



European Securities and
Markets Authority

Final Report

**On draft RTS on the clearing and derivative trading obligations in view
of the benchmark transition to risk free rates**



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Acronyms used

BCBS	Basel Committee on Banking Supervision
CA	Competent Authority
CCP	Central Counterparty
CDS	Credit Default Swap
CO	Clearing Obligation
DTO	Trading obligation for derivatives
DTO RTS	Commission Delegated Regulation (EU) 2017/2417 of 17 November 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the trading obligation for certain derivatives
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories
EMMI	European Money Markets Institute
EONIA	Euro OverNight Index Average
ESA	European Supervisory Authorities
ESRB	European Systemic Risk Board
€STR	Euro Short-Term Rate
ESMA	European Securities and Markets Authority
EU	European Union
EURIBOR	Euro InterBank Offered Rate
FIRDS	Financial Instruments Reference Data System
FRA	Forward Rate Agreements
IBOR	InterBank Offered Rate
IOSCO	International Organisation of Securities Commissions
IRS	Interest Rate Swap
LIBOR	London InterBank Offered Rate
MiFID II	Directive 2014/65/EU of the European Parliament and the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU

MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012
MTF	Multilateral Trading Facility
OIS	Overnight Index Swaps
OTC	Over-the-counter
OTF	Organised Trading Facility
RFR	Risk Free Rates
RM	Regulated Market
RTS	Regulatory Technical Standard
RTS 2	Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives
RTS 4	Commission Delegated Regulation (EU) 2016/2020 of 26 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation
SONIA	Sterling Overnight Index Average
SOFR	Secured Overnight Financing Rate
TONA	Tokyo Overnight Average Rate
TR	Trade repository

1 Executive Summary

Reasons for publication

This final report presents draft regulatory technical standards (RTS) amending the RTS on the clearing obligation (CO) and on the derivative trading obligation (DTO) that ESMA has developed under Article 5(2) of Regulation (EU) No 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR), and under Article 32 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MiFIR), respectively. The draft RTS relate to the benchmark transition away from EONIA and LIBOR and onto new Risk-Free Rates (RFR).

ESMA ran a public consultation until 2 September 2021 with a proposal to amend the scope of the CO and the DTO to accompany the benchmark transition. ESMA received around twenty responses from a well-diversified range of stakeholders and has taken this feedback into account in the finalisation of the proposed amendments to the CO and DTO RTSs. In parallel, ESMA has continued to monitor the progress made with the benchmark transition, including an analysis of more recent EMIR TR data, in order to calibrate the changes to be made to the scope of the CO and DTO. Furthermore, ESMA has continued its dialogue with the authorities from other jurisdictions to facilitate coordination and convergence to the extent possible. Last but not least, ESMA has received input from the European Systemic Risk Board (ESRB) on the amendments to the clearing obligation which have been reflected in the analysis and in the draft RTS. The report presents all these elements and includes the amending draft RTS in Annex.

Content

Section 2 presents the context for this review of the clearing and trading obligations. Section 3 details the progress in the benchmark transition. Section 4 describes the general approach for the coordinated revision of the CO and DTO.

Sections 5 and 6 include the analyses and the conclusions on how to amend the scope of the CO and DTO respectively and the related implementation timing. These amendments have been finalised with the objective to ensure a smooth transition while maintaining an effective scope for the CO and DTO, in line with the G20 objectives. In particular, for the CO, it proposes to remove the EONIA, GBP LIBOR and JPY LIBOR classes, to introduce the €STR and SOFR classes and to extend the SONIA class. For the DTO, it proposes to remove the GBP LIBOR and USD LIBOR classes.

Finally, section 7 talks about the way forward.

Next Steps

The draft RTS have been submitted to the European Commission for endorsement in the form of Commission Delegated Regulations.

ESMA is mindful that the approval process can take some time although it would see benefits in a quick process to accompany the actual benchmark transition milestones taking place shortly but as well to facilitate coordination and convergence with regards to the changes introduced by authorities in other jurisdictions to the scope of their mandatory clearing and trading obligations.

2 Introduction

1. ESMA published on 9 July 2021 a consultation paper¹ (CP) on the review of the clearing (CO) and derivative trading (DTO) obligations in view of the Benchmark transition. The CP contained a description of the Benchmark transition, the progress made with the transition and thus what it meant for the CO and the DTO for OTC interest rate swaps denominated in EUR, GBP, JPY or USD. ESMA received about twenty responses to the consultation from a well-diversified range of respondents including market infrastructures (CCPs, TVs), the buy-side and the sell-side. ESMA also requested the views of the SMSG, which decided not to provide a response to this consultation. In addition, ESMA received input from the ESRB which was consulted on the proposed approach. The ESRB was overall supportive of ESMA's work and highlighted some additional elements, as also suggested by some respondents to the CP. These elements have been taken into account in this final report.
2. As explained in the CP, several jurisdictions have introduced benchmark reforms, including the EU with the Benchmarks Regulation², with the common objective to ensure the accuracy and integrity of benchmarks, and thus increase contracts' robustness. Following these benchmark reforms, a number of benchmarks are now due to cease soon (although it should be noted that for EUR, the EURIBOR benchmark remains). In particular, EONIA (EUR) as well as GBP and JPY LIBOR are due to cease at the end of 2021, whereas USD LIBOR will continue to be published until June 2023³. These benchmarks are being replaced by other benchmarks and notably by Risk-Free Rates (RFR):

Currency	RFR short name	RFR name
EUR	€STR	Euro Short-Term Rate
GBP	SONIA	Sterling Overnight Index Average
JPY	TONA	Tokyo Overnight Average Rate
USD	SOFR	Secured Overnight Financing Rate

3. Furthermore, there have been several communications from regulators at the international level or by certain jurisdictions, including ESMA as part of a joint EU authorities' statement⁴, asking market participants to stop using any of the LIBOR settings, including

¹ [ESMA consults on derivatives clearing and trading obligations in view of the benchmarks transition \(europa.eu\)](https://www.esma.europa.eu/sites/default/files/library/esma_cp_derivatives_clearing_and_trading_obligations_in_view_of_the_benchmarks_transition.pdf)

² Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds

³ Two USD LIBOR fixings (1-week and 2-month) are also due to cease at the end of 2021 but the majority and the most commonly used USD LIBOR fixings (such as the 1-month, 3-month, 6-month and the 12-month USD LIBOR) in derivative contracts are currently scheduled to be published until June 2023

⁴ IOSCO statement: [Statement on Benchmarks Transition \(iosco.org\)](https://www.iosco.org/publications/iosco-statement-on-benchmarks-transition/)

Joint statement in the EU: https://www.esma.europa.eu/sites/default/files/library/joint_public_statement_usd_libor.pdf

USD LIBOR, as reference rates in new contracts as soon as practicable and in any event by 31 December 2021. As a result, because these benchmarks are due to cease soon and because entities are expected to no longer reference these benchmarks soon, the transition away from these benchmarks and onto new ones is in its final stages.

4. More specifically with regards to OTC interest rate derivatives, the CP described the progress made with the transition in the EUR, GBP, JPY and USD markets at the time of publication of the CP. Since then, the transition has progressed further. Therefore, the final report presents an update on the progress made in these markets. In addition, the final report also presents the feedback received from the consultation. And last but not least, during the period since the publication of the CP, ESMA has continued the dialogue with the regulators from other jurisdictions.
5. Following from this, the draft RTS have been updated taking into account the progress made in the transition, the feedback received from stakeholders and the discussions with the regulators from other jurisdictions. The final report presents these aspects in detail.
6. Lastly, it should also be noted that whereas the trading and clearing activity in derivatives referencing EONIA or LIBOR is expected to have pivoted to derivatives referencing other benchmarks shortly, it is not the end of the transition either. For instance, certain markets are in a multi-rate environment and thus liquidity for these various rates might evolve, other benchmarks may develop, etc. This also means that beyond this final report presenting the changes to the CO and DTO RTS with regards to EUR, GBP, JPY and USD classes, ESMA will continue to monitor this transition and may need to adapt the scope of the CO and DTO further in the future as a result.

3 Current status of the benchmark transition

3.1 General update on the transition

7. The CP described the implementation of the benchmark reforms in the OTC interest rate derivative markets and the related efforts undertaken to transition to new benchmarks conducted over the past years, and in particular:
 - a. the introduction of fall-backs in derivative contracts,
 - b. the expansion of the CCP clearing offerings to include classes of OTC interest derivatives referencing RFRs,
 - c. the switch of the CCP discounting curves to RFRs, and
 - d. the CCP conversion of legacy contracts referencing EONIA or LIBOR to contracts referencing the new RFRs (also referred to as the ‘CCP legal switch’).

8. Respondents to the consultation broadly agreed with the description made in the CP of the various steps that contributed to the progress made with the transition, and they are thus not redeveloped here. However, we will recall two aspects covered in the CP that are quite relevant in the short term as they will play an essential role in the transition over the coming months:
 - a. the CCP legal switch dates: The largest part of the cleared market has been preparing for a few conversion dates when legacy contracts referencing EONIA (EUR), GBP LIBOR or JPY LIBOR are scheduled to be converted to contracts referencing the corresponding RFRs, i.e. €STR, SONIA and TONA respectively, with CCPs also removing these contracts from their lists of clearing eligible contracts. These correspond to:
 - i. the weekend of 16 October 2021 for EONIA to €STR (this is now passed and the relevant contracts have been converted),
 - ii. the weekend of 4 December 2021 for JPY LIBOR to TONA, and
 - iii. the weekend of 18 December 2021 for GBP LIBOR to SONIA; and
 - b. The table of CCPs clearing OTC interest rate derivatives referencing the EUR, GBP, JPY and USD RFRs.

TABLE 1: LIST OF EU AND TC-CCPs OFFERING CLEARING OF DERIVATIVES REFERENCING NEW RISK-FREE RATES IN THE G4 CURRENCIES

CCP	Asset-Class	Type	Underlying	Settlement currency	Range of tenor
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EU-CCPs ^{5,6}					
BMEC ⁷	Interest Rate	Basis	€STR	EUR	1D-30Y
BMEC	Interest Rate	OIS	€STR	EUR	6Y
Eurex	Interest Rate	Basis	€STR	EUR	1D-51Y
Eurex	Interest Rate	Basis	SOFR	USD	1D-51Y
Eurex	Interest Rate	Basis	SONIA	GBP	1D-51Y
Eurex	Interest Rate	Basis	TONA	JPY	1D-51Y
Eurex	Interest Rate	OIS	€STR	EUR	1D-51Y
Eurex	Interest Rate	OIS	SOFR	USD	1D-51Y
Eurex	Interest Rate	OIS	SONIA	GBP	1D-3Y
Eurex	Interest Rate	OIS	TONA	JPY	1D-51Y
KDPW_CCP	Interest Rate	OIS	€STR	EUR	1D-30Y
TC-CCPs ⁸					
CME US ⁹	Interest Rate	Basis	SOFR vs FedFunds	USD	Up to 51Y
CME US	Interest Rate	Basis	SOFR vs USD LIBOR	USD	Up to 51Y
CME US	Interest Rate	OIS	SOFR	USD	Up to 51Y
CME US	Interest Rate	OIS	SONIA	GBP	30Y
CME US	Interest Rate	OIS	TONA	JPY	30Y
HKFE ¹⁰	Interest Rate	Basis	€STR vs EURIBOR	EUR	Up to 11Y
HKFE	Interest Rate	Basis	SOFR vs FedFunds	USD	Up to 11Y
HKFE	Interest Rate	Basis	SOFR vs LIBOR	USD	Up to 11Y
HKFE	Interest Rate	OIS	€STR	EUR	Up to 11Y

⁵ https://www.esma.europa.eu/sites/default/files/library/ccps_authorised_under_emir.pdf

⁶ https://www.esma.europa.eu/sites/default/files/library/public_register_for_the_clearing_obligation_under_emir.pdf

⁷ <https://www.bmeclearing.es/ing/Segments/Swaps/Swaps-Products>

⁸ https://www.esma.europa.eu/sites/default/files/library/third-country_ccps_recognised_under_emir.pdf

⁹ <https://www.cmegroup.com/trading/interest-rates/cleared-otc.html>

¹⁰ https://www.hkex.com.hk/Products/OTC-Derivatives/Interest-Rate-Swaps?sc_lang=en

HKFE	Interest Rate	OIS	SOFR	USD	Up to 11Y
JSCC ¹¹	Interest Rate	OIS	TONA	JPY	NA
LCH Ltd ¹²	Interest Rate	Basis	EURIBOR vs €STR	EUR	Up to 51Y
LCH Ltd	Interest Rate	Basis	FedFunds vs SOFR	USD	Up to 51Y
LCH Ltd	Interest Rate	Basis	GBP LIBOR vs SONIA	GBP	Up to 51Y
LCH Ltd	Interest Rate	Basis	JPY LIBOR vs TONA	JPY	Up to 41Y
LCH Ltd	Interest Rate	Basis	USD LIBOR vs SOFR	USD	Up to 51Y
LCH Ltd	Interest Rate	OIS	€STR	EUR	Up to 51Y
LCH Ltd	Interest Rate	OIS	SOFR	USD	Up to 51Y
LCH Ltd	Interest Rate	OIS	SONIA	GBP	Up to 51Y
LCH Ltd	Interest Rate	OIS	TONA	JPY	Up to 41Y

Sources: CCPs and ESMA public register for the CO

9. In addition, the CP also talked about two other elements that are playing an important role in the progress made with the transition. The first one, which was already mentioned in the introduction, is the end-of-year deadline, and the second one is the series of so-called 'First' approaches where the market is shifting some of its trading conventions to the new RFRs.
10. Starting with the first one, the end of the year can be considered a tipping point. Most of these benchmarks are due to cease then and in addition we already mentioned the communications from regulators asking entities to stop using any of the LIBOR settings, including USD LIBOR, as reference rates in new contracts as soon as practicable and in any event by 31 December 2021. The end of 2021 is thus a clear deadline that helps focus efforts on transitioning by then.
11. The second element relates to initiatives to change quoting conventions, which can help coordinating a shift to the successor rates. At this stage in the overall transition, this is particularly relevant for the currencies where the situation was not as clear cut (at the time of publication of ESMA's CP) as for some other currencies in terms of successor rates' ability to attract liquidity. It is thus particularly relevant for USD and JPY.
12. Regarding USD, we had already mentioned the SOFR First approach¹³ in the CP, but the real effect happened after the publication of the CP, from the time this SOFR First approach was implemented, from 26 July 2021. Interdealer quotation shifted from USD

¹¹ <https://www.jpcc.co.jp/jpsc/en/cash/irs/product.html>

¹² <https://www.lch.com/services/swapclear/what-we-clear>

¹³ Link: [CFTC's Interest Rate Benchmark Reform Subcommittee Recommends July 26 for Transitioning Interdealer Swap Market Trading Conventions from LIBOR to SOFR | CFTC](#)

LIBOR to SOFR, and this combined with the other elements described in the final report and coming in support of the transition, meant that ESMA has seen an increase in the trading of derivatives referencing SOFR since then.

13. Regarding JPY, ESMA highlights that there has now also been a TONA First approach¹⁴ in a similar manner as what was just discussed for SOFR and at roughly the same time, end of July 2021. The communication on the TONA First approach, and thus the start of its implementation, happened a little bit after the publication of the CP and thus were not mentioned in the CP. As a reminder, at the time of the CP, it was not yet clear which rate might become the successor rate for JPY LIBOR except from the fact that TONA had been chosen in particular for the CCP legal switch for trades referencing JPY LIBOR. It has now become clearer that TONA should inherit an important part of the liquidity for JPY. Secondly, similarly to what we have seen with the SOFR First approach for SOFR, we are also seeing an increase in the trading of derivatives referencing TONA since then.
14. Continuing with the 'First' approaches, we could also mention the 'RFR First' approach¹⁵ for cross currency swaps with the objective for the LIBOR cross-currency swaps market to adopt new quoting conventions for interdealer trading based on RFRs instead of LIBOR, from 21 September 2021.
15. In summary, the CP described all the various steps undertaken to progress with the transition away from EONIA and LIBOR and onto alternative rates, and primarily RFRs for the OTC interest rate derivatives market. But since the publication of the CP, the combination of the end-of-year deadline approaching, the CCP legal switch dates (when the stock of legacy trades are converted to trades referencing RFRs and where CCPs will stop accepting trades referencing the old benchmarks for clearing) and the various 'First' approaches (pushing interdealer quoting conventions to RFRs), have meant that the transition has continued to progress well and that ESMA is seeing liquidity pivoting to the new RFRs. The next section is an update of ESMA's analysis of the progress made in the transition in order to have a more granular description.

3.2 Updated analysis

3.2.1 Overall trends

16. In view of the benchmark transition, ESMA assessed in the CP how liquidity was pivoting from derivatives referencing EONIA or LIBOR to derivatives referencing other benchmarks, and in particular OIS referencing RFRs.
17. However, it is not always the case that there is a single successor rate and there are some multi-rate markets where liquidity for different benchmarks may evolve over time. In particular, the CP described that for certain use cases some market participants have looked into term rates, and this is still true. On this point, it should be noted that respondents broadly agreed with how the CP covered this aspect.
18. Yet, given that we are now closer to the end-of-year compared to the time of publication of the CP, and based on the elements described in the previous section, there is now a

¹⁴ Link: [Transition of Quoting Conventions in the JPY interest rate swaps market \("TONA First"\) : 日本銀行 Bank of Japan \(boj.or.jp\)](#)

¹⁵ Link: [The FCA and the Bank of England encourage market participants in a switch to RFRs in the LIBOR cross-currency swaps market from 21 September | Bank of England](#)

clearer picture on how the OTC interest rate markets for EUR, GBP, JPY and USD are transitioning:

a. EUR:

Regarding EUR, the situation remains largely as described in the CP. On the one hand, EURIBOR stays, therefore for a large part of the volume of derivatives denominated in EUR, the situation does not change. On the other hand, in terms of overnight rates, €STR is replacing EONIA. This replacement is in fact already largely effective, even when new trades referencing EONIA have been entered into since the time of the CP, because the conversion from EONIA to €STR is fixed, such that they now both represent the same liquidity pool. In addition, the mid-October CCP legal switch for EONIA has helped this situation to evolve further with the conversion of the outstanding cleared EONIA OIS trades.

