

# Final Report

Conditions of the Active Account Requirement



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# 1 Executive Summary

## Reasons for publication

The Review of the European Market Infrastructure Regulation (EMIR 3) seeks to address the financial stability risks caused by EU clearing members and clients being exposed to systemically important third-country central counterparties (Tier 2 CCPs), by requiring certain financial counterparties (FCs) and non-financial counterparties (NFCs) with exposures to clearing services of substantial systemic importance to hold an operational and representative active account at EU CCPs.

ESMA is mandated under Article 7a(8) to further specify the conditions of the Active Account Requirement (AAR) in Regulatory Technical Standards (RTS) by 25 June 2025.

ESMA published a Consultation Paper with draft RTS on 20 November 2024. The consultation ended on 27 January 2025. ESMA also held a public hearing on the Consultation Paper on 20 January 2025.

This Final Report provides the draft RTS further specifying the requirements under paragraph 3, points (a), (b) and (c) of Article 7a of EMIR, the conditions for stress testing such conditions, the details of the representativeness obligation under paragraph 3, point (d) of Article 7a of EMIR, as well as the details of the reporting in accordance with Article 7b of EMIR. The Final Report and the accompanying RTS take into account the feedback provided by the respondents to the consultation.

In accordance with Article 7a(8) of EMIR, these draft RTS have been prepared in cooperation with EBA, EIOPA and the ESRB and after consulting the ESCB. ESMA also sought advice from the Securities and Markets Stakeholder Group (SMSG).

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Section 3 outlines the scope of the AAR on which ESMA has based its quantitative analysis and the different policy choices outlined in this Final Report. Section 4 outlines the requirements proposed by ESMA to meet respectively the operational conditions set out under points (a) to (c) of Article 7a(3), and their stress-testing. Section 5 specifies the details of the representativeness obligation under condition (d) of Article 7a(3), including the relevant classes of derivatives, the different trade size and maturity ranges, the number of most relevant subcategories per class of derivatives, as well as the duration of reference periods. Section 6 details the reporting requirements for counterparties subject to the AAR under Article 7b. Each of these sections highlights the responses received to the consultation, and how ESMA suggested to amend the draft RTS to accommodate, where possible, the comments received.

Annex I sets out the legislative mandate for developing the RTS. Annex II provides for a cost-benefit analysis for the RTS. Annex III presents the advice from the MSG, and Annex V contains the proposed draft RTS.

#### **Next Steps**

ESMA will submit the Final Report and draft RTS to the European Commission. The European Commission has three months to decide whether to adopt the RTS (in the form of a Commission Delegated Regulation). Following the adoption, the RTS are then subject to non-objection by the European Parliament and the Council.

## 2 Introduction

1. Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024<sup>1</sup> (EMIR 3), which has amended Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012<sup>2</sup> (EMIR), entered into force on 24 December 2024.
2. EMIR 3 seeks in particular to address the financial stability risks caused by EU clearing members and clients being exposed to systemically important third-country CCPs (Tier 2 CCPs), by requiring some financial counterparties (FC) and non-financial counterparties (NFCs) with exposures to clearing services of substantial systemic importance to hold an operational and representative active account at EU CCPs.
3. In accordance with Article 7a(8) of EMIR, ESMA is mandated to further specify the conditions of the Active Account Requirement (AAR) in a Regulatory Technical Standard (RTS) within six months following the entry into force of EMIR 3.

## 3 Scope

4. Article 7a of EMIR requires certain FCs and NFCs to hold, for certain categories of derivative contracts, at least one active account at an EU CCP and for some of those FCs and NFCs to clear at least a representative number of trades in this account.
5. ESMA finds it useful for the implementation of the AAR and the readiness of market participants and their competent authorities to explain in this report the scope on which it has based its quantitative analysis and the different policy choices.
6. The scope of the AAR is not part of ESMA's mandate under Article 7a since it is set at Level 1 and is therefore not covered in the draft Regulatory Technical Standards (RTS) and has not been subject to consultation. Any question related to the interpretation of EU Law, as the case may be, can only be addressed in accordance with the Treaties.

### 3.1 Products

7. The derivative contracts subject to the active account requirement are over-the-counter (OTC) interest rate derivatives denominated in euro, OTC interest rate derivatives denominated in Polish zloty and Short-Term Interest Rate Derivatives (STIR) denominated in euro, as outlined in Article 7a(6) of EMIR and further clarified in Recital 11 of EMIR 3. For ease of reading, ESMA uses the term "the relevant derivative

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<sup>1</sup> 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; OJ L, 2024/2987, 4.12.2024.

<sup>2</sup> 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; OJ L 201, 27.7.2012, p. 1–59.

contracts” throughout the Final Report when referring to the contracts listed under Article 7a(6) of EMIR.

8. Under Article 7a(7), the list of contracts subject to the AAR may be amended following ESMA’s cost-benefit analysis and opinion to the European Commission in line with the Quantitative Technical Assessment under Article 25(2c) of EMIR, which shall occur after consulting the ESRB and in agreement with the central banks of issue (CBIs) for the relevant currencies. The European Commission may then adopt a delegated act to amend the list of derivative contracts.
9. At the time of the Report<sup>3</sup> published in December 2021, the assessment identified three clearing services as being of substantial systemic importance to the EU or to one or more of its Member States: SwapClear of LCH Ltd for the clearing of interest rate derivatives denominated in euro and Polish zloty, as well as the Credit Default Swaps (CDS) and the STIR services of ICE Clear Europe Ltd (ICEU), in both cases for euro-denominated products.
10. Since the publication of the Report, ICEU has decided to cease clearing CDS contracts as of end-October 2023. Therefore, EUR CDS have not been included in the scope of the AAR in EMIR 3, as clarified in Recital 11.
11. Article 7a(1) of EMIR requires that counterparties hold active accounts at EU CCPs only where clearing services for the relevant derivative contracts are provided at one (or more) EU CCP. When conducting the Technical Assessment under Article 25(2c) of EMIR, ESMA is also required under subpoint (i) of point (c) of that Article to consider the “existence of potential alternative substitutes for the provision of the clearing services concerned in the currencies concerned to clearing members, and to the extent the information is available, their clients and indirect clients established in the Union”. ESMA had concluded in its Assessment Report that there were alternative clearing services provided by other CCPs in the EU to the clearing services deemed of substantial systemic importance at LCH Ltd and ICEU.
12. ESMA will continue closely monitoring the development of alternative clearing services in the EU given their implications for the requirement on counterparties to hold an active account at an EU CCP.

## 3.2 Counterparties

13. Article 7a(1) of EMIR sets out a double condition for the application of the active account requirement to FCs and NFCs.

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<sup>3</sup> ESMA91-372-1945 Assessment Report under Article 25(2c) of EMIR, [Part 1](#) and [Part 2](#)

### 3.2.1 Clearing obligation

14. Under the first condition of the AAR, FCs and NFCs have to be subject to the clearing obligation. FCs and NFCs are subject to the clearing obligation when their aggregate month-end average position for the previous 12 months exceeds the clearing threshold specified pursuant to point (b) of Article 10(4) of EMIR (or where the counterparties do not calculate their positions).
15. Under Article 4a of EMIR, where a FC calculates its positions and the result of that calculation exceeds the clearing threshold, the FC becomes subject to the clearing obligation for all OTC derivative contracts pertaining to any class of OTC derivatives for which the clearing obligation is applicable.
16. Under Article 10 of EMIR, where an NFC calculates its positions and the result of that calculation exceeds the clearing thresholds, the NFC becomes subject to the clearing obligation only for the OTC derivative contracts in asset classes for which the result of the calculation exceeds the clearing thresholds. In addition, the NFC only needs to include the OTC derivative contracts which are not objectively measurable as reducing risks.

### 3.2.2 Clearing threshold for the categories of the derivative contracts relevant for the AAR

17. Under the second condition of the AAR, the FCs and the NFCs have to exceed the clearing threshold in any of the categories of the derivative contracts relevant for the AAR, in an individual category or on aggregate across all categories.
18. Article 11 of the Commission Delegated Regulation (EU) No 149/2013<sup>4</sup> (the “Delegated Regulation on clearing thresholds”) sets the clearing threshold values for the purpose of the clearing obligation at:
  - a) EUR 1 billion in gross notional value for OTC credit derivative contracts;
  - b) EUR 1 billion in gross notional value for OTC equity derivative contracts;
  - c) EUR 3 billion in gross notional value for OTC interest rate derivative contracts;
  - d) EUR 3 billion in gross notional value for OTC foreign exchange derivative contracts;
  - e) EUR 4 billion in gross notional value for OTC commodity derivative contracts and other OTC derivative contracts not provided for under points (a) to (d).

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<sup>4</sup> Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivative contracts not cleared by a CCP, OJ L 052, 23.2.2013

19. ESMA understands that these thresholds should be assessed against the aggregate month-end average positions for the previous 12 months of the covered counterparties. Such assessment should be performed on a continuous basis by the counterparty so it can, when breaching the threshold, notify ESMA and its NCA without undue delay.
20. Consequently, for the second condition to be met, the positions of the FCs or NFCs would have to exceed EUR 3 billion in gross notional value in either category of OTC interest rate derivatives denominated in euro, OTC interest rate derivatives denominated in Polish zloty and Short-Term Interest Rate Derivatives (STIR) denominated in euro or on aggregate across all categories.
21. ESMA notes that under EMIR it is required to review the relevant RTS determining the relevant clearing thresholds as point (b) of Article 10(4) of EMIR now refers to “the values of the clearing thresholds for uncleared positions, which are determined taking into account the calculation methodology [...], the systemic relevance of the sum of net positions and exposures per counterparty and per class of OTC derivatives.”
22. However, Article 5 of EMIR 3 clearly states that the changes to Article 4a and Article 10 of EMIR shall not apply until the entry into force of the RTS referred to in Article 10(4) of EMIR. In addition, ESMA notes that, according to Recital 9 of EMIR 3, the review is not expected to lead to substantial changes in order to ensure that the current prudent coverage of the clearing obligation is not affected by the new methodology.
23. Therefore, ESMA is of the view that the clearing thresholds outlined in the current Commission Delegated Regulation (EU) No 149/2013 should be used for the AAR as from the entry into force of EMIR 3 as stipulated in Article 7a(1) of EMIR.

### 3.2.3 Short-term interest rates (STIR) derivatives

24. ESMA notes that ICEU STIR derivatives for euro denominated products should be considered as OTC derivatives under Article 2a of EMIR, since the European Commission has not adopted an implementing act determining that the relevant third-country market complies with legally binding requirements which are equivalent to the requirements laid down in Title III on regulated markets of Directive 2004/39/EC<sup>5</sup> and that it is subject to effective supervision and enforcement in that third country on an ongoing basis.
25. However, STIR derivatives cleared in the EU would not be considered as OTC derivatives under the Article 2a of EMIR provided that their execution takes place on regulated markets<sup>6</sup> authorised in the EU. On this basis, EUR STIR traded on an EU

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<sup>5</sup> Directive 2004/39/EC has been repealed and replaced by Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) Text with EEA relevance, OJ L 173, 12/06/2014.

<sup>6</sup> ESMA notes that derivatives for which the execution takes place on Multilateral Trading Facilities (MTFs) or Organised Trading Facilities (OTFs) under Article 4(22) and (23) of Directive 2014/65/EU are considered OTC derivatives under EMIR.

regulated market and cleared at an EU CCP should not be included in the calculation of the clearing threshold for the AAR, whereas EUR STIR cleared at ICEU should be included. This approach follows the EMIR Q&A OTC Answer 1(c) developed by ESMA and published in December 2020<sup>7</sup>.

26. The same applies for EUR STIR traded on third-country markets deemed equivalent by the European Commission to regulated markets under Article 2a of EMIR. At the time of the publication of this Final Report, the European Commission has granted equivalence decisions to third-country markets based in Australia, Canada, Japan, Singapore and the United States of America<sup>8</sup>. To ESMA's knowledge, the Chicago Mercantile Exchange (CME) is the only third-country market on which EUR STIR are traded and cleared, which is deemed equivalent to regulated markets in the EU. On this basis, EUR STIR cleared at CME should not be included in the calculation of the clearing threshold for the AAR.
27. ESMA notes that this approach would diverge from EUR OTC IRD and PLN OTC IRD, whereby all products in these categories would be accounted for the calculation of clearing threshold regardless of the place where they are traded and cleared.
28. Finally, ESMA acknowledges that the gross notional amount may not always be the most appropriate metric for quantifying trading or clearing activity for all types of derivatives, in particular for futures and options, as the industry typically uses metrics based on open interest or volume in such cases. However, for consistency and practical purposes, ESMA proposes to continue using gross notional value as referred to in the clearing thresholds set out in the Delegated Regulation on clearing thresholds currently in force. Notional to be reported under EMIR is defined in the Article 5 of the Commission Delegated Regulation (EU) 2022/1855 (the "RTS on reporting")<sup>9</sup> and the section 4.17 of the ESMA Guidelines on Reporting<sup>10</sup> further details how total notional amounts should be reported. ESMA will consider whether any additional guidance is needed further to the existing definition of notional and the corresponding guidelines.
29. Finally, ESMA notes that there is no clearing obligation for STIR contracts under EMIR, however Article 29 of MiFIR<sup>11</sup> extends the clearing obligation to these products when they are traded on a regulated market. It is possible that certain counterparties, which are not subject to the clearing obligation under EMIR for OTC IRD products in EUR and

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<sup>7</sup> ESMA70-1861941480-52 Questions and Answers, Implementation of the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) (2 February 2024):

[https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52\\_qa\\_on\\_emir\\_implementation.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf)

<sup>8</sup> [https://finance.ec.europa.eu/document/download/ded285fd-3b12-40eb-8169-0a1c64c86af0\\_en?filename=emir-equivalence-decisions\\_en.pdf](https://finance.ec.europa.eu/document/download/ded285fd-3b12-40eb-8169-0a1c64c86af0_en?filename=emir-equivalence-decisions_en.pdf)

<sup>9</sup> Commission Delegated Regulation (EU) 2022/1855 of 10 June 2022 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards specifying the minimum details of the data to be reported to trade repositories and the type of reports to be used, OJ L 262, 7.10.2022

<sup>10</sup> ESMA74-362-2281 Final Report, Guidelines for reporting under EMIR (14 December 2022): [esma74-362-2281\\_final\\_report\\_guidelines\\_emir\\_refit.pdf \(europa.eu\)](https://www.esma.europa.eu/sites/default/files/library/esma74-362-2281_final_report_guidelines_emir_refit.pdf)

<sup>11</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, OJ L 173, 12.6.2014.

PLN, but clear EUR STIR on regulated markets above the indicated threshold, fall out of the obligation to hold an active requirement in the EU.

30. In conclusion, FCs and NFCs subject to the clearing obligation and with positions exceeding EUR 3 billion in gross notional value in any of or across all categories of relevant derivative contracts should be subject to the AAR as from the entry into force of EMIR 3 (or as from the moment they become subject to the clearing obligation). Covered counterparties would then be required to establish active accounts in the EU within six months of becoming subject to the obligation.

### 3.3 Entity vs. group level

31. When assessing whether it is subject to the AAR, Article 7a(2) of EMIR states that the counterparty belonging to a group subject to consolidated supervision in the Union shall include all relevant derivative contracts cleared by any entity within the group (except intragroup transactions). ESMA understands that the group level treatment applies to all entities part of a group subject to consolidated supervision in the Union and should not be limited to groups included in a consolidation in accordance with Directive 2013/36/EU.
32. ESMA notes that under Article 7a(2) of EMIR the group level requirement applies to all the obligations set out in Article 7a(1) of EMIR, including both the obligation to hold at least one active account at an EU CCP and to clear at least a representative number of trades in that account. Therefore, ESMA understands that, if a counterparty is subject to group consolidated supervision, the counterparty should consider all derivatives contracts that are cleared by that counterparty or other entities in the group to assess whether it is subject to the AAR and the representativeness obligation as outlined under Section 5 of this Final Report.
33. Recital 12 of EMIR 3 states that “when verifying whether they are subject to the active account requirement, counterparties that are part of groups headquartered in the Union should take into account the derivative contracts belonging to clearing services of substantial systemic importance that are cleared by any entity within the group, including entities established in third countries, since those contracts might contribute to the excessive degree of exposure of the group as a whole”.
34. As intragroup transactions are exempt from the AAR and can be used to replicate the desired risk exposures of the EU counterparty via back-to-back transactions with the third-country subsidiary, the recital further clarifies that “derivative contracts of third-country subsidiaries of Union groups should also be included to prevent those groups from moving their clearing activities outside the Union in order to avoid the active account requirement”. The recital also states that third-country entities that are not subject to the clearing obligation under Union law are not subject to the obligation to maintain an active account.

35. Following the above, ESMA finds that all relevant derivative contracts cleared by entities within the group subject to consolidated supervision in the Union should be included when determining whether the counterparty is subject to the AAR and to the representativeness obligation.
36. ESMA understands that the fulfilment of the tasks related to the obligation to hold an active account with trades representative of the group activity could be outsourced to another entity, including another entity of the group. However, where an entity chooses to outsource the tasks related to the AAR requirements under Article 7a of EMIR, it would remain legally responsible for the performance of such tasks.
37. As part of its analysis, ESMA has focused on groups under the direct supervision of the Single Supervisory Mechanism (SSM). However, the data collected at the group level may not always be complete, in particular when it comes to incorporating the clearing activity of subsidiaries in third-countries belonging to a group subject to consolidated supervision in the EU, as the subsidiaries are not subject to Article 9 reporting under EMIR.
38. For this reason, ESMA proposes to include in the draft RTS provisions concerning the reporting of necessary data on the clearing activity in third-country CCPs by the counterparties subject to the AAR. These points are further detailed in Section 6 of this Final Report.

## 3.4 Exemptions

- 3.4.1 Exemption from the operational conditions, their stress-testing and the reporting requirements
  39. Article 7a(5) of EMIR states that counterparties subject to the AAR which clear at least 85% of their relevant derivative contracts at an EU CCP shall be exempt from the operational conditions of the active account under Section 4 and the reporting requirements under Section 6 of this Final Report.
  40. ESMA understands that the 85% threshold should be met on aggregate across all the relevant categories of derivatives (and not individually per category), and excluding intragroup transactions.
  41. Recital 13 of EMIR 3 justifies this exemption in order to “take into account the situation of counterparties that are already clearing a significant amount of their transactions in interest rate derivatives denominated in euro and Polish zloty, and in short-term interest derivatives denominated in euro, at Union CCPs”. On this basis, ESMA understands that the 85% threshold should be assessed on the basis of the total gross outstanding notional contracts already cleared by the counterparty in the relevant categories of derivative contracts.

42. In order to ensure that this requirement is properly enforced, it is essential that NCAs and ESMA have appropriate data to not only calculate the numerator, but also the denominator of the 85% exemption threshold (i.e. information on derivatives contracts cleared at CCPs recognized under Article 25 of EMIR or otherwise). These points are further detailed in Section 6 of this Final Report.

### 3.4.2 Exemption from the representativeness obligation

43. The third subparagraph of Article 7a(4) of EMIR states that counterparties subject to the AAR with a “notional clearing volume outstanding” of less than EUR 6 billion in the relevant derivative contracts should not be impacted by the representativeness obligation under point (d).
44. ESMA is unaware of such metric being used in the field of derivatives and notes that it could be understood as referring both to the value (“notional”) and the number of transactions (“volume”). For consistency with the EUR 3 billion threshold outlined in Section 3.2 and for ease of understanding by market participants, ESMA has based its analysis on the assumption that this wording refers to “notional amount outstanding cleared” used for the clearing thresholds, a long-established metric which is well-known by the industry.
45. As per the approach outlined in Section 3.2 for the clearing threshold, the EUR 6 billion threshold should apply on aggregate across all the relevant categories of derivatives (and not individually per category). Similarly to the determination of counterparties subject to the AAR under Section 3.2, the counterparty should look at its aggregate month-end average positions for the previous 12 months. This would be in line with Recital 14 of EMIR 3 which states that the number of derivative contracts to be cleared should be calculated on “an annual average basis, meaning that in assessing whether counterparties fulfil the representativeness obligation, competent authorities should consider the total number of trades over a year”.
46. In alignment with the approach outlined in Section 3.3, ESMA finds that this threshold should be calculated at the group level, excluding intragroup transactions, and including the clearing activity of all the entities of a group.
47. Finally, Article 7a(4) of EMIR clarifies that the representativeness obligation does not include client clearing activity.

## 4 Operational conditions

48. Under Article 7a(3) of EMIR, FCs and NFCs subject to the AAR are required to meet three operational conditions listed under points (a) to (c) and a representativeness obligation under point (d) of that Article which only applies to a subset of FCs and NFCs depending on the size of their clearing activity in the relevant derivative contracts.

49. The three general conditions of the AAR under Article 7a(3) are designed to ensure that the active accounts at EU CCPs – that counterparties are required to open and maintain – are functional and operational in practice and suitable for clearing large volumes and flows of transactions redirected at short notice from a clearing service of substantial systemic importance, as well as all new trades cleared by the counterparty at all times.
50. Article 7a(8) of EMIR requires ESMA to develop draft RTS further specifying the operational conditions for the AAR outlined under points (a), (b) and (c), as well as the conditions of their stress-testing. The mandate further states that ESMA “shall take into account the size of the portfolios of different counterparties so that counterparties with more trades in their portfolios are subject to more stringent operational conditions and reporting requirements than counterparties with fewer trades”.
51. This requirement should be balanced out with the objectives of maintaining operational and functional accounts which should also serve the purpose of “incentivising counterparties to move trades to the Union”.

## 4.1 Condition (a)

### ESMA initial proposal

52. Under condition (a), counterparties subject to the AAR will have to ensure that their account at an EU CCP is permanently functional, including by being able to demonstrate to the relevant competent authority that the IT connectivity, internal processes and legal documentation associated with the account are in place.
53. In line with technical requirements which are already required by CCPs as part of their onboarding of members, and similar checks conducted by clearing members when onboarding clients, ESMA proposed that:
  - Counterparties be required to demonstrate that they have established the legal arrangements supporting the provision of clearing services in the relevant derivative contracts with an EU CCP, either directly or via a clearing member.
  - Counterparties be required to have documentation supporting that they have established and provisioned cash and collateral accounts.
  - Counterparties be required to have developed internal policies or procedures to access the clearing services of the EU CCP, either directly or via a clearing member.
  - Counterparties be required to demonstrate that they have set up a live IT connection with the CCP, directly or via a clearing member or client providing client clearing services.

