁵ That same day, ESMA prolonged its tiering determinations and recognition decisions for ICE Clear Europe, LCH Ltd (Tier 2) and LME Clear Ltd (Tier 1), and signed a revised MoU with the Bank of England to reflect EMIR 3 cooperation requirements.¹⁶

Against this backdrop, EMIR 3.0 preserves near-term UK CCP access while putting in place a framework intended to build EU clearing capacity. In January 2025, the Commission prolonged UK CCP equivalence for three years, until 30 June 2028, to avoid short-term disruption while EMIR 3 measures take effect.¹⁷ The policy trade-off, articulated by Commissioner Maria Luís Albuquerque, is to safeguard stability in the short run while reducing reliance on UK CCPs over time.¹⁸

8 Ibid.

9 'ICE Announces Successful Transition of Credit Default Swap Open Interest from ICE Clear Europe'.

10 Darrell Duffie and Haoxiang Zhu, 'Does a Central Clearing Counterparty Reduce Counterparty Risk?' (2011) 46 Rock Center for Corporate Governance at Stanford University Working Paper 1.

11 Ibid.

12 Ibid.

13 Bank of England, *The Bank of England's approach to financial market infrastructure supervision* (Nov. 2024), esp. Section 1 (objectives and remit) and Section 5 (non-UK FMIs under UK EMIR). See also Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories as it forms part of UK law ('UK EMIR'), as amended by the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (SI 2019/335) and (No. 2) Regulations 2019 (SI 2019/1416).

14 EFAMA and others, 'Active Accounts – Joint Trade Association Statement' (EFAMA 2023) Joint trade association statement.

15 Bank of England, 'Bank of England Statement on the European Securities and Markets Authority's Decision Regarding EU Recognition of UK Central Counterparties' (17 March 2025).

16 European Securities and Markets Authority (ESMA), 'ESMA Extends the Tiering and Recognition of the Three UK-Based CCPs' (17 March 2025).

17 Commission Implementing Decision (EU) 2025/215 of 30 January 2025 determining, for a limited period of time, that the regulatory framework applicable to central counterparties in the United Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council 2025 (Official Journal of the European Union); 'Commission Extends Time-Limited Equivalence for UK Central Counterparties (CCPs) Until 30 June 2028' (European Commission 2025) Press release.

18 European Commission, 'Commission Extends Time-Limited Equivalence for UK Central Counterparties' (31 January 2025).

The central thesis of this article is that the success of this balancing act will depend on the proportionality of the AAR (is it a measured tool or an overreach?) and the strength of cooperative oversight mechanisms put in place. I will examine whether active accounts can be implemented in a manner that genuinely enhances systemic resilience without unduly fragmenting markets or risking tensions in cross-border supervisory cooperation.

02

From Rulebook to Trades: Making the AAR Work

EMIR 3.0 sets out the AAR at Level 1 and mandates ESMA to specify key details by regulatory technical standards. The regime is codified in EMIR primarily through new Articles 7a (Active account) and 7b (Monitoring), with related information duties in 7c.¹⁹ Article 7a(1) requires in-scope financial and non-financial counterparties to hold at least one active account at an EU-authorised CCP and to clear a representative number of trades in that account.²⁰ When a counterparty becomes subject to the obligation, it must notify ESMA and its competent authority and establish the account within six months.²¹ Articles 7b–7c provide for semi-annual monitoring and information duties.²²

2.1 Scope: Who and what is covered?

The AAR applies to EU clearing members and clients (financial or large non-financial counterparties) with significant clearing activity in the targeted product classes. Third-country entities are not directly bound.²³

However, for Union-group supervision, Article 7a(2) requires a group basis assessment: all relevant cleared derivatives across the group (excluding intragroup transactions) are counted, capturing trades cleared by third-country subsidiaries of Union groups.²⁴ This limits regulatory arbitrage without asserting direct extraterritorial effect.

Under EMIR 3.0, financial counterparties and non-financial counterparties that are subject to the EMIR clearing obligation and exceed the relevant clearing threshold, assessed on a Union-group basis including third-country subsidiaries, must maintain an active account at an EU-authorised CCP. The recitals specify the initial product scope as: (i) euro-denominated OTC interest-rate derivatives, (ii) Polish złoty OTC interest-rate derivatives, and (iii) euro-denominated short-term interest-rate derivatives.²⁵

19 Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets.

20 Ibid.

21 Ibid.

22 Ibid.

23 Ibid.

24 Art 7a(2) and Recital 12 EMIR (as amended by Reg (EU) 2024/2987). (ibid)

25 Ibid.

ESMA's technical standards refine the categories as follows: EUR IRS (fixed-to-float, OIS, FRAs), PLN IRS (fixed-to-float, FRAs), and EUR STIR futures (Euribor and €STR), with options excluded.²⁶ Euro-denominated credit derivatives and other currencies are outside the initial scope, reflecting the narrower focus on the most critical EU exposures and the cessation of EUR CDS clearing at ICE Clear Europe in late 2023.²⁷

2.2 Calibration and 'Representativeness'

EMIR 3.0 states the principle, and ESMA turns it into practice by defining what representative volume means in numbers. EMIR 3.0 sets the parameters: ESMA may designate up to three classes per category and, for each class, up to five sub-categories based on trade size and maturity (with caps of four maturity ranges and three size ranges).²⁸

The representativeness obligation is 5 trades per reference period in each ESMA-designated 'most relevant' subcategory. If that would exceed half of the counterparty's total trades over the prior 12 months, one trade per subcategory suffices.²⁹ The minimum-trades test functions as a floor to ensure the active account is not dormant.^{30,31}

A de minimis rule applies: where the normal AAR calculation would require more than half of the firm's total trades (over the previous 12 months), the obligation is reduced to one trade per most-relevant subcategory (annual-average basis).³² For example, for EU pension scheme arrangements – which often have only a few large, long-dated trades – a scaled-down requirement of 1 trade per sub-category applies.³³ These nuances reflect proportionality concerns, aiming not to force trivial or uneconomic trading just to meet a quota.