In summary, for EUR, EURIBOR remains and with regards to overnight rates, €STR replaces EONIA. Yet, it should also be mentioned that the use of compounded €STR is developing beyond the short-term maturities. One example is with regards to cross currency swaps where some counterparties want to reference a RFR on both legs, including for cases with a EUR leg. The increase in compounded €STR over a range of maturities is not yet happening in volumes that would change the above overall approach described in ESMA's report with regards to EUR, but this means that ESMA will continue monitoring how €STR develops.

b. GBP:

Regarding GBP, the situation remains overall as described in the CP. (Compounded) SONIA has continued to develop as the new market standard for OTC interest rate derivatives denominated in GBP, where alternative term rates have not really picked up. As a result, at this stage, market participants have largely transitioned already in terms of new activity. In addition, with the December CCP legal switch and the end-of-year cessation of GBP LIBOR, it is reasonable to expect that most of the liquidity will have shifted from GBP LIBOR to SONIA by the end of the year.

c. USD:

With respect to USD, the situation is still evolving but is clearer than at the time of publication of the CP. As mentioned in the previous section, following the SOFR First initiative, (compounded) SOFR's activity has increased and is expected to continue developing. In addition, none of the alternative term rates discussed for the various use cases where USD LIBOR has been used, has really put into question SOFR's ability to become the lead successor rate in the OTC interest rate derivative market. SOFR has thus become a reliable rate in terms of liquidity and the expectation is that SOFR should continue developing to become the main or dominant successor rate for OTC interest rate derivatives denominated in USD.

d. JPY:

With respect to JPY, there as well the situation is still evolving but it is becoming clearer. As mentioned in the previous section, TONA has now been identified as the lead successor rate and the TONA first initiative has meant that there has been an increase in derivative trades referencing TONA. In addition, with the December CCP legal switch and the end-of-year cessation of JPY LIBOR, it is reasonable to expect that liquidity will continue to shift from JPY LIBOR to TONA by the end of the year. Although this shift of liquidity from JPY LIBOR to TONA seems to be the direction of travel, in the EU the increase in trading activity referencing TONA is more recent and is starting from lower levels than in some other jurisdictions, therefore ESMA will continue monitoring how this transition evolves.

19. In order to have a more granular look at the progress made with the transition with regards to these four markets and thus what it means for the revision of the CO and the DTO in the EU, the next section looks into some more recent data analysis conducted by ESMA.

3.2.2 Detailed analysis

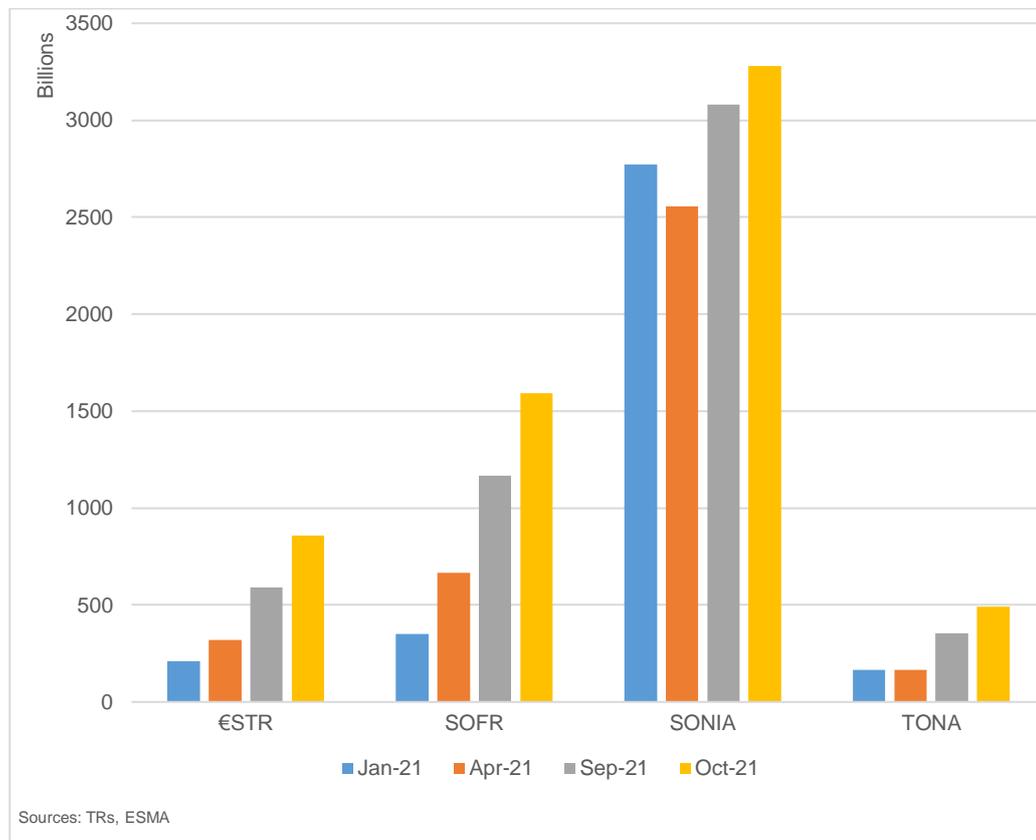
20. As already highlighted in the CP and with a view to understanding how markets are adapting to the new RFRs, ESMA has carried out a data analysis (its methodology is explained in section 8.3) aiming at providing an overview of the current market landscape. These results are mostly based on EMIR TR data.

3.2.2.1 General

21. ESMA's data analysis looked at various indicators for each of the new RFR taking as reference dates January, April, September and October 2021. In order to provide a meaningful overview of how the markets have evolved since the publication of the CP and to keep a high level of compatibility between the different dates, it is worth noting that ESMA has indeed replicated the analysis presented in the CP with the addition of new data points¹⁶ (i.e. September and October 2021).
22. As observed in Figure 1 below, when looking at the notional outstanding volumes, SONIA remains the most advanced benchmark attracting more liquidity than any other RFR, although volumes in €STR, SOFR and TONA have considerably increased from April to October. (It should be reminded in this section as it is explained in the report, that in view of the fixed spread and thus conversion between EONIA and €STR OIS, it could be argued that they represent one single pool of liquidity, and therefore that €STR volumes alone are not sufficient to assess €STR's level of liquidity but that is still an interesting dimension to evidence in the below graphs.)

¹⁶ESMA notes that the methodology used in this Final Report is slightly different to the one used in the CP as multiple data extracts have been used. In the CP, only the April extract was used, creating a survival bias with an increase of outstanding amounts leading up to the date of extraction. To smooth this bias, Figure 2 uses all four extractions used in the rest of this report (January, April, September and October) depending on the execution date. From March 2021 until August 2021 the new September data is used, while the new October data is used to compute the September values.

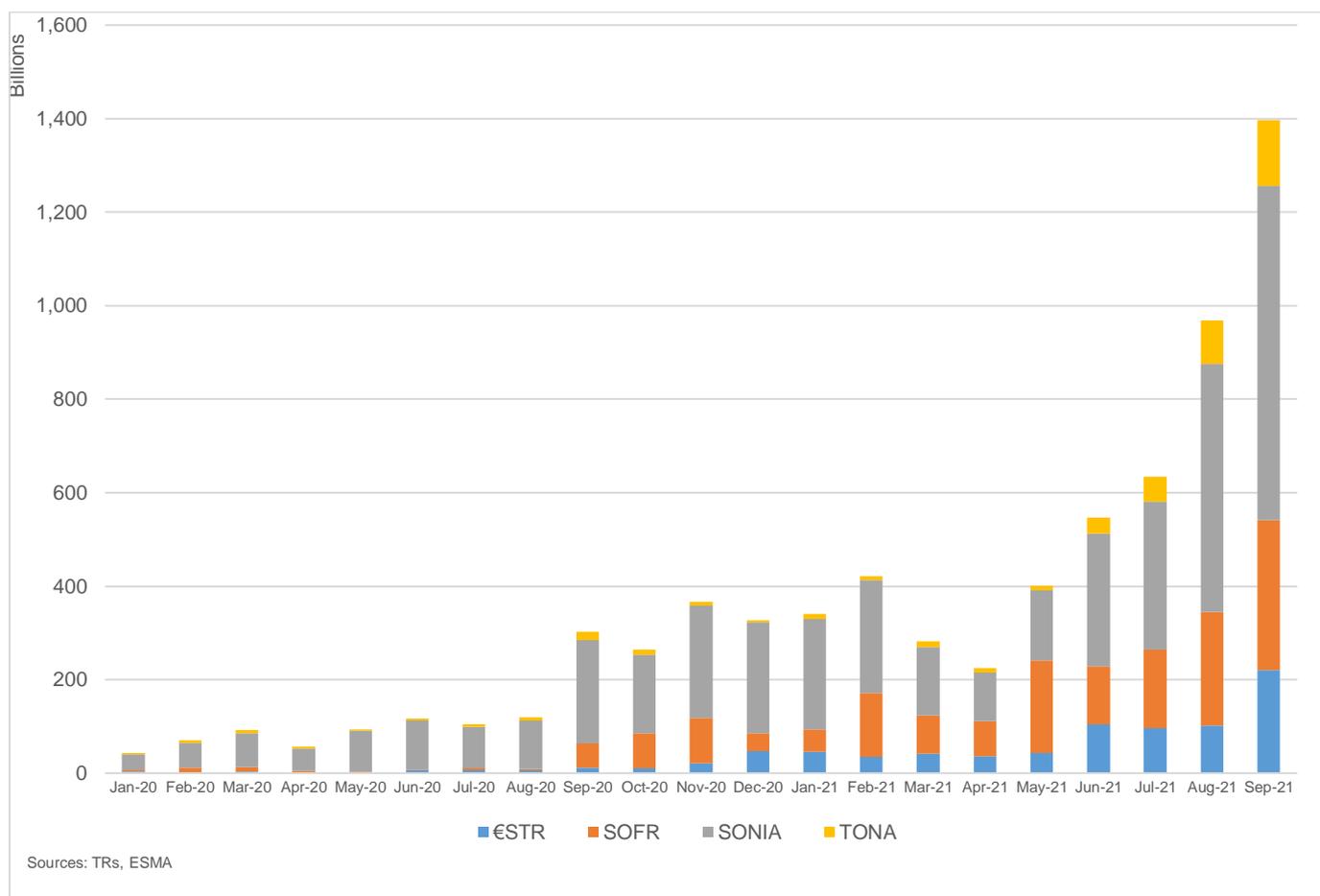
FIGURE 1: NOTIONAL OUTSTANDING (JANUARY, APRIL, SEPTEMBER AND OCTOBER 2021) - PER RFR



23. Similar conclusions can be drawn when observing the notional outstanding (as of 15 October 2021) displayed per execution date and covering the January 2020-September 2021 period. From that perspective, SONIA remains the most active market followed by SOFR, €STR and TONA. This is shown in Figure 2¹⁷ below.

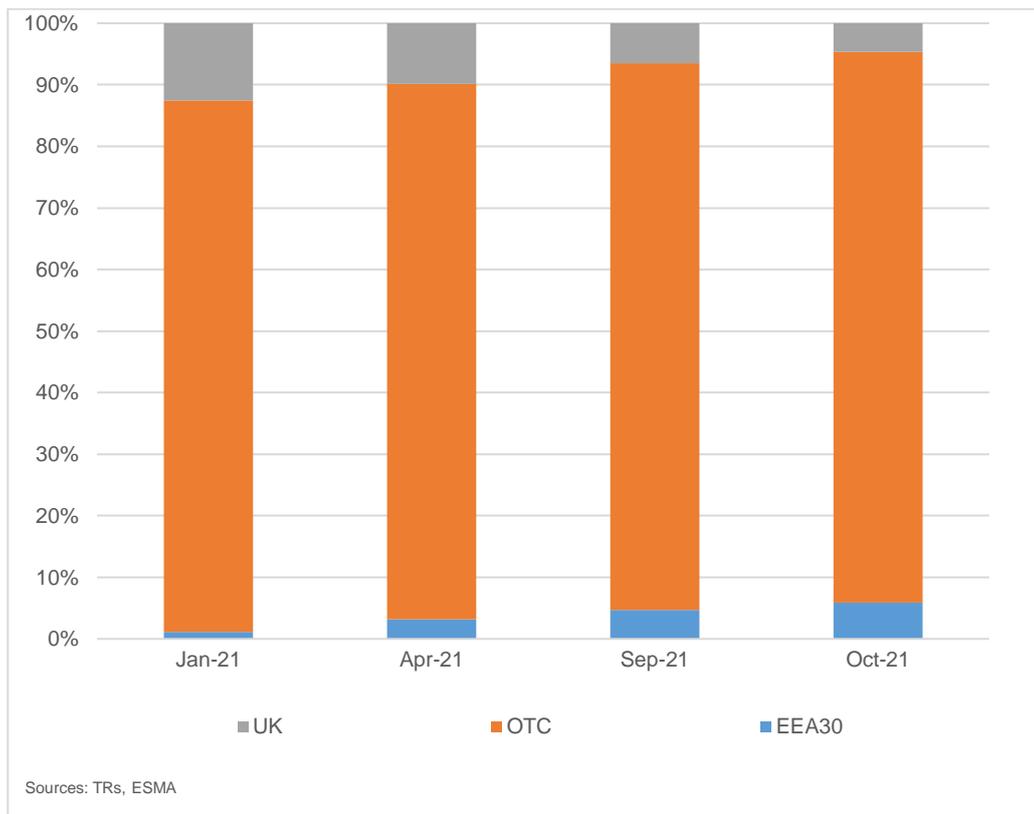
¹⁷ Figure 2 does not provide for October 2021 data as the data extraction was performed on 15 October and therefore it was decided not to include October data to keep a high-level of comparability between the different months. The series shows the outstanding contracts as of 15 October 2021 plotted per execution date. It shall be noted that the series may have a survival bias: the more the execution dates are distant from the reference date, the higher the possibility that some contracts have matured in the meantime and do not appear in the series.

FIGURE 2: NOTIONAL OUTSTANDING PER EXECUTION DATE (JANUARY 2020-SEPTEMBER 2021) – PER RFR



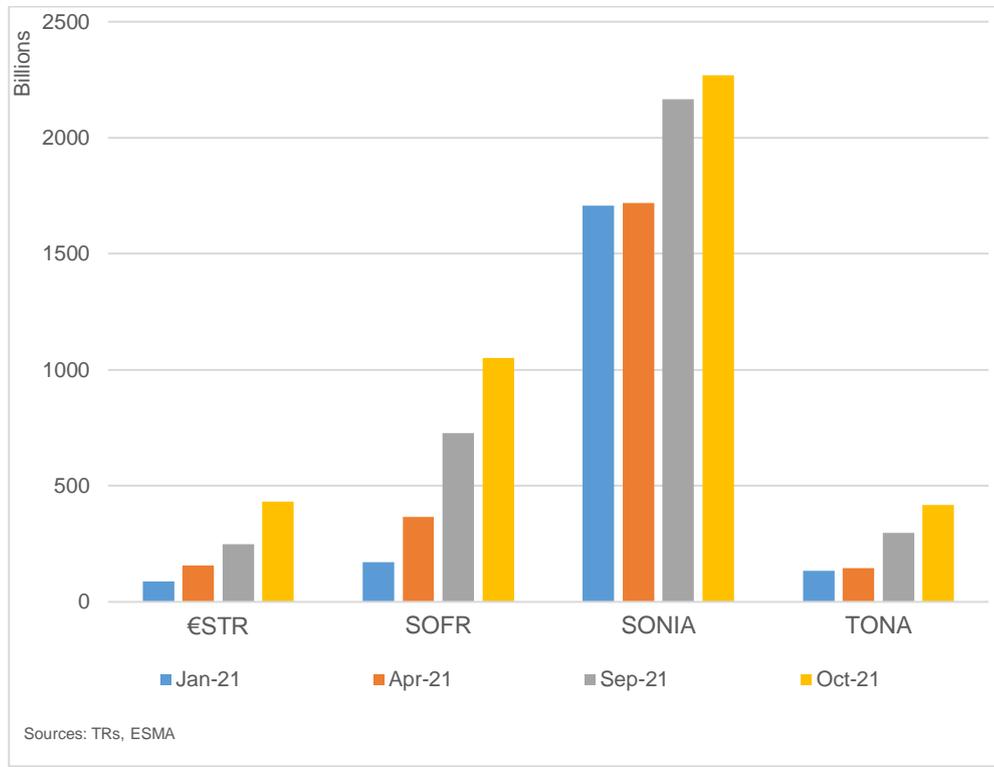
24. In addition, looking at the venue of execution, it is clear that most trading activity in interest rate derivatives referencing RFR in terms of notional outstanding is executed OTC (about 85% in both January and April 2021, with a slight increase in September and October 2021 - see Figure 3). Out of the activity of EU counterparties (i.e. those entities subject to EMIR reporting) only a small, but increasing notional outstanding is executed on venue, i.e. on regulated markets, MTFs and OTFs. Significant trading activity by EU counterparties in contracts referencing RFRs can still be observed on UK trading venues, although the share of UK venues slightly decreased from January to April 2021 and even more from April to October 2021. As noted in the CP, the latter covers in particular the trading activity in contracts referencing (compounded) SONIA, which being currently outside the trading obligation in the EU and in the UK can be freely traded on any trading venue.