## Feedback from respondents

54. A total of 23 respondents provided feedback in relation to the proposed approach for condition (a) of Article 7a(3), which requires that counterparties subject to the AAR keep the account permanently functional, including with legal documentation, IT connectivity and internal processes. Some entities fully supported ESMA's proposed approach for condition (a), however a relatively high number of respondents expressed some concerns over documentation requirements, potential misalignment with EMIR provisions which focus on operational capacity and the inclusion of financial resources in operational capacity requirements.
55. Respondents expressing concerns with regard to ESMA's approach did not focus on the requirements themselves but stressed that demonstrating compliance should be simplified and should not require excessive documentation. Some stakeholders suggested that the proof of a clearing account's existence at an EU CCP should suffice as evidence of operational capacity, given that institutions already undergo extensive due diligence when onboarding with a CCP. In their view, requiring additional documentation becomes redundant.
56. In this same vein, several respondents noted that many of the operational conditions listed by ESMA are already met through existing CCP participation rules and onboarding requirements. Some of them suggested to amend the drafting of Article 2 of the proposed RTS to avoid requiring that new arrangements should be put in place in situations where there are already contractual arrangements, IT connectivity and internal processes. Some of these respondents further suggested that trade repository (TR) data and CCP certificates should be sufficient proof of compliance, instead of requiring new documentation.
57. One of the concerns which has come more prominently in relation to condition (a) relates to the requirement for counterparties to hold "cash and collateral accounts with sufficient financial resources". Several respondents see the requirement to have sufficient financial resources as unnecessary and misaligned with EMIR and the "operational capacity" requirement. They cited paragraph 67 of ESMA's consultation paper, which states that operational capacity should not include financial resources. Some of these respondents feared that this requirement could introduce stress-testing obligations beyond what is mandated in Level 1.
58. Furthermore, some respondents have argued that requiring "policies and procedures" is contrary to Level 1, which requires "internal processes", which would be less burdensome.
59. A small number of respondents also argued that some CCPs might require only cash accounts, therefore they suggested that the requirement in Article 1(c) of the proposed RTS refer to "cash and/or collateral accounts" but not to both.

## **ESMA assessment of feedback**

60. ESMA has taken note of the different positions in relation to condition (a). ESMA notes that despite the different suggestions and the clarification requests, no major issues of such nature that could make the proposal inoperable has been identified by respondents. ESMA acknowledges however that the comments around the reference to “sufficient financial resources” of the “cash and collateral accounts” deserve a further reflection. Indeed, while it is true that ESMA makes reference to Article 37 of EMIR and that the operational capacity of the clearing members is distinct from their financial resources, this reference in paragraph 67 of the Consultation Paper refers to conditions (b) and (c). It is important to highlight that from the different EMIR requirements related to participation and margins, it results that accounts opened at a CCP must comply with the obligations linked to the access to the relevant clearing service set by such CCP including with regards to financial resources to cover the risks raising from exposures or as a prerequisite to start the clearing activity, when applicable. Whilst the reference to “sufficient financial resources” in Article 1(c) of the draft RTS on which ESMA consulted is in line with those EMIR requirements ESMA suggests not to single it out in the final proposal and instead to make a general reference to the need to comply with all membership obligations in relation to the accounts and beyond. It is worth noting that ESMA does not suggest as part of the stress-testing of the operational conditions of the active account that the financial resources of clearing member and of clients be tested.
61. ESMA does not agree that “policies and procedures” would go beyond what is asked in Level 1, i.e. “internal processes”. The establishment of “policies and procedures” is a good compliance practice that should not only facilitate compliance by the staff of the concerned entities but should also facilitate the understanding of internal processes and their supervision by competent authorities.
62. ESMA sees merits in some of the comments and drafting suggestions in relation to Article 1 of the proposed RTS. In particular, ESMA agrees that on some occasions contractual arrangements, internal policies and procedures, accounts and IT connectivity might already be in place and do not need to be newly “established”.

## **4.2 Conditions (b) and (c)**

- 4.2.1 Internal systems and arrangements to monitor and support a large shift in positions and new trade flow under different scenarios

### **ESMA initial proposal**

63. ESMA proposed that counterparties set up internal systems to monitor the counterparty’s exposures and the internal arrangements to support a large flow of transactions from positions held in a clearing service of substantial systemic

importance pursuant to Article 25(2c) under different scenarios assessing any potential legal and operational barriers to this effect.

#### **Feedback from respondents**

64. The majority of respondents did not comment on this proposal, though a few industry associations and banks raised concerns regarding the cost for counterparties to assess the legal barriers to supporting a large flow of transactions from positions held in a clearing service of substantial systemic importance.

#### **ESMA assessment of feedback**

65. While ESMA understands there may be certain costs associated with this requirement, ESMA still believes it is appropriate for counterparties to at least consider what could be the legal and operational barriers to supporting a large shift in positions from a clearing service of substantial systemic importance in accordance with condition (b) of Article 7a and new trades of the respective counterparty in the derivative contracts referred to in Article 7a(6) in accordance with condition (c) of Article 7a. Therefore, ESMA decided keeping its initial proposal unchanged.

### 4.2.2 Dedicated staff member

#### **ESMA initial proposal**

66. ESMA proposed that counterparties appoint at least one staff member with sufficient knowledge to support the proper functioning of the clearing arrangements at all times.

#### **Feedback from respondents**

67. The majority of respondents opposed the proposal by ESMA arguing that the requirement would be i) impractical, as several staff members may be working in relation to clearing arrangements from front-to-back office or that smaller counterparties may not have a full time employee dedicated to these activities; ii) unnecessary, as to be able to run clearing arrangements the counterparty already has the “sufficient knowledge” to support the proper functioning of the clearing arrangements; and iii) may contradict the Level 1 requirements, as such competences are not required under EMIR or differ from legal obligations linked to operational risk requiring that several persons support the functioning of the service.
68. Instead, a majority of respondents called to remove the requirement or at least to allow the counterparties to identify teams and functions to support the functioning of the clearing arrangements, rather than responsible individuals.

#### **ESMA assessment of feedback**

69. ESMA’s powers for specifying the details of the operational conditions of the AAR are framed by the Level 1 text, which explicitly requires that the “counterparties have the resources available to be operationally able to use the account”. In this context, ESMA

understands the term resources as not only referring to the operational resources, but also to human resources in order for the counterparty to be able to use the account should a large flow of positions be transferred from a clearing service of substantial systemic importance.

70. Therefore, ESMA proposes to modify the requirement to refer to human resources more generally, to ensure it is sufficiently flexible so that different internal set ups or preferences may be deemed compliant.
71. Certain respondents also raised concerns with the use of the wording “at all times” which could be misinterpreted as a requirement to retain staff available across time zones. However, this only copies the wording used in Level 1 under conditions (b) and (c) of Article 7a, thus ESMA suggests retaining the reference to “at all times” in the draft RTS.
72. Finally, ESMA notes that several respondents highlighted what they believe is a misconception or misunderstanding from ESMA that positions cannot be moved from a Tier 2 CCP to an EU CCP, but rather that positions would have to be closed at the former with offsetting trades and reopened at the later with equivalent new trades replicating the overall level of risk cleared by the counterparty at the Tier 2 CCP, rather than reproducing the same number of trades or volumes.
73. As in previous instances, ESMA would refer the respondents back to the Level 1 text which refers to “large volumes of the derivative contracts”, or a “large flow of transactions” which binds ESMA and limits its ability to refer explicitly to the risk metrics such as notional or margin.
74. ESMA however proposes to review the drafting in the draft RTS to refer instead to the “positions held in a clearing service of substantial systemic importance”.

#### 4.2.3 CCP certification that account can withstand threefold increase

##### **ESMA initial proposal**

75. Counterparties shall obtain from the authorised CCP, directly or indirectly via a clearing member or a client providing client clearing services, a signed written statement confirming that the account of the counterparty has the operational capacity to clear up to three times the notional outstanding cleared for the previous 12 months.

##### **Feedback from respondents**

76. While the majority of respondents welcomed the proposal by ESMA to indirectly rely on EU CCPs to certify that their account can support a substantial increase in clearing activity, respondents have also highlighted a number of shortcomings:

- The proposed threefold increase may be excessive for certain respondents who already clear a consequential share of their activity in the EU, while remaining negligible for those clearing minimal amounts.
- Some respondents asked ESMA to clarify the scope of this requirement, i.e. whether the threefold increase would apply to the “stock” or to the “flow” of cleared derivatives.
- The proposed approach implies relying on EU CCPs providing the certification for the accounts to the clearing members, and clearing members down the clearing chain, which may raise legal concerns as to whom could be held responsible in case this certification is not made available in a timely fashion or on reasonable terms.
- The current drafting referring to “written” or “signed” statements could be misinterpreted as requiring physical or paper-copy version of the certificates, which would be particularly inefficient and burdensome for clearing participants and supervisors alike.

#### **ESMA assessment of feedback**

77. ESMA has sympathy for these arguments and therefore proposes to provide additional safeguards to address these concerns.
78. Regarding the threefold increase in clearing activity in the account, as explained in the CBA, ESMA had proposed to rely on this proxy measure to determine what constitutes a “large volume” or “large flow” while at the same time avoiding requiring counterparties to share individual and potentially commercially sensitive information to the CCP or their clearing member on their total clearing activity. It is important to remind that this requirement would apply to the relevant derivative activity of the counterparty itself within the EU CCP only. Nonetheless, ESMA understands that this metric might have some drawbacks and should be further refined.
79. First, having noted the concerns expressed by respondents in relation to the scope of the requirement, ESMA clarified the metric to which the threefold increase should be applied. ESMA noted in particular that paragraph (c) of Article 7a(3) refers to the ability of counterparty to use the account “even at short notice, for large volume of derivatives contracts”, and “to be able to receive, in a short period of time, a large flow of transactions from positions held in a clearing service of substantial systemic importance”.
80. Based on the above, ESMA is of the view that for the purpose of condition (c) counterparties should demonstrate that the active account is able to withstand a rapid increase of the flows of transactions cleared in this respective account. Hence, the threefold increase should apply to the flow of transactions, i.e. the written statement should confirm the ability of the account to clear up to three times the gross notional cleared in the account over the previous 12 months.

81. In addition, in order to limit the level of complexity of this certification process, while still avoiding to force counterparties to disclose sensitive information, ESMA suggests relying, for the purpose of complying with points (b) and (c) of Article 7a(3), on two separate self-certifications:
- On one hand, counterparties should obtain from the relevant authorised EU CCP a written statement confirming that the EU CCP has the operational capacity to withstand a threefold increase of the gross notional value cleared in the relevant derivative contracts over the previous 12 months. This certification should cover all accounts opened at the EU CCP, irrespective of the counterparty's size. To ensure plausibility even when the market share of EU CCPs increases, such increase should be capped to 100% of the market activity in the relevant derivative contracts.
  - On the other hand, counterparties should provide their NCA with a certification that the counterparty or its clearing service provider has the operational capacity to sustain an equivalent increase in volumes, i.e. up to three times the gross notional value cleared by the counterparty for the previous 12 months in the account. To limit the impact and ensure the plausibility of this requirement for participants who already clear a material share of their activity in the EU, ESMA proposes to add an upper bound to the increase in clearing capacity of in the account to 100% of the counterparty's activity in the relevant derivative contracts.
82. One respondent had suggested fixing the increase by a fixed amount, e.g. 50% basis point of the activity already taking place in the EU CCP account (i.e. a twofold increase instead of a threefold). However, ESMA finds that such a proposal, while reducing the impact of the requirement, would not address the fairness argument.
83. Regarding the concerns on the physical nature of the CCP certification, ESMA proposes to keep the reference to "written" statements but clarifying that these could be provided electronically.
84. Finally, ESMA also notes that certain respondents had proposed that the certification conducted at the level of the EU CCP be reported directly by the EU CCP to the competent authority and ESMA. ESMA finds that such an approach would not be legally feasible as condition (b) applies on the counterparty, while condition (c) applies at the level of the account. Nevertheless, such obligation would not prevent EU CCPs from making this certification public or readily available to all relevant counterparties.

## 4.3 Stress-testing of the operational conditions

### 4.3.1 Technical and functional tests (condition (a))

#### **ESMA initial proposal**

85. Counterparties shall conduct technical and functional tests verifying the operational capacity and the functioning of the IT connectivity with the CCP, directly or indirectly, with the clearing member or client providing client clearing services.

#### **Feedback from respondents**

86. The majority of respondents did not comment on this specific aspect of stress testing. As already indicated under section 4.1 of this Final Report, most of the respondents having reacted in relation to the stress test of condition (a) have raised concerns around the testing of financial resources, making a link between the wording of Article 1(c) of the proposed RTS and Article 3. Furthermore, a few industry associations have also raised concerns on the proposed approach, notably indicating that the stress testing, which aims to demonstrate the technical functionality of the active account, should be conducted by the CCPs and clearing members, and that clients should not be involved in the stress-testing process.

#### **ESMA assessment of feedback**

87. As already highlighted in section 4.1, the stress-testing required under Article 3(1)(a) of the proposed RTS concerns the operational capacity and the functioning of the IT connectivity but not the financial resources and the redrafting of Article 1(c) of the RTS should alleviate any misunderstanding. Therefore, ESMA suggests keeping its initial proposal unchanged.

### 4.3.2 CCP written statement that the account has the capacity to withstand a substantial increase in outstanding and new clearing activity (stress-testing of conditions (b) and (c))

#### **ESMA initial proposal**

88. Counterparties shall request from the EU CCP, directly or indirectly via a clearing member or a client providing client clearing services, a signed written statement that the account of the counterparty has the capacity to withstand a substantial increase in outstanding and new clearing activity of up to 85% of the total outstanding clearing activity of the counterparties in the derivative contracts referred to in Article 7a(6) of Regulation (EU) No 648/2012.

89. Such increase shall take place on both the house and client accounts within (i) five business days for OTC derivatives and (ii) two business days for financial instruments other than OTC derivatives.

#### **Feedback from respondents**

90. Most respondents expressed concerns in relation to the proposal to simulate an 85% increase in clearing activity for the purpose of the stress-testing requirement.
91. Notably, a number of respondents noted that in the event where access to Tier 2 CCPs was lost, EU clearing members would most likely not close-out and relocate each of their transactions but would rather initiate global set-off transactions to cover their own global risks towards the given Tier 2 CCP. On the other hand, a majority respondents noted that, in fact, such loss of access would require the relocation of 100% of the transaction flows to the EU, i.e. questioning the reference to the 85% metric. A number of respondents asked ESMA to clarify whether the requirement would in fact apply to the flow of new transactions or to the stock of existing transactions. A majority of respondents also expressed concerns on the choice of the time horizon for the effective increase of volumes at the EU CCP, that they believe is not realistic, especially if the objective were to transfer the stock of positions.
92. In addition, a number of respondents argued that the proposed stress testing requirement would entail a high level of complexity and operational burden on CCPs and counterparties involved. To limit the burden, some respondents asked that clients are explicitly excluded from the stress testing requirement.
93. However, ESMA also notes that respondents have not been able to offer a better alternative to ESMA's initial proposal and could consider keeping the requirement on counterparties to receive a written certification that a CCP can withstand an increase of clearing activity of up to [X%] of the total clearing activity of the counterparties in the relevant derivative contracts
94. Finally, while agreeing with the principle of certification, a number of respondents asked for a requirement to be included in the RTS for the CCP to provide the certification free of charge and without undue delay.

#### **ESMA assessment of feedback**

95. ESMA notes that the proposal for the stress testing requirement is considered to be going beyond realistic expectations, and that the 85% increase may be somehow duplicative of the threefold increase required under the condition described in Article 1(c) of the RTS, while not being a pass-or-fail test.
96. In order to reduce the burden on counterparties and simplify the approach, ESMA proposes to rely on the metric set-out in Article 2(c) of the RTS, and instead of "scaling-up" the requirement, to require counterparties to confirm the operational capacity of the account, via a fire-drill / stress testing exercise, i.e. to test on a yearly basis that the

account is actually able to handle a threefold increase as certified for the purpose of condition (c).

#### 4.3.3 Frequency of the stress-testing

##### **ESMA initial proposal**

97. ESMA initially suggested that the CCP written statement on the account capacity should be provided (i) annually for counterparties with a notional clearing volume outstanding of less than EUR 100 billion in the derivative contracts subject to the AAR obligation, and (ii) every six months, for counterparties with a notional clearing volume outstanding of more than EUR 100 billion.

##### **Feedback from respondents**

98. A majority of respondents expressed concerns with the differentiated approach for the stress testing, noting that a biannual testing would increase the operational burden, while they argue that the outcome of the stress testing is not likely to change materially within a 6-month period. Therefore, a majority of respondents asked that all stress tests are aligned on an annual frequency.

##### **ESMA assessment of feedback**

99. Having noted the concerns and the arguments raised, and in order to limit the burden for counterparties as well as for CCPs (that would have to run different fire drills / tests identifying counterparties depending on their size), ESMA suggests aligning the frequency of the stress testing requirement so that it is annual for all counterparties.

## **5 Representativeness obligation**

100. In order to ensure that the active account requirement appropriately contributes to the overarching objective of reducing the excessive exposures to substantially systemic clearing services provided by third-country CCPs and that it is not dormant, Article 7a(4) of EMIR requires that certain counterparties clear a minimum number of trades at an EU CCP. These trades shall be representative of the relevant derivative contracts cleared by the relevant counterparty at the clearing services of substantial systemic importance.
101. The fifth subparagraph of Article 7a(4) further states that, for the representativeness obligation to be fulfilled, counterparties will have to clear at least five trades in each of the most relevant subcategories per class of derivative contracts and per reference period at their EU CCP account. However, if the resulting number of trades over one full calendar year exceeds half of that counterparty's total trades for the preceding 12 months, counterparties shall clear at least one trade (instead of five) in each of the most relevant subcategories per class of derivative contracts per reference period.

102. Recital 14 of EMIR 3 further explains this choice by outlining that “the specific business model of Union pension scheme arrangements needs to be properly taken into account. In several cases, such arrangements have a limited number of interest rate derivatives trades, which are concentrated, long-term and with a high notional amount. That is why it is appropriate for a scaled-down representativeness obligation to be established, which should require one trade to be cleared instead of five in the most relevant subcategories per reference period”.
103. ESMA understands the “resulting number of trades” as the number of trades that the counterparty would have to clear in the EU in the most relevant subcategories per class of derivative contract over one full calendar year under the normal procedure under Article 7a(4) of EMIR.

## 5.1 Classes of derivatives

### 5.1.1 Background and proposed approach (Consultation Paper)

#### *EUR OTC IRD*

##### **ESMA initial proposal**

104. ESMA proposes to select the following three classes of derivatives for EUR OTC IRD:
- Fixed-to-float interest rate swaps (IRS)
  - Forward rate agreement (FRA)
  - Overnight index swaps (OIS)
105. Based on EMIR data, the proposed three classes of derivatives account for over 95% of the market in terms of both cleared notional and cleared volumes, while the EUR Basis Swaps segment is very small in relative terms. Given the significantly smaller size and the upper limit of three classes of derivatives, ESMA decided to discard EUR Basis Swaps.

#### *PLN OTC IRD*

##### **ESMA initial proposal**

106. ESMA proposed to define the relevant classes subject to the AAR for the PLN OTC IRD category to the Fixed-to-Float and FRA classes of derivatives subject to the clearing obligation set out in Annex I of Commission Delegated Regulation (EU) 2016/1178.

## *EUR STIR*

### **ESMA initial proposal**

107. ESMA proposed to designate as classes of derivatives for EUR STIR cash-settled derivative contracts executed on an EU or a third-country exchange, whose underlying is a (i) 3 months interest rate referenced in Euribor and (ii) a 3-month interest rate referenced in €STR. The two classes of derivatives would include both futures and options.

## 5.1.2 Summary of Consultation Responses and ESMA's feedback

### *EUR OTC IRD*

#### **Feedback from respondents**

108. 18 respondents provided feedback on the proposed classes of derivatives for EUR OTC IRD. Almost half of them (eight respondents) expressly supported ESMA's proposal. Among the other respondents several of them acknowledged that the classes of derivatives for EUR OTC IRD reflect objective criteria and welcomed the fact that ESMA had selected classes of derivatives subject to the clearing obligation. Some respondents suggested reducing the number of subcategories.
109. One respondent suggested merging IBOR-based swaps and RFR-based swaps, arguing that the entities represented by this respondent only trade RFR-based swaps occasionally and therefore satisfying the representativeness requirement would be hard especially if measured on a monthly basis.
110. Some respondents suggested that ESMA should only identify 3 classes per clearing services of substantial systemic importance, with IRD denominated in EUR and in PLN being one service and STIR denominated in EUR another service. Therefore, there should be three classes for IRD in EUR and PLN, and another three classes for STIRs in EUR.
111. Several respondents warned that the active account requirement should not result in financial institutions being forced to execute additional or unnecessary transactions.
112. One respondent requested a clarification on (i) whether the reference period to consider is the "previous" or the "current" period in order to determine the relevant subcategories that need to be cleared to satisfy the representativeness criteria (addressed in Section 6.3), and (ii) the way to measure the trade size as part of the representativeness obligation, suggesting that "gross notional amount" could be the way to measure trade size (instead of number of EUR Millions as proposed by ESMA in the Annex of the draft RTS).
113. One respondent has taken the opportunity of the feedback to this question to highlight the following:

- the lack of market making exemption in EMIR 3.0, especially for less liquid instruments
- the fact that a number of regional banks and clients can only put in place transactions for hedging purposes. As an unintended consequence, the representativeness requirement could force to generate transaction for trading purposes, breaching the relevant banks/trading desk mandate.

### **ESMA assessment of feedback**

114. ESMA notes that most of the respondents either agree or do not have any objection to the proposed classes of categories, several of them noting that ESMA has used objective criteria for the selection of the proposed classes of derivatives.
115. Regarding the approach to determine the classes of derivatives, ESMA finds that approaches which would lead to overlap with the categories of derivatives would not be legally sound as it would mean defining classes of derivatives which would mix different characteristics and currencies, thereby going against the definition of classes of derivatives under Article 2(6) of EMIR.
116. It should also be noted that the categories of clearing services under Article 7a(6) of EMIR may be subject to change by a delegated act of the Commission (Article 7a(7) of EMIR), following ESMA's assessment under Article 25(2c) of EMIR, while unaffected the previously selected ones, as supported by Recital 11 of EMIR 3. In such case, new services can potentially be added to the list; should that number of services exceed three, limiting classes of derivatives across the categories to three would effectively exclude at least one of the services of substantial systemic importance from the AAR requirement.
117. In light of the broadly positive feedback received, ESMA believes that the three proposed classes for EUR-denominated IRD OTC products to be adequately defined and therefore suggests keeping its initial proposal unchanged.

### *PLN OTC IRD*

#### **Feedback from respondents**

118. The vast majority of respondents supported ESMA's approach welcoming its alignment with the existing classes of derivatives subject to the clearing obligation and the fact that it adequately reflects the specific market size, growth trend and liquidity of zloty-denominated OTC IRD products, as well as their current split between Tier 2 and EU CCPs.