ESMA's Final Report on the AAR outlined these details in draft RTS, and ultimately retained the basic subcategory structure while narrowing short-term rate derivatives to futures.³⁴ Within each class, subcategories are defined by combinations of maturity and trade-size ranges rather than by product type, and ESMA slightly extended the longest maturity band for EUR STIR to capture relevant trades.³⁵ The practical effect is a low but non-trivial trading floor intended to ensure the active account is used in a representative way.

26 European Securities and Markets Authority (ESMA), 'Final Report on the EMIR 3 Active Account Requirement' (European Securities and Markets Authority 2025) ESMA91-1505572268-4201.

27 Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets; European Securities and Markets Authority (ESMA), 'Consultation Paper: Conditions of the Active Account Requirement Under EMIR 3' (2024) ESMA91-1505572268-3856.

28 Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets.

29 Ibid.

30 Recital 14.

31 Ibid.

32 Ibid.

33 Ibid.

34 European Securities and Markets Authority (ESMA) (n 24).

35 Ibid.

2.3 Operational Readiness and other Conditions

Beyond trade counts, Article 7a(3) requires the active account to be permanently functional and capable of absorbing a significant volume of business on short notice.³⁶ ESMA's final draft RTS streamline operational conditions into outcome-based requirements (contractual arrangements, adequate resources, and a CCP capacity statement), with annual operational testing.³⁷ The RTS replaced prescriptive requirements (such as named responsible individuals) with a more flexible human-resourcing standard, allowed electronic CCP certifications, and pared back stress testing to an annual exercise.³⁸ These refinements reduce duplication with ordinary onboarding while preserving credible capacity assurance.

2.4 Timeline and Entry Into Force

EMIR 3.0 was published in the Official Journal in December 2024 and entered into force on 24 December 2024.³⁹ Firms had six months to establish an active account (late June 2025).⁴⁰ ESMA transmitted its Final Report and draft RTS on 19 June 2025. Endorsement and scrutiny followed the usual Level 2 sequence.⁴¹ Reporting obligations followed on a staggered timetable, with initial returns due by end-January 2026.⁴²

2.5 Ongoing Reporting and Monitoring

Under Article 7b, in-scope counterparties report every six months to their competent authority, which forwards information to ESMA.⁴³ ESMA's RTS divide reporting into activity/exposure metrics, operational readiness, and representativeness.⁴⁴ After consultation, ESMA simplified the template by removing margin/collateral fields and aligning it with existing EMIR Article 9 reporting.⁴⁵ For operational readiness, firms submit a compliance statement and retain evidence on request. For representativeness, the focus is on trade counts rather than notionals or trade IDs.⁴⁶

36 Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets.

37 European Securities and Markets Authority, 'Final Report on EMIR 3 Active Account Requirement' (ESMA 2025); 'ESMA Publishes the Final Report on the Active Account Requirement Under EMIR 3' (European Securities and Markets Authority (ESMA) 2025) Press release.

38 European Securities and Markets Authority (ESMA) (n 24); Daniel Franks and Kirsty McAllister-Jones, 'EMIR 3: ESMA Revises Draft Active Account Technical Standards' (*Ashurst*, 18 July 2025).

39 Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets.

40 Ibid

41 European Securities and Markets Authority (ESMA) (n 24).

42 Franks and McAllister-Jones (n 35).

43 Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets.

44 European Securities and Markets Authority (ESMA) (n 24).

45 Ibid; Franks and McAllister-Jones (n 35).

46 European Securities and Markets Authority (ESMA) (n 24).

In summary, EMIR 3.0's AAR regime is now largely defined: the law and RTS establish who must comply, what they must do, how they must do it, and how compliance is monitored. This provides the foundation for the subsequent analysis.

03

From Equivalence to Exposure Management: Article 25 EMIR and the Active-Account Requirement

EMIR's third-country CCP regime (Art. 25 of EMIR 648/2012) was built on a philosophy of conditional equivalence-based recognition: if the EU deems a non-EU country's CCP oversight 'equivalent' to EMIR and establishes cooperation arrangements, ESMA can recognise individual CCPs from that country to offer clearing services to EU firms. Once recognised, a third-country CCP can be used by EU clearing members just as freely as an EU-authorized CCP.

EMIR 2.2 (2019) added a 'tiering' regime. ESMA places each recognised third-country CCP in Tier 1 (not systemically important) or Tier 2 (systemically important). Tier 2 CCPs face tougher ESMA supervision, including direct compliance with specified EU rules and participation in ESMA's stress tests.⁴⁷ In extreme cases, if EU authorities judge that the risks cannot be managed, recognition can be refused either for a CCP as a whole or for particular services.⁴⁸

In reality, UK CCP equivalence and recognition have been politically charged since Brexit. Temporary equivalence granted in 2018 and extended in 2020 and 2022 was set to expire on 30 June 2025.⁴⁹ On 30 January 2025 the Commission extended UK CCP equivalence by three years, to 30 June 2028, explicitly to allow EMIR 3.0 measures (including the AAR) to take effect and be assessed.⁵⁰ ESMA then confirmed that recognition decisions for LCH Ltd, ICE Clear Europe and LME Clear remain valid through June 2028, aligning recognition with the new equivalence period.⁵¹

47 Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs 2019 (L 322) 1.

48 European Securities and Markets Authority, 'ESMA Concludes Tier 2 CCP Assessment Under Article 25(2c) of EMIR' (European Securities and Markets Authority 2021) Public Statement.

49 Implementing Decision (EU) 2022/174.

50 Commission Implementing Decision (EU) 2025/215 of 30 January 2025 determining, for a limited period of time, that the regulatory framework applicable to central counterparties in the United Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council.