FIGURE 3: NOTIONAL OUTSTANDING (JANUARY, APRIL, SEPTEMBER AND OCTOBER 2021) - EXECUTION VENUE



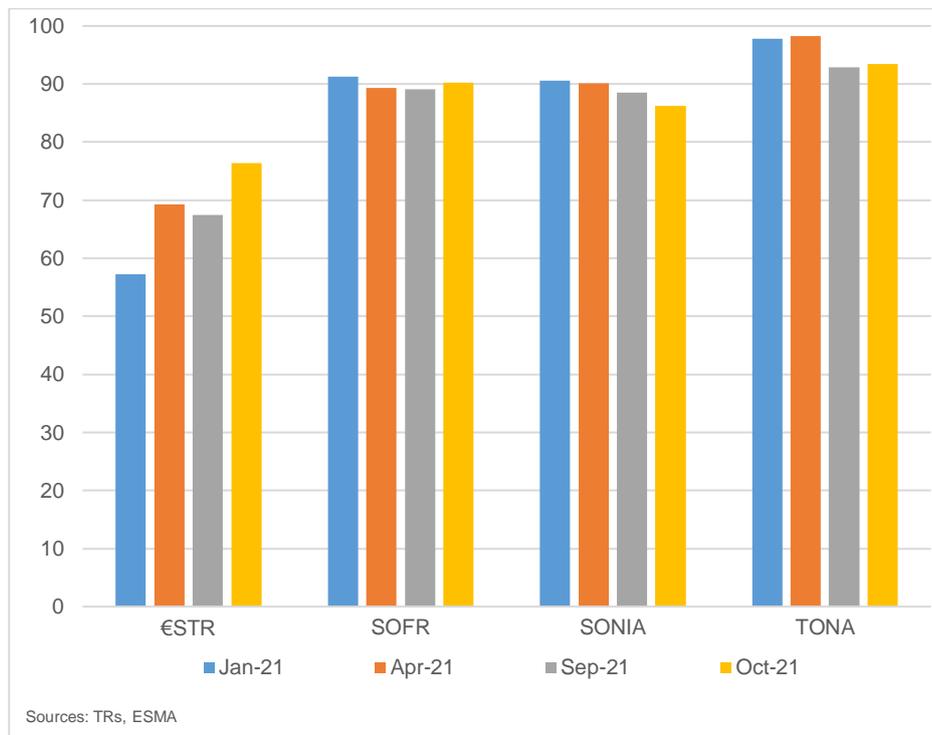
25. ESMA also analysed the cleared volumes in January, April, September and October 2021 on the basis of data reported by CCPs. In line with the April observation, although volumes in €STR, SOFR and TONA have increased over the reporting period, SONIA remains the most cleared benchmark. Figure 4 below confirms that the transition from the GBP LIBOR to the new GBP RFR is at a far more advanced stage also in light of the relevant increase in cleared volumes registered for SONIA over the last months.

FIGURE 4: CLEARED VOLUMES (JANUARY, APRIL, SEPTEMBER AND OCTOBER 2021) - PER RFR



26. With respect to the clearing rates (the percentages of cleared volumes over the total notional traded, cleared and uncleared), the September and October data points, as shown in Figure 5 below, confirm that between 80% and 100% of notional in SOFR, SONIA and TONA is currently cleared. A lower share of notional is cleared for €STR, though the clearing rate increased from around 57% in January to 76% in October 2021.

FIGURE 5: SHARE OF CLEARED VOLUMES (JANUARY, APRIL, SEPTEMBER AND OCTOBER 2021) - PER RFR



3.2.2.2 EUR

27. Regarding EUR, the September and October data confirmed a similar trend to the one described in the CP. More in detail, the activity in contracts referencing €STR is still significantly lower than in contracts referencing the other two benchmarks, EONIA and EURIBOR. From that angle, Figure 6 and Figure 7 provide a comparison of the activity of contracts referencing EONIA, €STR and EURIBOR, while Figure 8 shows the distribution in €STR by different bucket of tenors with a strong predominance of the 0-2Y maturities.

FIGURE 6: ACTIVITY ON CONTRACTS REFERENCING EONIA VS €STR VS EURIBOR (JANUARY, APRIL, SEPTEMBER AND OCTOBER 2021) - IN NOTIONAL AMOUNT

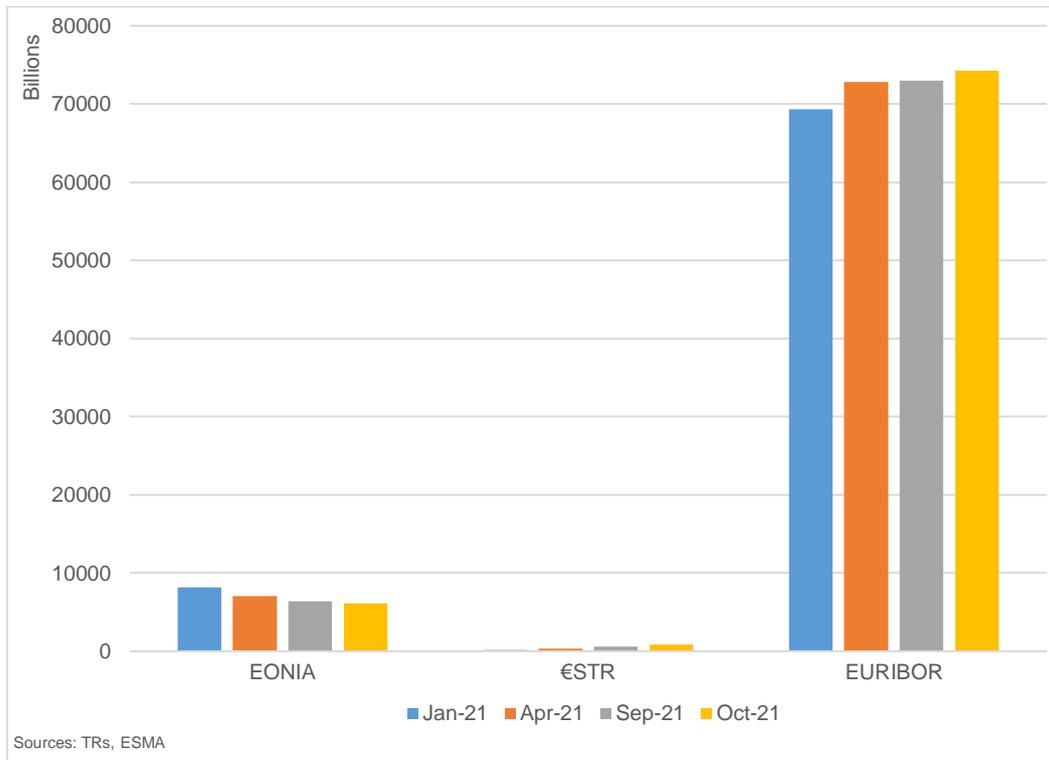


FIGURE 7: AGGREGATED ACTIVITY ON CONTRACTS REFERENCING EONIA VS €STR VS EURIBOR (JANUARY, APRIL, SEPTEMBER AND OCTOBER 2021) IN PERCENTAGE

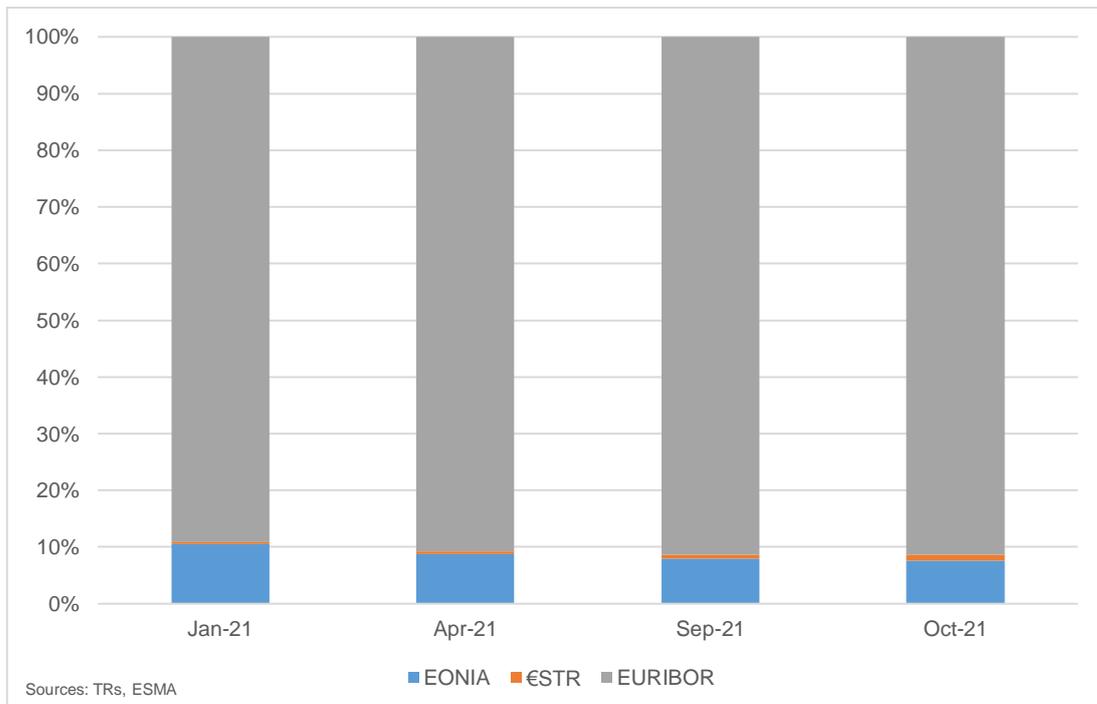
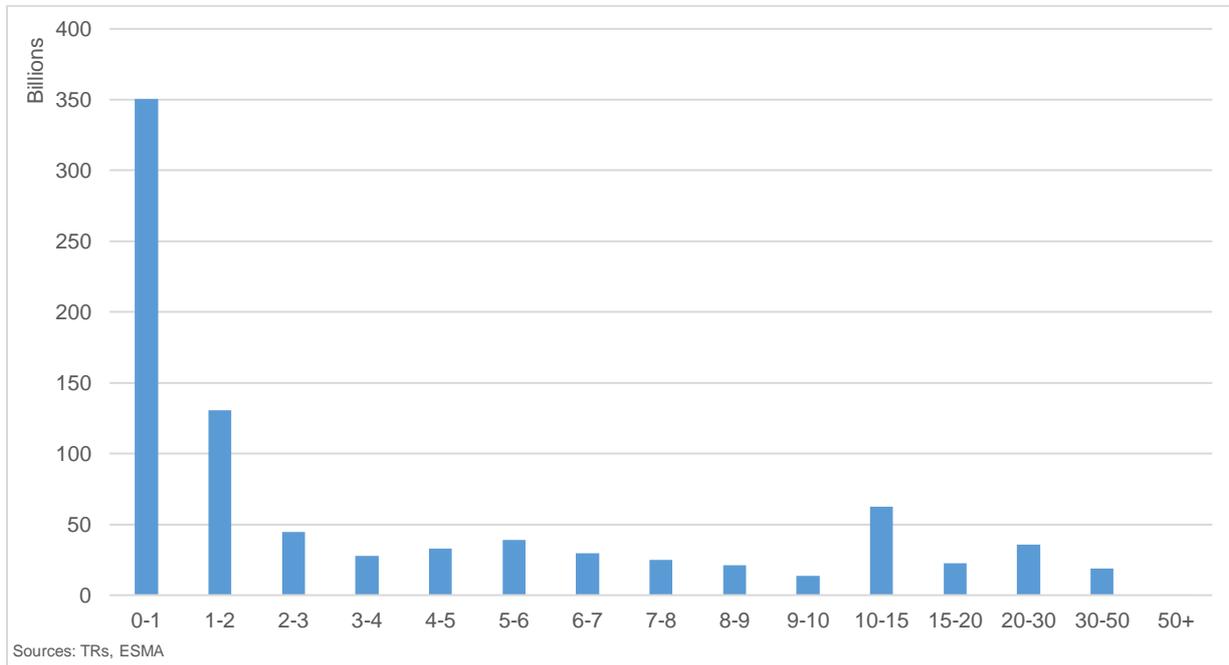


FIGURE 8: €STR, DISTRIBUTION PER BUCKET OF TENORS



3.2.2.3 GBP

28. Regarding more specifically GBP, the trend described in the CP appears to be confirmed by the updated data analysis. SONIA is gradually replacing GBP LIBOR as the reference index for GBP denominated OTC interest rate derivatives. Trades in SONIA account now for a large share of the volume in total GBP denominated OTC interest rate derivatives (i.e. LIBOR and SONIA) (see Figure 9 and Figure 10 below) and with liquidity across the entire maturity curve, including up to 50Y (see Figure 11).

FIGURE 9: ACTIVITY ON CONTRACTS REFERENCING GBP LIBOR VS SONIA (JANUARY, APRIL, SEPTEMBER AND OCTOBER 2021) – IN NOTIONAL AMOUNT

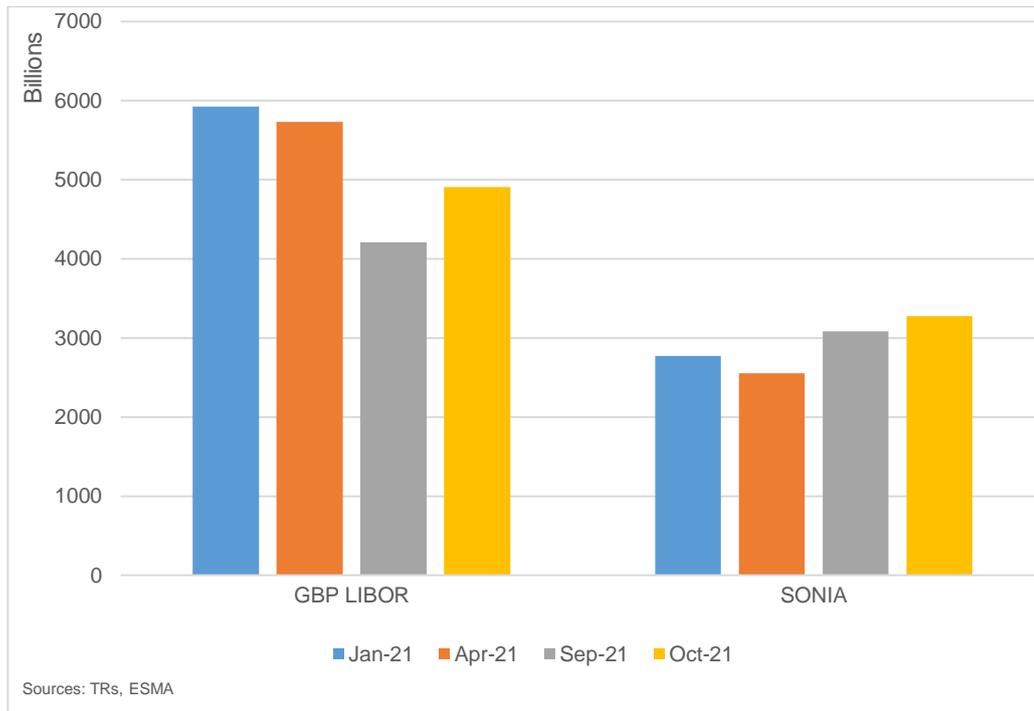


FIGURE 10: AGGREGATED ACTIVITY ON CONTRACTS REFERENCING GBP LIBOR VS SONIA (JANUARY, APRIL, SEPTEMBER AND OCTOBER 2021) - IN PERCENTAGE