### ESMA assessment of feedback

119. In light of the broadly positive feedback received, ESMA believes that the two proposed classes for PLN-denominated IRD OTC products to be adequately defined and therefore suggests keeping its initial proposal unchanged.

### EUR STIR

#### Feedback from respondents

120. The vast majority of respondents supported ESMA's approach, as it was considered proportionate and reflects the fact that the EUR STIR market is less developed and less liquid than EUR OTC IRD. However, a number of respondents suggested to exclude EUR STIR options from the scope, considering the different liquidity and the difference in products offered to clearing between ICEU and Eurex Clearing.

#### ESMA assessment of feedback

121. Having noted the comments on the absence of alternative clearing services for €STR Options in the EU, ESMA proposes to modify the definition of classes of derivatives for EUR STIR and to remove options, whilst noting that these may need to be amended in the future if new alternative clearing services would open in the future.

## 5.2 Subcategories

### 5.2.1 Background and proposed approach (Consultation Paper)

#### EUR OTC IRD

**ESMA initial proposal** – ESMA proposed the following maturity ranges and trade sizes:

#### EUR Fixed-to-float

	Trade size (in EUR million)		
Maturity	[0-25M]	(25M-50M]	(50M+]
[0-5Y]			
(5Y-10Y]			
(10Y-15Y]			
(15Y+]			

#### EUR OIS

	Trade size (in EUR million)		
Maturity	[0-25M]	(25M-100M]	(100M+]
[0-1Y]			

(1Y-2Y]			
(2Y-5Y]			
(5Y+]			

EUR FRA

	Trade size (in EUR million)		
	[0-75M]	(75M-200M]	(200M+]
[0-6M]			
(6M-12M]			
(12M-18M]			
(18M+]			

*PLN OTC IRD*

**ESMA initial proposal** – ESMA proposed to create one range covering all maturities and one range covering all trade sizes for each class of derivatives to leave the maximum flexibility to counterparties in meeting the representativeness obligation for PLN OTC IRD.

PLN Fixed-to-Float

	Trade size (in PLN million)
Maturity	Any trade size
Any maturity	

PLN FRA

	Trade size (in PLN million)
Maturity	Any trade size
Any maturity	

*EUR STIR*

**ESMA initial proposal** – ESMA proposed to create four maturity ranges that reflect the distributions in terms of maturity of the two proposed classes of EUR STIR derivatives (i.e. EUR STIR referenced in €STR and Euribor).

### EUR STIR referencing Euribor / EUR STIR referencing €STR

	Trade size (in EUR million)
Maturity	Any trade size
[0-6M]	
(6M-12M]	
(12M-18M]	
(18M+]	

122. Regarding trade size, taking into account the more limited control that counterparties may have on the trade size following the execution of exchange-traded products, and therefore the increased difficulty to enter “representative” trades, ESMA proposed that there would only be one trade size ranges (i.e. all trade sizes) per class of derivatives in EUR STIR for each class of derivatives.

## 5.2.2 Summary of Consultation Responses and ESMA’s feedback

### *EUR OTC IRD*

#### **Feedback from respondents**

123. Out of the 20 respondents who provided feedback to this question, more than half of them have either expressly supported ESMA’s proposal or indicated that they do not have any concern in relation to the proposal.
124. Some respondents however do not agree.
125. One suggested that the subcategories with maturity higher than five years for OIS and higher than 10 years for fixed-to-float IRS should fusion into one subcategory each. This same respondent suggested that the subcategories above EUR 50mn for fixed-to-float and above EUR 100mn for OIS could be merged with the lower ones. Otherwise, this respondent feared that requiring counterparties to clear trades in these sizes for the purpose of representativeness might result in unwanted increases of long-term risk positions. This same respondent would also welcome clarity on the definition of “resulting number of trades” and highlights the need for sufficient time for implementation following the publication of the final RTS on the representativeness obligation.
126. Several respondents suggested that it would make sense to align the maturity buckets of OIS with the clearing obligation and therefore go up to three years instead of five, while two respondents suggests that the maturities for the EUR FRA should be narrowed.

### **ESMA assessment of feedback**

127. ESMA notes that the majority of respondents either agree with ESMA proposal or do not have any particular objection. ESMA's proposal was based on a data analysis which used a rich dataset of transactional data from EMIR reporting and the actual portfolios of counterparties that are likely to be subject to the representative obligation.
128. ESMA does not agree with the anecdotal concerns that counterparties would unwantedly increase long-term risks and furthermore, based on the data assessment made for the initial proposal, does not see the need to align maturity buckets of OIS with the clearing obligation nor to narrow the maturities for the EUR FRA. Therefore, ESMA suggests keeping its initial proposal unchanged

### *PLN OTC IRD*

#### **Feedback from respondents**

129. The broad majority of respondents supported ESMA's approach regarding the proposed trade sizes and maturity ranges, and found it adequately reflects the specific market size, growth trend and liquidity of zloty-denominated OTC IRD products, as well as their current split between Tier 2 and EU CCPs.
130. One CCP was against the proposed trade size and maturity ranges arguing that these should be set at a more granular level, with at least 2 maturity ranges for PLN Fixed to Float [below 5Y and above 5Y] and 4 maturity ranges should be considered for PLN FRA, aligned on those use for EUR FRA. The CCP also proposed to consider three trade size ranges, as in case of EUR IRD products: for PLN Fixed to Float subcategory: [0;100M], (100M;200M], (200M+), and for PLN FRA: [0;200M], (200M;500M], (500M+).
131. Another CCP proposed that ESMA clarify that the trades cleared on the EU CCP account should at least reflect the average trade size for the respective contracts conducted on the non-EU account, rather than just any trade size in order to avoid the circumvention of the AAR.

#### **ESMA assessment of feedback**

132. While ESMA finds that the flexibility proposed in its initial proposal regarding trade size and maturity ranges is adequate given the current characteristics of the PLN OTC IRD market, ESMA agrees that the spirit of the representativeness criteria should be respected to the maximum extent possible and proposes to require that the average trade size and maturity ranges of PLN OTC IRD products cleared in the EU should be representative of the average trade size and maturity cleared by the counterparty in the clearing service of substantial systemic importance at the Tier 2 CCP.
133. Therefore, ESMA proposes to keep the proposed trade size and maturity range and to add language in the relevant article indicating that the average trade size and maturity ranges of PLN OTC IRD products cleared in the EU should reflect the average trade

size and maturity of the products cleared by the counterparty in the clearing service of substantial systemic importance under Article 25(2c).

## *EUR STIR*

### **Feedback from respondents**

134. All respondents supported ESMA's approach regarding the proposed trade sizes (i.e. no trade size ranges) for EUR STIR classes of derivatives and found that it adequately reflects the unique characteristics of the EUR STIR market. One CCP however asked ESMA to clarify that the trades cleared on the EU CCP active should at least reflect the average trade size for the respective contracts conducted on the non-EU account, rather than just any trade size in order to avoid the circumvention of the AAR objective, where a counterparty could include only one contract in the active account.
135. In relation to the maturity ranges, half the number of respondents supported ESMA's approach. However, another half argued that the number of maturity ranges should be reduced to reflect the relatively small size and scarce liquidity of this market along the curve. Most of these respondents asked to consider only 2 or 3 maturity buckets, with a strong preference expressed for [0-12m] and (12m+].
136. Finally, one CCP agreed with the number of maturity buckets, but suggested that to better reflect the market conventions and the observed volume and open interest profiles on the market, the maturity buckets for EUR STIR should be selected as: [0-6M], (6M-12M], (12M-24M] and (24M+].

### **ESMA assessment of feedback**

137. Despite the comments on the relative lower liquidity of the STIR market, ESMA finds that the distribution of trades per maturity buckets is supported by market data, and therefore suggests maintaining an approach with four maturity ranges. However, in order to better take into account market conventions and trends, ESMA proposes to slightly modify the maturity ranges as follows: [0-6M], (6M-12M], (12M-24M] and (24M+].
138. Regarding trade sizes, having noted the broad support for the flexible approach proposed, ESMA however agrees that the spirit of the representativeness criteria should be respected to the maximum extent possible and proposes to add language in the relevant article indicating the average trade size and maturity ranges of EUR STIR products cleared in the EU should reflect the average trade size and maturity of the products cleared by the counterparty in the clearing service of substantial systemic importance at the Tier 2 CCP.

## 5.3 Number of most relevant subcategories

### 5.3.1 Background and proposed approach (Consultation Paper)

#### **ESMA initial proposal**

139. ESMA proposed to select five most relevant subcategories for each of the three selected classes of EUR OTC IRD, one most relevant subcategory for each of the two selected classes of PLN IRD and four most relevant subcategories for each of the two selected classes of EUR STIR.

### 5.3.2 Summary of Consultation Responses and ESMA's feedback

#### EUR OTC IRD

##### **Feedback from respondents**

140. The feedback on EUR OTC IRD was largely supportive, with only minor requests for clarifications on compliance obligations and assurance that counterparties will not be required to trade in subcategories where they lack activity.

##### **ESMA assessment of feedback**

141. ESMA takes notes of the feedback received and suggests keeping its initial proposal unchanged.

#### PLN OTC IRD

##### **Feedback from respondents**

142. The majority of respondents did not express views on the number of most relevant subcategories in relation to PLN OTC IRD or supported ESMA's approach. Only one CCP proposed that ESMA set this number to 5 most relevant subcategories, in order to properly reflect the actual diversity of counterparties portfolios.

##### **ESMA assessment of feedback**

143. As per the previous section, ESMA does not find there is enough evidence to change its approach regarding the subcategories for each class of PLN FRA and PLN IRS, nor the number of most relevant subcategories.

#### EUR STIR

##### **Feedback from respondents**

144. The majority of respondents did not express specific views on the number of most relevant subcategories in relation to EUR STIR and generally supported ESMA's approach. Nevertheless, around half the number of respondents noted that their

proposal to reduce the number of maturity ranges from four to two would mechanically reduce the number of most relevant subcategories for EUR STIR.

### **ESMA assessment of feedback**

145. As per the previous section, ESMA does not find there is enough evidence to change its approach regarding the number of maturity ranges for EUR STIR classes of derivatives, and therefore ESMA is of the view that the number of most relevant subcategories should continue to match the maximum number of subcategories, i.e. four.

## **5.4 Reference periods**

### **5.4.1 Background and proposed approach (Consultation Paper)**

EUR OTC IRD

#### **ESMA initial proposal**

146. On the basis of the observed clearing patterns, ESMA proposed for EUR OTC IRD that the reference period for counterparties with a notional clearing volume outstanding of more than EUR 100 billion be one month, while the counterparties with a notional clearing volume outstanding of less than EUR 100 billion would be required to meet the representativeness obligation every six months.

PLN OTC IRD

#### **ESMA initial proposal**

147. ESMA proposed that the reference period for the calculation of the representativeness obligation be based on a twelve-month period regardless of the clearing activity of the counterparty or the class of derivatives cleared.

EUR STIR

#### **ESMA initial proposal**

148. ESMA proposed that the reference period for the calculation of the representativeness obligation is differentiated between counterparties with a notional clearing volume outstanding of more than EUR 100 billion and other counterparties. ESMA also proposed to follow a more cautious approach for €STR products than for Euribor, considering the difference of liquidity of the two markets.

149. As a result, the proposed reference periods are as follows:

- EUR STIR Euribor: 1m for counterparties with a notional clearing volume outstanding of more than EUR 100 billion, 6m for other counterparties;

- EUR STIR €STR: 6m for counterparties with a notional clearing volume outstanding of more than EUR 100 billion, 12m for other counterparties;

## 5.4.2 Summary of Consultation Responses and ESMA's feedback

### EUR OTC IRD

#### **Feedback from respondents**

150. Out of 20 respondents, a majority (13 out of 20) agreed with ESMA's proposed reference periods for EUR OTC IRD noting that the proposed reference periods align with Level 1 requirements. However, some respondents raised concerns, primarily focusing on the rigidity of the reference periods and the fact that short reference periods may lead to forced trading (in particular for entities with long-term hedging strategies). Some of these respondents suggest extending the reference period to 12 months to avoid unnecessary trading purely for compliance, and the need for clarification on calculations and methodology.
151. Finally, several respondents requested clarifications on how the EUR 100 bn threshold is calculated, particularly whether it applies at the counterparty or group level. Some respondents asked whether the reference period should be fixed or rolling, and whether it should be based on backward-looking or current-period data. Some respondents asked for guidance on how to compute annual averages, especially when subcategories change over time.

#### **ESMA assessment of feedback**

152. ESMA notes broad support for its proposal. Based on the data analysis which supported ESMA's initial proposal, ESMA does not agree with the suggestion to extend the reference period based on concerns that the proposal could create unnecessary trading purely for compliance purposes.

### PLN OTC IRD

#### **Feedback from respondents**

153. The broad majority of respondents supported ESMA's approach to provide the longest reference period for all counterparties given the market is less liquid and more concentrated than the EUR OTC IRD market.
154. One CCP instead proposed a reference period of six months for all counterparties and each class of derivatives.
155. Some respondents would welcome clarification's by ESMA as to how to compute annual averages.

### **ESMA assessment of feedback**

156. ESMA finds that the length of the reference period outlined in its initial proposal is adequate given the current characteristics of the PLN OTC IRD market.

EUR STIR

### **Feedback from respondents**

157. The majority of respondents supported ESMA's approach to provide longer reference periods for counterparties with a notional clearing volume outstanding of more than EUR 100 billion per year.

158. However, a number of respondents asked to align the reference period for EUR STIR referencing Euribor with the reference periods for EUR STIR referencing €STR. Most of these respondents argue that this would reflect the fact that the EUR STIR market in general is less liquid than the EUR OTC IRD market. A number of respondents also pointed out that the EU-Euribor market at Eurex is in fact less liquid than the €STR market. Finally, a few respondents noted that aligning the reference periods across the two classes of EUR STIR products would facilitate the operational implementation.

### **ESMA assessment of feedback**

159. To specify the duration of the reference period and the number of most relevant subcategories per class of relevant derivative contract, ESMA considered the clearing activity of EEA counterparties at Tier 2 and EU CCPs using a wide range of metrics including the number of trading days and the number of cleared trades in one full trading year for counterparties with exposures above and below EUR 100 billion.

160. ESMA finds that EUR STIR referencing Euribor is an active market in terms of volumes and number of trades. In terms of clearing activity across counterparties (and despite its smaller size of the market in terms of notional), ESMA observes a pattern similar to that of the EUR OTC IRD markets. Therefore, it is deemed appropriate to require a more frequent reference period for counterparties with a notional clearing volume outstanding of more than EUR 100 billion.

161. However, ESMA notes that the situation is different for EUR STIR referencing €STR, as this is a dynamic yet nascent market, and suggested allowing more flexibility for counterparties to meet compliance. Therefore, ESMA suggests keeping its initial proposal unchanged.

## 6 Reporting requirements

162. Under Article 7b of EMIR, FCs and NFCs subject to the AAR are required to calculate their activities and risk exposures in the relevant categories of derivatives and report the information necessary to assess their compliance with the AAR.
163. They are required to report every six months to their competent authority, which in turn transmits this information to ESMA without undue delay.
164. Article 7b(3) of EMIR also requires competent authorities to ensure that the counterparties “take the appropriate steps to fulfil that obligation, including using their supervisory powers under their sectoral legislation, where appropriate, or imposing penalties as referred to in Article 12 where necessary”. To this effect, competent authorities may require more frequent reporting in particular when they deem that insufficient steps have been taken to meet the AAR.
165. Under Article 7a(8) of EMIR, ESMA is required to define the details of the reporting in a draft RTS in accordance with Article 7b, which are further specified in this Section.

### 6.1 Reporting of activities and risk exposures

#### 6.1.1 Background and proposed approach (Consultation Paper)

##### **ESMA initial proposal**

166. The draft RTS outlines the specific data points that counterparties must use to calculate their “activities and risk exposures” in the relevant derivative contracts for the AAR and to report the “information necessary to assess compliance” with the Article 7a of EMIR. This initial proposal included: General counterparty information; activity and risk exposure metrics using both gross and net notional amounts, trade counts, and margin data; and, aggregation of metrics following EMIR REFIT Guidelines.
167. ESMA proposed that counterparties exclude exempted trades (e.g., intragroup transactions) and, if part of a supervised group, report exposure data at both entity and subsidiary levels. Additionally, ESMA proposed including Unique Trade Identifiers (UTIs) to enhance supervisory oversight and data quality verification.

#### 6.1.2 Summary of Consultation Responses and ESMA’s feedback

##### **Feedback from respondents**

168. The proposed approach for the reporting of the activity and risk exposures has attracted a lot of attention from stakeholders. A total of 23 respondents provided feedback on this topic, with a majority of them (21 out of 23) expressing strong concerns over the proposed reporting framework, citing operational burden, redundancy with existing

reporting requirements under Article 9 of EMIR, and misalignment with EU objectives for burden reduction and regulatory simplification. While a few institutions showed some alignment with the intent of ESMA's proposal, there was broad consensus that the reporting requirements should be reconsidered and streamlined. Only two respondents fully supported ESMA's proposal.

169. Regarding the operational complexity and cost, many respondents emphasised that the proposed reporting requirements introduce a significant operational burden, requiring the development of new reporting systems. Furthermore, several respondents suggested ESMA provides at least 12 months following the adoption of Level 2 for the implementation of the reporting.
170. Several stakeholders pointed out that much of the required data is already reported to trade repositories under Article 9 of EMIR. They argue that this data should already be available to regulators and questioned the need to report the same data again in relation to the AAR. ESMA and NCAs were urged to leverage existing trade repository data rather than creating a parallel, duplicative reporting regime. Furthermore, concerns were raised that mandatory resubmission of the same data could lead to inconsistencies and increased compliance costs. A number of these responses suggested that the aggregation of data to check the compliance of entities with the active account requirements should be performed by ESMA or NCAs rather than at the counterparty level.
171. Many respondents flagged margin and collateral reporting as unnecessary and overly complex. Some of these respondents further indicated that the margining is usually done at the level of the portfolio which might include subcategories of contracts which are not concerned by the active account requirement.
172. The reporting of uncleared trades was also questioned, with arguments that it is irrelevant for monitoring the active account requirement.
173. Multiple respondents noted that ESMA's assessment of the AAR is scheduled for June 2026, at which point only one report complying with the RTS would have been submitted, making it difficult to gauge market trends effectively. Furthermore, there were concerns that the evolving nature of reporting metrics (such as the most traded subcategories) could distort aggregate data over time.
174. Several respondents suggested simplifications to the reporting requirements proposed by ESMA, including:
  - Annual (rather than bi-annual) reports.
  - Relying on CCP statements to verify active accounts.
  - Expanding the existing AAR notification template as a means to streamline compliance.

- Direct use by ESMA of CCPs' data to obtain aggregate data instead of requiring firm-level submissions.
175. Finally, some respondents requested clarification in relation to reporting obligations for subsidiaries within a group, particularly those outside the EU, and the definition of key terms such as “material changes” and “aggregate financial resources provisioned”.

### **ESMA assessment of feedback**

176. Article 7b of EMIR clearly requires that counterparties subject to the AAR calculate their activities and risk exposures in the relevant categories of derivative contracts and report every six months to its competent authority the information necessary to assess compliance with that obligation.
177. ESMA therefore does not have the legal basis in its draft RTS to modify the entity on which the reporting obligation falls, nor to extend the frequency of the reporting, as this would contradict the Level 1. However, ESMA is particularly sensitive to comments calling to avoid a duplication of reporting requirements wherever possible and would propose to make a number of adjustments to the reporting of activities and risk exposures in order to find the right balance between the Level 1 obligation to ensure that the NCAs receive the necessary information to assess the counterparties' compliance with the AAR without unduly burdening counterparties with additional reporting requirements, and reusing existing data wherever possible.
178. With this objective in mind, ESMA proposes to significantly alleviate the reporting requirements on counterparties' activities and risk exposures, while ensuring that NCAs receive enough data on an aggregate basis, including the group level activity, so they can assess to which requirements the counterparty is subject for the relevant category of derivatives contracts:
- Above EUR 3bn cleared and uncleared – operational conditions and reporting requirements
  - Above EUR 6bn cleared – representativeness obligation
  - Above/Below EUR 100bn cleared – to determine the applicable reference period
179. In practice, this would mean reporting at the aggregate level only the gross notional amount outstanding of the aggregate month-end average position for the previous 12 months in the relevant derivatives contracts cleared by the group across all CCPs and relying on the [AAR notification template](#) for the EUR 3bn threshold which covers both cleared and uncleared derivatives (Are you above 3bn? Y/N).
180. This aggregate level information might not be enough for the NCA to assess whether the counterparty is eligible to the 85% exemption from conditions a), b) and c), which would thus require an ad-hoc reporting per CCP, per category of relevant derivative contracts subject to the ARR to identify the split between Tier 2 and EU CCPs.

181. ESMA suggests removing other reporting fields initially introduced to facilitate the supervisory work of the NCAs when assessing the compliance of counterparties with the AAR and for the monitoring of the effectiveness of the AAR. It should however be noted that this approach will increase supervisory costs for NCAs and ESMA (due to the significant recourses for processing EMIR data and remove data useful to benchmark or reconcile EMIR data when assessing the compliance to the AAR, or its effectiveness). In addition, the reporting of gross notional only, would also mean in practice that NCAs and ESMA will have more limited information on the evolution of risk exposures at Tier 2 and EU CCPs, as gross notional does not fully reflect the riskiness of a position.
182. ESMA also considered the option to remove the reporting of activity and risk exposures by counterparties altogether and to rely exclusively on EMIR TR data. However, such an approach would generate significant difficulties for NCAs to reconcile group level figures with data from entities based in other Member States – which is a key component to assess whether an entity is subject to the AAR. Furthermore, the information of activity by subsidiaries of EU groups based in third countries clearing in TC-CCPs would not be available. For these reasons, ESMA discarded this approach.
183. The table below shows a worked-out example of information which should be reported under Article 7 of the proposed RTS:

*Table 2*

**Activities and Risk exposures**

	Field	Details to be reported	Total
1	Gross Notional Amount outstanding of the aggregate month-end average position for the previous 12 months in the categories of derivatives contracts cleared under Article 7a(6) of Regulation	The aggregate sum of the notional amount of leg 1 and, where applicable, the notional amount of leg 2, for the derivatives in scope of this reporting, as referred to in Article 5 of Commission Regulation (EU) 2022/1855.	250,000,000,000 €

	(EU) 648/2012							
2	Dimension 1 – Break down total by category of derivative	EUR OTC IRD			PLN OTC IRD		EUR STIR	
		125,000,000,000€			2,500,000,000 €		122,500,000,000 €	
3	Dimension 2 – Breakdown by CCP (EU / Tier 2 /Tier 1) (reporting at CCP LEI level)	CCP1*	CCP2	CCP3	CCP1	CCP2	CCP1	CCP2
		110,000,000,000 €	10,000,000,000 €	5,000,000,000 €	2,400,000,000 €	100,000,000 €	100,000,000,000 €	22,500,000,000 €

\*CCPs must be identified by their LEIs

## 6.2 Reporting of the operational conditions

### 6.2.1 Background and proposed approach (Consultation Paper)

#### ESMA initial proposal

184. ESMA proposed that the counterparty report to the competent authority:

Under condition (a)

- written statement by the counterparty confirming that a contractual arrangement has been signed with an authorised CCP or a clearing member or a client supporting the provision of clearing services for the relevant derivative contracts, and, where relevant, a description of any changes to the contractual arrangement since the last report;
- where relevant, a description of any material changes since the last report to the internal policies and procedures for clearing the relevant derivative contracts;
- information on the account statements for settlement and collateral, including the number of the account and the aggregate amount of financial resources provisioned; and
- a written statement by the counterparty confirming that the IT connectivity with an authorised CCP or a clearing member or client supporting the provision of clearing services is live and operational.