51 European Securities and Markets Authority (ESMA) (n 14).

The net effect is that UK CCPs are 'safe' for EU firms to use until mid-2028 from a legal perspective. EU banks can continue clearing at LCH, for example, without breaching EMIR mandates, and EU clearing members retain their status at those CCPs. The AAR, however, overlays a new condition on how much of that clearing can remain abroad. In essence, even though UK CCPs are recognised (and equivalent) – meaning the EU accepts UK rules and supervision as meeting EU standards – the AAR says: 'we still want part of the business in the EU'.

This raises an apparent tension: under EMIR's equivalence framework, one might expect that if a foreign CCP and home regulator (the Bank of England) are trusted and equivalent, EU participants should be free to use that CCP for all their needs. Imposing an active account usage mandate suggests a lack of complete trust or a higher prudential standard being applied.

In short, Article 25 sets a two-gate regime: system-level preconditions (equivalence, cooperation, authorisation, AML/CFT) and an entity- or service-level ESMA assessment via tiering. Tier 2 CCPs can be recognised only with additional EU-style prudential conditions and central-bank-of-issue safeguards, and ESMA can refuse recognition for services deemed of substantial systemic importance where risks cannot be mitigated. EMIR 3.0 preserves this architecture but tightens it by adding criteria and ongoing monitoring for equivalence decisions and by expanding mandatory MoU content.

In light of the above, one way to view the AAR is as a complementary safeguard layered atop equivalence/recognition. The EU may be saying: 'We acknowledge UK CCPs are properly regulated and are not cutting them off, but for our own systemic risk comfort, we require that EU firms also maintain the capacity to clear in the EU and actually do some clearing there.' This is framed as mitigating the concentration risk of too much EU business in one foreign CCP. By maintaining active accounts domestically, EU authorities ensure there is at least a foothold of activity in EU CCPs, which could be scaled up in an emergency (if, say, UK CCP access were compromised by crisis or geopolitical fallout).

However, this stance must pass proportionality and non-discrimination scrutiny. Recognised third-country CCPs meet high standards, and capping usage via minimum-trade obligations can be seen as discriminatory unless carefully calibrated. The recitals emphasise that the regulation should not go beyond what is necessary, and ESMA must review AAR implementation and its impact (including via the Joint Monitoring Mechanism).⁵² This built-in review suggests the AAR is not intended as a permanent, blind quota.

To conclude this section, the AAR does not overturn or negate the Art. 25 equivalence/recognition framework, instead, it operates within it, as a kind of overlay. UK CCPs are deemed equivalent and remain recognised for EU users, but EU users themselves face a new internal requirement on how they allocate their business.

The legal interface is novel: it preserves formal market access (compliance with Art. 25) while pursuing a quantitative risk rebalancing. Whether this is sustainable or a stable equilibrium is debatable. Much will depend on the cooperative arrangements and mutual trust between EU and UK regulators, which I address next. Effective cooperation could make the AAR's intrusive aspects seem less necessary over time, whereas frictions could reinforce arguments for keeping or even tightening such measures.

⁵² Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets.

04

International Comity by Design: The ESMA-Bank of England MoU as a Supervisory Backstop

A key enabling condition for the EU's continued use of UK CCPs is ESMA's recognition under EMIR, which, among other requirements, depends on a cooperation arrangement (MoU) between ESMA and the Bank of England. This MoU was revised in March 2025, alongside the extension of the UK CCPs' recognition to 30 June 2028.⁵³ Beyond creating the active-account rule, EMIR 3.0 strengthens the legal terms of ESMA's third-country cooperation arrangements for systemically important (Tier 2) CCPs, requiring more frequent data sharing, full information access, inspection coordination, and crisis-planning hooks.⁵⁴ On March 17, 2025, ESMA and the Bank of England announced a revised MoU that 'follows the amendments introduced by EMIR 3' regarding the content of cooperation arrangements.⁵⁵ This MoU is a cornerstone of international comity: it sets out how two sovereign regulators will share information, coordinate oversight, and manage crises for UK CCPs that are deeply interconnected with EU markets. The 2025 ESMA-Bank of England MoU meets EMIR's recognition requirement and acts as a supervisory safety net, so the EU can keep using UK CCPs unless cooperation breaks down or another serious oversight problem arises.

The March 2025 ESMA-Bank of England MoU records arrangements to enable ESMA's 'immediate access on an on-going basis to all information requested' about the covered CCPs.⁵⁶ This encompasses significant model changes, governance issues, default fund resources, stress test results, and any issue that could affect CCP safety. Under EMIR 3.0, cooperation arrangements for Tier 2 CCPs must provide (at least monthly) whatever information ESMA requests to ensure EMIR compliance, creating a direct data pipeline that mitigates information asymmetry.⁵⁷

4.1 On-site Inspections and Investigations

EMIR 2.2 had controversially empowered ESMA to conduct on-site inspections of third-country CCPs. The revised ESMA-Bank of England MoU sets practical protocols: ESMA will ordinarily undertake any General Investigations or On-site Inspections as part of the Bank's supervisory program. Independently planned on-site inspections 'will only be considered in limited cases', and where ESMA intends such an inspection it must consult the Bank beforehand.⁵⁸ The Bank of England may accompany ESMA or even conduct a joint inspection. The MoU balances

53 European Securities and Markets Authority, 'ESMA and Bank of England Conclude a Revised MoU in Respect of UK-Based CCPs Under EMIR' (17 March 2025).

54 Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets.

55 European Securities and Markets Authority (n 50).

56 European Securities and Markets Authority (ESMA) and Bank of England, 'Memorandum of Understanding Between ESMA and the Bank of England to Set Out Arrangements for Cooperation on the Monitoring and Supervision of CCPs Established in the UK' (Bank of England; European Securities and Markets Authority 2025) Memorandum of Understanding.