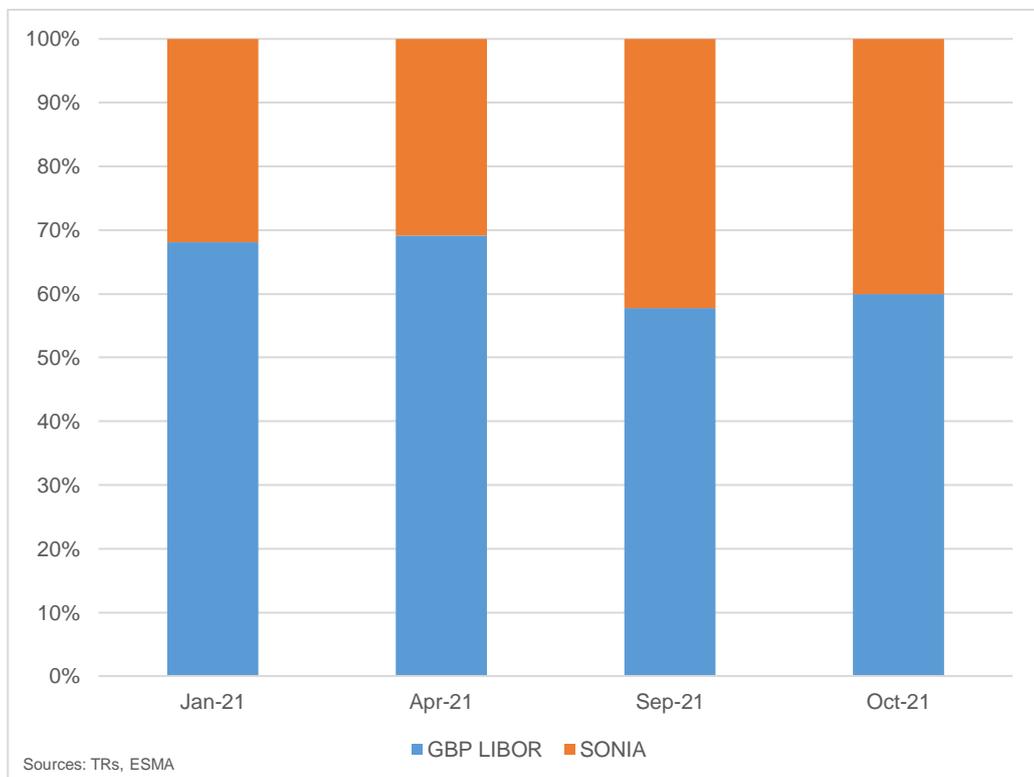
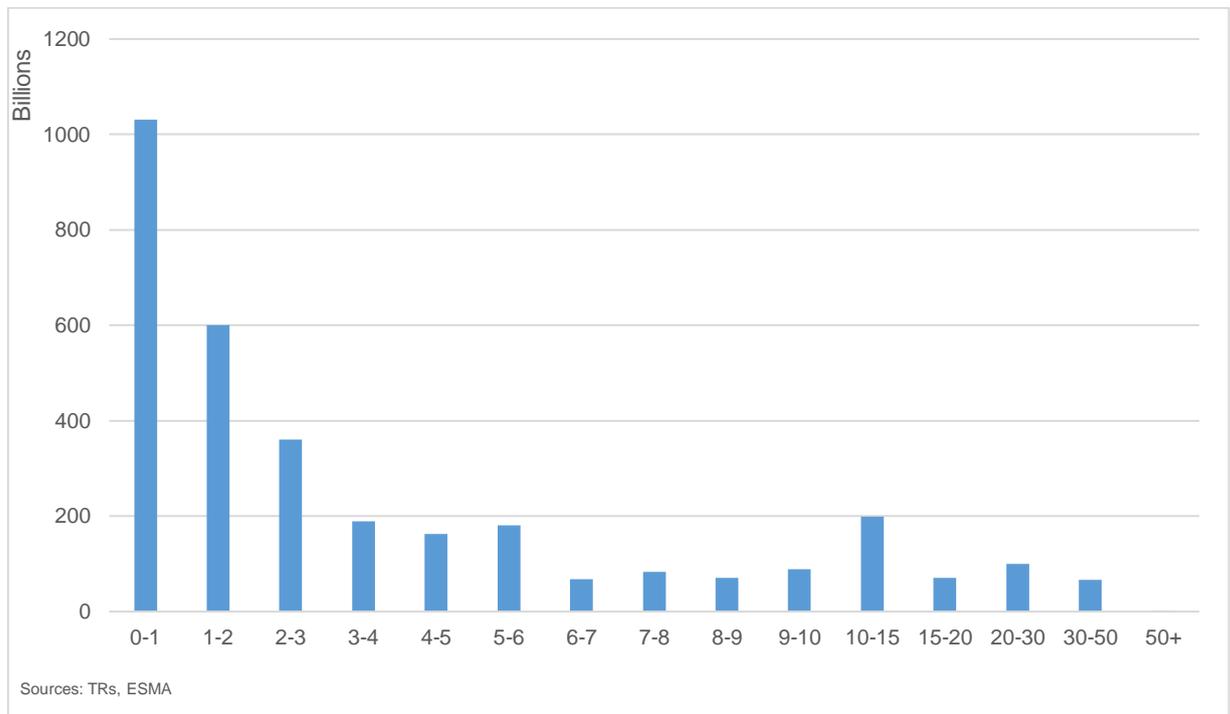


FIGURE 11: SONIA, DISTRIBUTION PER BUCKET OF TENORS



3.2.2.4 JPY

29. In the context of the CP, ESMA noted that the transition to RFR for JPY was the least advanced compared to the other major currencies. ESMA also considered that, with JPY LIBOR due to cease at the end of the year, there was uncertainty on which index would be used instead since, TONA, the JPY RFR, did not attract much liquidity. However, the situation has evolved from April to October 2021. More in detail, while the activity in JPY LIBOR remains significantly higher, the data gathered by ESMA seems to suggest that liquidity in TONA has finally picked up and that much more activity is likely to be observed over the next months. This is shown in Figure 12 and Figure 13.

FIGURE 12: ACTIVITY ON CONTRACTS REFERENCING JPY LIBOR VS TONA (JANUARY, APRIL, SEPTEMBER AND OCTOBER 2021) – IN NOTIONAL AMOUNT

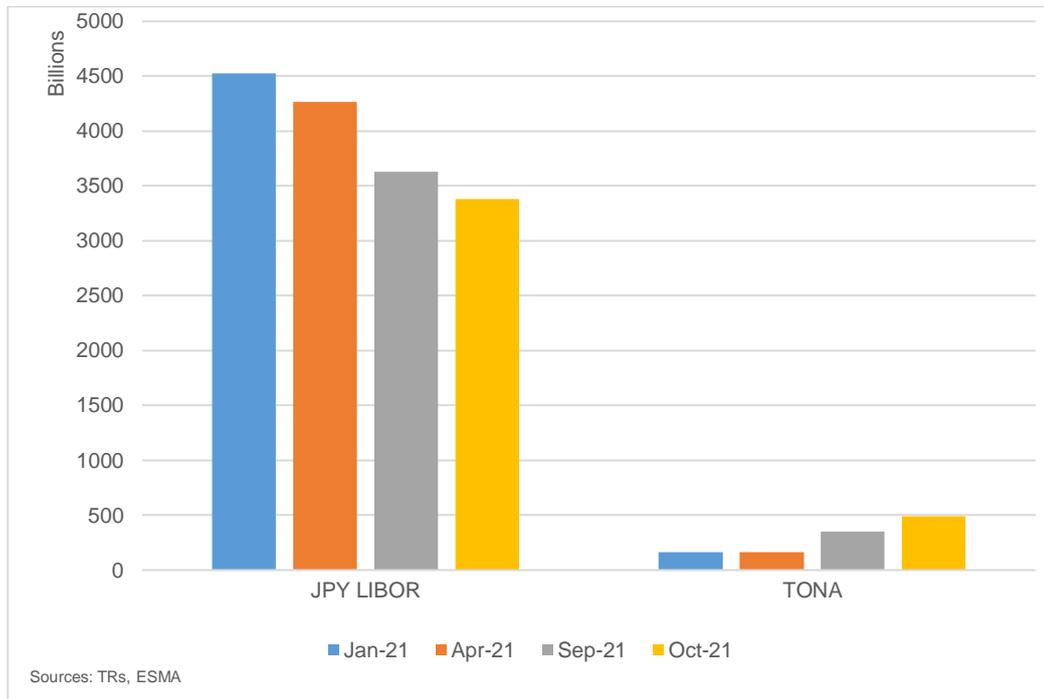
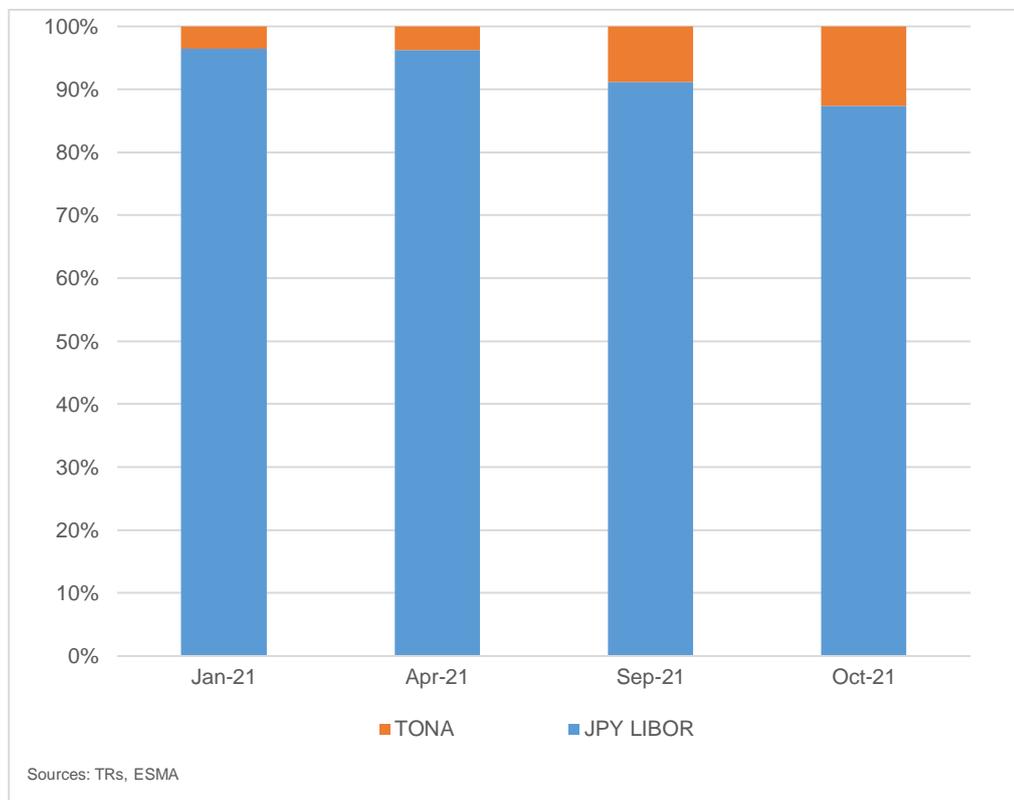
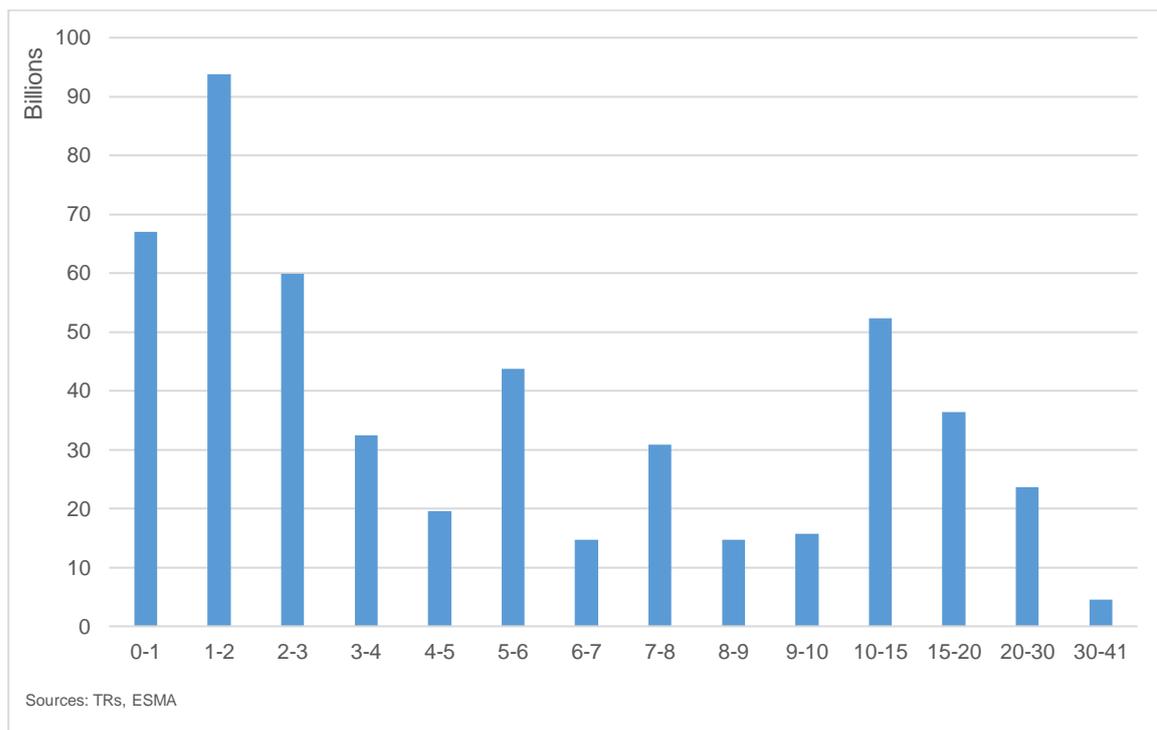


FIGURE 13: AGGREGATED ACTIVITY ON CONTRACTS REFERENCING JPY LIBOR VS TONA (JANUARY, APRIL, SEPTEMBER AND OCTOBER 2021) IN PERCENTAGE



30. The progress in the transition from JPY LIBOR to TONA emerges also when looking at the maturity of the contracts referencing the new JPY RFR. While most of the activity is in contracts up to 2Y, activity for longer maturity tenors up to 41Y can also be observed. This is shown in **Figure 14: tona, distribution per bucket of tenors** Figure 14 below.

FIGURE 14: TONA, DISTRIBUTION PER BUCKET OF TENORS



3.2.2.5 USD

31. Compared to USD LIBOR, activity in SOFR remains rather limited. However, the share of SOFR trading has significantly increased over the April – October 2021 period also in light of the ‘SOFR initiative’ launched in the US. To that end, Figure 15 provides an overview of the current situation where it is clear that activity in contracts referencing SOFR has constantly increased over the observation period. However, although USD LIBOR is due to cease in 2023, the activity observed in this benchmark has also risen since April 2021, following a similar trend to the one observed from January to April 2021. From that perspective and despite the strong growth of the USD RFR over the last months, the share of SOFR activity remains marginal if compared with the one of USD LIBOR (around 5%), as it can be seen in Figure 16 below. Yet, it is also important to not just consider the share of SOFR in % terms, but also in absolute terms given the size of the USD derivatives market. From that perspective, SOFR activity has become reliable and demonstrates a certain level of liquidity.
32. Finally, Figure 17 shows the SOFR distribution across the curve. The growing relevance of the USD RFR is confirmed by the trading activity up to and including 50Y. This represents an important feature as, according to what observed in the CP, activity in SOFR did not exceed 35Y.

FIGURE 15: ACTIVITY ON CONTRACTS REFERENCING USD LIBOR VS SOFR (JANUARY, APRIL, SEPTEMBER AND OCTOBER 2021) – IN NOTIONAL AMOUNT

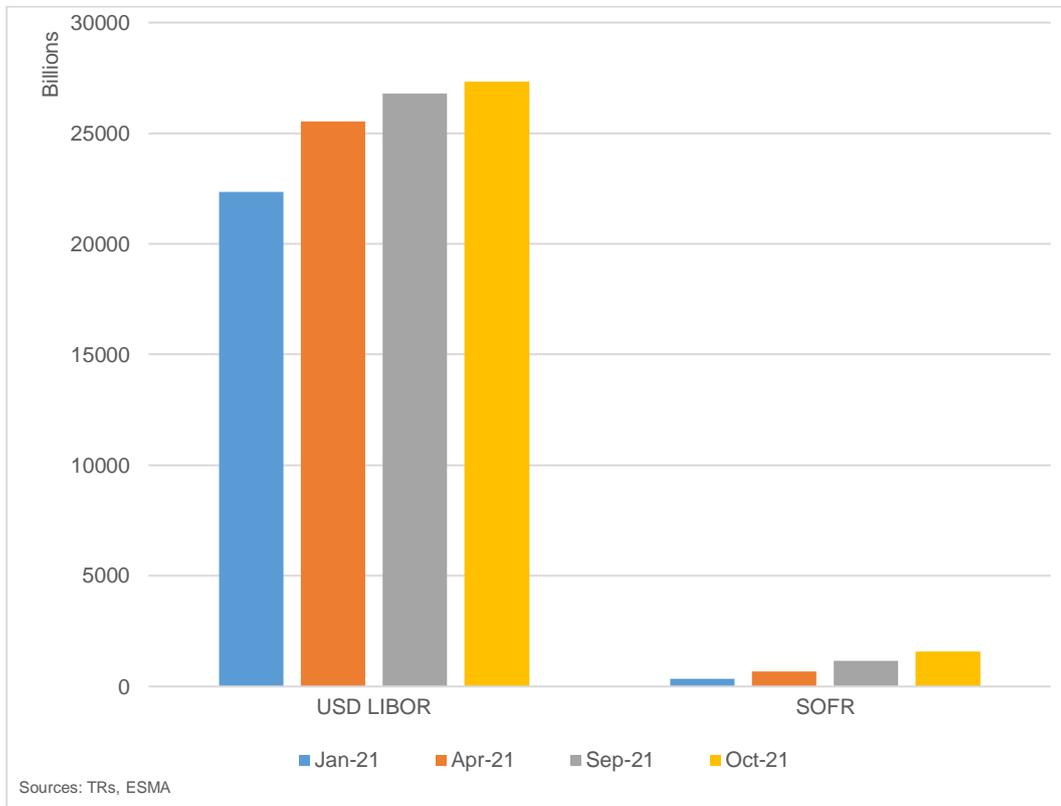


FIGURE 16: AGGREGATED ACTIVITY ON CONTRACTS REFERENCING USD LIBOR VS SOFR (JANUARY, APRIL, SEPTEMBER AND OCTOBER 2021) - IN PERCENTAGE