Under conditions (b) and (c)

- where relevant, a description of any material changes since the last report to the internal systems to monitor the counterparty's exposures and the governance arrangements of the counterparty to support a large flow of transactions from

positions held in a clearing service of substantial systemic importance under different scenarios, including by identifying and addressing any potential legal and operational barriers to this effect;

- information on the staff member at the counterparty, including the name and contact details, in charge of ensuring the proper functioning of the clearing arrangements at all times; and
- a copy of the written statement, signed by the authorised CCP, confirming that the account has the operational capacity to support a large increase in outstanding and new clearing activity in a short period of time.

Stress-testing of the operational conditions

- a written statement by the counterparty confirming it has conducted technical and functional tests verifying the operational capacity and the functioning of the IT connectivity with the CCP, directly or indirectly, with the clearing member or client providing client clearing services in accordance with Article 3 of the draft RTS; and
- a copy of the written statement, signed by the authorised CCP, confirming that the account has been stress-tested in accordance with Article 3 of the draft RTS.

## 6.2.2 Summary of Consultation Responses and ESMA's feedback

### **Feedback from respondents**

185. Overall, the respondents generally expressed concerns about the burden and practicality of the proposed reporting requirements in relation to the operational conditions.
186. The type of feedback received was essentially divided in two groups: one group opposing the reporting requirements on the operational conditions and their frequency altogether and proposing that ESMA essentially delete the relevant provisions from the draft RTS, and another group proposing targeted amendments to reduce the compliance burden and improve the clarity of the reporting requirements, including a number of proposals outlined below.
187. Condition (a)
  - Contractual arrangements – written statement confirming the contractual arrangement with the authorised CCP should only be provided at the start of the reporting and updated only when the contractual arrangement changes.
  - Account statements – competent authorities should already have access to the margin and cash posted via TR-reports and therefore propose to remove the requirement on counterparties to report the “aggregate amount of financial resources provisioned”.

- IT connectivity – counterparties should only have to report any material changes to the contractual arrangements and to the IT connectivity, similarly to the proposed requirement regarding internal policies and systems in Article 8(1) (b).

188. Conditions (b) and (c)

- Material changes to internal policies, systems, and governance – several respondents have asked that ESMA clarifies what should be understood by “material changes”.
- Dedicated staff – a description of allocated human resources should suffice, rather than requiring names and contact details which would lead to frequent updates.

189. Stress-testing of the operational conditions

- Alignment of the stress-test and reporting requirements – clarification that if the stress-test is annual, the reporting of stress-test should be annual.
- Clearing chain – clarification that a client should request the statement from the clearing member in order for the client to transmit it to its NCA.

**ESMA assessment of feedback**

190. Regarding the feedback received from the first group of respondents, ESMA is bound by the Level 1 text which requires counterparties “to report every six months to its competent authority the information necessary to assess compliance with that obligation” under Article 7b(1). The Article further adds that the reporting shall also include “a demonstration to the competent authority that the legal documentation, IT connectivity and internal processes associated to the active accounts are in place.” Article 7b(2) requires that counterparties “also report every six months to their competent authority information on the resources and systems that they have in place to ensure that the condition referred to in Article 7a(3), point (b), is met”.
191. However, ESMA is sensitive to arguments which could help alleviate the reporting burden, in particular if this information has already been reported to the competent authorities for other purposes.
192. In order to further alleviate the reporting burden upon counterparties, ESMA proposes that counterparties provide a written statement confirming that they comply with the operational conditions specified in the draft RTS. In line with the Level 1 text, counterparties should have at the disposal of their competent authorities the documentation necessary to prove compliance with the operational requirements.

## 6.3 Reporting of the representativeness obligation

### 6.3.1 Background and proposed approach (Consultation Paper)

#### ESMA initial proposal

193. ESMA proposed that counterparties report to the competent authority the subcategories which are the most relevant per class of derivative contracts at a clearing service of substantial systemic importance, in order to allow competent authority to assess that these are replicated in the active account of the EU CCP.
194. ESMA proposed that this information include the corresponding gross and net notional amount and the number of trades cleared for each subcategory per class of derivatives and at each clearing service of substantial systemic importance at TC-CCPs and each EU CCP. Counterparties subject to the AAR would also have to report whether they are allowed to clear 1 trade per subcategory instead of 5 and which reference period applies depending on the notional cleared outstanding.

### 6.3.2 Summary of Consultation Responses and ESMA's feedback

#### Feedback from respondents

195. Respondents expressed particular concerns with the requirement to report "gross and net notional amounts cleared" for each subcategory and class of derivatives at both TC CCPs and EU CCPs. The respondents suggested that supervisors should obtain the volumes and gross notional amounts cleared by a counterparty at EU CCPs versus TC CCPs based on information provided by the counterparty at aggregate level under the draft RTS, while market participants should only report the number of trades cleared in the relevant subcategories at an EU CCP when subject to the representativeness obligation.
196. In line with the feedback from respondents to question 18, a number of respondents also expressed concerns about the proposal to include Unique Trade Identifiers (UTIs) as being overly burdensome on counterparties to report and disproportionate to achieve the objectives of the reporting requirements on the representativeness criteria.
197. Several respondents also asked for clarifications on how counterparties should report to their competent authorities every six months their compliance with the representativeness requirements which are based on an annual average basis and for reference periods of 12 months.
198. One respondent also proposed to clarify that the draft RTS on reporting requirement on the representativeness criteria should only apply to counterparties that meet the threshold for representativeness, as per the Consultation Paper and the Level 1 text. To this effect, they propose that Article 9 of the draft RTS should specifically refer to

counterparties subject to Article 7a(3)(d) of EMIR and not to Article 7(a)1 of EMIR. A few respondents also enquired whether the reference to “recognised third-country CCP” (draft Article 9 para 1 subparagraph b) should be replaced by “CCPs of Substantial Systemic Importance”.

#### **ESMA assessment of feedback**

199. ESMA finds there is value in monitoring the gross and net notional value for each subcategory of the relevant derivatives contracts in which the counterparty is active to ensure that the trades cleared at EU CCPs are representative of the trades cleared at a clearing service of substantial systemic importance, given the limited value in monitoring only the number of trades from a risk perspective.
200. However, ESMA agrees that these figures are not strictly necessary to assess the compliance of the counterparties with the representativeness criteria for each subcategory as the Level 1 text focuses on the number of trades and that the supervisory objectives could also be achieved by monitoring the aggregate values of the reported by the counterparty on its activities and risk exposures. For this reason, ESMA proposes removing the requirement to report gross and net notional amount for each subcategory.
201. In line with the previous changes proposed by ESMA, ESMA also proposes removing the references to Unique Trade Identifiers (UTIs) from the reporting requirements for the representativeness obligation, as well as the reference period which can be deduced by the NCA from the aggregate gross notional amount reported as part the AAR activities and risk exposures under Section 6.1.
202. For simplicity, ESMA also suggests that the number of trades be directly reported in the Tables of Annex III for the NCA to be able to assess which are the most relevant sub-categories per class of derivative contracts to be represented in the active account, as well as determine which counterparties are eligible for the exemption from the 5 trades per sub-category.
203. Regarding the calculation of the reference period, ESMA agrees with the requests for clarification on whether the representativeness criteria should be calculated on the basis of the previous reference period, as it would be impossible for NCAs to assess compliance of counterparties on the basis on of the current period.
204. ESMA therefore proposes to report in the relevant tables:
  - For EU CCPs by considering the clearing activity in the reference period preceding the reporting date; and
  - For Tier 2 CCPs by considering the clearing activity in the reference period preceding the reference period used for EU CCPs.
205. Finally, ESMA agrees with the proposal to clarify that Article 9(1) of the draft RTS applies only to counterparties subject to Article 7a(3)(d) of EMIR and to replace the

reference to “recognised third-country CCP” in point (b) to “clearing services of substantial systemic importance under Article 25(2c)”.

## 6.4 Reporting arrangements and methodology

### 6.4.1 Background and proposed approach (Consultation Paper)

#### ESMA initial proposal

206. ESMA proposed that the draft RTS establish set dates for the reporting by counterparties to NCAs, such as for example the last day of January and the last day of July of every year (or the next working day, should this date fall on a business holiday), to ensure a more harmonised level of reporting and certainty for counterparties.
207. ESMA had indicated its intent to supplement the reporting elements in the draft RTS with further details in subsequent Level 3 guidance to ensure a consistent application of the reporting requirements.

### 6.4.2 Summary of Consultation Responses and ESMA’s feedback

#### Feedback from respondents

208. While the majority of respondents welcomed efforts by ESMA to further standardise and harmonise as much as possible the reporting requirements despite the lack of ITS mandate, a number of respondents highlighted some concerns with regards to the proposed approach.
209. First, an important number of respondents called for additional time to implement the reporting requirements, with some recommending a 12-month preparation period, in particular if they were to remain at the proposed level of granularity.
210. Some respondents suggested clarifying the “reporting periods” rather than a single date on which to report the data and to add a reporting window to ensure that counterparties had sufficient time to consolidate and check the data before submitting it to NCAs. Others have asked to align the reporting period to only cover the past six months to avoid overlapping periods (due to certain requirements having 12 months lookback periods).
211. Finally, some respondents also highlighted that the Level 3 Guidance may be needed as from the publication of the RTS in order to properly prepare for implementation and reduce compliance costs.

## **ESMA assessment of feedback**

212. ESMA believes that the proposed alleviations to the reporting requirements addresses most of the concerns expressed by respondents, in particular regarding the number of fields to be submitted regarding AAR activities and risk exposures.
213. Regarding the timing of the reporting, ESMA would recall that the frequency of the reporting requirements is set in the Level 1 and that therefore, it does not have the legal basis to postpone the requirements beyond the proposed six months following the entry into force of the RTS. Similarly, ESMA does not believe it can align all the calculation periods on the reporting period under Article 7b as these are defined under Article 7a (e.g. duration of the reference periods which depend on the size of the counterparties or the AAR conditions which are linked to the clearing obligation and thresholds). ESMA would also note that it is due to publish a Report on the effectiveness of the AAR by June 2026 and that at least one period where the reporting complies with the RTS should have been concluded and analysed to this effect.
214. Regarding the reporting date and the reporting window, ESMA agrees that the draft RTS should specify the date when the first reporting complying with the RTS and the indicate that periodic reporting should take place every six months thereafter on a fixed end of month date, including clarifications on that reporting should take place on the next working day, should this date fall on a business holiday and that the reporting period covered could include several reference period which should be reflected.
215. Regarding the concerns on the timing of the Level 3 publication, ESMA believes that the revised templates for the reporting of AAR activities and risk exposures and representativeness, as well as the new self-certification template for the reporting of the operational conditions should help harmonisation from the start of the reporting requirements and that additional Level 3 may only be needed on an ad hoc basis.

## 7 Annexes

### 7.1 Annex I – Legislative mandate to develop technical standards

#### Article 7a

##### Active Account

*“8. ESMA, in cooperation with EBA, EIOPA and the ESRB and after consulting the ESCB, shall develop draft regulatory technical standards to further specify the requirements under paragraph 3, points (a), (b) and (c), of this Article, the conditions of the stress testing thereof and the details of the reporting in accordance with Article 7b. In developing those regulatory technical standards, ESMA shall take into account the size of the portfolios of different counterparties according to the third subparagraph of this paragraph, so that counterparties with more trades in their portfolios are subject to more stringent operational conditions and reporting requirements than counterparties with fewer trades.*

*Regarding the representativeness obligation referred to in paragraph 3, point (d), ESMA shall specify the different classes of derivative contracts, subject to a limit of three classes, the different maturity ranges, subject to a limit of four maturity ranges, and the different trade size ranges, subject to a limit of three trade size ranges, to ensure the representativeness of the derivative contracts to be cleared through the active accounts.*

*ESMA shall set the number, which shall not be higher than five, of the most relevant subcategories per class of derivative contracts to be represented in the active account. The most relevant subcategories shall be those containing the highest number of trades during the reference period.*

*ESMA shall also set the duration of the reference period, which shall not be less than six months for counterparties with a notional clearing volume outstanding of less than EUR 100 billion in the derivative contracts referred to in paragraph 6 and not less than one month for counterparties with a notional clearing volume outstanding of more than EUR 100 billion in the derivative contracts referred to in paragraph 6.*

*ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 25 June 2025.*

*Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.”*

## **Article 7b**

### **Monitoring of the active account obligation**

*“1. A financial counterparty or a non-financial counterparty that is subject to the obligation referred to in Article 7a shall calculate its activities and risk exposures in the categories of derivative contracts referred to in paragraph 6 of that Article, and report every six months to its competent authority the information necessary to assess compliance with that obligation. The competent authority shall transmit that information to ESMA without undue delay.*

*The counterparties referred to in the first subparagraph of this paragraph shall use the information reported under Article 9 where relevant. The reporting shall also include a demonstration to the competent authority that the legal documentation, IT connectivity and internal processes associated to the active accounts are in place.*

*2. Financial counterparties and non-financial counterparties subject to the obligation referred to in paragraph 1 of this Article which hold, for the derivative contracts referred to in Article 7a(6), accounts at a Tier 2 CCP in addition to active accounts, shall also report every six months to their competent authority information on the resources and systems that they have in place to ensure that the condition referred to in Article 7a(3), point (b), is met. The competent authority shall transmit that information to ESMA without undue delay.*

*3. The competent authorities referred to in the first paragraph of this Article shall ensure that the financial and non-financial counterparties subject to the obligation referred to in Article 7a take the appropriate steps to fulfil that obligation, including using their supervisory powers under their sectoral legislation, where appropriate, or imposing penalties as referred to in Article 12 where necessary. Competent authorities may require more frequent reporting in particular where, based on the information reported, insufficient steps have been taken to meet the requirements set out in this Regulation as regards active accounts.”*

## 7.2 Annex II – Cost-benefit analysis

### 7.2.1 Operational conditions

#### a) Condition (a) – Legal and IT requirements and internal processes

<b>Specific objective</b>	The objective is to further specify the details of the operational conditions (a) to ensure that the “account is permanently functional, including with legal documentation, IT connectivity and internal processes associated to the account being in place.”
<b>Policy option 1</b>	A first policy option would be to require counterparties to share with the relevant competent authorities proof that they have established accounts at EU CCPs, such as their clearing contracts with the EU CCP (directly or via a clearing member), documentation on their clearing arrangements, policies or procedures to access the services of the CCP (directly or via a clearing member), proof they have established collateral accounts and clearer cash accounts, and information on the technology systems used to connect to the CCP (directly or via a clearing member).
<b>Policy option 2</b>	A second policy option would be to differentiate the level of details of the documentation supporting that condition (a) is met depending on the clearing relationship with the CCP. For clearing members, the level of detail could be more extensive given their role in the default management process of the CCP. The list of documents to be provided would include (in addition to the requirements listed under policy option 1) evidence that the clearing member can meet default management obligations and fulfils the applicable legal and capital requirements. Additional requirements could be to require that the clearing member has a licence to monitor derivatives data and has shared its emergency contact details with the CCP.
Preferred option	<b>Policy option 1.</b>

<b>Qualitative impact of the proposed policies</b>	
<b>Option 1</b>	
Benefits	The list of legal and technical requirements under policy option 1 is already required by CCPs as part of their onboarding of members and regularly updated as part of their due diligence checks. Meeting those requirements would be a simple and efficient way of assessing that the account is functional and can be used.
Compliance costs	Requiring counterparties subject to the AAR to demonstrate that they have the necessary legal and technical documentation linked to opening a clearing account in line with the EMIR requirements should not generate additional costs for the counterparty.

Supervision costs	The same would apply for the supervisory costs.
<b>Option 2</b>	
Benefits	The list of requirements under policy option 2 would be more extensive and would better reflect the specific role that clearing members play with regards to their clients in terms of risk management.
Compliance costs	The cost on clearing members would be higher – while potentially beneficial from a risk perspective, the additional requirements would bring little benefit from an active account perspective.
Supervision costs	The costs on the supervisors would be higher as the requirements to review would be more extensive.

b) Condition (b) – CCP written statements

<b>Specific objective</b>	The first objective is to assess whether the counterparty has the operational ability under condition (b) “to use the account, even at short notice, for large volumes of the derivative contracts referred to in paragraph 6 of this Article at all times and to be able to receive, in a short period of time, a large flow of transactions from positions held in a clearing service of substantial systemic importance pursuant to Article 25(2c);”
<b>Policy option 1</b>	A first policy option would be to require the counterparty to assess the capacity of the account to withstand a large increase in volumes and flows.
<b>Policy option 2(a)</b>	A second policy option would be to require that the counterparty requests a written statement from the CCP that the account can withstand such an increase. In the case of client clearing member, the counterparty would require that this certification be issued by the clearing member of the client account, as the client may not be known to the CCP.
<b>Policy option 2(b)</b>	A variant of policy option 2(a) would be to require that the CCP simulates this increase in clearing activity across the house and client accounts and that these certifications are then transmitted to the clients via the clearing members.
Preferred option	<b>Mix of Policy option 1 and Policy option 2(b).</b>

<b>Qualitative impact of the proposed policies</b>	
<b>Option 1</b>	
Benefits	This approach would have the benefit on relying solely on the counterparty itself and not requiring information from other participants in the clearing chain.
Compliance costs	However, the counterparty, in particular in case of end-clients, may not have the operational or technical ability to appropriately simulate the impact of a large increase in volumes and flows on its ability to use the

	clearing account, as the account is held at the level of the CCP (directly or indirectly).
Supervision costs	The supervisory costs could be mixed depending on whether the NCA would rely solely on a statement from the counterparty or whether it would conduct additional queries in order to assess whether the counterparty has a full grasp of the potential impact of a large increase or flow of transactions on its ability to use the account.
<b>Option 2(a)</b>	
Benefits	As the accounts are held at the level of the CCP (directly or indirectly), the CCP or clearing member has the operational capacity to simulate a large increase in volumes and flows in the account.
Compliance costs	The compliance costs on the counterparty would be more limited as the counterparty would only be responsible for obtaining a statement from the CCP (or clearing members). However, part of the compliance costs would be borne by the concerned CCPs and clearing members. In the case of clients clearing with multiple clearing members, this could be burdensome for the clearing members.
Supervision costs	The supervisory costs would also increase as it would require being able to have a good view of the clearing chain in case of client clearing. Conversely, the clearing capacity of CCPs and clearing members is subject to higher requirements on which the supervisor can also decide to rely.
<b>Option 2(b)</b>	
Benefits	This approach has the advantage of relying exclusively on the certifications provided by the CCP on the client accounts, and would avoid requiring a similar certification from each clearing member or client providing client clearing services for client positions, which may be excessively burdensome for clients using multiple clearing members.
Compliance costs	The compliance costs would be lower than for options 1 and 2(a), as these could be limited to EU CCPs providing written statements confirming the account is able to simulate the increase.
Supervision costs	The supervisory costs would be lower than for options 1 and 2(a), as there would be one written statement to review per counterparty, instead of two or more in the case of client clearing under option 2(a).

c) Condition (b) – Proxy for large increase in volumes and flows

<b>Specific objective</b>	The objective is to identify a metric or proxy for “large” volumes and a “large” flow of transactions from existing positions at clearing services of substantial systemic importance as outlined under condition (b).
<b>Policy option 1</b>	A first policy option would be for the counterparty to consider the impact of repatriating a substantial part of its total clearing activity in the EU, by

	considering whether its clearing arrangements could withstand an increase in clearing activity of up to X% of its total clearing activity.
<b>Policy option 2</b>	A second policy option would be to require the counterparty to simulate a substantial increase of its clearing activity (e.g. threefold) in the account at an EU CCP.
Preferred option	<b>Policy option 2.</b>

<b>Qualitative impact of the proposed policies</b>	
<b>Option 1</b>	
Benefits	This approach would be the most precise option, as the simulation of a large increase in volume or flow would depend on the current clearing activity of the counterparty at a Tier 2 CCP.
Compliance costs	However, ESMA finds that this approach has significant technical shortcomings due to the structure of the clearing chain. In order to simulate the impact of large increase in volume or flow in an account, the CCP would need to obtain information on the total clearing activity of the counterparty, which may be both confidential and commercially sensitive information and require complex disclosure chains, in particular when intermediated by a clearing member. In addition, the CCP may not have the capacity to identify the end client and therefore to assess the impact of a large increase in volume on a given client, in particular if their positions are comingled in an omnibus account with other clients.
Supervision costs	In practical terms, ESMA finds that this would add a step for the NCA as it would first need to check whether the information submitted by the counterparty is accurate, before reviewing the written statement by the CCP.
<b>Option 2</b>	
Benefits	ESMA estimates that on average 26% of the OTC IRD by EEA counterparties are cleared at an EU CCP in terms of notional amount outstanding cleared over the past 12 months (from March 2023 to March 2024). On this basis, a threefold increase would have the benefit of appropriately simulating a large increase in existing clearing activity to more than half of the total clearing activity (taking also into account divergences across classes of derivatives from 46% for FRA to 23% for IRS).
Compliance costs	A three-fold increase has the benefit of being simple and easily implemented, as it does not require sharing confidential and commercially sensitive information from counterparties on their total clearing activity to the CCP or their clearing members.
Supervision costs	The supervisory costs would be lower as the NCA would only have to review the written statement by the CCP, and would not need to check the information submitted by the counterparty to the CCP.