57 Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets.

58 European Securities and Markets Authority (ESMA) and Bank of England (n 53).

ESMA's statutory right to investigate (e.g. if there is a suspicion of a rule breach at a Tier 2 CCP) with respect for the Bank of England's jurisdiction and primary role. In essence, ESMA would likely exercise on-site powers only if remote information sharing proves insufficient, and with Bank of England cooperation. This comity-driven approach helps prevent turf wars and maintains respect for UK sovereignty, while still giving ESMA a meaningful tool if needed to verify conditions on the ground.

4.2 Crisis Management and Emergency Coordination

Perhaps the most crucial test of cross-border cooperation is during a financial crisis or CCP distress scenario. The 2025 MoU affirms close cooperation, consultation, and timely information sharing, and makes clear that the Bank of England leads in emergencies while ESMA is informed and consulted.⁵⁹ The Bank commits to take ESMA's views into account as far as possible, and to keep ESMA apprised of developments.⁶⁰ This hierarchy reflects comity: the home authority retains primacy, while the host authority has meaningful voice and visibility.

4.3 Ongoing Supervisory Cooperation

Beyond emergencies, the MoU covers routine interactions. It sets periodic meetings where ESMA and Bank of England discuss the CCPs' risk profiles, model changes, examination findings, and so on. Under EMIR 3.0, the MoU must enumerate the CCP information to be shared regularly and procedures for swift communication of any emerging risk.⁶¹ For instance, if a UK CCP plans to expand into new products or significantly change margin parameters, the Bank of England would inform ESMA in advance. There are also likely provisions for data-sharing on clearing participation, e.g. the Bank of England providing ESMA with data on EU banks' positions or default fund contributions at the CCP (which helps ESMA gauge systemic exposure). Under EMIR Article 23b, ESMA establishes, manages and chairs the Joint Monitoring Mechanism, which brings together the European Central Bank (ECB)/ Single Supervisory Mechanism (SSM), European Systemic Risk Board (ESRB), European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and relevant central banks of issue to monitor the EU-wide implementation of the Active Account requirements and related financial-stability risks. This EU-side monitoring complements analytically the information ESMA receives under the ESMA-Bank of England MoU⁶² and the Bank of England MoU ensures ESMA has the input (from the UK side) needed for that monitoring.

4.4 Default Management and Portability

Although the published MoU does not detail default-management playbooks, cross-border coordination is implicit. A defaulting EU clearing member could have positions at both LCH and an EU CCP. Effective porting of client positions or auctioning of the defaulting portfolio would require the Bank of England and ESMA to coordinate. The MoU's information-sharing and consultation channels provide the infrastructure for that coordination, even if the operational details are handled case by case. In practice, the ability to move positions or manage loss

59 'Memorandum of Understanding Between ESMA and the Bank of England to Set Out Arrangements for Cooperation on the Monitoring and Supervision of CCPs Established in the UK'; European Securities and Markets Authority (ESMA) and Bank of England (n 53).

60 European Securities and Markets Authority (ESMA) and Bank of England (n 53).

61 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR) 2012 (Official Journal of the European Union) 1.

62 Ibid.

allocation without spillovers is a central stress-test for comity, and this is one area where deeper equivalence-plus mechanisms could further reduce reliance on unilateral measures.

Trust and Verification: Ultimately, the efficacy of this MoU comes down to trust between ESMA and the Bank of England, reinforced by legal obligation. The Bank of England welcomed ESMA's extended recognition decision in 2025 and emphasised cooperation to enable effective cross-border supervision.⁶³ This signals shared incentives: the EU gains oversight comfort and the UK retains access for its CCPs.

In summary, the ESMA-Bank of England MoU can be seen as the 'comity guardrail' around the AAR. It assures that even as the EU mandates some on-shoring of clearing, it is simultaneously deepening cross-border cooperation to manage the remaining offshore clearing. The MoU's robust provisions (real-time data sharing, joint oversight, crisis coordination) address many of the concerns that originally drove the AAR. If the Bank of England provides ESMA everything it needs to monitor UK CCP risks, and if in crises the Bank of England acts in a way that protects EU stability (while keeping ESMA fully informed), then the rationale for heavy-handed tools diminishes. Conversely, if cooperation faltered, EU authorities might feel vindicated in having required those active accounts as an insurance policy.

05

The Cost of Split Clearing

A core economic concern about the Active Account mandate is that it will force *split clearing* of portfolios, whereby a firm's derivative positions end up divided between an EU CCP and a third-country CCP (like LCH). Clearing fragmentation can introduce several inefficiencies: loss of margin netting benefits, duplication of default fund contributions, liquidity strains from managing collateral in multiple places, and operational complexity.⁶⁴ In this section, I focus on the initial margin impact and related netting and liquidity effects, using examples to gauge the magnitude of these costs.

5.1 Netting and Initial Margin Basics

Clearinghouses require each member (or client) to post initial margin against its portfolio's potential future exposure. Margin is calculated at the CCP level, taking into account offsetting positions within that CCP. If a bank clears all its euro interest rate swaps at one CCP, long and short positions can be offset, reducing the net risk. If those swaps are split across two CCPs, each CCP sees only its slice and cannot recognise cross-CCP offsets. In general, the total IM required by two CCPs for two sub-portfolios will be greater than the IM required for the combined portfolio at one CCP. This is the familiar netting inefficiency or de-netting effect, and reflects the subadditivity

63 'Bank of England Statement on the European Securities and Markets Authority's Decision Regarding EU Recognition of UK Central Counterparties' (17 March 2025).