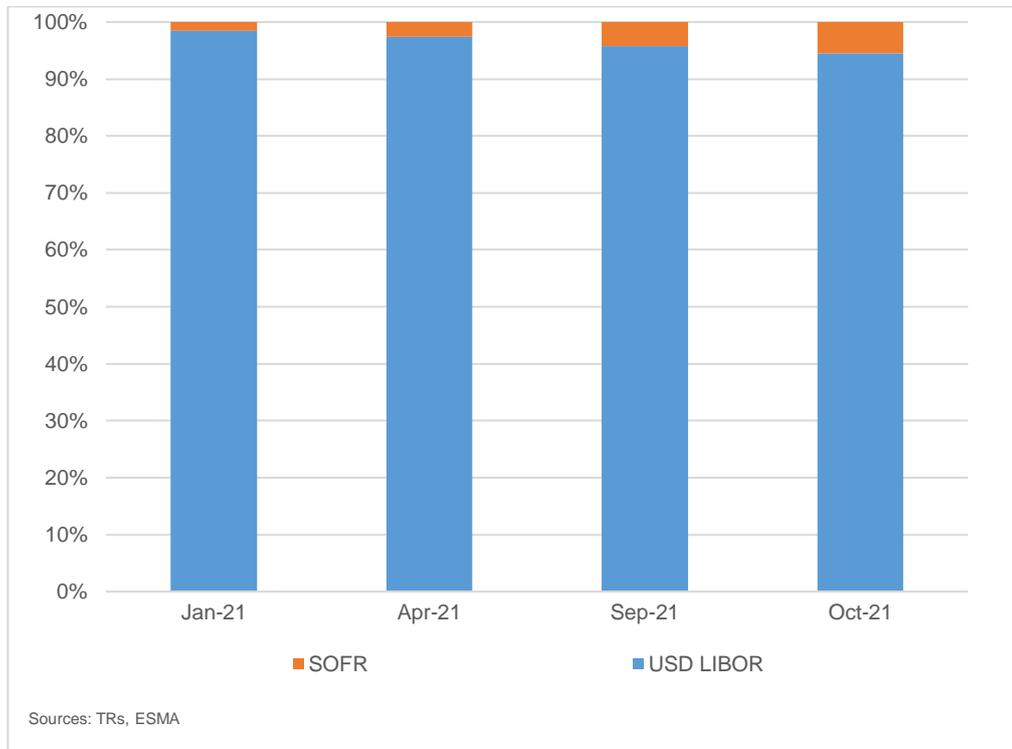
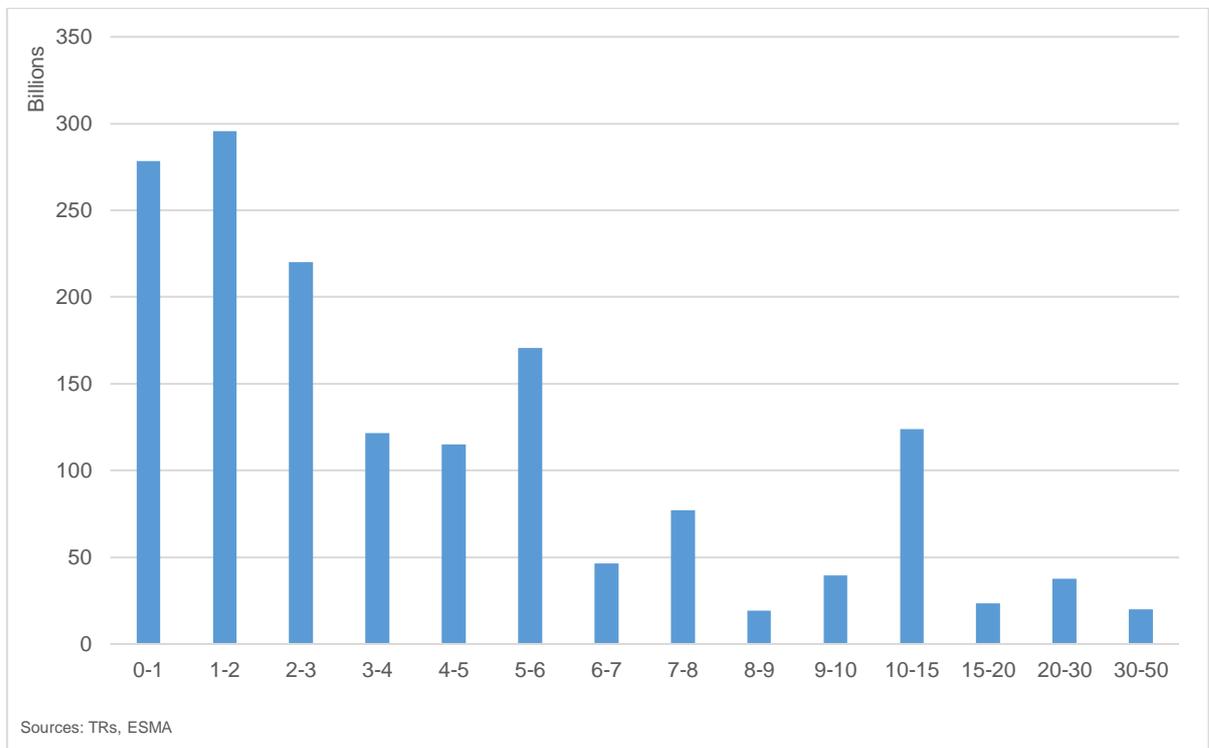


FIGURE 17: SOFR, DISTRIBUTION PER BUCKET OF TENORS



4 General approach

33. The previous sections deal with the benchmark transition and in particular the progress made with the transition, both in terms of steps that have been taken to achieve this transition, as well as in terms of data to evidence how much volume has shifted. In this context of the benchmark transition, the CP looked at what this transition would mean for the CO and DTO, i.e. at potential changes to the scope of these obligations in terms of classes subject to mandatory clearing and trading in order to accompany the transition.
34. The CP presented ESMA's approach in conducting this exercise of the review of the CO and the DTO in the context of the benchmark transition. First of all, it is a data driven exercise which is complemented by information related to various stakeholders' involvement. For this purpose, ESMA looked into EMIR TR data, and where relevant, at other sources of information, to analyse and monitor the progress made with the transition. In addition, ESMA looked as well into the various elements that influenced this progress, including the decisions and communications from regulators, initiatives from market participants including CCPs and TVs, etc. On this first aspect regarding ESMA's analytical approach, there was large support from respondents to the CP. Therefore, the methodology used for the final report remains the same. The analysis presented in the final report is thus a continuation of what was done for the CP.
35. Secondly, the benchmark transition is an important and structural change in financial markets, and in particular in OTC interest rate derivative markets. In view of the particularities of this structural change ESMA had decided to look at both the CO and the DTO at the same time in the CP.
36. The determination process for the CO and for the DTO in this context is not like what was done in previous cases. In previous cases ESMA looked into rolling out these obligations for certain classes of derivatives when the criteria defined in EMIR or MiFIR were met and where these corresponded to new obligations for certain segments of the market. This time, ESMA is looking at how the market is pivoting from certain classes to other classes and where this transition is anchored around some key transition dates. Furthermore, this transition in the OTC interest rate derivative markets for contracts denominated in EUR, GBP, JPY and USD is taking place in a largely cleared market and where some key tenors are also traded largely on trading venues. Instead of introducing new obligations for a new portion of the market, ESMA is approaching this exercise by looking into how to transition existing obligations into a changing environment and accompany the trading and clearing activity pivoting within a cleared market.
37. Most respondents expressed support for this approach combining the CO and the DTO. Without prejudice to how future clearing or trading determination processes might be conducted, the final report thus continues with the same approach.
38. Thirdly, ESMA mentioned in the CP having discussed this topic with regulators from other jurisdictions to facilitate international convergence to the extent possible. This was one of the key messages of stakeholders responding to the consultation, i.e. the need for ESMA to continue this dialogue in the finalisation of the draft RTS and more broadly to cooperate with other regulators in determining the scope and timing of the CO and the DTO. On this latter point, some respondents suggested aligning the scope across jurisdictions as much as possible and if possible the timing too, in order to facilitate compliance when trading across borders, and to also wait for the home authority of a certain market to implement

the CO or DTO for derivative trades in that specific currency before considering doing it in the EU.

39. Since the publication of the CP, ESMA has continued this dialogue with other regulators, discussing the specificities of the transition in the respective markets, the feedback received to the respective consultations, the respective approaches in the review of the CO or DTO, etc. On that topic of a dialogue with the regulators from other jurisdictions, at the time of the CP we had mentioned the consultation from the Bank of England for the UK CO. Since the CP, we could also mention the consultation from the FCA for the UK DTO, another more targeted consultation from the Bank of England on JPY for the CO and published at the same time as their final rules for the UK CO, the consultation from the JFSA for the JP CO and DTO, and the request for comments from the CFTC. They have all been taken into account by ESMA, and they all show that regulators are all looking into how to adapt the respective mandates. The review ESMA is conducting to adapt the scope of the EU obligations is a similar exercise to what other jurisdictions are also considering in view of the benchmark transition.
40. At the same time, ESMA is mindful of the respective procedures and processes for introducing changes to the CO and/or DTO in other jurisdictions. ESMA is on the one hand having a dialogue with other regulators on this topic to facilitate convergence where possible and where meaningful in view of the specificities of the respective markets, and on the other hand is following closely the determination criteria and procedures set out in EMIR and MiFIR for the CO and the DTO.
41. This means that ESMA has finalised the draft RTS based on the technical assessment laid out in EMIR and MiFIR while taking into account the feedback from respondents and the information discussed with the other regulators. This also means that a total alignment of scope for the CO and the DTO everywhere in all jurisdictions would not make sense (for example, a class of derivatives that would be very liquid for the purpose of the DTO in one country might not be in the EU and vice versa) but in the finalisation of the scope and time of application of the changes, ESMA has taken into account this input when finalising the measures presented in the final report.
42. Lastly, there were some comments related to post trade risk reduction (PTRR) services and how these services needed to be taken into account in setting out the CO changes. As a reminder, ESMA produced a consultation paper and a final report¹⁸ on whether certain trades resulting from PTRR services could benefit from an exemption. After analysing this issue and taking into account the feedback received from a wide range of stakeholders, ESMA presented in the final report on PTRR services its view that a limited exemption regime could be introduced, provided that a number of conditions were met, with the objective to facilitate risk reduction and less complex transactions via PTRR services, while not putting at risk EMIR's and ESMA's objective to ensure a broad implementation of the clearing obligation to mitigate systemic risk. The report was provided to the European Commission who issued its own report and any changes would need to be considered in a review of EMIR, which is thus outside the scope of this final report on the benchmark transition.
43. In summary, ESMA is following in the final report the same analytical approach used for the CP to look at both the CO and the DTO at the same time and maintains a continued dialogue with the regulators from other jurisdictions as the transition is progressing. In the

¹⁸ Link: [ESMA releases Report on post trade risk reduction services \(europa.eu\)](https://www.esma.europa.eu/press-news/esma-news/esma-releases-report-on-post-trade-risk-reduction-services)

next section, the findings from the analysis and the input from market participants and regulators are taken into account to determine the changes to introduce to the CO and the DTO.

5 Clearing obligation

5.1 Legal framework

44. EMIR introduces the obligation to clear certain classes of OTC derivatives in CCPs that have been authorised (for European CCPs) or recognised (for third-country CCPs) under the EMIR framework. Ensuring that the clearing obligation reduces systemic risk requires a process of identification of classes of derivatives that should be subject to mandatory clearing.
45. EMIR foresees two possible processes for the identification of the relevant classes of OTC derivatives:
 - a. The “bottom-up” approach described in EMIR Article 5(2), according to which the determination of the classes to be subject to the clearing obligation will be done based on the classes which are already cleared by authorised or recognised CCPs.
 - b. the “top-down” approach described in EMIR Article 5(3), according to which ESMA will on its own initiative identify classes which should be subject to the clearing obligation but for which no CCP has yet received authorisation.
46. Following the first CCP (re)authorisations under EMIR, ESMA conducted the clearing obligation procedure a few times following the bottom-up approach of Article 5(2) of EMIR. This work led to the publication of several consultation papers and final reports, and eventually to the publication of 3 Commission Delegated Regulations on the clearing obligation, mandating a number of classes of OTC interest rate derivatives denominated in EUR, GBP, JPY, NOK, PLN, SEK and USD as well as classes of OTC index credit derivatives denominated in EUR to be cleared. The list of CCPs that have been authorised to clear OTC derivatives, the classes that they are authorised to clear as well as the classes subject to the clearing obligation are available in the public register published on ESMA’s website.
47. The approach followed in the CP and in the final report is based also on the bottom-up approach, i.e. on what the CCPs are authorised to clear. In accordance with the clearing obligation procedure and the Commission mandate shown in Annex I, ESMA shall develop and submit to the European Commission for endorsement draft technical standards specifying:
 - a. the class (or classes) of OTC derivatives that should be subject to the clearing obligation referred to in Article 4; and
 - b. the date or dates from which the clearing obligation takes effect, including any phase in and the categories of counterparties to which the obligation applies.
48. Furthermore, in accordance with Article 5(4) of EMIR, with the overarching aim of reducing systemic risk, the draft RTS for the part referred to in Article 5(2)(a) of EMIR (i.e. the specification of the class of OTC derivatives that should be subject to the clearing obligation) shall take into consideration the following criteria:
 - a. the degree of standardisation of the contractual terms and operational processes of the relevant class of OTC derivatives;
 - b. the volume and liquidity of the relevant class of OTC derivatives; and
 - c. the availability of fair, reliable and generally accepted pricing information in the relevant class of OTC derivatives.

49. Those criteria are then further specified in Article 7 of the RTS on OTC derivatives.

5.2 Determination for the purpose of the clearing obligation

50. The CP presented the analysis of which classes could be removed and which classes could be introduced based on the determination framework set in EMIR. There was overall support with the analysis conducted in the CP, although there were also a few comments suggesting ESMA to consider other metrics or a more granular analysis of the criteria set in EMIR without providing additional information for ESMA how to conduct this additional analysis. This section is thus essentially an update of the analysis conducted in the CP, taking into account more recent data points in EMIR TR data in particular, the responses to the consultation, the various elements influencing the progress with the transition as discussed in section 3 as well as the discussions with the regulators from other jurisdictions regarding this topic.

5.2.1 Classes proposed to be removed

51. Starting with the classes to be removed, the proposal in the CP was to remove EONIA (EUR), GBP LIBOR and JPY LIBOR classes as these benchmarks are due to cease at the end of the year. On this proposal there were no divergent views and the situation remains the same with regards to these benchmarks, therefore the proposal from the CP is maintained in the final report, such that the amending RTS in Annex is proposing to remove these classes.

52. Regarding USD, as the situation was not as clear at the time of the CP, a dedicated question was included in the CP to receive feedback from stakeholders. On the one hand, banks were arguing that the transition has advanced sufficiently to remove USD LIBOR classes whereas the other respondents were more of the view that USD LIBOR should only be removed when SOFR classes are introduced.

53. Beyond these split views, it is also true that USD LIBOR represented at the time of the CP, and still does at the time of the final report, the benchmark referenced for the largest part of the volume of OTC interest rate derivatives denominated in USD. However, it is also important to take into account what the situation is expected to be in the coming months.

54. As mentioned several times in the final report, ESMA believes it is important to be consistent for the CO with the communication made by ESMA and other EU authorities, as well as the communications made by several other authorities in other jurisdictions and at the international level who expect entities to stop referencing LIBOR (including USD LIBOR) by the end of the year. If ESMA and other regulators expectations are fulfilled, there should no longer be material liquidity in OTC interest rate derivatives referencing USD LIBOR from the start of next year. Therefore, the liquidity criteria of the EMIR procedure would no longer be met at the end of the year. Following from this, ESMA is proposing to remove the USD LIBOR classes from the clearing obligation and the RTS has been modified accordingly.

5.2.2 Classes proposed to be introduced

55. Moving now to the classes to be included, in the CP, ESMA looked at the criteria set in EMIR to determine which classes might be fit for the CO. As a reminder, the CP considered 4 classes, namely:
- €STR OIS,
 - SONIA OIS,
 - SOFR OIS, and
 - TONA OIS.
56. For these classes, given the nature of the transition, it meant that the liquidity criteria played the dominant role in determining whether one or more of these classes should be included in the scope of the CO.

5.2.2.1 Criterion 1: degree of standardisation

57. The first criterion referenced in EMIR is the degree of standardisation of the relevant class, both in terms of the contractual terms as well as the operational process. In the CP, ESMA mentioned that standard master agreements are widely used for these contracts, that the processes are widely automated enabling in particular straight through processing and electronic routing to clearing.
58. ESMA thus considered in the CP that these OIS classes do benefit from a high level of standardisation, both from a contractual terms' perspective as from an operational process perspective. No element was raised in the responses to the consultation that would put in question this assessment. As a result, ESMA is thus still of the view that the contractual terms and operational processes of the OTC interest rate derivative classes in scope of the final report (i.e. OIS referencing the new RFRs) demonstrate an appropriate level of standardisation to be considered for the clearing obligation.

5.2.2.2 Criterion 2: Liquidity

5.2.2.3 Criteria 2(a) and 2(c): Proportionate margins and market dispersion

59. First of all, provision 7(2)(a) of the RTS on OTC derivatives states that, in relation to the volume and liquidity of the relevant classes of OTC derivative contracts, ESMA shall take into consideration whether the margins or financial requirements of the CCP would be proportionate to the risk that the clearing obligation intends to mitigate. ESMA recalled in the CP that the margins and financial requirements at EU CCPs (or TC-CCPs) clearing interest rate OTC derivatives, including these classes, were reviewed as part of the CCP supervision and authorisation (or recognition) process.
60. Secondly, provision 7(2)(c) of the RTS on OTC derivatives states that, in relation to the volume and liquidity of the relevant classes of OTC derivatives, ESMA shall take into consideration the likelihood that market dispersion would remain sufficient in the event of the default of a clearing member.
61. For these two sub-criteria, ESMA expressed the view that it considered this new clearing obligation as an adaptation of the current clearing obligation, mirroring in the scope of the clearing obligation how the market is pivoting gradually from one set of products to another one. This means that there is high degree of continuity in terms of market activity, counterparties being active in OTC interest rate derivatives denominated in EUR, GBP, JPY and USD, clearing members providing clearing services, CCPs clearing these

products, etc. This also meant that the level of proportionality of margins or financial requirements of CCPs to the risk that the clearing obligation intends to mitigate should essentially remain the same, and that the degree of likelihood that market dispersion would be sufficient in the event of the default of a clearing member should also remain the same.