1. Condition (c) – Proxy for all new trades cleared

<b>Specific objective</b>	The objective is to identify a metric or proxy to assess how counterparties can ensure that “all new trades of the respective counterparty in the derivative contracts referred to in paragraph 6 can be cleared in the account at all times”.
<b>Policy option 1</b>	A first policy option would be for the counterparty to consider the impact of clearing “all new trades” in the account by simulating the increase with a proxy based for example on the activity of the counterparty over the past 12 months.
<b>Policy option 2</b>	A second policy option would be to rely on the three-fold increase in clearing activity in the account over the past 12 months, as for condition (b).
Preferred option	<b>Policy option 2.</b>

<b>Qualitative impact of the proposed policies</b>	
<b>Option 1</b>	
Benefits	This approach would have the benefit of providing a simulation of future clearing activity to assess the capacity of the account to clear all new trades.
Compliance costs	However, ESMA finds that this approach has significant short-comings for several reasons. First, the new clearing activity conducted over the past 12 months may not be a reliable indicator of expected future activity, as it can be influenced by external factors, such as high volatility due to a period of uncertainty. Second, it would require sharing confidential and commercial sensitive activity up a complex clearing chain would significantly increase compliance costs.
Supervision costs	In practical terms, ESMA finds that this would add a step for the NCA as it would first need to check whether the information submitted by the counterparty is accurate, before reviewing the written statement by the CCP.
<b>Option 2</b>	
Benefits	ESMA estimates that on average 26% of the OTC IRD by EEA counterparties are cleared at an EU CCP in terms of notional amount outstanding cleared over the past 12 months. Therefore, ESMA finds that on average a threefold increase would have the benefit of providing a reasonable assessment of the account’s ability to receive the new cleared trades of the counterparty in the relevant derivative contracts (even if less precise as all new trades cleared would be difficult to predict).
Compliance costs	A three-fold increase has the benefit of being simple and easily implemented, as it does not require sharing confidential and commercially

	sensitive information from counterparties on their total clearing activity to the CCP or their clearing members.
Supervision costs	The supervisory costs would be lower as the NCA would only have to review the written statement by the CCP, and would not need to check the information submitted by the counterparty to the CCP.

## 2. Stress-testing of conditions (b) and (c) – Stress scenarios

<b>Specific objective</b>	The objective is to identify a metric or proxy the stress-testing for “large” volumes and “large” flow of transactions from existing positions at clearing services of substantial systemic importance and all new trades cleared by counterparty in the derivative contracts in the EU account at all times.
<b>Policy option 1</b>	A first policy option would be for the CCP to simulate a stress scenario based on the clearing activity taking place in the CCP and going well beyond the three-fold increase required to meet conditions (b) and (c).
<b>Policy option 2</b>	A second policy option would be to require impacted EU CCPs to simulate a common stress scenario based on data aggregated and published by ESMA.
<b>Policy option 3</b>	A third policy option would be to require counterparties to run operational tests of the threefold increase simulated for the purpose of complying with conditions (b) and (c)
Preferred option	<b>Policy option 3.</b>

<b>Qualitative impact of the proposed policies</b>	
<b>Option 1</b>	
Benefits	A stress simulation developed by each EU CCP would enable a more tailored approach based on the existing total clearing activity of the counterparties subject to the AAR clearing at that given CCP.
Compliance costs	However, this would require significant efforts from CCPs to obtain confidential and commercially sensitive information from counterparties along sometime complex clearing chains to be able to differentiate the clearing activity of the counterparties subject to the AAR from the clearing activity of the counterparties which are not in scope.
Supervision costs	The NCA of the counterparty would have to rely also on the NCA of the CCP to ensure that the estimations produced the CCP are accurate.
<b>Option 2</b>	
Benefits	Under this approach, the total outstanding clearing activity in the relevant derivative contracts cleared at TC-CCPs and EU CCPs would be published annually by ESMA on its website, as required under Article 6(2) of EMIR. This would allow also to have a more harmonized approach when conducting the stress-tests across CCPs.

Compliance costs	This would avoid substantial efforts from CCPs requiring potentially confidential and commercially sensitive information from counterparties to estimate their total clearing activity across sometimes complex clearing chains.
Supervision costs	This would avoid complex checks by the NCAs of counterparties and those of the CCPs.
<b>Option 3</b>	
Benefits	Under this approach, there would be no need to approximate the total clearing activity on the relevant derivatives contracts, nor for counterparties to disclose highly sensitive information on their clearing activity. The stress testing would be understood as an operational test (fire drill) to be run on a yearly basis.
Compliance costs	Compliance costs would be highly reduced for CCPs and counterparties compared to options 1 and 2.
Supervision costs	The number of checks to be performed by NCAs would be reduced, as there will be no need to assess the underlying scenarios.

## 7.2.2 Representative criteria

### a) Different classes of derivative contracts

<b>Specific objective</b>	The objective is to specify the different classes of derivative contracts, subject to a limit of three classes per category of derivatives contracts, to ensure the representativeness of the derivative contracts to be cleared through the active accounts.
Methodology	<p><u>Empirical approach</u></p> <p>To determine the representative classes of derivative products, ESMA analysed the clearing activity of EEA entities at clearing services of substantial systemic importance using a wide range of empirical metrics, including cleared notional, cleared volume (i.e. number of cleared trades), and average notional outstanding over the sample period.</p> <p><u>Data</u></p> <p>ESMA used transaction data for EUR-denominated interest rate derivatives (IRD), PLN-denominated IRD, and EUR-denominated short-term interest rates (STIR), which were obtained through EMIR reporting. These data capture new trades executed by EEA counterparties between March 2023 and March 2024, and were complemented by end-of-week outstanding positions over the same sample period. The EMIR reporting contains more than 100 fields that include information on whether a trade is centrally</p>

	<p>cleared, the name of the CCP, trade characteristics (e.g. rate, notional, execution date, and maturity date), and counterparty identities.</p> <p>A number of filters were applied to clean the data, starting by keeping only the IRD and STIR transactions denominated in the relevant currencies. To classify transactions, ESMA used the type of the derivative and the underlying reference rate. Next, duplicates were removed by using the unique trade identifier of every report. Finally, a number of additional filters was applied to remove inaccurate reports, for example by manually removing reports with extremely large notional or long maturity. The cleaned data were also benchmarked against supervisory data and data from public sources to identify any inconsistencies.</p> <p>After filtering the data, we are left with over 90 million new trades across different IRD classes, reported by 1714 EEA counterparties that cover the cleared activity in EUR OTC IRD, PLN OTC IRD and EUR STIR, and account for about EUR 660 trillion in traded notional over the sample period. The weekly average outstanding notional is EUR 158 trillion and EUR 23 trillion for cleared and uncleared positions over the same period, respectively. While EMIR reporting offers a rich dataset for cost-benefit analysis, it has certain limitations. First, only EEA entities are required to report, which means that the activity of third-country subsidiaries of EU groups is not captured. Additionally, EMIR data lack information on group structure; however, this can be addressed by utilising publicly available group structure information of significant banks supervised by the ECB.</p> <p>Moreover, EMIR reports do not contain a flag for transactions associated with the provision of client clearing services. ESMA believes that this limitation is likely to have a limited impact since the entities involved in such activities (i.e. clearing members) tend to have very large portfolios exceeding the EUR 6 billion threshold and trade extensively on their own account. Nonetheless, these data limitations in addition to any inaccurate reporting may introduce some noise into ESMA's calculations. The filters applied to clean the data aim to mitigate this noise, at least to some extent.</p>
Empirical Evidence	<p><u>EUR OTC IRD</u></p> <p>ESMA identified 5 main derivative classes at LCH Ltd consisting of fixed-to-float interest rate swaps (IRS), overnight interest rate swaps (OIS), forward rate agreements (FRA), inflation swaps and basis swaps, accounting for about 42%, 35%, 22%, 0.35% and 0.1% of the market in terms of notional cleared, respectively. This suggests that clearing is concentrated at the IRS, FRA and OIS segment, which demonstrate strong daily activity. Inflation swaps are not subject to the clearing obligation under EMIR and the clearing</p>

activity in this market, and in basis swaps, is small. The analysis with cleared volumes and notional outstanding yields qualitatively similar findings.

Next, ESMA considered the cleared activity at EU CCPs. The data portrayed a similar picture with IRS, OIS and FRA accounting for over 97% of the market, although in this case with a larger FRA segment. Although the Tier 2 CCP market is larger in terms of daily cleared notional and volume (especially for IRS and OIS), there is also regular clearing of these derivative classes at EU CCPs suggesting an active and liquid market. EMIR data also suggest that over 75% of the counterparties that are likely to be subject to the AAR (i.e., above the EUR 3 billion threshold) are already active at EU CCPs.

#### PLN OTC IRD

Following a similar approach, ESMA identified only two active classes of derivatives for PLN-denominated IRD, namely IRS and FRA, with the IRS accounting for about 40% and 80% of the market at LCH Ltd in terms of cleared notional and cleared volume, respectively.

When examining the activity at EU CCPs, the analysis yields a similar picture with IRS and FRA being the most active derivative classes, but with a smaller FRA segment. More generally, LCH Ltd dominates the PLN OTC IRD market, with the activity at EU CCPs being more sporadic, especially for FRA.

#### EUR STIR

ESMA is not aware of pre-existing classes of derivatives for STIR, which leaves more flexibility for ESMA to define the relevant classes of derivatives for the AAR. For this part of the analysis, in addition to EMIR data, ESMA utilised supervisory data covering the period between April and June 2024.

ESMA first considered the breakdown of open interest by product at ICE Clear Europe (ICEU), which suggested that almost 98% of the market consists of derivatives referenced in Euribor, with Three-month Euribor Options (64%) and Three-month Euribor Futures (24%) being the two more active segments. Other products include three-month Euribor 1-year mid-curve Options (7.4%) and three-month Euribor 2-year mid-curve Options (3%), among others.

Interestingly, the analysis unveiled an emerging high-growth segment, namely the three-month €STR Futures, which despite its small size in terms of open interest (about 1.5% in June 2024) has more than trebled between April and June 2024 in terms of both number of contracts and notional.

ESMA also analysed the cleared activity of EUR STIR at EU CCPs. Despite being a smaller market compared to ICEU, there is active clearing for

	Euribor and €STR Futures, with the latter exhibiting very high daily volumes, which however do not fully translate into open interest. Finally, there is no cleared activity for EUR STIR Options at EU CCPs based on EMIR data.
<b>Policy option 1</b>	<p><u>EUR OTC IRD</u></p> <p>A first policy option is to select the three most actively cleared derivative classes at LCH Ltd that account for over 95% of the market, namely the EUR-denominated IRS, FRA and OIS.</p> <p><u>PLN OTC IRD</u></p> <p>A first policy option is to select the two active classes of derivatives that account for 100% of the market, namely the PLN-denominated IRS and FRA.</p> <p><u>EUR STIR</u></p> <p>A first policy option is to designate classes of derivatives based on the reference index of the underlying asset, namely 3 months interest rate referenced in Euribor, and 3 months interest rate referenced in €STR.</p>
<b>Policy option 2</b>	<p><u>EUR OTC IRD</u></p> <p>A second option would be to select inflation swaps or basis swaps in place of the derivative classes under policy option 1 or select a smaller number of derivative classes.</p> <p><u>PLN OTC IRD</u></p> <p>A second option would be to select a smaller number of derivatives classes denominated in PLN.</p> <p><u>EUR STIR</u></p> <p>A second option would be to designate classes based on the derivative type (Futures vs. Options) or a combination of derivative type and the reference index.</p>
Preferred option	<b>Policy option 1.</b>

<b>Qualitative and quantitative impact of the proposed policies</b>	
<b>Option 1</b>	
Benefits	<p>This approach would ensure that the designated classes are representative of the clearing activity of EEA counterparties at Tier 2 CCPs, as evidenced in EMIR data. By taking into account current market dynamics and growth trends, it helps ensure that these classes will remain relevant in the coming years, adapting to evolving market conditions.</p> <p>For PLN OTC IRD, ESMA examined additional derivatives classes, but EMIR data indicate that IRS and FRA dominate the market entirely. While</p>

	<p>ESMA considered designating only one derivative class, this could create opportunities for circumventing the AAR, as IRS and FRA are economically similar.</p> <p>For EUR STIR, classifying based on the reference index of the underlying asset allows maximum flexibility for counterparties in fulfilling their representative obligation, as it avoids restricting the type of derivative.</p>
Compliance costs	<p>This approach would require EEA entities to clear a number of trades in the designated derivative classes through active accounts. ESMA believes that selecting 7 classes out of the maximum possible 9 would help reduce compliance costs. In addition, ESMA's tailored approach for each derivative class aims at easing compliance with the AAR. By considering market dynamics at both Tier 2 and EU CCPs, ESMA ensures that a liquid market already exists for these derivative classes at EU CCPs. Finally, ESMA notes that a broad majority of the EEA entities likely to be subject to the representativeness obligation are already active in EU CCPs.</p>
Supervision costs	<p>This approach suggests designating 7 classes out of the maximum possible 9, striking a balance between minimising supervision costs for monitoring AAR implementation and achieving a satisfactory level of representativeness.</p>
<b>Option 2</b>	
Benefits	<p>This approach would only partially achieve the representativeness of EEA entities' clearing activity at active accounts. For EUR OTC IRD, the inclusion of inflation swaps is not viable as this derivative class is exempt from the clearing obligation. Additionally, the selection of basis swaps lacks justification due to the minimal size of this segment.</p> <p>More generally, a smaller number of designated derivative classes would undermine the representativeness of clearing through active accounts. Specifically, for EUR STIR, data do not support classifying solely by derivative type (Futures vs. Options) or by a combination of type and reference index. In the case of PLN OTC IRD, while ESMA considered other classes, however, it found no significant activity for those not subject to the clearing obligation, leading ESMA to discard this option.</p>
Compliance costs	<p>A smaller number of designated derivative classes would lower compliance costs for counterparties but could compromise the representativeness of clearing through active accounts. For EUR STIR, a different classification would likely reduce counterparties' flexibility in meeting the representative obligation, potentially leading to increased compliance costs.</p>
Supervision costs	<p>More generally, while fewer derivative classes may decrease supervision costs for monitoring compliance, this approach would also diminish the effectiveness of the active account requirement.</p>

b) Relevant subcategories

<p><b>Specific objective</b></p>	<p>The objective is to specify the different maturity ranges, subject to a limit of four maturity ranges, and the different trade size ranges, subject to a limit of three trade size ranges, to ensure the representativeness of the derivative contracts to be cleared through the active accounts.</p>
<p>Methodology</p>	<p><u>Empirical approach</u></p> <p>ESMA recognises that there could theoretically be up to 12 different combinations of trades sizes and maturities (maximum) per class of derivatives, of which counterparties would have to clear representative trades for the most relevant subcategories defined by ESMA. However, ESMA notes that the number of combinations may also vary depending on the characteristics of a class of derivatives subject to the AAR.</p> <p>On this basis, ESMA analysed the actual portfolios of counterparties likely subject to the representativeness obligation for each clearing service of substantial systemic importance and each designated derivative class. Using an optimisation algorithm that aims for an equal number of trades per bucket, ESMA defined optimal maturity and trade size buckets for each counterparty portfolio. ESMA then defined subcategories by maturity and trade size per derivative class based on the distribution of these optimal buckets across relevant counterparties. Specifically, ESMA selected maturity and trade size ranges that fall between the 25<sup>th</sup> and 75<sup>th</sup> percentile of this distribution for each bucket. This focus on the central part of the distribution not only ensures the representativeness of the designated subcategories, but also mitigates the impact of any outlier observations.</p> <p>As part of its analysis, ESMA considered several additional factors that could influence the derivation of buckets, including the aggregate market size and clearing dynamics (noting that the aggregate market distribution could be skewed by high clearing activity from certain counterparties). ESMA also examined differences in clearing patterns between different counterparty types (client vs. clearing member) or between different CCPs (Tier 2 vs EU CCPs), as well as the perceived riskiness associated with certain buckets (e.g. longer maturities generally carry higher risk). Additionally, ESMA aimed to achieve a minimum degree of simplicity and standardisation when defining the lower and upper limit of each bucket.</p> <p>By analysing actual counterparty portfolios using EMIR reporting and considering a wide range of relevant factors, ESMA believes its approach effectively serves the AAR’s objective of deriving subcategories that are representative and reflect the diversity of the portfolios of counterparties subject to the AAR.</p>

	<p><u>Data</u></p> <p>ESMA used the same EMIR data as in subsection (a) above. New trades by EEA entities executed between March 2023 and March 2024 were used to specify optimal maturity and size buckets for each counterparty portfolio, while end-of-week outstanding positions data were used to indicate the counterparties likely to be subject to the representativeness obligation, i.e. with cleared portfolios in AAR relevant derivatives above EUR 6 billion. To capture derivatives exposures at the group level, ESMA used the group structure information of significant banks supervised by the ECB.</p>
	<p><u>EUR OTC IRD</u></p> <p>Based on its analysis, ESMA finds that EEA counterparties are highly active in EUR OTC IRD, with significant diversity in the maturity and trade sizes of transactions cleared at both Tier 2 and EU CCPs.</p> <p>ESMA finds that maturities for EUR IRS span from a few days to over 50 years, with concentrations around “standard” maturities like 5 years, 10 years, and 15 years. EMIR data indicate active trading for EUR OIS even at longer maturities above 10 years, but with a distribution skewed towards shorter maturities compared to EUR IRS. Moreover, the observed maturities of EUR OIS at EU CCPs tend to be shorter than those at Tier 2 CCPs. EUR FRA tend to be very short-lived with clearing concentration below the 2-year maturity, resulting in narrower maturity ranges. Notably, ESMA finds that the maturity profiles of the clearing activity of clearing members and clients are generally quite similar.</p> <p>In terms of trade size, the analysis reveals a high diversity of trade sizes across all three derivative classes. EMIR data show that EUR IRS and EUR OIS have comparable trade sizes, although EUR OIS exhibits wider ranges and larger medians. EUR FRA, on the other hand, shows significantly larger trade sizes, with over 30% of cleared transactions exceeding EUR 200 million, a trend observed for both Tier 2 and EU CCPs, as well as among clearing members and clients.</p> <p><u>PLN OTC IRD</u></p> <p>ESMA finds that the PLN OTC IRD market is smaller and with more sporadic trading compared to the EUR OTC IRD market. There are generally fewer active counterparties, while the market is less developed and liquid at EU CCPs.</p> <p><u>EUR STIR</u></p> <p>For EUR STIR, ESMA focused on Futures due to the less-developed Option market at EU CCPs. The EUR STIR market is characterised as a short-term</p>

	<p>market, with most trades expiring before a 2-year maturity. EMIR data indicate that EUR STIR markets referenced in Euribor and €STR exhibit similar maturity distribution, with clearing concentrations at the 6-month, 1-year and 1.5-year maturities. As €STR Futures is a new (but dynamic) segment, ESMA anticipates that its trading dynamics will gradually align with the more developed Euribor segment.</p> <p>While the EUR STIR market cleared by EEA counterparties varies in trade sizes and could technically be distributed across different trade size ranges, ESMA is also aware that counterparties have a more limited control on the trade size following the execution of exchange-traded products compared to the size of their initial trade order, which may be only partially executed depending on the number of trades matched in the central limit order book of the exchange for a given price.</p>
<p><b>Policy option 1</b></p>	<p><u>EUR OTC IRD</u></p> <p>The first policy option is to define the maximum number of ranges of maturities (i.e. four) and trade sizes (i.e. three), reflecting the significant diversity of maturities and trade sizes observed in EMIR data. The maturity and trade size ranges under this policy option are described in Section 5.2.</p> <p><u>PLN OTC IRD</u></p> <p>The first option is to establish only one range covering all maturities and one range covering all trade sizes for each class of derivatives, maximising flexibility for counterparties in meeting the representativeness obligation for PLN OTC IRD.</p> <p><u>EUR STIR</u></p> <p>A first policy option is to designate four maturity ranges to reflect the diversity of observed maturities in the EUR STIR market. In the case of trade size, ESMA proposes to leave maximum flexibility for counterparties by creating only one range (i.e. all trade sizes) per class of derivatives. The maturity and trade size ranges under this policy option are described in Section 5.2.</p>
<p><b>Policy option 2</b></p>	<p><u>EUR OTC IRD</u></p> <p>A second option would be to select a fewer maturity or trade size ranges.</p> <p><u>PLN OTC IRD</u></p> <p>A second option would be to select more maturity and trade size ranges.</p> <p><u>EUR STIR</u></p> <p>A second option would be to select fewer maturity ranges or to differentiate between the EUR Euribor and EUR €STR or to define more trade size ranges.</p>

Preferred option	<b>Policy option 1.</b>
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<b>Qualitative and quantitative impact of the proposed policies</b>	
<b>Option 1</b>	
Benefits	<p>By analysing actual counterparty portfolios from EMIR reporting, this approach ensures that the proposed subcategories accurately represent the clearing activity of EEA entities at clearing services of substantial systemic importance.</p> <p>The consideration of various factors, such as the aggregate market size and clearing dynamics, counterparty types, and differences in clearing patterns between Tier 2 and EU CCPs, further support this objective.</p> <p>For EUR OTC IRD, ESMA finds that selecting the maximum number of possible maturity and trade size ranges is justified by EMIR data and reflects the diversity of portfolios of EEA counterparties likely subject to the AAR.</p> <p>In the case of PLN OTC IRD, the smaller market size justifies a flexible approach, allowing counterparties to meet the representativeness obligation for PLN OTC IRD with reduced compliance costs.</p> <p>Finally, ESMA's approach for EUR STIR ensures that the subcategories are representative of the diversity of EEA counterparty portfolios concerning maturities. It also recognises the different market structure of this market that limits counterparties' ability to control trade sizes after executing orders at a central limit order book.</p>
Compliance costs	<p>This approach would require counterparties to clear a number of trades at the representative subcategories through active accounts. By considering actual counterparty portfolios and various factors tailored to each derivative class level, the aim is to ease compliance costs. Specifically, examining market dynamics at both Tier 2 and EU CCPs helps ensure that the proposed subcategories also reflect existing clearing activity at EU CCPs.</p> <p>The proposal to define a smaller number of subcategories for PLN OTC IRD (one out of the maximum possible 12) considers the potential implications for the relevant counterparties, allowing maximum flexibility for counterparties in meeting the representativeness obligation. Similarly, aligning the maturity ranges for EUR Euribor and EUR €STR aims to reduce compliance costs through standardisation and simplicity in the EUR STIR market.</p> <p>In the case of EUR STIR, ESMA recognises that counterparties have limited control on the trade size following the execution of exchange-traded products compared to the size of their initial trade order, which would complicate compliance with the AAR. Therefore, the proposal to define only one trade size range maximises flexibility for counterparties in meeting their</p>

	representativeness obligation under the AAR, as counterparties would have to clear trades only in 4 possible subcategories.
Supervision costs	Given that this approach is tailored to actual EEA counterparty portfolios in the relevant derivative classes as observed in EMIR data, it is expected to strike a balance between achieving a good level of representativeness and reducing supervision costs. For instance, proposing fewer subcategories than the maximum possible for PLN OTC IRD and EUR STIR is likely to lower supervision costs associated with monitoring the implementation of the AAR.
<b>Option 2</b>	
Benefits	<p>Selecting fewer subcategories for EUR OTC IRD would likely decrease compliance and supervision costs, but it may come at the expense of making clearing at active account less representative of the clearing activity of EU entities at Tier 2 CCPs. This approach option would fail to reflect the great diversity of counterparty portfolios in terms of the maturity and trade size profile.</p> <p>For PLN OTC IRD, selecting a larger number of subcategories would likely increase compliance costs disproportionately, given the smaller size and liquidity of this market compared to the EUR OTC IRD.</p> <p>In the case of EUR STIR, selecting a larger number of trade size subcategories would be difficult to implement in practice due to the market structure and underlying trade execution mechanism. On the other hand, the observed high diversity of maturities suggests that a smaller number of subcategories would not be justifiable. Likewise, selecting different classes for EUR Euribor and EUR €STR classes would not be supported by the data, particularly as the EUR €STR is new but dynamic segment expected to converge to the more established EUR Euribor.</p>
Compliance costs	A smaller number of designated derivative classes for EUR OTC IRD would lower compliance costs for counterparties but may compromise the representativeness of clearing through active accounts. In the case of PLN OTC IRD and EUR STIR, a different selection of subcategories, could increase compliance costs disproportionately due to clearing characteristics in these two derivative categories.
Supervision costs	More generally, while having fewer classes could decrease supervision costs associated with monitoring compliance, it might also diminish the effectiveness of the active account requirement. This trade-off calls for a balanced approach that considers both compliance efficiency and representativeness in clearing activities.