64 Duffie and Zhu (n 9); Rama Cont and Thomas Kokholm, 'Central Clearing of OTC Derivatives: Bilateral Vs Multilateral Netting' [2012] SSRN Electronic Journal; Evangelos Benos and others, 'The Cost of Clearing Fragmentation'; John Heilbron and Stathis Tompaidis, 'The Impact of CCP Liquidity and Capital Demands on Clearing Members Under Stress' (Office of Financial Research, US Department of the Treasury 2025) Working Paper 25-03; Thomas B King and others, 'Central Clearing and Systemic Liquidity Risk' (2023) 19 International Journal of Central Banking 85; Luitgard AM Veraart and Iñaki Aldasoro, 'Systemic Risk in Markets with Multiple Central Counterparties' (Bank for International Settlements 2022) Working Paper 1052.

of risk measures applied within a CCP's own liquidation groups.⁶⁵

How large the uplift is depends on the portfolio structure and the offsets a CCP recognises.⁶⁶ For opposite-direction, highly correlated hedges, one-CCP margin can be very low. Splitting removes that offset, and the uplift can be large. For same-direction exposures, splitting matters less. Across weakly related or cross-asset positions, the uplift reflects the loss of any diversification the CCP's model would have recognised, and fragmentation is also associated with a CCP-to-CCP pricing 'basis' documented in industry and policy work.⁶⁷

Empirical and modelling work suggests the uplift is economically significant but sensitive to correlation: for highly correlated rates portfolios, splitting across CCPs may raise IM by single-digit to low-double-digit percentages, while weaker correlations can yield much larger penalties.⁶⁸

In short, the lower the cross-correlation of risks that end up separated, the higher the margin penalty. Typical interest rate curves are highly correlated along tenors (hence splitting the same asset class between CCPs might only raise IM by perhaps 5–15%).⁶⁹ But splitting different asset classes (e.g. clearing credit derivatives in one CCP and rates in another) could have a bigger impact if those asset classes had some diversification benefit under a single CCP's multi-product margin methodology.⁷⁰ In effect, split clearing converts diversification into trapped collateral: once offsets are broken across CCPs, the foregone netting becomes a structural liquidity charge that tends to widen when correlations weaken or models tighten under stress.

A simple illustration clarifies the mechanism. Suppose two highly correlated swap positions would largely offset if cleared together. At a single CCP, the combined margin requirement can be small relative to the stand-alone margin on each position. Split across two CCPs, those offsets are not recognised across the divide, so total IM rises materially. The exact magnitude depends on correlations and model design, but the direction is robust.

5.2 Measuring the Split

Prior to EMIR 3.0, many large banks cleared certain products in multiple CCPs but kept core swaps portfolios consolidated to maximise netting. LCH's SwapClear remains the dominant venue for EUR IRS, with Eurex holding a smaller share.⁷¹ Under the AAR, some volume must migrate or be replicated at an EU CCP, meaning two margin pools and higher collateral usage.

65 Commission Delegated Regulation (EU) No 153/2013 supplementing Regulation (EU) 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties 2013 (OJ L 52) 41.

66 'Uplift' means the additional initial margin required when the same portfolio is cleared across more than one central counterparty rather than a single one. It is the difference between the total margin required across those CCPs and the margin that would have been required if the positions were kept together at one CCP. Expressed as a percentage, it is that difference relative to the single-CCP margin.

67 Ismael Alexander Boudiaf, Martin Scheicher and Francesco Vacirca, 'CCP Initial Margin Models in Europe' (European Central Bank 2023) Occasional Paper Series 314.

68 Ibid; Rama Cont and Thomas Kokholm, 'Central Clearing of OTC Derivatives: Bilateral Vs Multilateral Netting' (2014) 31 Statistics & Risk Modeling 3.

69 Commission Delegated Regulation (EU) No 153/2013 supplementing Regulation (EU) 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties.

70 Ibid.

71 Jon Skinner, 'Q2 2025 CCP Volumes and Share in IRD' (*Clarus Financial Technology Blog*, 30 July 2025).

For context, as of Q1 2025 LCH cleared roughly 93% of EUR IRS (Euribor) gross notional and Eurex about 7%, with LCH's share even higher in EUR OIS.⁷² These shares underscore the historic concentration of euro rates clearing and why even modest shifts can have noticeable margin and liquidity effects.

Beyond margin, liquidity fragmentation is a concern. If, say, 10% of euro swap trades move to Eurex, will there be enough liquidity (market makers, trading activity) in that CCP to keep spreads tight and allow smooth execution? The answer is uncertain. So far Eurex has grown its share mainly through incentive programs and the looming regulatory push, but market depth is thinner than at LCH. Traders might experience slight pricing differentials – indeed some anecdotal evidence shows a small ‘basis’ or price discrepancy between Eurex-cleared and LCH-cleared euro swaps (reflecting relative demand to clear at one vs. the other). If liquidity fragments, it can also create operational frictions: firms might need to maintain connectivity to multiple trading venues or brokers to execute at the different CCPs, and manage collateral pools separately (one can not freely move collateral between CCPs without cost or delay).

There is also default fund duplication: clearing members contribute to each CCP's default fund. More CCP memberships mean committing more capital to default funds, another implicit cost of fragmentation (though typically smaller than IM).⁷³

Are these costs systemic or just private? From the individual bank's perspective, higher IM is a cost – it ties up liquidity/collateral that could be used elsewhere. But one might argue that from a system perspective, higher total collateral on the same portfolio is extra safety. However, requiring double posting of margin for essentially the same risk does not actually make the system safer if the risk was already being covered once – it just immobilises resources.

In extreme cases, if firms struggle to find collateral to meet dual margin calls, it could cause stress (especially in a crisis when liquidity is scarce).

There is also an opportunity cost: collateral locked at CCPs can not be used to fund other activities or absorb other shocks. Regulators acknowledge these trade-offs. Indeed, EMIR 3.0's recitals explicitly speak of ‘avoiding unnecessary market balkanisation’ and calibrating the AAR to minimise undue burden.⁷⁴ The inclusion of de minimis thresholds and the narrow product scope are part of keeping fragmentation costs in check.