62. The majority of respondents did not raise any elements that would argue against this conclusion. However, a few respondents indicated that the current transition should not be misunderstood as the mere replacement of one benchmark by another. ESMA agrees that it is more fundamental and described in the CP that OIS on compounded RFRs are not the same as fixed-to-float swaps referencing a term rate.
63. What is meant is that the market is not pivoting from one benchmark to another but is pivoting from a set of products (referencing the old benchmarks due to cease) to another set of products (this set is evolving, but for the derivatives market at this stage it is primarily a mix of products referencing benchmarks that are staying such as EURIBOR, products such as OIS referencing compounded RFRs that are new or expanding, and possibly products referencing alternative rates but that have not picked up so far). Therefore, the logic remains that there is a high degree of continuity as described in the previous paragraph, and that it is thus reasonable to expect that the margins or financial requirements of CCPs would remain proportionate to the risk that the clearing obligation intends to mitigate, and that the likelihood that market dispersion would be sufficient would remain the same in the event of the default of a clearing member.

5.2.2.4 Criteria 2(b) and 2(d): Stability of the market size and depth and number and value of the transactions

64. Provision 7(2)(b) of the RTS on OTC derivatives states that, in relation to the volume and liquidity of the relevant classes of OTC derivative contracts, ESMA shall take into consideration the stability of the market size and depth in respect of the product over time.
65. Provision 7(2)(d) of the RTS on OTC derivatives states that, in relation to the volume and liquidity of the relevant classes of OTC derivatives, ESMA shall take into consideration the number and value of the transactions.
66. For this section, ESMA is cross-referring to the analysis of the transition that is presented in Section 3, and where the levels of activity in these 4 classes have been presented. The analysis conducted in Section 3 takes into account the various elements that have contributed to assess further progress with the transition since the time of the CP as well as elements that should continue to have an influence on a further increase in the level of activity in derivatives referencing these RFRs. The analysis conducted in this section also leverages on more recent data compared to the CP.

a. EUR:

Regarding €STR OIS, Figures 6, 7 and 8 still indicate a rather low level of activity, but as explained in the CP and in Section 3, there is now a fixed relation between EONIA and €STR, meaning that it can be considered as a single pool of liquidity. Furthermore, as also explained in the CP, given that EURIBOR stays (and covers the long maturities) and €STR is replacing EONIA (overnight and thus shorter maturities), the activity for €STR alone (or €STR/EONIA combined if one takes the view that this is the same liquidity pool) is more apparent on the short end of the curve, in particular up to 3 years. Lastly, the CCP legal switch related to EUR conducted mid-October now means that the

cleared volume of OIS trades is referencing €STR, such that at this stage a large part of the outstanding trades are referencing €STR.

ESMA considered in the CP that the €STR OIS class with maturities up to 3 years benefited from an appropriate level of liquidity to be considered for the clearing obligation. Respondents broadly agreed with this assessment. It should also be mentioned that some respondents indicated that in fact liquidity for longer maturities was also developing and becoming more apparent. ESMA is still of the view that the €STR OIS class with maturities up to 3 years benefits from an appropriate level of liquidity to be considered for the clearing obligation, but at the same time ESMA remains prudent for now with respect to longer maturities. ESMA will thus continue monitoring how compounded €STR evolves across the maturity range before considering longer maturities for the CO.

b. GBP:

With regards to SONIA OIS, Figures 9, 10 and 11 in Section 3 continue to showcase the trend already presented in the CP that SONIA is gradually becoming the reference index for OTC interest rate derivatives denominated in GBP. As explained in the data methodology, ESMA has used trade state TR data, and it is reasonable to expect that SONIA's leading role in the OTC interest rate derivative market denominated in GBP would be even more pronounced using a snapshot of recent activity only. SONIA OIS liquidity has developed along the entire maturity range for a while now, in fact the SONIA OIS class for short maturities has been in the scope of the CO for several years now. The graphs continue to show that there is a relatively important level of activity across the entire maturity curve and up to the 50-year tenor included.

ESMA considered in the CP that the SONIA OIS class with maturities up to 50 years benefited from an appropriate level of liquidity to be considered for the clearing obligation. Respondents to the consultation agreed with this assessment. Furthermore, it should be noted that this analysis aligns with what the UK regulator has also concluded for the GBP RFR, i.e. that the SONIA OIS classes are liquid and will replace the GBP LIBOR classes in the scope of the UK CO towards the end of the year. Taking all this into account, ESMA maintains its view on the SONIA OIS class.

c. USD:

With respect to SOFR OIS, the analysis in the CP was less conclusive on whether to include this class and for which maturity range, and thus included a dedicated question for the USD classes to ask for feedback on this topic from stakeholders. ESMA received split views on whether SOFR was fit for the clearing obligation in terms of its liquidity profile. On the one hand, mainly respondents from banks were arguing that it was too early for SOFR to be included. On the other hand, several other respondents from the other categories argued that on just the question of liquidity, SOFR was in fact liquid enough for the CO, and even possibly for a broader maturity range than initially envisaged by ESMA in the CP.

As explained in Section 3, the situation has evolved significantly for USD, in particular the SOFR First approach has had an impact on the level of activity in OIS trades referencing SOFR. Although Figures 15 to 17 indicate that SOFR

still remains a small percentage of the USD activity, this share is growing rapidly. In addition, as the USD market is a deep and large market, this level of activity in SOFR still equates to a relatively important volume in absolute terms (in Figure 1, the total notional in interest rate derivatives referencing SOFR is already important and is catching up quickly with levels of notional similar to those in interest rate derivatives referencing SONIA). When looking at liquidity per maturity buckets, Figure 17 shows that there is also some level of activity beyond the 3Y tenor but given that SOFR is growing from a smaller share of the USD market, it remains more prudent to consider only the short maturities.

In addition to the SOFR First initiative, there are other elements explained in Section 3 (no alternative rate in the USD derivatives market has taken a prominent role so far, communications from regulators for the end-of-year deadline with regards to USD LIBOR) that should all translate into even bigger volumes in SOFR OIS traded as time passes by. ESMA is thus of the view that the SOFR OIS class with maturities up to 3 years already benefit from an appropriate level of liquidity to be considered for the clearing obligation and that this level of liquidity should even increase further.

d. JPY:

Regarding TONA OIS, the figures presented in the CP indicated a rather low level of activity and the situation for JPY was at the time not so clear in terms of what benchmark might prevail when JPY LIBOR would cease. In the CP, ESMA was thus of the view that the TONA OIS class did not yet benefit from an appropriate level of liquidity to be considered for the clearing obligation. A large number of respondents agreed with this assessment. However, some pointed to more recent trends that indicated a developing liquidity for TONA OIS.

As explained in Section 3, the situation for JPY is now clearer as TONA has been chosen as the main successor rate for OTC interest rate derivatives denominated in JPY. The recent TONA First approach has also had an impact on the volume of trades referencing TONA. Figures 12 to 14 evidence this more recent and rather rapid increase in trades referencing TONA, but in the EU, for JPY this trend is starting from rather low levels. It is true that the CCP legal switch for JPY trades in December and the end-of-year cessation of JPY LIBOR should accelerate this transition in the JPY market. As a result, ESMA prefers to remain cautious at this stage and considers that the TONA OIS class does not yet benefit from an appropriate level of liquidity to be considered for the CO in the EU but will continue monitoring the situation in the short term and might reconsider this class accordingly.

67. Last but not least, the CP had shown that these classes are already voluntarily cleared in their large majority. This is still the case at the time of the final report as explained in Section 3. This is a further indication that some of these classes could be fit for the CO and that market participants have been preparing or updating their clearing arrangements as part of the benchmark transition in order to clear these classes at authorised EU CCPs or recognised TC-CCPs.

5.2.2.5 Criterion 3: availability of the pricing information

68. With regard to the third criterion in EMIR, i.e. in relation to the availability of fair, reliable and generally accepted pricing information in the relevant classes of OTC derivative

contracts, Article 7(3) of the RTS on OTC derivatives requires ESMA to take into consideration whether the information needed to accurately price the contracts within the relevant class of OTC derivative contracts is easily accessible to market participants on a reasonable commercial basis and whether it would continue to be easily accessible if the relevant class of OTC derivative contracts became subject to the clearing obligation.

69. The CP reminded stakeholders that the analysis of the level of access to reliable pricing data following these terms for OTC interest rate derivative classes in general was performed in the context of the first two RTS on the clearing obligation of OTC interest rate derivatives and that for these new classes it was reasonable to build on this prior assessment. Respondents to the consultation did not raise any material issues that would lead to a different assessment. Following from this, ESMA still considers that the OIS classes in scope in this final report benefit from an appropriate availability of fair, reliable and generally accepted pricing information.

5.3 Overview of the proposed amendments to the scope of the CO

70. In conclusion, with regards to the benchmarks that are due to cease at the end of the year or the benchmarks which have been subject to communications asking market participants to stop using them as reference rates in new contracts as soon as practicable and in any event by 31 December 2021, the classes referencing these benchmarks are being removed from the scope of the CO in the amending RTS. These relate to the classes referencing EONIA (EUR) and LIBOR (GBP, JPY and USD).
71. With regards to the new RFRs, based on the analysis described in the previous section, the classes referencing €STR (EUR) up to 3 Y, SONIA (GBP) up to 50 Y and SOFR (USD) up to 3 Y are proposed to be introduced in the scope of the CO via the amending RTS.
72. ESMA will continue monitoring the progress made with the transition and how benchmarks develop and attract liquidity. This also means that ESMA may propose to amend the scope of the CO further depending on these developments.
73. The proposed amendments to the CO that have been included in the RTS are summarised in Tables 3 to 6 below.

TABLE 2: BASIS SWAP CLASSES

Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
Basis	EURIBOR	EUR	28D-50Y	Single currency	No	Constant or Variable
Basis	LIBOR	GBP	28D-50Y	Single-currency	No	Constant or Variable
Basis	LIBOR	JPY	28D-30Y	Single-currency	No	Constant or Variable
Basis	LIBOR	USD	28D-50Y	Single-currency	No	Constant or Variable

TABLE 3: FIXED-TO-FLOAT INTEREST RATE SWAP CLASSES

Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
Fixed-Float	EURIBOR	EUR	28D-50Y	Single currency	No	Constant or Variable
Fixed-Float	LIBOR	GBP	28D-50Y	Single currency	No	Constant or Variable
Fixed-Float	LIBOR	JPY	28D-30Y	Single currency	No	Constant or Variable
Fixed-Float	LIBOR	USD	28D-50Y	Single currency	No	Constant or Variable
Fixed-Float	NIBOR	NOK	28D-10Y	Single currency	No	Constant or Variable
Fixed-Float	WIBOR	PLN	28D-10Y	Single currency	No	Constant or Variable
Fixed-Float	STIBOR	SEK	28D-15Y	Single currency	No	Constant or Variable

TABLE 4: FORWARD RATE AGREEMENT CLASSES

Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
FRA	EURIBOR	EUR	3D-3Y	Single currency	No	Constant or Variable
FRA	LIBOR	GBP	3D-3Y	Single currency	No	Constant or Variable
FRA	LIBOR	USD	3D-3Y	Single currency	No	Constant or Variable
FRA	NIBOR	NOK	3D-2Y	Single currency	No	Constant or Variable
FRA	WIBOR	PLN	3D-2Y	Single currency	No	Constant or Variable

FRA	STIBOR	SEK	3D-3Y	Single currency	No	Constant or Variable
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TABLE 5: OVERNIGHT INDEX SWAP CLASSES

Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
OIS	EONIA	EUR	7D-3Y	Single currency	No	Constant or Variable
OIS	FedFunds	USD	7D-3Y	Single currency	No	Constant or Variable
OIS	SONIA	GBP	7D-3Y	Single currency	No	Constant or Variable
OIS	€STR	EUR	7D-3Y	Single currency	No	Constant or Variable
OIS	SONIA	GBP	7D-50Y	Single currency	No	Constant or Variable
OIS	SOFR	USD	7D-3Y	Single currency	No	Constant or Variable

5.4 Proposed implementation

74. The mandate for ESMA is not only to determine which classes to remove from the CO and which classes to introduce, but also to define the implementation timelines for these changes.

5.4.1 Date of application

75. The proposal presented in the CP was to mirror the shift of liquidity happening in the market in the scope of the CO, at the time of the main deadline for this shift to be completed, i.e. at the end of the year, and more precisely to have the new scope of the CO to apply from 3 January 2022.

76. Some respondents agreed fully or partially with this approach, but most respondents had different views on the timing for the changes to the CO. There were in fact split views, with some suggesting implementing the changes earlier, while some were suggesting implementing them later.

77. Starting with the former, mainly respondents from CCPs, TVs and the buy-side argued that ESMA should anchor its changes around the dates of the CCP legal switch dates. This would mean for the change to the CO for EUR to have occurred in mid-October and for the changes to the CO for GBP and JPY to occur in December. Some of the reasons were that it would facilitate international convergence and also that it would avoid the bifurcation risk of trades being done in the uncleared bilateral market after the CCP legal switch dates.

78. ESMA is supportive of the argument to avoid a potential bifurcation to the bilateral market and this argument thus goes in favour of an implementation date that would occur sooner rather than later. However, on the choice to anchor the changes to the CO precisely on the dates chosen by private entities to coordinate a migration of parts of the derivative contracts referencing the old benchmarks (although this coordination is very helpful for the reasons discussed earlier in the report), ESMA prefers another date. ESMA prefers to use the date that has been communicated by the regulators to market participants, i.e. the date that corresponds to the time market participants have to transition all their derivative trading activity, the end of the year. ESMA sees value in being consistent in the CO with the message asking market participants to stop using any of the LIBOR settings as reference rates in new contracts as soon as practicable and in any event by 31 December 2021 (the same would go with reference to EONIA as EONIA will cease at the end of the year).
79. Moving to the latter, mainly respondents from the sell-side argued that ESMA should provide for a six-month phase-in (one respondent suggesting that a three-month phase-in might also be sufficient) to allow time for market participants to implement the necessary changes to comply with the changed CO.
80. As explained in the CP and again in the final report in the previous sections, ESMA sees this benchmark transition in the OTC interest rate derivative transition as the market pivoting from one set of classes to another set of classes within a largely cleared market. ESMA has included phase-ins in the past mainly to take into account of the fact that many counterparties did not have clearing arrangements in place for the classes, or more broadly asset classes, for which a CO was being introduced. In this case, the counterparties that have clearing arrangements to clear EONIA OIS up to 3 years should be able to adapt their existing clearing arrangements to clear €STR OIS up to 3 years.
81. Furthermore, in view of the CCP legal switch dates taking place in Q4 this year (mid-October for EUR, so already took place, and December for JPY and GBP), counterparties that have been clearing contracts referencing EONIA (EUR), GBP LIBOR or JPY LIBOR would see their contracts converted to reference the RFRs in these currencies before the end of the year, so it is reasonable to expect that they will have adapted their clearing arrangements before then.
82. Lastly, an additional phase-in would push the application start date until much later and thus would go against the call to coordinate with other jurisdictions to the extent possible, as for instance the Bank of England has scheduled the date of application of the updated CO for Q4 this year (more specifically the application of the UK CO changes is spread out over Q4 matching the dates of the respective CCP legal switch dates, so October and December depending on the currencies) .
83. Taking all of the above into account, ESMA maintains its view to anchor the shift in the scope of the CO around the end-of-year deadline, and thus for the modified CO to start applying from the first business day of 2022, i.e. 3 January.
84. However, it is true that once the draft RTS is submitted to the Commission, it is subject to the endorsement process of the Commission and it is subject to the non-objection period by the European Parliament and Council. To take this into account, the RTS aims primarily for a 3 January 2022 start date for the modified CO but the draft can also cater for the scenario where the publication would take place sometime after 3rd January (in which case the modified CO would apply only 20 days after publication). Having said that, whereas the legal obligation will strictly apply from the date the amended RTS enters into force,

ESMA is convinced of the benefits of adapting the clearing arrangements earlier for the CO, and thus would still see value in market participants preparing for a 3 January start date.

85. Lastly, there were also a few comments from respondents with respect to the question of timing for the amended CO, but this time having to do with another aspect of the CO, i.e. the UK CCPs recognition status and the ongoing exercise concerning the EU clearing strategy. In this paper we are taking into account both authorised and recognised CCPs in order to assess the capacity to support the CO, in line with the EMIR procedure, whereas in the other exercise the clearing capacity necessary for the EU is one of the inputs. This thus means that although there is some link between the two topics, they can remain two separate exercises with their separate processes and timelines.
86. However, on this topic, it is important to recall the clear communications from the Commission on the need for EU counterparties to reduce reliance on UK CCPs. Although the CO review exercise covered in this final report is different as it is about how EU counterparties would need to adapt their clearing arrangements in response to the benchmark transition, in particular when transitioning away from EONIA and onto €STR, this could also be an opportunity to continue reducing reliance on UK CCPs.