c) Duration of reference periods and the number of most relevant subcategories

<b>Specific objective</b>	The objective is to specify the (i) the duration of the reference period, which shall not be lower than six months for counterparties with a notional clearing volume outstanding of less than EUR 100 billion euro in AAR-relevant
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	<p>derivative contracts and not lower than one month for counterparties with a notional clearing volume outstanding of more than EUR 100 billion euro in AAR-relevant derivative contracts; and (ii) set the number, which shall not be higher than five, of most relevant subcategories per class of derivative contracts to be represented in the active account.</p>
<p>Methodology</p>	<p><u>Empirical approach</u></p> <p>To specify the duration of the reference period and the number of most relevant subcategories per class of derivative contract, ESMA considered the clearing activity of EEA counterparties at Tier 2 and EU CCPs using a wide range of metrics including the number of trading days and the number of cleared trades in one full trading year for counterparties with exposures above and below EUR 100 billion.</p> <p>Similar to subsections (a) and (b), ESMA considered additional factors which could influence the analysis, while also aimed to achieve a minimum degree of simplicity and standardisation to ease compliance and supervision costs.</p> <p>In addition, ESMA has given due consideration to the implications of the expected minimum number of cleared trades based on the current clearing behaviour of counterparties. Specifically, ESMA considered situations where counterparties belong to SSM supervised banking groups or fulfil the AAR with only 1 trade (instead of five) per subcategory where the resulting number of trades exceeds half of that counterparty's total trades for the preceding twelve months.</p> <p><u>Data</u></p> <p>ESMA used the same EMIR data as in subsections (a) and (b) above, which cover new trades by EU counterparties executed between March 2023 and March 2024. As discussed earlier, EMIR data provide a rich dataset for analysing counterparty specific portfolios subject to certain limitations.</p>
<p>Empirical Evidence</p>	<p><u>Reference period:</u></p> <p><u>EUR OTC IRD</u></p> <p>EMIR data show that the EUR OTC IRD is deep and liquid with EEA counterparties showing significant clearing activity.</p> <p>Those clearing on average more than EUR 100 billion per year, trade on average almost every other day, with a broad majority clearing more than 600 trades in each class of derivatives every year. The most active among them clear more than 10000 trades per year, primarily consisting of clearing</p>

members or entities that belong to large groups, along with some active clients.

Counterparties clearing on average less than EUR 100 billion per year (but more than EUR 6 billion) exhibit more diverse clearing patterns. Many in this group clear more than 50 trades per year, while the least active could benefit from the one trade waiver per subcategory. ESMA also observes in EMIR data that some of these counterparties already engage in transactions at EU CCPs, which should facilitate compliance with the representativeness obligation.

These findings are broadly consistent across the three classes of derivatives identified for EUR OTC IRD.

#### PLN OTC IRD

In contrast, ESMA notes that the PLN OTC IRD market is less active and concentrated among a few counterparties clearing mainly at Tier 2 CCPs, calling for a more cautious approach when defining the reference period.

#### EUR STIR

ESMA finds that EUR STIR referencing Euribor is an active market in terms of volumes and number of trades. While clearing is highly concentrated at Tier 2 CCPs, EMIR data indicate that active daily clearing also occurs at EU CCPs.

In terms of clearing activity across counterparties (and despite its smaller size of the market in terms of notional), ESMA observes a pattern similar to that of the EUR OTC IRD markets. Therefore, it is deemed appropriate to require a more frequent reference period for counterparties clearing over EUR 100 billion per year.

However, ESMA notes that the situation is different for EUR STIR referencing €STR, as this is a dynamic yet nascent market, suggesting allowing more flexibility for counterparties to meet compliance.

#### Number of most relevant subcategories:

Regarding the number of most relevant subcategories, ESMA considered the size and liquidity of the respective markets, as well as the current split between Tier 2 and EU CCPs. Based on this analysis, it seems suitable to have a larger number of most relevant subcategories for each class of EUR OTC IRD due to the market's substantial size and the active clearing by EEA counterparties at both Tier 2 and EU CCPs. For PLN OTC IRD and EUR STIR, a smaller number of most relevant subcategories seems more appropriate reflecting the smaller size of these markets.

<p><b>Policy option 1</b></p>	<p><u>Reference period:</u></p> <p><u>EUR OTC IRD</u></p> <p>The first policy option is that the reference period for counterparties clearing more than EUR 100 billion per year be one month, while the counterparties clearing less than EUR 100 billion per year would be required to meet the representativeness obligation every six months.</p> <p><u>PLN OTC IRD</u></p> <p>The first option is that the reference period for the calculation of the representativeness obligation be based on a twelve-month period regardless of the clearing activity of the counterparty or the class of derivatives cleared.</p> <p><u>EUR STIR</u></p> <p>The first option for EUR STIR referencing Euribor is that the reference period for counterparties clearing more than EUR 100 billion be of one month, while counterparties clearing less than EUR 100 billion would be required to meet the representativeness obligation every six months.</p> <p>In the case of EUR STIR referencing €STR, ESMA suggests a more cautious approach requiring counterparties clearing more than EUR 100 billion to meet the representativeness obligation every six months, while those clearing less would have up to twelve months.</p> <p><u>Number of subcategories:</u></p> <p>ESMA proposes to have five most relevant subcategories for each class of EUR OTC IRD. For the two classes of PLN OTC IRD, ESMA proposes one most relevant subcategory for each class given that there is only one subcategory for both maturity and trade size. Finally, for the two classes of EUR STIR, ESMA proposes four most relevant subcategories for each class.</p>
<p><b>Policy option 2</b></p>	<p><u>Reference period:</u></p> <p><u>EUR OTC IRD</u></p> <p>A second option would be to select a less frequent reference period for EUR OTC IRD.</p> <p><u>PLN OTC IRD</u></p> <p>A second option would be to select a more frequent reference period for PLN OTC IRD.</p> <p><u>EUR STIR</u></p> <p>A second option would be to select a less (more) frequent reference period for EUR STIR referencing Euribor (€STR).</p>

	<p><u>Number of subcategories:</u></p> <p>A second option would be to select a smaller number of subcategories for each class of derivative for EUR OTC IRD, PLN OTC IRD, EUR STIR.</p>
Preferred option	<b>Policy option 1.</b>

<b>Qualitative and quantitative impact of the proposed policies</b>	
<b>Option 1</b>	
Benefits	<p>This approach would ensure that both the frequency of the reference period and the number of subcategories reflect the dynamics of each designated derivative class, as well the clearing activity of EEA counterparties both at Tier 2 and EU CCPs, as indicated by EMIR data. This tailored approach aims to ease compliance for EU counterparties with the AAR while reducing supervision costs, without compromising the effectiveness of the representativeness obligation.</p>
Compliance costs	<p>This approach would require counterparties to clear a number of specified trades in each of the most relevant subcategories and per reference period at the designated derivative classes through active accounts.</p> <p>By considering both actual counterparty portfolios and various factors when determining the frequency of the reference period and the number of the most relevant subcategories seeks to lowering compliance costs. Specifically, selecting fewer most relevant subcategories out of the maximum possible for PLN OTC IRD and EUR STIR, along with a less frequent reference period for PLN OTC IRD and EUR STIR €STR is expected to maximise flexibility for counterparties to meet compliance with the AAR.</p> <p>ESMA notes that counterparties with less frequent clearing would only need to execute 1 trade (instead of five) per subcategory, provided that the resulting number of trades exceeds half of that counterparty's total trades for the preceding twelve months. In addition, for subcategories where counterparties or their group clear zero trades during the reference period at a Tier 2 CCP, ESMA understands that these counterparties would be required to replicate zero trades in the same subcategory at an EU CCP. In this regard, ESMA also notes that EMIR data suggest that a broad majority of the counterparties likely subject to the AAR are already active at relevant EU CCPs. These considerations indicate that compliance costs are likely to be manageable.</p>
Supervision costs	<p>This approach is tailored to the market dynamics of each derivative class and the clearing activity of EEA counterparties, as reflected in EMIR data, aiming to achieve a good level of representativeness. For PLN OTC IRD and EUR STIR, this approach proposes selecting a smaller number of the most relevant subcategories from the maximum possible 5 per derivative class, hence also reducing supervision costs. The less frequent reference</p>

	period for the smaller and less liquid derivative classes supports this objective.
<b>Option 2</b>	
<b>Benefits</b>	<p>The selection of a smaller number of most relevant subcategories and less frequent reference periods for EUR OTC IRD may reduce compliance and supervision costs. However, this comes at the expense of the effectiveness of the AAR at promoting activity at active accounts and despite EUR OTC IRD being a large and liquid market with very active EEA counterparties.</p> <p>ESMA examined different numbers of most relevant subcategories for PLN OTC IRD and EUR STIR. In the case of PLN OTC IRD only one subcategory exists, while for EUR STIR, adjusting the number of the most relevant subcategories could undermine the representativeness of clearing through active accounts and, more generally, the effectiveness of the AAR. ESMA notes that the designation of only four subcategories out of the maximum of twelve for EUR STIR, will already provide some flexibility for counterparties in meeting the AAR.</p> <p>In the case of EUR STIR referenced in €STR, ESMA considered a more frequent reference period; however, given the segment's relatively small (but dynamic) size, such an option would disproportionately increase compliance costs. Similarly, ESMA considered a more frequent reference period for the PLN OTC IRD, however, this lacked support from data, as the small market size and infrequent trading by EEA counterparties would make compliance challenging.</p>
<b>Compliance costs</b>	A smaller number of most relevant subcategories or a less frequent reference period would likely reduce compliance costs. However, this may come at the expense of making the clearing through active accounts less representative.
<b>Supervision costs</b>	Reducing the number of relevant subcategories or implementing a less frequent reference period classes would likely decrease supervision costs for monitoring compliance but could also likely diminish the effectiveness of the AAR.

### 7.2.3 Reporting requirements

#### a) Reporting of activities, risk exposures and representativeness

<b>Specific objective</b>	The objective is to ensure that competent authorities have the necessary information to assess whether counterparties are subject to the AAR and how they meet the representativeness obligation.
<b>Policy option 1</b>	A first policy option would be to require only information enabling the competent authority to assess whether the counterparty is subject to the AAR and the representativeness obligation, and whether the counterparty

	is compliant with the representativeness obligation as specified by ESMA in its draft RTS.
<b>Policy option 2</b>	A second policy option would be to include some additional information (to what is already proposed under policy option 1) on the relevant trades to enable competent authorities to better perform their supervisory duties by verifying the information reported by counterparties.
Preferred option	<b>Policy option 1.</b>

<b>Qualitative impact of the proposed policies</b>	
<b>Option 1</b>	
Benefits	This approach is limited to the essential elements which are required 1) to identify the counterparty (LEI, FC/NFC, corporate sector, CM/client); 2) to identify if the counterparty is a stand-alone entity or part of a group, including EU subsidiaries of a Union group (LEIs of other entities and ultimate parent entity); 3) to assess whether it is subject to/how it meets the AAR and the representativeness criteria (clearing threshold, derivative category, cleared/uncleared, EU/TC CCP, gross and net notional, number of trades, margins, the most relevant subcategories for that counterparty, gross notional/number trades cleared per subcategory, reference period used).
Compliance costs	Compliance costs would be reasonable given the level 1 provisions as they would be limited to the strict necessary to assess compliance.
Supervision costs	Supervisory costs should be contained as the counterparties would be required to use information submitted under Article 9 of EMIR and report to the competent authority directly the information necessary for them to assess compliance. However, if the competent authorities required any additional information to assess compliance (for example, if it had doubts on the possibility of a potential circumvention), this would require considerable efforts from the competent authority to identify and match the relevant trades with the additional information already reported to Trade Repositories under Article 9.
<b>Option 2</b>	
Benefits	ESMA proposes under this policy option to also include the list of Unique Trade Identifiers (UTIs) for the relevant derivative contracts subject to the AAR, which were included in the calculation of activities and risk exposures. This would enable competent authorities to better perform their supervisory duties by verifying the information reported by counterparties under Article 7b against the reports submitted to Trade Repositories under Article 9. Additionally, including the UTIs may help detect data quality issues in the reporting.
Compliance costs	This would require counterparties to report additional fields, which would increase the reporting costs and burden.

Supervision costs	This approach would improve the supervisory work of the competent authorities and subsequently of the Joint-Monitoring Mechanism and ESMA which will be respectively responsible for the monitoring of the implementation of the AAR and for assessing the effectiveness of the AAR in mitigating the financial stability risks for the Union.
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b) Reporting of the operational conditions

<b>Specific objective</b>	The objective is to ensure that competent authorities have the necessary information so they can assess whether the counterparties meet the operational conditions.
<b>Policy option 1</b>	A first policy option would be to require counterparties to report each time all the documentation demonstrating to the competent authorities that they meet the operational conditions and their stress-testing as outlined in the draft RTS by ESMA.
<b>Policy option 2</b>	A second policy option would be to require counterparties to report, where relevant, the material changes to the documentation since the last report submitted to the competent authorities confirming that they meet the operational conditions and their stress-testing as outlined in the draft RTS by ESMA.
Preferred option	<b>Policy option 2.</b>

<b>Qualitative impact of the proposed policies</b>	
<b>Option 1</b>	
Benefits	This approach would ensure that the competent authorities have at all times a complete set of documents assessing whether the counterparties subject to the AAR meet the operational conditions.
Compliance costs	This approach would potentially require reporting every six months identical documentation by the counterparty to the competent authority, even if no changes have occurred since the previous report. For example, the counterparty would have to report again the internal policies and procedures for clearing the derivative contracts, which may represent a significant amount of documentation.
Supervision costs	This approach would facilitate supervisory work as competent authorities would be able to assess every six months compliance based on an updated set of documentation, without having to go through previous reports.
<b>Option 2</b>	
Benefits	This approach would also ensure that instead of reporting the entire contractual arrangements with the clearing service provider, the counterparty only report a written statement that the contractual arrangement is still live and standing, and a summary of the material changes since the last report to the competent authority.

<p>Compliance costs</p>	<p>This should considerably diminish the reporting and compliance costs of the counterparty. However, this would not be true for all reporting fields as the written statements by the counterparty, written statements by the CCPs and information on the account statement and the dedicated staff member would still have to be updated every six months.</p>
<p>Supervision costs</p>	<p>While more effective from the counterparty's perspective, this approach would require additional work from a supervisory perspective as the competent authority may have to go through previous reports if it needs to access information shared as part of the first report and no longer available in the more recent ones submitted.</p>

## 7.3 Annex III – Advice of the Securities and Markets Stakeholder Group

# Advice to ESMA

## SMSG advice to ESMA on its Consultation Paper on the conditions of the Active Account Requirement

### Executive Summary

The SMSG welcomes the opportunity to offer its advice to ESMA in relation to its Consultation Paper (CP) on the Conditions of the Active Account Requirement (AAR). The SMSG expresses its general support for the European Commission's (ECs) objectives of improving the attractiveness of EU CCPs, enhancing resilience, and reducing excessive reliance on the non-EU clearing ecosystem. The SMSG notes the importance of clearing and post-trade as an integral part of the Capital Markets Union (CMU) and the Savings and Investments Union (SIU).

The SMSG highlights areas requiring further clarification, such as terminology inconsistencies both within this framework and with other legal frameworks, as well as instances where the proposed level 2 text exceeds the level 1 mandate. We also express concerns that some of the suggested rules may impose excessive costs relative to their expected benefits.

The SMSG observes that clarifications provided in the CP, such as those regarding the AAR requirement, should be consistently presented through appropriate regulatory measures. This includes incorporating them primarily in the Regulatory Technical Standard (RTS) and, when appropriate, at Level 3 or through Q&As, given that a CP does not possess legal status.

The SMSG highlights that the forthcoming RTS should be balanced and consider the ECs objectives to enhance the competitiveness of EU capital markets, minimize unnecessary burdens and costs, and promote simplification by avoiding unnecessary and duplicate reporting.

The SMSG comments on the AAR scope and suggests that ESMA reconsider its position on the calculation methodology for the 85% threshold considered for exemption. The SMSG also notes that the level 1 text does not mandate ESMA to establish a 12-month lookback period and provides arguments against introducing such a lookback period.

The SMSG recommends that stress testing rules be made more proportionate, and the stress testing exercise be conducted annually instead of biannually. Additionally, proposals are made to streamline reporting processes to prevent excessive costs and other burdensome

requirements. Furthermore, comments are provided on aligning these rules more closely with prevailing market practices.

The SMSG offers comments and proposals on most questions in the CP, for further detail we refer to the full text of this advice.

## 1 Introductory remarks

1. The SMSG welcomes the opportunity to offer its advice to ESMA in relation to its Consultation Paper (CP) on the Conditions of the Active Account Requirement (AAR). The SMSG would like to start by expressing its general support for the European Commission's (ECs) objectives of improving the attractiveness of EU CCPs, enhancing resilience, and reducing excessive reliance on the non-EU clearing ecosystem. Clearing and post-trade financial services are an integral part of the Capital Markets Union (CMU) and Savings and Investments Union (SIU) and an essential component for achieving the target of liquid, efficient and cost-effective financial markets in the EU, with lower levels of systemic, credit and operational risks.
2. Against this background, the SMSG is supportive of the conditions of the AAR developed in the Level 1 text of EMIR 3. However, while it is correctly indicated in the CP that the AAR scope is set at level 1, and thus not part of ESMA's mandate under Article 7a, covered in the draft Regulatory Technical Standards (RTS), or subject to consultation, the SMSG note that there are certain unclear descriptions in the CP regarding the scope of the requirements, which should be addressed. The SMSG also considers that there are inconsistencies between the scope specified in the level 1 regulation and the proposal in the CP, and that parts of the proposal go beyond the level 1 mandate.
3. The SMSG also notes the importance of the forthcoming RTS being balanced and giving appropriate consideration to the European Commission's objectives to increase the competitiveness of EU capital markets, reduce unnecessary burdens and costs, and foster simplification including by avoiding unnecessary- and double-reporting.
4. Finally, one cannot ignore the context surrounding the CP, and notably the fact that the equivalence decision for UK CCPs (Commission Implementing Decision (EU) 2022/174) will come to an end on 28 June 2025. The SMSG takes good note of the decision recently announced to extend this equivalence decision until 30 June 2028. The SMSG welcomes both the content of this decision and its timing, as (i) it is announced sufficiently ahead of the June deadline to provide market participants with appropriate visibility and avoid creating uncertainty or stress in the underlying market, and (ii) it makes it possible to avoid interactions with the review clause in EMIR 3 Level 1 under which ESMA is required to provide a report on the effectiveness of the AAR as soon as 25 June 2026.

## 2 Simplification, definitions, and clarifications

5. One important (but at times forgotten) aspect of simplification is to make sure that a terminology is consistent within its own as well as vis-à-vis other legal frameworks. To avoid unnecessary costs and negative impacts on competition, it is also important to consider prevailing, well-functioning (and often international) market practices. In a clearing context, it is therefore important to make a clear distinction between concepts relating to *outstanding positions* as compared to *new transactions*.
6. *Outstanding positions* result from past transactions, constitute a stock, and are linked to the notion of market risk (where the value of open positions of clients may vary with market conditions) and counterparty risk (open positions which mark mutual obligations between a clearing member and a clearing house).
7. *New transactions* form a flow of new contracts which may add to or reduce open positions.
8. The distinction between outstanding positions and new transactions is clear in the Level 1 text where, in article 7a, the stock of open positions is referred to as “positions” and “notional clearing volume outstanding”, and the flow of new transactions is referred to as “transactions”, “trades” and “derivative contracts”.
9. However, in the CP and the RTS other terms are also used which blur this distinction. As an example, the term “outstanding clearing activity in the relevant derivative contracts” is used, where “outstanding” seems to indicate that the concept relates to open positions. Similarly, the terms “activity” and “derivative contracts” are used, while they rather seem to link to the volume of new transactions.
10. This said, both *outstanding positions* and *new transactions* give rise to operational risks, e.g. related to the ability of a clearing house and its clearing member to process margins, integrate the flow of new transactions, etc.
11. The SMSG against this background stresses the need for clarity and recommends that the wording used by the draft RTS be reviewed and aligned, in the cases above as well as other potential places, with that of the Level 1 text.
12. Similarly, where clarifications are addressed in the CP, e.g. in respect to the AAR requirement, it is important (as a CP does not have any legal status) that such clarifications are also presented in a consistent manner and by regulatory means, first and foremost in the RTS, but also when convenient at Level 3 or via Q&As. This is particularly important for the STIRs in scope of the AAR.