Another externality is product and basis risk. If an EU bank decides not to mirror trades but rather to clear different sets of trades in EU vs UK CCP (to meet the representativeness requirement), it might end up with a slightly different portfolio in each. Managing those two portfolios to remain aligned with the bank's overall risk target could get complicated. For instance, if hedging certain tenors is easier at LCH due to liquidity, but a bank must do some at Eurex to satisfy AAR, it could face basis risk between Eurex-cleared and LCH-cleared exposures (if their valuations diverge or if one CCP has a margin/haicut change that forces position adjustments).

⁷² Ibid.

⁷³ ‘Commission Staff Working Document: Impact Assessment Report (EMIR 3.0 – Measures to Mitigate Excessive Exposures to Third-Country CCPs and Improve the Efficiency of Union Clearing Markets)’ (European Commission 2022) SWD(2022) 697 final; Duffie and Zhu (n 9).

⁷⁴ Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets.

Ultimately, the policy question is not whether split clearing raises initial margin, but whether this incremental liquidity charge purchases proportionate resilience, an issue that can only be credibly assessed under stress, not inferred from calm-period averages.

5.3 Policy Implications

The margin and netting externalities of split clearing feed directly into the proportionality analysis of the AAR. If the systemic stability gained (via some risk reduction) is minor compared to the cost imposed on market participants and liquidity, the mandate might not be justified. Conversely, if the margin uplift is small and firms adapt efficiently, the cost argument weakens. The analysis here suggests that for highly correlated portfolios (like within one asset class), the inefficiency, while not negligible, is likely in the single-digit percent range for IM. This was arguably deemed an acceptable cost for the benefit of having an EU fallback clearing channel.

Moreover, one could argue that maintaining active accounts has a positive externality: it spurs development of EU CCP capacity, which in the long run could yield more competition and lower clearing fees or better services. Over time, if Eurex or others deepen their liquidity, the spreads between CCPs may narrow and the cost of splitting could diminish (especially if banks can more flexibly allocate trades where they get the best execution at any given time).

In conclusion, split clearing does impose tangible economic costs on clearing participants - primarily through increased initial margin requirements and collateral fragmentation. My stylised examples point to a trade-off that is real but potentially contained if carefully managed. Policymakers will need to watch these indicators (hence the importance of AAR reporting data) to ensure the requirement does not unduly harm market liquidity or efficiency. This economic perspective will be crucial in the next section, where I assess whether the AAR, in light of these costs and the cooperation mechanisms in place, can be considered a proportionate (or un-proportionate) measure under principles of EU law and international comity.

06

Proportionality with Comity: A Test for Use-Mandates

When evaluating a regulatory measure like the AAR, EU law requires compliance with proportionality, the measure must be appropriate to a legitimate objective, necessary (no equally effective but less onerous alternative), and proportionate *stricto sensu* (the disadvantages must not be disproportionate to the aims pursued). Here, those principles must be applied with an international legal lens, given the cross-border implications of the AAR.

I propose a comity-aware proportionality test for the AAR, consisting of three stages:

6.1 Suitability

Is the AAR able to achieve the objective of reducing excessive exposure to third-country CCPs and enhancing EU financial stability? On its face, yes. By mandating that some portion of clearing be done on EU CCPs, the AAR directly seeks to curb absolute reliance on foreign CCPs. The measure addresses the identified risk: e.g., if LCH (UK) were to face distress, EU firms would at least have an alternative pipeline (their active accounts) to continue clearing critical trades, and they would already have experience and infrastructure in using it.

Recital 11 of EMIR 3.0 states that the AAR should reduce reliance on Tier 2 CCP services of substantial systemic importance.⁷⁵ The measure therefore targets a legitimate objective, even if its modest scale is better understood as building operational readiness than as an immediate transfer of risk.

The AAR's scale is modest: representativeness can mean as few as five trades per subcategory per year. This suggests the measure is primarily about ensuring operational capability and a foothold of activity rather than an immediate redistribution of market share. Suitability therefore depends on whether operational readiness is the relevant goal and whether EU CCPs can credibly absorb a surge if needed.

6.2 Necessity

Necessity is the most contested limb. The existence of a robust ESMA–Bank of England MoU and extended equivalence might support a softer approach (trust but verify through information-sharing and joint oversight) instead of mandatory relocation.⁷⁶ Less intrusive options include stress-testing and contingency planning without mandated activity, or prudential capital add-ons for concentrated exposures. The EU nevertheless opted for a direct mandate, reflecting a judgment that cooperation and information access alone are insufficient insurance against tail risk at a foreign CCP. From a comity perspective, this is a cautious choice that prioritises self-reliance over deference to the home regulator.

Necessity also turns on risk tolerance. Even with robust UK recovery and resolution powers, EU authorities may be unwilling to rely on discretionary decisions by a foreign central bank in a crisis where EU interests are large. Active accounts provide an insurance policy and a domestic lever. At the same time, if cooperation and equivalence already mitigate the most plausible risks, the necessity case for a mandatory usage rule becomes contestable rather than self-evident.

6.3 Proportionality in the Strict Sense

Do the benefits of the AAR outweigh its costs and adverse impacts, considering less intrusive measures were either inadequate or not available? This is a balancing exercise. On the benefit side, stability has been enhanced (or at least reduced worst-case risk), increased EU oversight in normal times (since EU CCPs are directly supervised by ESMA/NCAs, giving a clearer view of some trades), and a strategic goal of building out EU clearing capacity

⁷⁵ Ibid.

⁷⁶ European Securities and Markets Authority (ESMA) and Bank of England (n 53).