5.4.2 USD case

87. Beyond the general case just discussed, i.e. the timing for the changes to the CO with respect to the classes denominated in EUR, GBP and JPY, ESMA received additional feedback regarding the timing for USD classes.
88. Broadly speaking, the views were split as well on the timing for removing USD LIBOR classes and on when to introduce SOFR classes (not just on whether SOFR would be fit for the CO which was discussed earlier in this section).
89. On the one hand, some respondents from the sell-side were of the view that the USD market had transitioned sufficiently to remove USD LIBOR now, but for SOFR, despite the comments on whether it was liquid enough, these respondents indicated that in any case this should be coordinated with the CFTC as the regulator for the domestic market for where the majority of these classes are traded.
90. On the other hand, some respondents from the other categories of respondents were of the view that USD LIBOR should be removed only when SOFR was being introduced. Despite the respective comments on whether SOFR was liquid enough for the CO, some of these respondents also indicated that coordination with the other regulators was important.
91. Regarding the timing for removing USD LIBOR, as per the other sections of the final report, ESMA believes there is value in being consistent for the CO with the communication whereby market participants are expected to stop using any of the LIBOR settings, including USD LIBOR, as reference rates in new contracts as soon as practicable and in any event by 31 December 2021. In line with section 5.2, this means that ESMA does not expect material activity and thus liquidity past the end of the year for USD LIBOR trading activity. If there is no longer material liquidity, then this means that the criteria of the CO would no longer be met as a result at that point. In other words, this means that these classes should also be removed from the CO at that time when the liquidity is expected to drop, i.e. for the removal of these classes to also be effective on 3 January 2022 as for the other currencies discussed in the previous section.

92. Regarding the timing for introducing SOFR, the situation is a bit different. As explained in section 5.2, there is sufficient liquidity to consider SOFR for the CO. It is already considered as a reliable and liquid enough rate, and furthermore it is expected to continue developing and become the lead successor rate to USD LIBOR in the OTC interest rate derivative market. However, as indicated in section 4, we have continued the dialogue with the regulators from the other jurisdictions who have not yet indicated whether and when they may introduce SOFR classes to their COs. ESMA is taking this element into account in defining the timing for the implementation relative to SOFR classes. At the end of the day, the approach set in EMIR, once the analysis concludes that a class is fit for the obligation, then ESMA has to take into account all the other elements to define the timing of the implementation, and in this case the phase-in.
93. As no CCP legal switch date has been coordinated and set yet by CCPs (for converting the backlog of legacy contracts referencing USD LIBOR into contracts referencing SOFR) and because it is not yet known if, and probably when, other jurisdictions would mandate SOFR in their CO, market participants are less advanced in their preparations for trading and clearing their OTC interest rate derivatives denominated in USD with a switch of a good portion of these to reference SOFR.
94. ESMA is thus providing in the draft RTS a phase-in of three additional months to counterparties that have had clearing arrangements in place for clearing USD LIBOR classes but need some extra time to adapt them to clear the new scope of the CO.
95. Counterparties with an international activity are in a similar position today as they were several years ago. The roll-out of the various clearing mandates were not precisely synchronised as jurisdictions had their respective processes and mandates to respect, but over time they largely converged. Taking all this into account, ESMA has thus introduced a three-month phase-in in the draft RTS for when the CO would start to apply to SOFR classes.
96. Given the strong link between the CO and the DTO in the Regulation and in market practices, the changes to the CO that have been discussed in this section would also have knock-on effects on the DTO. The DTO aspects are covered in detail in the next section.

6 Derivative trading obligation

6.1 Legal Framework

97. Article 28 of MiFIR introduces a DTO established in accordance with the procedure set out in Article 32 of MiFIR and further specified in Commission Delegated Regulation (EU) 2016/2020 of 26 May 2016¹⁹ (RTS 4).
98. Article 32 of MiFIR outlines the procedure for establishing which derivatives should be declared subject to mandatory trading on trading venues. According to Article 32(1) of MiFIR once a class of derivatives has been made subject to the CO under EMIR, ESMA shall draft RTS specifying which derivatives (or a subset of them) should be subject to the DTO.
99. Article 32(2) of MiFIR specifies that the following two factors have to be met when determining whether a class of derivatives subject to the CO should also be made subject to the DTO:
- The venue test: the class of derivatives must be admitted to trading or traded on at least one admissible trading venue; and
 - The liquidity test: whether there is sufficient third party buying and selling interests in the class of derivatives so that a class of derivatives is ‘sufficiently liquid’ for the purpose of the DTO.
100. Article 32(3) of MiFIR lists a set of criteria for determining whether a class of derivatives or a relevant subset thereof is sufficiently liquid, and in particular: (i) the average frequency and size of trades, (ii) the number and type of active market participants, and (iii) the average size of spreads.
101. As mandated under Article 32(6) of MiFIR, RTS 4 further specifies the criteria for determining whether there is sufficient third-party buying and selling interests in a class of derivatives (or a subset) so that such a class of derivatives (or subset) is considered “sufficiently liquid” to trade on trading venues only.
102. Under Article 32(1) of MiFIR, every time a class of derivatives (or subset) is declared subject to the CO under EMIR, ESMA has 6 months to prepare, consult on, and present to the Commission a draft RTS specifying which derivatives should also be made subject to the DTO and as of which date.
103. Commission Delegated Regulation 2017/2417 (DTO RTS)²⁰ specifies the classes of derivatives subject to the DTO as well as the dates from which the DTO takes effect.
104. According to the current DTO RTS, fixed-to-float interest rate swaps (IRS) denominated in EUR, USD and GBP in certain benchmark contracts and as specified in the Annex of

¹⁹ Commission Delegated Regulation (EU) 2016/2020 of 26 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation, OJ L 313, 19.11.2016, p. 2.

²⁰ Commission Delegated Regulation (EU) 2017/2417 of 17 November 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the trading obligation for certain derivatives, OJ L 343, 22.12.2017, p. 48.

the DTO RTS, are subject to the DTO. Furthermore, two classes of index credit default swaps (CDS) as specified in the Annex of the DTO RTS are subject to the DTO.

6.2 Determination for the purpose of the derivative trading obligation

105. In the CP, ESMA made a couple of proposals in relation to the DTO, taking into account the proposals made for the CO. This included the proposal to remove fixed-to-float IRS referencing GBP LIBOR from both the CO and the DTO. ESMA also recommended to not include in the scope of the DTO at this point in time the OIS referencing the RFRs, i.e. €STR, SONIA, SOFR. ESMA did not yet make any proposals in the CP as regards the USD LIBOR and USD SOFR classes, and rather asked stakeholders for feedback on this aspect. It was noted that any proposals in relation to the scope of the DTO would depend on the changes made for the CO.

6.2.1 Feedback received

106. In relation to the approach concerning the OIS referencing €STR, SONIA and SOFR, i.e. to not include these contracts to the DTO at this point in time, a slight majority of respondents, representing the banking sector/sell-side, were supportive. Most note that there are low volumes of trades at the moment in these contracts, which does not warrant bringing these under the scope of the DTO. Some respondents noted that while liquidity in OIS referencing in particular €STR and SOFR may currently not be sufficient, ESMA should keep monitoring this activity. Two respondents from the banking sector suggested adding OIS referencing SONIA to the scope of the DTO to have a consistent approach taken across the UK and the EU.

107. Respondents representing other sectors, in particular trading venues, CCPs and the buy-side, argued for a broader scope of the DTO. Most argued for OIS referencing SONIA and €STR to be included to the DTO and some recommended adding OIS on SOFR to the scope of the DTO. Respondents supporting a broader scope considered that the market has effectively transitioned to SONIA and that OIS referencing SONIA are sufficiently liquid. Concerning €STR and SOFR respondents considered that OIS referencing those benchmarks are already sufficiently liquid or are expected to become sufficiently liquid in the coming months. Lastly, it was raised that a broader scope of the DTO would contribute to moving more trading to regulated markets, MTFs and OTFs, that OIS contracts are more standardised than IRS referencing EURIBOR/LIBOR and that the DTO has positive impacts on market functioning and market stability.

108. Some respondents recommended to perform the assessment based on daily trading activity and/or to take the other criteria for determining derivatives subject to the DTO in Article 32(3) of MiFIR into account.

109. Many respondents, regardless of whether they were in favour of the approach or not, stressed the need for international alignment on derivatives subject to the DTO.

110. In relation to the question on USD LIBOR, the majority of respondents considered that IRS referencing USD LIBOR should continue to be subject to the DTO. Those respondents considered that there remains sufficient liquidity and high levels of trading activity for these contracts and that in consequence the criteria for being subject to the DTO continue to be

met. Many respondents suggested that the DTO for IRS referencing USD LIBOR should only be removed once it is replaced by a DTO for OIS referencing SOFR.

111. Other respondents, mainly from the banking sector/sell side, did not agree with keeping IRS referencing USD LIBOR subject to the DTO since liquidity is expected to drop by the end of 2021.

6.2.2 The venue test

112. For the OIS referencing €STR, SONIA and SOFR an assessment was carried out as to whether these should be made subject to the DTO. This assessment is carried out in the following subsections, starting with the venue test before looking at the liquidity of such contracts for the purpose of the DTO.

113. Article 32(2)(a) of MiFIR requires that in order for the DTO to take effect the class of derivatives subject to the CO must be admitted to trading or traded on at least one trading venue as referred to in Article 28(1) of MiFIR, i.e. a regulated market, MTF, OTF or a third-country trading venue following an equivalence decision of the Commission.

114. When developing the first RTS on the DTO back in 2017, ESMA decided to include for this assessment only EU trading venues and not to apply the venue test for non-EU trading venues. However, at the time when carrying out the first assessment, no equivalence decisions on eligible third country trading venues had been made. Since EU market participants can also meet the DTO by trading on third-country trading venues, this assessment should therefore also consider third-country trading venues.

115. The assessment that was described in the CP looked at reference data submitted by EU trading venues to ESMA's Financial Instruments Reference Data System (FIRDS) and concluded that the venue test for OIS referencing €STR, SONIA and SOFR was met. This continues to be the case, as currently a wide variety of OIS referencing €STR, SONIA and SOFR are made available for trading on MTFs and OTFs, covering a wide range of maturities.

116. ESMA has not received any indications that the list of EU trading venues offering trading of derivatives referencing the new RFRs, as depicted in the CP, would be incorrect. No stakeholder in the consultation disagreed with the assessment of the venue test. Hence ESMA considers this criterion to still be met.

6.2.3 Updated liquidity test

117. ESMA has also assessed whether the OIS referencing €STR, SONIA and SOFR are 'sufficiently liquid' for the DTO to take effect. For this Final Report, ESMA has updated the figures that were used for the CP. Most of these results are based upon EMIR TR data. ESMA considered an update of the figures necessary, as the transition to the RFRs is nearing its completion and the latest picture as to trading activity in contracts referencing €STR, SONIA and SOFR can be presented.

118. As was previously the case for the CP, ESMA opted again for a holistic assessment of the liquidity in the €STR, SONIA, SOFR classes.²¹ Some stakeholders recommended to

²¹ It should be noted that the data displayed in the figures in this section cover trading activity in any IRS referencing to €STR, SONIA or SOFR. The bulk of the trading activity consists of OIS or basis swaps.

perform the assessment based on daily trading activity and/or to take the other criteria for determining derivatives subject to the DTO in Article 32(3) of MiFIR into account.

119. However, as this is not an assessment of a new DTO, but rather about accompanying the benchmark transition, ESMA is not looking in detail at every single criterion mentioned in Article 32(3) of MiFIR. ESMA has approached this exercise rather by looking at how trading activity is pivoting from certain classes to other classes.

120. It should be noted that while continuously improving, EMIR data is still prone to data issues, especially with respect to the reporting of newly created benchmarks, which is currently done in a very heterogeneous way. Potentially records are not identified as referring to RFR if they are reported wrongly or inaccurately. This is more likely to happen in less liquid instruments or with instruments that have a lower notional. Also, currently there are no obligations to report all MTF and OTF transactions using the venue MIC, which might also result in underestimating the share of instruments traded on venue.

121. In terms of comparison to the CP data, it should be noted that some of the trading activity that was categorised as “MiFID MTF” and “MiFID OTF” in the CP was ex post identified to include UK venues. In a similar vein, an issue was found in the data analysis in relation to volumes on EU venues. Taking into account these reclassifications, a more accurate picture is provided in the Figures 18, 21 and 22, also retroactively for those months already included in the CP (November 2020, January 2021).

122. In the figures used below (those based on EMIR data), OTC refers to at least one EEA counterparties executing a transaction OTC. MTF means that the EEA counterparty is executing a transaction on a MiFID MTF. Similarly, OTF means that the EEA counterparty is executing a transaction on a MiFID OTF. UK means that the EEA counterparty is executing a transaction on a UK venue and TC refers to the EEA counterparty executing a transaction on a third-country venue.

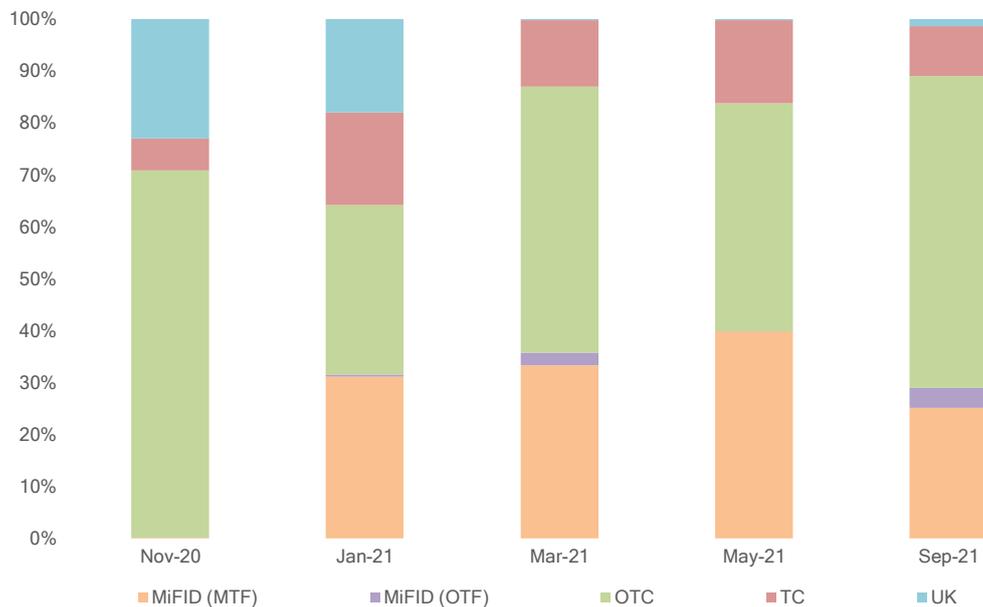
6.2.3.1 EUR

123. Similar to the figures from the CP, and as also highlighted in section 3.2.2.2, the bulk of trading activity in EUR denominated IRS remains concentrated in contracts referencing EURIBOR, followed by EONIA. Currently only very little trading volume is executed, both by EEA counterparties and globally, in contracts referencing €STR (see Figures 6 and 7). Contracts referencing €STR are available throughout a broad range of maturities. While most trading activity concentrates in short maturities (0-2 year), trading activity in maturities up to 50 years can be observed (see Figure 8).

124. When looking at the execution venue of €STR contracts based on EMIR trade state data reported by EEA counterparties covering the reference period November 2020 to September 2021 (Figure 18), it can be observed that between 30% to 60% of the gross monthly flows was executed OTC. Overall, there is a large fluctuation of execution venues from one month to the other.

125. Activity in IRS referencing €STR on EU trading venues was identified to be around 25% to 40%, depending on the month. The trading activity on EU venues has increased from November 2020 to May 2021, with a small decrease in September 2021 in favour of OTC trading. While increased activity is taking place on EU venues, overall activity in €STR compared to EONIA and EURIBOR is still very low, as mentioned above.

FIGURE 18: €STR – GROSS MONTHLY FLOWS FOR SELECTED MONTHS IN THE PERIOD NOV '20 TO SEP '21



Note: Gross notional monthly volumes of IRS' referencing the Benchmark on at least one of the two legs. Flows constructed using weekly notional amounts outstanding (Trade State files) and selecting for each week only transactions executed within this week. in %.

126. Activity in OIS referencing €STR on third-country trading venues is not very high. In September 2021 cumulative activity on UK and third-country venues amounted to approximately 10%. The trading activity on SEFs for contracts referencing €STR remains very low. Figure 19 below shows the updated trading activity on US SEFs for IRS referencing RFRs based on the new reference period 1 January 2021 to 30 September 2021 split by type of trading activity, i.e. dealer-to-client (D2C) and dealer-to-dealer (D2D).