### 3 Responses to questions in consultation paper

**Question 1: Are there any aspects of the AAR scope on which ESMA has based its quantitative analysis and its policy choices that ESMA should consider detailing further?**

13. Within the analysis of the scope in term of products and counterparties it is clarified (para 27) that: “ICEU STIR derivatives for euro denominated products should be considered as OTC derivatives under Article 2a of EMIR, since the European Commission has not adopted an implementing act determining that the relevant third-country market complies with legally binding requirements which are equivalent to the requirements laid down in Title III on regulated markets of Directive 2004/39/EC10 and that it is subject to effective supervision and enforcement in that third country on an ongoing basis.”
14. In the absence of an EC implementing act as set out above, the SMSG notes the importance of avoiding potential unintended consequences for EU Non-Financial Counterparties (NFCs) and Final Clients of clearing services.
15. With reference to p. 15 of the CP the SMSG also stresses the importance of ESMA closely monitoring the development of alternative clearing services in the EU, given their implications for the requirement on counterparties to hold an active account at an EU CCP and the need to offer a full range of liquid products to NFCs in EU.
16. When it comes to the 85% threshold that is considered for exemption under article 7a.5. of the Regulation, the SMSG considers that ESMA must reconsider its position on the calculation methodology. Section 3.4 requires “85% of counterparties' derivative contracts” to be measured using the gross notional value of the aggregate month-end average position over the previous 12 months. With this lookback period, firms recently transitioning to exclusively clearing on an EU CCP would not qualify for the exemption. Consequently, they would still need to establish systems for dual-CCP clearing, stresstesting, and reporting, potentially encouraging firms to adopt a dual-CCP strategy and forego the exemption altogether.
17. The SMSG considers that applying a 12-month lookback period for counterparties to benefit from this exemption is unhelpful and does not incentivise firms to move their clearing to an EU CCP. Moreover, the SMSG sees no mandate in the Level 1 text for ESMA to establish a 12-month period in the Level 1 text, making it especially important to establish a workable solution that encourages firms to make use of the exemption. The 12-month lookback is punitive and contradicts the spirit of the Level 1 exemption, which is intended to reward counterparties willing to clear more than 85% of their trades on an EU CCP.
18. Finally, the SMSG understands from para 32 of the CP that, considering that STIRs cleared on a regulated market are excluded from the clearing obligation calculation, a counterparty

with over EUR 3 billion in gross notional value in STIRs on a regulated market — but below the clearing thresholds in relevant asset classes (i.e. EUR IRS + PLN IRS < EUR 3 billion) — would fall outside the scope of the AAR. To ensure clarity on that topic, the SMSG suggests adding a Recital 1b in the projected RTS, that would read: “Because there is no clearing obligation for STIR contracts under EMIR, as these products are traded on a regulated market and are immediately cleared (as required under Article 29 of MiFIR), there may be situations where certain counterparties, which are not subject to the clearing obligation under EMIR for OTC IRD products in EUR and PLN, happen to clear EUR STIR above the clearing threshold. Such counterparties would fall out of the obligation to hold an active account in the EU”.

**Question 2: Do you agree with the above approach for condition (a)? Are there other requirements that ESMA should consider for meeting condition (a)?**

19. Please refer to question 3.

**Question 3: Do you agree with the above approach for conditions (b) and (c)?**

20. The approach for condition (a), (b), and (c) generally seems consistent and proportionate with the guidelines provided by the level 1 text. It is however important that active accounts are transparently communicated, and that Clearing Members and Clients providing clearing services inform their NFCs and Final Clients about the option to clear their derivatives on EU CCPs. They should also provide this option under the same conditions and at no additional cost in their contractual offers.

#### ***Financial resources requirement***

21. The SMSG welcomes the clarification in p. 67 of the CP regarding the condition referred to in Article 7a (3) point (a) of the Regulation, that “the operational capacity should not include the financial resources of the clearing participant”. The SMSG recommends that point c) of Article 1 in the draft RTS be modified so that “with sufficient financial resources to meet the obligations arising from the direct or indirect participation in an authorised CCP” is deleted from the text.

#### ***Staffing requirements***

22. When it comes to the conditions referred to in Article 7a (3) points (b) and (c) of the Regulation, Article 2 of the draft RTS require “counterparties” (clearing members and clients of clearing services captured by the obligation) (a) to have internal systems and arrangements to support a “large flow of transactions”, (b) to “appoint at least one staff member” to support the functioning of the clearing arrangements and (c) to obtain from the CCP a written confirmation that the account can withstand a threefold increase of outstanding positions (compared with the average over the previous 12 months).

23. It should here be noted that the requirement to appoint a member of the staff to support the functioning of the clearing arrangement is inconsistent with the way most entities are organized. Instead of having one person dedicated to this task, entities will most likely have (several) teams contributing to the functioning and control of the active account. It may even create an operational risk to single out one person in this respect, in case of illness, personnel turnover, etc.
24. Accordingly, the SMSG recommends that ESMA modify point (b) e.g. by requiring that counterparties shall “provide a generic contact backed by sufficient knowledge to support the proper functioning of the clearing arrangements at all times”. Article 8.1.c) ii. of the projected RTS should also be modified accordingly.

***Reporting of changes in internal policies, etc.***

25. The SMSG considers that requiring counterparties to report material changes to internal policies, systems, governance, etc. is unnecessary. The AAA is a standard clearing account, and reporting should be limited to confirming that proper clearing arrangements are in place with an authorized EU CCP via a clearing member. Accordingly, the SMSG recommends that Article 8 (1)(c)(ii) be deleted.

***Rules on outstanding positions***

26. The SMSG understands from para 68 to 75 of the CP that the threefold increase of outstanding positions with the EU CCP is linked to the idea that such an increase would bring the share of EU CCPs in open positions to levels close to 85%, that would (i) ensure that the reliance vis-a-vis non-EU CCPs is no longer of systemic importance and (ii) be consistent with the 85% level that grants exemption from the AAR.
27. While acknowledging the rationale behind this approach, the SMSG considers that, given that the share of EU CCPs is quite different from one entity to the next, ESMA should rather require that CCPs provide a general certification, rather than a certification for each concerned entity. P. 1.c) of Article 2 of the draft RTS could then be redrafted to read “obtain from the authorised CCP a signed written statement confirming that it has the operational capacity to clear up to 85% of the notional outstanding for the concerned counterparties in the derivatives contracts referred to in Article 7a(6) of Regulation (EU) No 648/2012.”.
28. If ESMA still decides to leave the requirement at the level of each counterparty, then the SMSG recommends that:
- another requirement should be added, to ensure that the authorised CCP provides the required signed written statement (i) with no undue delay and (ii) for free, and

- for a more straightforward and pragmatic approach, it should be made possible for counterparties to delegate to the CCP to transmit the written statements via the central database that ESMA is mandated to establish.

**Question 4: Do you agree with the proposed approach for the annual stress-testing conditions (a), (b) and (c)?**

29. The SMSG in general agrees with the proposed approach for the annual stress-testing conditions (a), (b), and (c), with the central role and responsibility entrusted directly to EU CCPs:
- stress tests should be run directly by and at the level of EU CCPs,
  - stress tests should not be envisaged as a “pass or fail” requirement by ESMA and NCAs, since their purpose is to highlight potential risks arising from stressed conditions, that should go beyond EMIR compliance requirements, and
  - certification by EU CCPs should be part of the on-boarding procedure.
30. The SMSG considers that the wording of Article 3 of the draft RTS related to “Stress-testing of the operational conditions of the active account” creates confusion between expectations on outstanding positions and expectation on flows. The SMSG hence recommends that the text be covered by the abovementioned review of terminology.
31. Further, the SMSG notes that in case of an extreme event that would jeopardize the access of EU financial institutions to a third country clearing service of a systematic importance, an EU clearing member would most likely from a practical point of view seek to reduce its outstanding position vis-à-vis the concerned CCP, not by concluding a large number of individual transactions targeting each single outstanding position, but rather by concluding a limited number of macro-hedge transactions, transferring most of the risk to the EU CCP. Following this, the CCP would most likely clear all new transactions with the EU CCP.
32. Accordingly, the SMSG recommends that p. 1.(c) of Article 3 instead be indexed 1.(b) of Article 3 in the draft RTS, with the new wording “request from the authorised CCP, directly or indirectly via a clearing member or a client providing client clearing services, a signed written statement that the account of the counterparty has the capacity to withstand a substantial increase (i) in outstanding position of up to 85% of the total outstanding position of the counterparty and (ii) in the volume of new transactions of up to 100% of the volume of transactions of the counterparty in the derivative contracts referred to in Article 7a(6) of Regulation (EU) No 648/2012.”. The SMSG notes that such statement could require the authorized CCP to receive indications from the counterparties subject to the obligation set out in Article 7a (1) regarding the magnitude of the increase (in outstanding positions and in volumes) that would be needed.

33. Similarly to Article 2, the SMSG recommends that another requirement be added, to ensure that the authorised CCP provides the required signed written statement (i) with no undue delay and (ii) for free.

34. As noted above, the SMSG also welcomes the statement in p. 81 of the CP that “ESMA would not envisage this stress-testing exercise as a “pass or fail” requirement, as the scenarios used in the stress-test may go beyond the requirements enshrined in EMIR”. The SMSG recommends that ESMA integrates this statement in Article 3.

**Question 5: Do you agree with the differentiated frequency for the stress-testing depending on the counterparties’ clearing activities? Would you suggest any other way to take into account the proportionality principle?**

35. The SMSG considers that technical, operational, contractual and financial conditions subject to the stress tests are unlikely to change within six months. With reference to the proportionality principles and not to incur more burdens than necessary, the SMSG recommends that stress tests not be conducted more frequently than once a year except in exceptional situations e.g. in a financial crisis.

36. For the sake of proportionality, the SMSG recommends that stress-testing should be differentiated between counterparties with notional volume outstanding below or above the EUR 100 billion threshold in the derivative contracts subject to the obligation referred to in Article 7a (6) of Regulation (EU) No 648/2012.

**Question 6: Do you agree with the proposed classes of derivatives for EUR OTC IRD?**

37. The SMSG is aware that, prior to the publication of the Consultation Paper, there were debates with regards to:

- the number of categories, notably to understand, on the ground of the wording of Article 7a.6. of the Regulation, whether EUR IRS and PLN IRS should be considered as the same category or two different categories,
- the number of classes, as the wording was unclear as to whether ESMA was asked to set 3 classes per category or 3 classes amongst all categories.

38. The difference could have been substantial for concerned counterparties, as shifts in interpretation could have led to very meaningful differences in outcomes, with requirements for most active counterparties potentially moving from the need to clear at least 900 to the need to clear at least 2,700 transactions per annum at an authorized CCP.

39. The SMSG considers that, notwithstanding requirements for some adjustments detailed in the answers to the following questions, ESMA’s proposal (that is to say the combination of

classes, categories, maturity and size buckets) reaches a globally reasonable balance, with a maximum requirement set at 1,190 transactions per annum.

**Question 7: Do you agree with the proposed classes of derivatives for PLN OTC IRD?**

40. The SMSG does not have any comments to this question.

**Question 8: Do you agree with the proposed classes of derivatives for EUR STIR?**

41. The SMSG notes that futures are intrinsically connected through time to expiry and the role time spreads between calendar months. Practitioners here tend to group risk by calendar year, whereby risk in the upcoming 4 quarterly months is assessed compared to the next, e.g. 0–12-months, 13–24-months, 25 months onwards. As a result, it is unnecessary to have 4 buckets in a market which is structured the way it is today. To reduce complexity and align the rules with prevailing market practice, the SMSG recommends that ESMA reduces the STIR maturity buckets to 2, i.e. 0-12m and 12+m.

**Question 9: Do you agree with the proposed maturity and trade size ranges for each class of derivatives in EUR OTC IRD?**

42. The SMSG does not have any comments to this question.

**Question 10: Do you agree with the proposed maturity and trade size ranges for each class of derivatives in PLN OTC IRD?**

43. The SMSG does not have any comments to this question.

**Question 11: Do you agree with the proposed maturity and trade size ranges for each class of derivatives in EUR STIR?**

44. The SMSG considers that the complexity and cost of compliance in relation to STIRS could be reduced by addressing the scope of STIR products subject to the AAR. STIR futures comprise 28 Euribor instruments and 31 ESTR instruments. The addition of options on (all) maturities, types (vanilla, mid curves), and calls/puts, will increase the scope to 8000+ instruments. The substantial increase in the cost of compliance must here be weighed against the policy objective, especially as options are not explicitly required by EMIR 3.0.

45. In connection herewith the SMSG notes that there are significant differences between ICEU (UK) and Eurex (EU), which are the only EU and UK CCPs active in this market. As an example, ICEU currently offers a wider strike range and granularity than Eurex. ICEU is also currently alone in offering ESTR options on futures. In practice such differences mean that EU users of ICEU would, as of today, be unable to move activity to an equivalent service in the EU.

46. To address these concerns regarding burden and complexity, the SMSG recommends that ESMA excludes options from the scope of the RTS.

**Question 12: Do you agree with the proposed number of most relevant subcategories for each clearing service of substantial systemic relevance? Do you think this should be set at a more granular level (i.e. per class of derivatives)?**

47. The SMSG does not have any comments to this question.

**Question 13: Do you agree with the proposed reference periods for EUR OTC IRD? Do you think the reference periods should be set at a more granular level (i.e. class of derivatives)?**

48. The SMSG does not have any comments to this question.

**Question 14: Do you agree with the proposed reference period for PLN OTC IRD? Do you think that the reference periods should be set at a more granular level (i.e. class of derivatives)?**

49. The SMSG does not have any comments to this question.

**Question 15: Do you agree with the proposed reference periods for EUR STIR referenced in Euribor? Do you agree with the proposed reference periods for EUR STIR referenced in €STR?**

50. The SMSG supports that classes, subcategories, maturity and trade size ranges are derived from statistics on derivatives traded and cleared in relevant CCPs, considering liquidity and potential growth. Nevertheless, for simplicity and to reduce unnecessary burden, the SMSG recommends aligning the representativeness periods for both Euribor and ESTR to the period proposed for ESTR.

51. While some NFCs and Final Clients of clearing services may see benefits in being able to use active accounts of EU CCP for derivatives at least for EUR denominated asset classes, this should be weighed against the costs for market- and infrastructure providers.

**Question 16: Do you agree with the proposed approach for the reporting of the activity and risk exposures of the counterparty subject to the active account requirement?**

52. The SMSG has considered the proposed approach against the objectives of proportionality, competitiveness, and burden reduction. From this perspective, the SMSG has reservations with regards to the reporting requirements expressed in Article 7 to Article 10 of the projected Regulatory Technical Standards. The SMSG notes that several requirements are not mandated by Level 1, and/or overlap and/or duplicate existing reporting requirement. While this leads to increased costs for the market participants, it may ultimately also lead to unusable data for ESMA.

53. The SMSG considers that reports required under article 7 of the draft RTS will be excessively numerous. Considering at least 1,000 accounts with at least 1 third-country CCP and 1 EU CCP, the clearing nature and 25 “most relevant” sub-categories (5 for fix-

to-float EUR IRS, etc.) leads to ESMA receiving more than 100,000 reports every semester. Aside from potential errors, the usability of these reports will be further reduced by the fact that they will not be additive, whether for a given period between reporting counterparties, or across periods for a given counterparty, because of the variability of the most relevant subcategories.

54. Accordingly, the SMSG urges ESMA to simplify the reports required on aggregate thresholds for assessing compliance with the active account (Article 7 of the projected RTS).
55. Notably, the SMSG considers that the report should not be required for those entities that spontaneously opt for the most demanding representativeness levels, for entities that commit to clearing at least 1,190 transactions per annum across the various categories of derivatives with an authorized CCP:

Category	Class	Maturities (a)	Sizes (b)	Number of points in the matrix (c)=(b)*(a)	Max number of representative points (d) = min ( 5 ; (c) )	Reference period (e)	Number of reference periods (f) = 12 / (e)	Max number of transactions per point and reference period (g)	Max number of transactions		
									Per Class (h) = (d) * (f) * (g)	Per Category	Total
EUR IRD	EUR Fixed-to-Float	4	3	12	5	1 month	12	5	300	900	1,190
	EUR OIS	4	3	12	5		12	5	300		
	EUR FRA	4	3	12	5		12	5	300		
PLN IRD	PLN Fixed-to-Float	1	1	1	1	12 months	1	5	5	10	
	PLN FRA	1	1	1	1		1	5	5		
EUR STIR	Euribor STIR	4	1	4	4	1 month	12	5	240	280	
	€str STIR	4	1	4	4	6 months	2	5	40		

56. Against this background, the SMSG stresses the importance of ascertaining that reporting and other requirements are considered both from a usefulness perspective, and a cost perspective.

**Question 17: Do you consider that including information on margin activity in the AAR reporting requirement would provide valuable information on the activities and risk exposures of the counterparty?**

57. With reference to our response to question 16, the SMSG considers that the requirement to report margining activity would lead to a significant increase in the workload of counterparties, while at the same time not being necessary for the monitoring of compliance with the AAR, and further not being mandated by Level 1.
58. For these reasons, the SMSG recommends withdrawing the references to Initial Margins and to Variation Margins in Table 2 of Annex II.

**Question 18: Do you consider that including reporting on Unique Trade Identifiers (UTIs) would provide valuable information from a supervisory perspective?**

59. With reference to its response to question 16, the SMSG considers that while the reporting of UTIs would create an excessive workload for entities, it is not needed to ensure the strict

monitoring of compliance with the active account requirement (as noted by ESMA in point 7.3.3.(a) of the cost and benefit analysis).

60. Further, the SMSG notes that UTIs are already reported under Article 9 of EMIR, and ESMA recognizes in para 166 of the CP that the reporting of UTI in the frame of the AAR would mostly “enable competent authorities to better perform their supervisory duties by verifying the information reported by counterparties under Article 7b against the reports submitted to trade repositories under Article 9.”.

61. Accordingly, the SMSG urges ESMA to withdraw the reference to the UTI both in Table 1 of Annex II and in Article 9.1.e. of the projected RTS.

**Question 19: Do you agree with the proposed approach for the reporting of the operational conditions?**

62. The SMSG refers to its response to question 16.

**Question 20: Do you agree with the proposed approach for the reporting of the representativeness obligation?**

63. The SMSG refers to its response to question 16.

**Question 21: Do you agree with the proposed approach to standardise the reporting arrangements under the active account requirement?**

64. The SMSG considers that, in a time of new and innovative technologies and IT architectures, any form of reporting required by CCP Participants, including Clearing Members, Clients providing clearing services, and Final Clients, regarding clearing activities carried on derivatives electronically cleared on CCPs is useless, expensive, and a source of risk.

65. To elaborate further on the use of “useless” above, the SMSG questions the value-added of such reporting, since all information is available to ESMA and NCAs electronically on a regular basis or upon request directly from CCPs.

66. The exercise will also be expensive, since all information and relevant databases are at least duplicated and CCPs Participants are obliged to set up specific IT systems and operational processes for compliance that can be better managed through CCPs.

67. The reporting will also be a source of significant operational risk, and errors may occur that undermine the reliability of reported data.

68. Accordingly, the SMSG considers that conditions for AAR should not add reporting requirements for CCP participants, since ESMA and NCAs can access the same data directly from authorised CCPs with more flexibility. Standard periodic reporting is provided

by CCPs on participants activities and aggregated statistics, and if needed ad hoc requests could be made for spot analysis or crisis management. This will result in lower costs, lower operational risk, and better data quality.

**Data collection**

69. The SMSG notes that information regarding a counterparty and its operational conditions can be collected by CCPs directly or indirectly through Clearing Members and Clients providing clearing services during the on-boarding process, together with the required certification already delegated to CCPs, and can be verified periodically alongside the stress tests.
70. The SMSG further notes that information about a counterparty's representativeness obligation, activity and risk exposure can be collected and aggregated by CCPs directly or indirectly or through Clearing Members and Clients providing clearing services using data attached to cleared trades, data about counterparty's margin calls and counterparty's trading statistics.
71. The SMSG recommends that Unique Trade Identifiers (UTIs) should always be attached to any cleared trade so to be able to produce any reporting on a specific trade within and outside of the CCP. Similarly, the Legal Entity Identifier (LEI) should always be used to identify a Participant and its parent group so to produce any reporting on a specific counterparty or group.
72. Finally, the SMSG considers that using CCPs as trades and counterparty data repositories to be collected by ESMA and NCAs periodically or on an ad hoc basis would simplify regulatory supervision, reduce associated costs, avoid duplication of databases, reduce level of operational risk and improve data quality and reporting reliability.

This advice will be published on the Securities and Markets Stakeholder Group section of ESMA's website.

Adopted on 31 January 2025

[signed]

[signed]

Giovanni Petrella  
Chair  
Securities and Markets Stakeholder Group

Urban Funered  
Rapporteur

## 7.4 Annex IV - List of non-confidential respondents

	<b>Asset Management</b>
1	AFG
2	European Fund and Asset Management Association (EFAMA)
	<b>Banking</b>
3	Credit Agricole CIB
4	Dutch Banking Association
5	ERSTE Group Bank AG
6	European Association of Public Banks
7	European Banking Federation (EBF)
8	French Banking Federation
9	German Banking Industry Committee
10	ISDA
11	Italian Banking Association
12	Polish Bank Association
	<b>Central Counterparty (CCP)</b>
13	Eurex Clearing AG
14	KDPW_CCP
15	LSEG
16	SIX Group
	<b>Government, Regulatory and Enforcement</b>
17	European Systemic Risk Board
	<b>Insurance and Pension</b>
18	Dutch Federation of Pension Funds
19	GDV - Gesamtverband der deutschen Versicherungswirtschaft e.V.
20	Insurance & Pension Denmark
21	PensionsEurope
	<b>Investment Services</b>
22	AMF Italia - Associazione Intermediari Mercati Finanziari
23	Nordic Securities Association
24	Swedish Securities Markets Association
	<b>Issuers</b>
25	EuropeanIssuers
	<b>Others</b>
26	DUFAS (the Dutch Fund and Asset Management Association)
27	FIA

## 7.5 Annex V – Draft regulatory technical standards

### COMMISSION DELEGATED REGULATION (EU) YYYY/XXXX

of DD MM YYYY

**supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards specifying the operational conditions, the representativeness obligation and the reporting requirements of the active account requirement**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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<sup>12</sup> and in particular the fifth subparagraph of Article 7a(8) thereof,

Whereas:

- (1) Regulation 2024/2987 amending Regulation (EU) 648/2012<sup>13</sup> seeks to address the financial stability risks associated with excessive exposures of Union clearing members and clients to Tier 2 CCPs that provide clearing services that have been identified by ESMA as clearing services of substantial systemic importance pursuant to Regulation (EU) 648/2012 by requiring certain financial counterparties and non-financial counterparties to hold active accounts and clear a representative number of transactions at CCPs established in the Union.
- (2) In order to ensure that the active account contributes to the overarching objective of reducing excessive exposures to clearing services of substantial systemic importance, this Regulation specifies the operational conditions of the account, the details of the representativeness obligation and the reporting requirements for counterparties subject to the active account requirement.
- (3) In order to ensure that the first operational condition is met and that the active account is permanently functional, counterparties should be required to demonstrate that they have the legal and technical arrangements supporting the provision of clearing services in the relevant derivative contracts with an EU CCP, either directly or via a clearing member. These counterparties should report to their competent authorities the documentation

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<sup>12</sup> OJ L 201, 27.7.2012, p.1-59.

<sup>13</sup> OJ L, 2024/2987, 4.12.2024

proving their compliance with the operational conditions, directly or indirectly via their clearing members, as part of their normal due diligence checks and their onboarding procedures when opening new clearing accounts, in order to avoid generating unnecessary costs and burden for the counterparties.