(the open strategic autonomy angle).⁷⁷ On the cost side, as detailed in the previous section, we have margin inefficiencies, liquidity fragmentation, operational burdens, and potential dampening of London-EU financial ties, which could reduce market efficiency globally. There is also a financial stability cost if fragmentation goes too far: forcing business into smaller liquidity pools can concentrate risk differently or reduce the ability to port positions in a crisis (if EU CCPs can not absorb large volumes that might need to move). So the balance must consider: is the incremental resilience gained worth the sum of these costs?

Capacity matters for this balance. EU CCPs have grown and invested in euro IRS capability, but remain smaller than LCH. Eurex's partnership program and rising notional outstanding suggest that capacity exists for a gradual rebalancing, while also indicating why a sudden, large reallocation could be destabilising.⁷⁸ This supports a calibrated AAR rather than an aggressive relocation mandate.

A comity-aware lens also adds the international relational cost: Does the AAR unnecessarily antagonise a partner jurisdiction? The fact that the UK has so far accepted the situation (Bank of England welcomed ESMA's extension and by extension lives with AAR's effects)⁷⁹ suggests the tension is being managed. But if the EU were to expand the AAR and increase the required portion of trades, or extend it to more product classes without clear justification, it might strain relations and potentially invite retaliation (like the UK imposing its own localisation requirements).

One way to ensure proportionality is to embed conditionality and review: the AAR is not set in stone. ESMA will evaluate its effects by 2026. If data shows limited exposure reduction but meaningful cost, ESMA could recommend scaling it back. If cooperation falters or UK rules diverge, tighter measures might be justified.

Practical indicia for this balancing exercise include: (i) the quality of cooperation under the MoU (information flows, crisis coordination, and supervisory access), (ii) EU CCP market depth and operational capacity to absorb shifts, and (iii) whether the margin and liquidity costs of fragmentation are outweighed by measurable reductions in concentration risk. These indicators help distinguish a proportionate insurance policy from an overreach.

One must also weigh the absence of feasible alternatives. Letting equivalence lapse and forcing all EU business onshore was widely viewed as too disruptive. The AAR is therefore a compromise between doing nothing and doing everything, and can be defended as the less restrictive means of reducing exposure.

Finally, recital 15 of EMIR 3.0 mandates ESMA to report on whether the AAR is reducing exposures and to propose adjustments if needed.⁸⁰ This built-in review acknowledges uncertainty and helps guard against overshooting.

77 Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets.

78 Eurex Clearing AG, 'Eurex Clearing – Partnership Program (OTC IRD Summary)' (Eurex Clearing AG 2025).

79 Bank of England, 'Bank of England Statement on the European Securities and Markets Authority's Decision Regarding EU Recognition of UK Central Counterparties' (17 March 2025).

80 Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets.

In conclusion, applying the comity-aware proportionality test suggests: the AAR can be justified (as proportionate) only under certain conditions – it must remain limited in scope, paired with deep cooperation, and continuously justified by outcomes. If those conditions hold, the AAR is an innovative blend of unilateral precaution and international oversight. If any condition fails (cooperation strong but AAR overshoots, or AAR not actually needed due to cooperation), then either the AAR should be dialed back or the cooperation improved, to restore balance.

07

Equivalence-Plus: Data Gateways, Portability, and Crisis Playbooks

Is there a long term solution that reconciles the EU's quest for financial stability with the efficiencies of a global clearing market? I posit that the answer lies in an 'equivalence-plus' framework: equivalence paired with active safeguards and cooperation mechanisms, yet short of market fragmentation. This would hardwire the best elements of current arrangements (the MoU, data-sharing) and add new tools to address EU concerns, potentially allowing the AAR to be relaxed or not renewed after 2028 if benchmarks are met.

Key components of an equivalence-plus template could include:

1. **Real-time Reporting Gateways:** Building on the ESMA-Bank of England MoU, formalise direct data feeds from UK CCPs to ESMA. EMIR 3.0 already requires at least monthly exchanges and 'access to all information requested by ESMA'.⁸¹ An equivalence-plus addendum could operationalise near-real-time feeds comparable to ESMA's oversight of EU CCPs.⁸² With this depth of insight, the case for relocating trades weakens.
2. **Enhanced Portability and Segregation Safeguards:** Equivalence-plus can address CCP failure risk by improving portability of positions and collateral from a UK CCP to an EU CCP in a crisis. At minimum, counterparties must ensure their EU-CCP active account is permanently functional, with documentation, connectivity and processes to absorb a rapid increase in volume.⁸³ More ambitious arrangements (inter-CCP transfer protocols) would likely require legislative or contractual groundwork.
3. **Crisis-Time Coordination Mechanisms:** Beyond the MoU, equivalence-plus could embed joint crisis simulations and clearer playbooks, formalising ESMA's role in recovery and resolution discussions while respecting the Bank of England's lead. This would reduce uncertainty about cross-border coordination in stress.

81 Ibid.

82 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR).

83 European Securities and Markets Authority (n 34).

- 4. Harmonised Risk Standards:** Another element could be aligning certain risk management standards across CCPs. EMIR 2.2 enabled ESMA to impose some EU requirements on Tier 2 CCPs (covering liquidity, collateral, etc.). Equivalence-plus might involve the UK and EU agreeing on certain enhanced standards for systemically important clearing services, like minimum liquidation period, margin buffer levels, default fund sizing. This would help the EU feel comfortable that a UK CCP is not holding less resources than an EU CCP would. If the regulatory outcomes are the same, the EU has less reason to worry about the location. In fact, dual supervision (Bank of England and ESMA both overseeing UK CCP risk models) is already emerging, and formalising that into a cooperative oversight committee could be envisaged.
- 5. Market Transparency and Incentives:** A lighter-touch complement would be greater transparency around CCP margin and haircut practices, enabling participants to compare costs and risks across venues. Private incentive schemes (such as fee rebates to shift volume) can support EU CCP growth without mandates, though they should remain consistent with competition and stability objectives.
- 6. Sunset and Review Clauses:** Equivalence-plus could pair enhanced safeguards with a clear understanding that if they function effectively, the AAR would be relaxed or not renewed. If cooperation weakens or risk standards diverge, stronger measures could be re-triggered.