- (4) In order to demonstrate that the second and third operational conditions are met and that the counterparties have available systems and resources so that they are operationally able to use the account to clear large volumes of derivative contracts, counterparties should be able to demonstrate to the NCA that they have the necessary internal systems and dedicated resources to monitor their exposures and the internal arrangements to allow them to use the account in case of a large increase in clearing volume, including by assessing any potential legal and operational barriers to this effect. For that purpose, both the CCP and the counterparties should be able to demonstrate their ability to withstand a large increase in volumes cleared in the relevant derivative contracts.
- (5) In order to demonstrate that the operational conditions have been stress-tested, counterparties should be required to run technical and functional tests on their IT connectivity with the authorised CCP, or with their clearing members and clients providing client clearing services. Counterparties should also be required to demonstrate that operational tests have been performed to confirm the operational capacity of the account and its ability to withstand large increases of volumes under short notice, for example via regular fire drills.
- (6) In order to determine the representativeness of the trades cleared at an authorised EU CCP, up to three classes of derivative contracts have been selected for each clearing service deemed of substantial systemic importance. The determination of classes of derivatives per clearing service deemed of substantial systemic importance ensures that the accounts opened in the Union are representative, reflect the diversity of portfolios of the counterparties subject to the active account requirement clearing at substantially systemic CCPs and capture a maximum of classes of interest rate derivatives already subject to the clearing obligation. It avoids aggregating classes of derivatives into categories of derivatives which would risk commingling certain derivatives which do not share common and essential characteristics, while at the same time allowing that the related representativeness criteria be better tailored to each specific market, taking into consideration their size, liquidity and growth, as well as the level of activity of each clearing service deemed of substantial systemic importance in comparison to EU CCPs activity. Finally, this determination ensures a more flexible and future-proof approach, able to adapt to market developments and to the degree of systemic importance of third-country CCPs and whether the related financial stability risks for the Union or for one or more of its Member States are sufficiently mitigated.
- (7) The ranges of maturities and trade sizes of the most relevant subcategories per classes of derivatives, as well as the number of most relevant subcategories and the durations of the reference period per clearing service deemed of substantial systemic importance,

have also been specified taking into account the specific characteristics of each class of derivatives. Counterparties should determine the most relevant subcategories depending on their clearing activity in each class of derivatives subject to the active account, in order to avoid forcing counterparties to clear certain derivative products in the Union, that they do not clear at a clearing service of substantial systemic importance.

- (8) In order to ensure that competent authorities have the necessary information to assess compliance with the active account requirement, counterparties should calculate their activities and risk exposures in the relevant categories of derivatives and provide aggregated data on the relevant categories of derivatives, including a breakdown by CCP, to their competent authority. This report should also contain information allowing the competent authority to assess how the counterparties meet the operational conditions and the representativeness obligation of the active account requirement.
- (9) Counterparties should report the required information in a format that complies with the templates set out in this Regulation to the competent authority every six months from the entry into force of the Regulation to ensure that the reporting periods do not overlap and can be consolidated to monitor the implementation and the effectiveness of the active requirement at Union level. By derogation, the first report should cover the period as from which the counterparties become subject to the reporting requirements on the active account up to the next reporting date.
- (10) Although some of the requirements related to the operational conditions, such as the stress-testing, are to be performed at least once a year, and even in the case where they are only performed annually, counterparties must still report to their competent authorities that they comply with the operational conditions every six months.
- (11) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (12) ESMA has cooperated with the European Banking Authority (EBA), the European Insurance and Occupational Pension Authority (EIOPA) and the European Systemic Risk Board (ESRB) and consulted the members of the European System of Central Banks (ESCB) before submitting the draft technical standards on which this Regulation is based. In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)<sup>14</sup>, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

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<sup>14</sup> OJ L 331, 15.12.2010, p. 84

HAS ADOPTED THIS REGULATION:

## **CHAPTER I OPERATIONAL CONDITIONS**

### *Article 1*

#### **Conditions on the IT connectivity, the internal processes and the legal documentation related to the active account**

In order for the counterparties subject to the obligation set out in Article 7a(1) of Regulation (EU) No 648/2012 to meet the condition referred to in Article 7a(3), point (a), of Regulation (EU) No 648/2012 by fulfilling the obligations arising from the direct or indirect participation in an authorised CCP, the counterparties shall be able to demonstrate the existence of:

- (a) a contractual arrangement, including in relation to cash and collateral accounts, with an authorised CCP, a clearing member or a client providing client clearing services in the categories of derivative contracts referred to in Article 7a(6) of Regulation (EU) No 648/2012 at an authorised CCP;
- (b) internal policies and procedures pertaining to the above contractual arrangements; and
- (c) an IT system with connectivity to an authorised CCP, a clearing member or a client providing client clearing services.

### *Article 2*

#### **Conditions on the operational capacity of the counterparty to support a large increase in outstanding and new clearing activity and a large flow of transactions in a short period of time**

1. In order for the counterparties subject to the obligation set out in Article 7a(1) of Regulation (EU) No 648/2012 to meet the conditions referred to in Article 7a(3), points (b) and (c) of Regulation (EU) No 648/2012, the counterparties shall:
  - (a) Set up internal systems to monitor the counterparty's exposures and the internal arrangements to support a large flow of transactions from positions held in a clearing service of substantial systemic importance pursuant to Article 25(2c) of Regulation (EU) No 648/2012 under different scenarios assessing any potential legal and operational barriers to this effect;
  - (b) be able to demonstrate they possess necessary human resources to support the proper functioning of the clearing arrangements at all times, including in situations where the account would have to support a large shift in positions from a clearing service of substantial systemic importance pursuant to Article 25(2c) of Regulation

- (EU) No 648/2012 and new trades of the respective counterparty in the derivative contracts referred to in Article 7a(6) of Regulation (EU) No 648/2012;
- (c) be able to provide its competent authority, directly or indirectly, with a written statement confirming that the CCP has the operational capacity to clear up to either
    - i. three times the gross notional value cleared by the CCP across all clearing members for the previous 12 months in the derivative contracts referred to in Article 7a(6) of Regulation (EU) No 648/2012; or
    - ii. the sum of the total gross notional value cleared by the CCP and by CCPs with a substantially systemically important clearing service identified pursuant to Article 25(2c) of Regulation (EU) 648/2012 for the previous 12 months, across all clearing members, in the derivative contracts referred to in Article 7a(6) of Regulation (EU) 648/2012;
  - (d) be able to provide its competent authority with a signed written statement confirming that the counterparty itself or its clearing service provider has the operational capacity to clear up to either:
    - i. three times the gross notional value cleared in the account by the counterparty for the previous 12 months in the derivative contracts referred to in Article 7a(6) of Regulation (EU) No 648/2012; or
    - ii. the total gross notional value cleared by the counterparty for the previous 12 months in the derivative contracts referred to in Article 7a(6) of Regulation (EU) No 648/2012
2. The written statements referred to in paragraph 1, points (b) and (c), shall confirm that the increase of clearing activity can take place within one month.
  3. The written statements referred to in paragraph 1, points (b) and (c) may be provided electronically.

### *Article 3*

#### **Stress-testing of the operational conditions of the active account**

1. Counterparties subject to the obligation set out in Article 7a(1) of Regulation (EU) No 648/2012 shall:
  - (a) conduct technical and functional tests verifying the operational capacity and the functioning of the IT connectivity with the CCP, directly or indirectly, with the clearing member or client providing client clearing services in accordance with Article 1, point (d); and

- (b) ensure that operational tests are conducted to demonstrate that the account of the counterparty has the capacity to withstand a substantial increase in clearing activity as required under Article 2(1), points (b) and (c) and Article 2(2).
2. The tests referred to in paragraph 1, point (b), shall take place annually.

## **CHAPTER II REPRESENTATIVENESS OBLIGATION**

### *Article 4*

#### **Representativeness obligation for interest rate OTC derivatives classes in euro**

1. Counterparties subject to the obligation set out in Article 7a(1) of Regulation (EU) No 648/2012, and clearing interest rate OTC derivatives in euro, shall clear at least the required minimum number of trades as set forth in the fifth subparagraph of Article 7a(4) in Regulation (EU) 648/2012 in each of the five most relevant subcategories at an authorised CCP for each class of derivatives in euro set out in Annex I of Commission Delegated Regulation (EU) 2015/2205<sup>15</sup>.
2. For each class of derivatives referred to in paragraph 1, counterparties referred to in paragraph 1 shall identify the five most relevant subcategories in which they clear the most trades at a clearing service of substantial systemic importance pursuant to Article 25(2c) of Regulation (EU) No 648/2012. The five most relevant subcategories shall be selected, for each class of derivatives referred to in paragraph 1, among the subcategories set out respectively in Table 1, Table 2 and Table 3 of Annex I, and over the reference period referred to in paragraph 3.
3. The required minimum number of trades referred to in paragraph 1 shall be calculated based on a duration of the reference period of:
  - (a) one month for counterparties with a notional clearing volume outstanding of more than EUR 100 billion in derivative contracts; and of
  - (b) six months for counterparties with a notional clearing volume outstanding of less than EUR 100 billion in derivative contracts.

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<sup>15</sup> OJ L 314, 1.12.2015, p. 13–21

## *Article 5*

### **Representativeness obligation for interest rate OTC derivatives classes in Polish zloty**

1. Counterparties subject to the obligation set out in Article 7a(1) of Regulation (EU) No 648/2012, and clearing interest rate OTC derivatives in Polish zloty, shall clear at least the required minimum number of trades as set forth in the fifth subparagraph of Article 7a(4) in Regulation (EU) 648/2012 in the most relevant subcategory at an authorised CCP for each class of derivatives in Polish zloty set out in Annex I of Commission Delegated Regulation (EU) 2016/1178<sup>16</sup>.
2. For each class of derivatives referred to in paragraph 1, counterparties referred to in paragraph 1 shall identify the most relevant subcategory in which they clear most trades at a clearing service of substantial systemic importance pursuant to Article 25(2c) of Regulation (EU) No 648/2012. The most relevant subcategory shall be selected for each class of derivatives referred to in paragraph 1 among the subcategories set out respectively in Table 4 and Table 5 of Annex I, and over the reference period referred to in paragraph 3.
3. The required minimum number of trades referred to in paragraph 1 shall be calculated based on a duration of the reference period of 12 months.
4. In fulfilling the obligation set out under paragraph 1, counterparties should be able to demonstrate to the relevant competent authority that there are no systematic and material differences in average trade sizes and maturities of the products cleared at an authorised CCP and products cleared at a clearing service of substantial systemic importance pursuant to Article 25(2c) of Regulation (EU) No 648/2012.

## *Article 6*

### **Representativeness obligation for short-term interest rate derivatives classes in euro**

1. Counterparties subject to the obligation set out in Article 7a(1) of Regulation (EU) No 648/2012, and clearing short-term interest rate derivatives in euro, shall clear at least the required minimum number of trades as set forth in the fifth subparagraph of Article 7a(4) in Regulation (EU) 648/2012 in each of the four most relevant subcategories at an authorised CCP for each class of derivatives in Table 6 set out in Annex I.
2. For each class of derivatives set out in Table 6 of Annex I, counterparties referred to in paragraph 1 shall identify the four most relevant subcategories in which they clear the

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<sup>16</sup> OJ L 195, 20.7.2016, p. 3–10

most trades at a clearing service of substantial systemic importance pursuant to Article 25(2c) of Regulation (EU) No 648/2012. The four most relevant subcategories shall be selected, for each class of derivatives set out in Table 6 set of Annex I, among the subcategories set out in Table 7 of Annex I for derivatives referencing Euribor over the reference period referred to in paragraph 3 and among the subcategories set out in Table 8 of Annex I for derivatives referencing €STR over the reference period referred to in paragraph 4.

3. The required minimum number of trades referred to in paragraph 1 and referenced in Euribor shall be calculated based on a duration of the reference period of:
  - (a) one month for counterparties with a notional clearing volume outstanding of more than EUR 100 billion in derivative contracts; and of
  - (b) six months for counterparties with a notional clearing volume outstanding of less than EUR 100 billion in derivative contracts.
4. The required minimum number of trades referred to in paragraph 1 and referenced in €STR shall be calculated based on a duration of the reference period of:
  - (a) six months for counterparties with a notional clearing volume outstanding of more than EUR 100 billion in derivative contracts; and of
  - (b) 12 months for counterparties with a notional clearing volume outstanding of less than EUR 100 billion in derivative contracts.
5. In fulfilling the obligation set out under paragraph 1, counterparties should be able to demonstrate to the relevant competent authority that there are no systematic and material differences in average trade sizes of the products cleared at an authorised CCP and products cleared at a clearing service of substantial systemic importance pursuant to Article 25(2c) of Regulation (EU) No 648/2012.

### **CHAPTER III REPORTING REQUIREMENTS**

#### *Article 7*

#### **Reporting on aggregate thresholds for assessing compliance with the active account**

1. Counterparties subject to the reporting obligation under Article 7(b) of Regulation (EU) 648/2012, shall report every six months to competent authorities the information outlined in Table 1 and Table 2 of Annex II.
2. For the purpose of this Article, the information reported under Table 2 set out in Annex II shall be reported at the level of the counterparty. Where the counterparty belongs to a group subject to consolidated supervision in the Union in accordance with Article 7a(2) of

Regulation (EU) 648/2012, the information outlined in Table 2 should also be reported at the levels of any subsidiaries, within and outside the EU.

#### *Article 8*

##### **Reporting on the operational conditions of the active account**

1. Counterparties subject to the obligation set out in Article 7a(1) of Regulation (EU) No 648/2012 shall report every six months to the competent authority a written statement confirming that they comply with the obligations set out in Articles 1 to 3 of this Regulation.
2. Counterparties mentioned in the paragraph 1 shall keep at the disposal of their competent authority documentation necessary to prove that the counterparty comply with the obligations set out in Articles 1 to 3 of this Regulation.

#### *Article 9*

##### **Reporting on the representativeness obligation**

1. Counterparties subject to the obligation set out in Article 7a(3)(d) of Regulation (EU) No 648/2012 shall report every six months to the competent authority information on:
  - (a) the most relevant subcategories identified by the counterparty for each class of derivative contracts cleared at a clearing service of substantial systemic importance pursuant to Article 25(2c) of Regulation (EU) No 648/2012, and for each reference period, as defined in Articles 4 to 6 of this Regulation;
  - (b) the number of trades cleared, in each of the subcategories in accordance with Articles 4 to 6, per class of derivative contracts and per reference period at clearing services of substantial systemic importance under Article 25(2c) of Regulation (EU) No 648/2012;
  - (c) the number of trades cleared, based on the average for the 12 previous months, in each subcategory in accordance with Articles 4 to 6 per class of derivative contracts and per reference period at an authorised CCP;
  - (d) the duration of the reference period in accordance with Articles 4 to 6 used for calculating the minimum required number of trades to meet the condition referred to in Article 7a(3), point (d), of Regulation (EU) No 648/2012; and
2. The counterparty referred to in paragraph 1 shall also report to the competent authority when the number of trades cleared in a subcategory of the derivative contracts referred to in Article 7a(6) of Regulation (EU) No 648/2012 exceeds half of that counterparty's total trades for the previous 12 months.
3. For the purposes of paragraph 1, counterparties should report for each class of derivatives using the relevant Tables set out in Annex III, as appropriate.

*Article 10*

**Reporting arrangements from counterparties to competent authorities**

1. Without prejudice to competent authorities requesting more frequent reporting pursuant to paragraph 3 of Article 7b of Regulation (EU) No 648/2012, counterparties shall submit reports that comply with the templates set out in Annex II and III of this Regulation to competent authorities on the last day of [January] and on the last day of [July] each year including in each report the information pertaining to the previous 12 months.
2. By derogation from paragraph 1, the first submission of data that complies with the templates set out in Annex II and III of this Regulation to competent authorities shall occur on the first reporting date falling no earlier than six month from entry into force of this Regulation and include information pertaining to the whole period going from entry into force to the reporting date.

*Article 11*

**Entry into force and application**

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, DD MM YYYY.

*For the Commission*

*The President*

*Signature*

## 7.6 Tables referred to in Articles 4 to 6

### ANNEX I

#### Classes of derivatives and relevant subcategories for the purpose of the representativeness obligation

Table 1

##### Subcategories for EUR Fixed-to-float

	Trade size (in EUR million)		
Maturity	[0-25M]	(25M-50M]	(50M+]
[0-5Y]			
(5Y-10Y]			
(10Y-15Y]			
(15Y+]			

Table 2

##### Subcategories for EUR OIS

	Trade size (in EUR million)		
Maturity	[0-25M]	(25M-100M]	(100M+]
[0-1Y]			
(1Y-2Y]			
(2Y-5Y]			
(5Y+]			

Table 3

##### Subcategories for EUR FRA

	Trade size (in EUR million)		
	[0-75M]	(75M-200M]	(200M+]
[0-6M]			
(6M-12M]			
(12M-18M]			
(18M+]			

Table 4

##### Subcategory for PLN Fixed-to-Float

	Trade size (in PLN million)
Maturity	Any trade size
Any maturity	

*Table 5*  
**Subcategories for PLN FRA**

	Trade size (in PLN million)
Maturity	Any trade size
Any maturity	

*Table 6*  
**Classes of derivatives for EUR STIR**

Execution	Underlying	Reference Index	Settlement Currency	Settlement Currency Type	Optionality
EU or third-country exchange	three-month interest rate	Euribor	EUR	Single currency	Excluded
EU or third-country exchange	Three-month interest rate	€STR	EUR	Single currency	Excluded

*Table 7*  
**Subcategories for EUR STIR referencing Euribor**

	Trade size (in EUR million)
Maturity	Any trade size
[0-6M]	
(6M-12M]	
(12M-18M]	
(18M+]	

*Table 8*  
**Subcategories for EUR STIR referencing €STR**

	Trade size (in EUR million)
Maturity	Any trade size
[0-6M]	
(6M-12M]	
(12M-18M]	
(18M+]	

## 7.7 Templates referred to in Article 7

### ANNEX II

*Table 1*  
**Counterparty Information**

	Field	Details to be reported
1	Reporting Date	Date of the submission of the report to the competent authority.
2	Counterparty subject to AAR	Legal Entity Identifier (LEI) of the counterparty to a derivative transaction who is fulfilling its reporting obligation via the report in question. In the case of an allocated derivative transaction executed by a fund manager on behalf of a fund, the fund and not the fund manager is reported as the counterparty.
3	Nature of the Counterparty	Indicate if counterparty a financial counterparty or a non-financial counterparty as defined in Article 2, points 1, 8 and 9, of Regulation (EU) No 648/2012, or an entity as referred to in Article 1, point 5, of that Regulation.
4	Entities within the Group	A list of the Legal Entity Identifiers (LEIs) of the entities within the group.
5	Ultimate Parent Entity	Legal Entity Identifier (LEI) of the Ultimate Parent Entity of the group.
6	Clearing member	Legal Entity Identifier (LEI) of the clearing member.

*Table 2*  
**Activities and Risk exposures**

	Field	Details to be reported	Total
1	Gross Notional Amount outstanding of the aggregate month-end	The aggregate sum of the notional amount of leg 1 and, where	

	average position for the previous 12 months in the categories of derivatives contracts cleared under Article 7a(6) of Regulation (EU) 648/2012	applicable, the notional amount of leg 2, for the derivatives in scope of this reporting, as referred to in Article 5 of Commission Regulation (EU) 2022/1855.									
2	Dimension 1 – Break down total by category of derivative		EUR OTC IRD			PLN OTC IRD			EUR STIR		
3	Dimension 2 – Breakdown by CCP (EU / Tier 2 /Tier 1) (reporting at CCP LEI level)		CCP1	CCP2	...	CCP1	CCP2	...	CCP1	CCP2	...

### ANNEX III

#### Reporting for the purpose of the representativeness obligation

\*To be filled with the number of trades per sub-category per class of derivative contracts and per applicable reference period

Table 1

Subcategories for EUR Fixed-to-float

Reference period							
Clearing service of substantial systemic importance under Article 25(2c)				Authorised CCP under Article 14			
	Trade size (in EUR million)				Trade size (in EUR million)		
Maturity	[0-25M]	(25M-50M]	(50M+]	Maturity	[0-25M]	(25M-50M]	(50M+]
[0-5Y]				[0-5Y]			
(5Y-10Y]				(5Y-10Y]			
(10Y-15Y]				(10Y-15Y]			
(15Y+]				(15Y+]			

Table 2

Subcategories for EUR OIS

Reference period							
Clearing service of substantial systemic importance under Article 25(2c)				Authorised CCP under Article 14			
	Trade size (in EUR million)				Trade size (in EUR million)		
Maturity	[0-25M]	(25M-100M]	(100M+]	Maturity	[0-25M]	(25M-100M]	(100M+]
[0-1Y]				[0-1Y]			
(1Y-2Y]				(1Y-2Y]			
(2Y-5Y]				(2Y-5Y]			
(5Y+]				(5Y+]			

Table 3  
Subcategories for EUR FRA

Reference period							
Clearing service of substantial systemic importance under Article 25(2c)				Authorised CCP under Article 14			
	Trade size (in EUR million)				Trade size (in EUR million)		
Maturity	[0-75M]	(75M-200M]	(200M+]	Maturity	[0-25M]	(25M-100M]	(100M+]
[0-6M]				[0-1Y]			
(6M-12M]				(1Y-2Y]			
(12M-18M]				(2Y-5Y]			
(18M+]				(5Y+]			

Table 4

Subcategory for PLN Fixed-to-Float

Clearing service of substantial systemic importance under Article 25(2c)		Authorised CCP under Article 14	
	Trade size (in PLN million)		Trade size (in PLN million)
Maturity	Any trade size	Maturity	Any trade size
Any maturity		Any maturity	

Table 5

Subcategories for PLN FRA

Clearing service of substantial systemic importance under Article 25(2c)		Authorised CCP under Article 14	
	Trade size (in PLN million)		Trade size (in PLN million)
Maturity	Any trade size	Maturity	Any trade size
Any maturity		Any maturity	

Table 6

## Subcategories for EUR STIR referencing Euribor

Reference period			
Clearing service of substantial systemic importance under Article 25(2c)		Authorised CCP under Article 14	
	Trade size (in EUR million)		Trade size (in EUR million)
Maturity	Any trade size	Maturity	Any trade size
[0-6M]		[0-6M]	
(6M-12M]		(6M-12M]	
(12M-18M]		(12M-18M]	
(18M+]		(18M+]	

Table 7

## Subcategories for EUR STIR referencing €STR

Reference period			
Clearing service of substantial systemic importance under Article 25(2c)		Authorised CCP under Article 14	
	Trade size (in EUR million)		Trade size (in EUR million)
Maturity	Any trade size	Maturity	Any trade size
[0-6M]		[0-6M]	
(6M-12M]		(6M-12M]	
(12M-18M]		(12M-18M]	
(18M+]		(18M+]	