All these proposals would require varying degrees of implementation effort. Some (like data sharing or crisis drills) are already happening or can be done through MoU addenda. Others (such as inter-CCP portability or formal joint oversight bodies) may require political negotiation or legislative changes, including potential amendments to insolvency and resolution frameworks. The benefit is mutual: the UK retains EU business and the EU gains oversight comfort without routine market intervention.

In effect, equivalence-plus is a package deal: EU retains access to global clearing, UK retains EU business, and both coordinate deeply to manage risks. The 'plus' are those extra safeguards ensuring EU comfort. Equivalence-plus can be described as a template for post-Brexit financial services relations, treating equivalence not as a one-off unilateral determination but as an ongoing, condition-based partnership.

To connect back to the theme of this paper: the existence of an effective equivalence-plus framework could be the key to phasing out the AAR eventually. If, for instance, by 2027 EU authorities see that due to cooperation and some growth of EU CCP capacity, the systemic risk is adequately controlled, they may decide not to renew the active account requirement (or to modify it such that it becomes almost symbolic). At that point, EU firms might still voluntarily maintain multiple CCP memberships (which is prudent risk management anyway), but without a rigid mandate. On the other hand, if by 2027 the cooperation has gaps or EU CCP uptake is minimal, they might feel the need to maintain or even intensify the mandate. So pushing for these 'plus' measures is in the interest of all parties to avoid that latter scenario.

If achieved, this approach aims to maintain financial stability without resorting to protectionist mandates, essentially achieving the AAR's goals through a cooperative safety net. In reality, some mix of on-shoring and cooperation will likely persist, but the balance can shift away from blunt instruments like the AAR as trust and experience in collaboration build up. The key is credibility: if the 'plus' measures work in practice, the case for mandatory usage shrinks.

Conclusion

EMIR 3.0's Active Account Requirement is a cautious attempt to reduce systemic concentration risk without severing cross-border clearing. It arose in a post-Brexit context that combines genuine financial-stability concerns with a strategic push to build EU clearing capacity. This paper examined the AAR's legal design, economic implications, and its interface with EMIR's equivalence/recognition framework and supervisory cooperation.

Several conclusions follow.

1. The AAR can be justified in principle as a proportionate measure only under specific conditions: it must target clearly identified systemic exposures, allow calibrated flexibility to avoid undue burden for smaller or special-case participants, and be embedded in robust supervisory cooperation to mitigate extraterritorial effects. EMIR 3.0 frames the AAR as risk-driven and time-limited, with an ESMA review around 18 months after entry into force and alignment with the 2028 equivalence timeline. This conditionality is key to legitimacy and provides a pathway for recalibration if evidence shows either limited stability benefits or undue costs.⁸⁴

The observed market impact to date appears deliberately modest: by requiring only a representative set of trades, the AAR nudges rather than forces relocation. EU CCPs have gained some share in targeted products while London remains the primary pool. If the objective is to build a scalable EU fallback and gently re-balance exposures, this 'light-touch' usage mandate is coherent. A meaningful test by 2028 will be whether EU CCPs handle a materially greater portion of euro-denominated clearing without compromising efficiency.

1. Supervisory comity has been strengthened in parallel. The revised ESMA-Bank of England cooperation arrangements, alongside the multi-year extension of UK-CCP equivalence and recognition to 30 June 2028, address information-asymmetry and crisis-coordination concerns and reduce the case for blunt relocation tools.⁸⁵ This supports the paper's claim that equivalence can be made more resilient through 'equivalence-plus' (richer data access, clearer crisis playbooks, and portability safeguards) rather than through rigid volume mandates.

Netting and margin externalities from split clearing are real but typically bounded. For correlated portfolios within a single asset class, the initial-margin uplift is often in the single-digit to low-teens percent range in normal conditions, rising under stress when correlations weaken. These costs belong squarely in the proportionality calculus: if stability gains are modest while IM and liquidity costs mount, recalibration is warranted. If costs stay contained and readiness benefits materialise, the mandate's burden is more easily justified.

84 Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets.

85 Commission Implementing Decision (EU) 2025/215 of 30 January 2025 determining, for a limited period of time, that the regulatory framework applicable to central counterparties in the United Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council.

The 2025-2028 period functions as a controlled experiment. Useful metrics include: the EU-vs-UK share of in-scope exposures, changes in default-fund concentration, aggregate IM for major EU participants, bid-ask spreads and depth in targeted products, and operational readiness to scale EU clearing if needed. If by 2028 UK CCPs remain safe, cooperative, and systemically important to EU markets, while EU CCP capacity has improved but not fully substituted London, extending equivalence (and relying more on equivalence-plus safeguards) will likely dominate abrupt relocation. In that scenario, the AAR could be refined or gradually relaxed if supervisory cooperation achieves the same stability objectives at lower cost. Conversely, if EU CCPs can reliably absorb the bulk of relevant clearing without fragmentation-induced fragility, a more ambitious onshoring path could be contemplated, though a complete severance remains unlikely absent exogenous shocks.

In sum, active accounts and international comity are complementary tools for managing cross-border CCP risk. EMIR 3.0's approach uses limited, reviewable use mandates layered on top of an equivalence regime reinforced by stronger cooperation, and it seeks a state of 'secure openness.' The preferred end-state by 2028 is one where EU authorities have sufficient visibility and contingency options, EU CCPs are resilient and contestable, and heavy mandates are unnecessary because cooperation and market capacity together deliver the intended risk reduction.⁸⁶

86 Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets; Commission Implementing Decision (EU) 2025/215 of 30 January 2025 determining, for a limited period of time, that the regulatory framework applicable to central counterparties in the United Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council.