FIGURE 19 TRADING ACTIVITY ON US SEFs IN IRS REFERENCING RFRs BY CURRENCY AND TYPE OF ACTIVITY

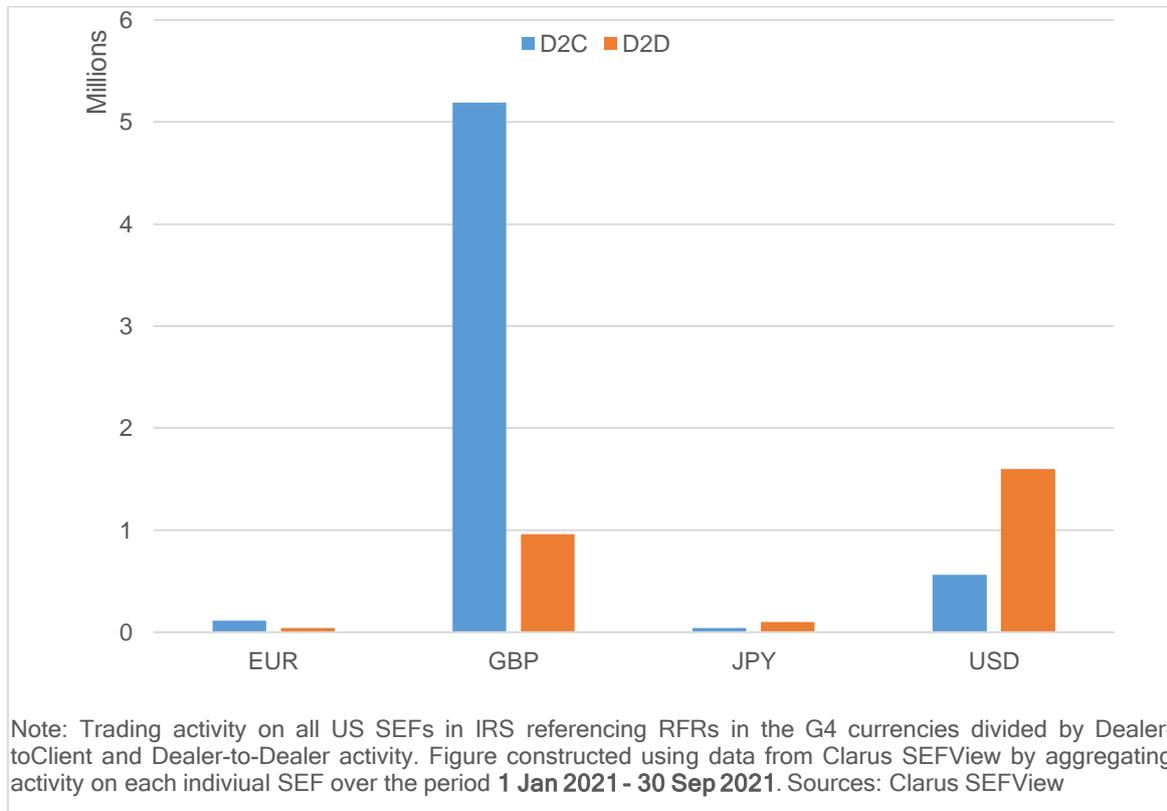
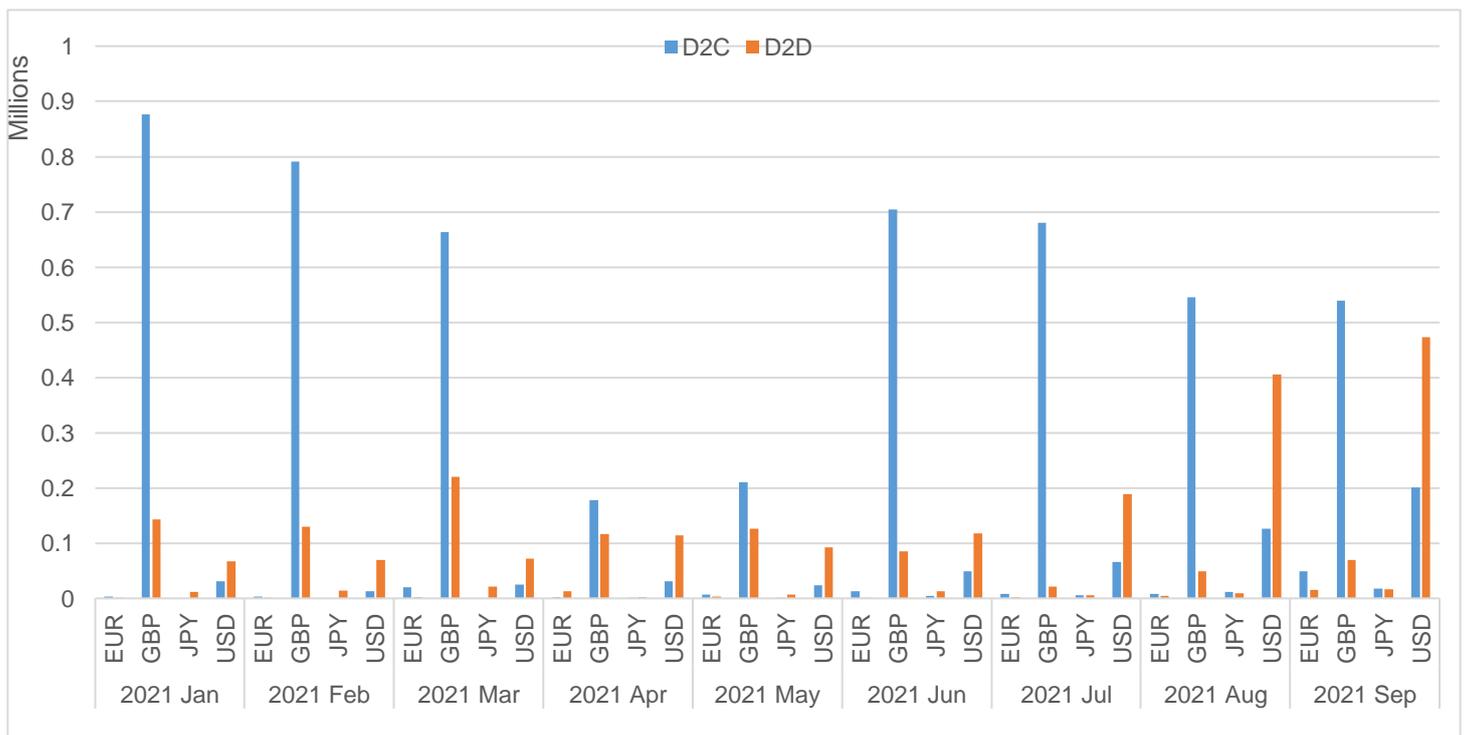


FIGURE 20 D2C/D2D ACTIVITY PER MONTH OVER THE G4 CURRENCIES



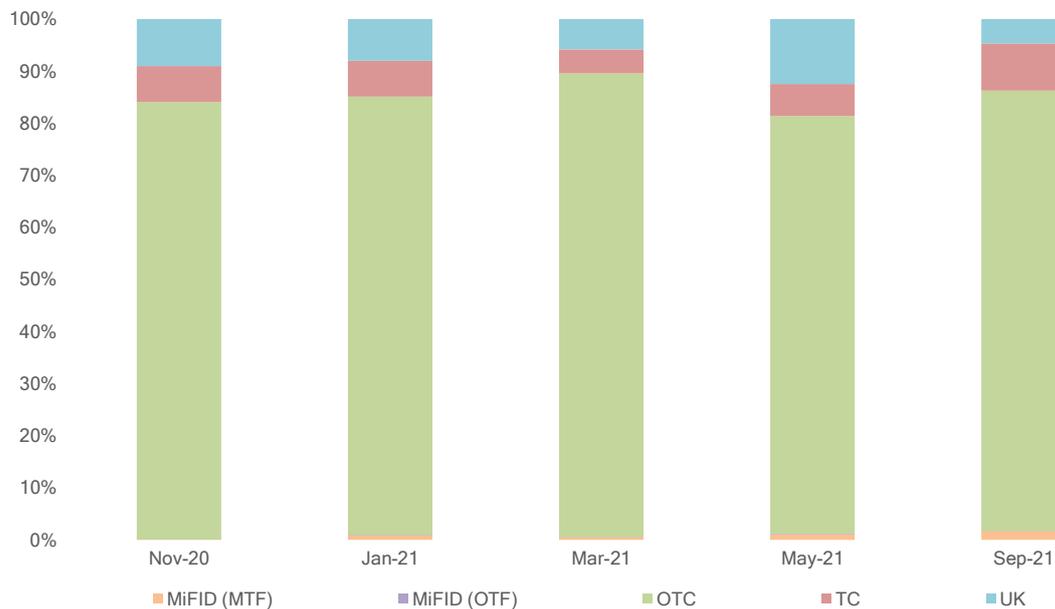
Note: Trading activity on all US SEFs in IRS referencing RFRs in the G4 currencies divided by Dealer-to-Client and Dealer-to-Dealer activity. Figure constructed using data from Clarus SEFView by aggregating activity on each individual SEF over the period 1 Jan 2021 - 30 Sep 2021. Sources: Clarus SEFView

127. In the CP, ESMA concluded that it would not recommend introducing the DTO to OIS referencing €STR, considering the low level of liquidity for contracts referencing €STR and considering that currently no DTO is in force for EONIA contracts. While a majority of respondents agreed with this approach, some respondents argued for a broader scope of the DTO, in particular covering also OIS referencing €STR (and SONIA). These respondents considered that OIS referencing €STR are already sufficiently liquid or are expected to become sufficiently liquid in the coming months.
128. Based on the newest figures in this Final Report, ESMA would however conclude that the overall level of liquidity for OIS referencing €STR is currently too low to introduce the DTO to these contracts. Nonetheless, ESMA expects that certain milestones may further enhance liquidity in OIS referencing €STR, such as the CCP transition from EONIA to €STR that occurred in mid-October and the €STR First Initiative, which recommends that interdealer brokers change RFR swap trading conventions from EONIA to €STR from that same date. ESMA therefore intends to reassess the liquidity of OIS referencing €STR for the purpose of the DTO in the short to medium-term.

6.2.3.2 GBP

129. As mentioned in the CP, the transition to RFRs is most advanced for SONIA with already a large share of the trading volume in GBP LIBOR having migrated to SONIA. While trading is concentrated in short-term maturities, activity in longer maturities is quickly developing and there is significant trading activity across the curve.
130. Trading activity for IRS referencing SONIA sees a significant share of the trading activity being executed OTC, with OTC gross monthly flow for each month fluctuating between 80% to 85% over the period November 2020 to September 2021 (see Figure 21).
131. Only very marginal activity in IRS referencing SONIA on EU trading venues was identified.

FIGURE 21 SONIA - GROSS MONTHLY FLOWS FOR SELECTED MONTHS IN THE PERIOD NOV '20 TO SEP '21



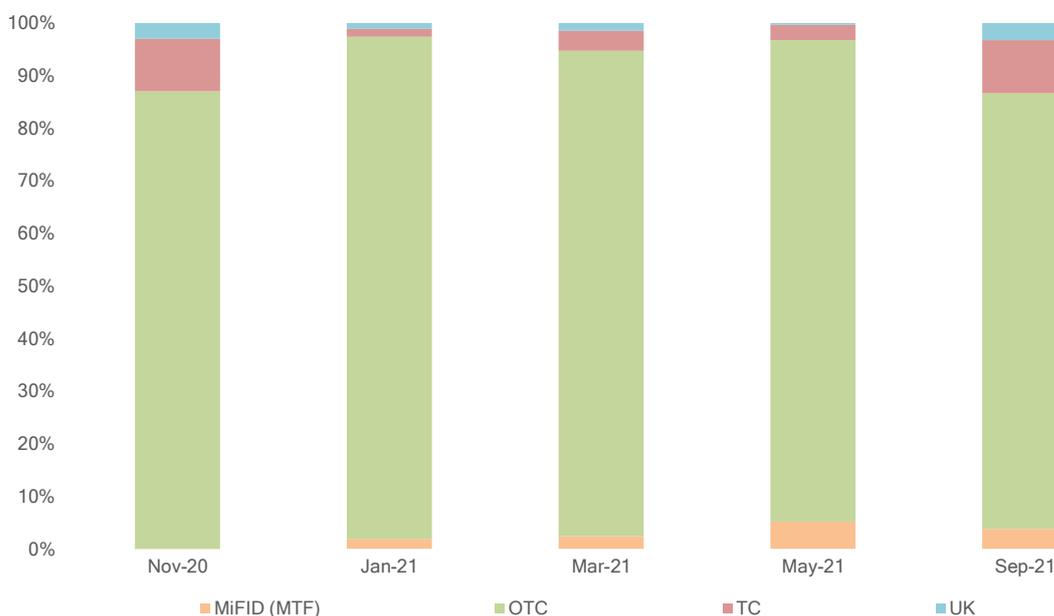
Note: Gross notional monthly volumes of IRS' referencing the Benchmark on at least one of the two legs. Flows constructed using weekly notional amounts outstanding (Trade State files) and selecting for each week only transactions executed within this week. in %.

132. Limited trading executed on third-country trading venues with no significant uptake could be observed over the past months based on EMIR data. Figures 19 and 20 provide more clarity on SEF trading. Figure 19 shows that there has been some trading activity in contracts referencing SONIA on US SEFs, in particular for D2C trading. However, Figure 20 shows that both D2C and D2D activity in fact (with some fluctuation per month) have been decreasing over the last couple of months since January 2021.
133. In the CP, ESMA concluded that the liquidity in SONIA contracts traded on venue is split between third-country equivalent venues such as US SEFs and third-country non-equivalent venues (in particular the UK). Given that there was only marginal liquidity in OIS referencing SONIA on EU trading venues, ESMA did not recommend including OIS referencing SONIA in the scope of the DTO.
134. While a majority of stakeholders agreed with this approach, some argued for a broader scope of the DTO, in particular covering also OIS referencing SONIA (and €STR). Respondents supporting a broader scope considered that the market has effectively transitioned to SONIA and that OIS referencing SONIA are sufficiently liquid.
135. However, based on the above new figures, ESMA would conclude that the level of liquidity on EU trading venues and third-country equivalent venues such as US SEFs for OIS referencing SONIA is currently too low (even decreasing for SEFs) to introduce the DTO to these contracts.

6.2.3.3 USD

136. The transition from USD LIBOR to SOFR is significantly less advanced compared to SONIA. While trading activity has been increasing over the last months and it can also be observed that trading picks up in longer maturities, trading activity in OIS referencing SOFR remains marginal compared to the remaining trading activity in USD LIBOR (see section **USD**3.2.2.5).
137. When looking at the execution venues used by EEA counterparties based on EMIR data (see **Error! Reference source not found.**2), it can be observed that the vast majority of the gross monthly flows has been executed OTC over the period observed. Based on EMIR data, some limited trading activity could be observed on EU trading venues, third-country trading venues and UK venues. The liquidity in OIS referencing SOFR traded on venue is split between these three categories.
138. When looking in more detail at the trading activity on US SEFs in particular, some liquidity, largely D2D activity, can be observed (see **Error! Reference source not found.**). There is a trend of increasing SOFR activity on SEFs, for both D2D and D2C activity (see Figure 20).

FIGURE 22 SOFR - GROSS MONTHLY FLOWS FOR SELECTED MONTHS IN THE PERIOD NOV '20 TO SEP '21



Note: Gross notional monthly volumes of IRS' referencing the Benchmark on at least one of the two legs. Flows constructed using weekly notional amounts outstanding (Trade State files) and selecting for each week only transactions executed within this week. in %.

139. In the CP, ESMA concluded that there is only marginal liquidity in OIS referencing SOFR, and that ESMA would consider it premature to include OIS referencing SOFR in the scope of the DTO. A majority of stakeholders responding to the CP agreed, although a few considered that OIS referencing SOFR are already sufficiently liquid or are expected to become sufficiently liquid in the coming months.
140. However, based on the newest figures in this Final Report, ESMA would conclude that the level of liquidity on EU trading venues and equivalent third-country venues such as US SEFs for OIS referencing SOFR is currently too low to introduce the DTO to these contracts.
141. Finally, concerning USD LIBOR, Figures 15 and 16 in section 3.2.2. indicate the activity in USD LIBOR contracts (vs SOFR). According to the latest figures, trading in USD LIBOR is not yet decreasing. The majority of stakeholders considered that IRS referencing USD LIBOR should continue to be subject to the DTO due to sufficient liquidity and high levels of trading activity for these contracts. Many respondents suggested that the DTO for IRS referencing USD LIBOR should only be removed once it is replaced by a DTO for OIS referencing SOFR. Other respondents did not agree with keeping IRS referencing USD LIBOR subject to the DTO since liquidity is expected to drop by the end of 2021.
142. ESMA agrees on the latter point, and notes that, at the latest by 31 December 2021, EU market participants are expected to no longer enter into OTC interest rate derivatives referencing USD LIBOR, which means that there should be a decrease towards the end of the year and that there should not be any material liquidity in derivatives referencing USD LIBOR beginning of 2022. As noted in section 5, ESMA decided that several USD LIBOR classes should be removed from the CO, including fixed-to-float IRS referencing

USD LIBOR. Therefore, given that for those reasons ESMA is proposing to remove the CO for USD LIBOR, the precondition in Article 32(1) of MiFIR for making derivatives subject to the DTO is no longer met. The DTO would consequently no longer apply to these contracts.

6.3 Overview of the proposed amendments to the scope of the derivative trading obligation

143. ESMA confirms its approach to follow the approach for OIS referencing €STR, SONIA and SOFR as outlined in the CP.

144. In relation to GBP LIBOR, ESMA would maintain its approach to remove from the DTO the fixed-to-float IRS referencing GBP LIBOR. This is in line with the approach as described in section 5, as the scope of the CO will be amended and fixed-to-float IRS referencing GBP LIBOR removed from the scope of the CO. In consequence, the precondition in Article 32(1) of MiFIR for making derivatives subject to the DTO, i.e. the class of derivatives is subject to the CO, is no longer met and the DTO can no longer apply to these contracts. This approach is also in line with what UK authorities are doing. The FCA is removing derivatives referencing GBP LIBOR under the current DTO (the FCA is however replacing them with OIS referencing SONIA).²²

145. As mentioned above, ESMA would additionally remove from the DTO the fixed-to-float IRS referencing USD LIBOR.

146. Table 6 below presents an overview of the final proposals for changes to the DTO.

TABLE 6: FIXED-TO-FLOAT SINGLE CURRENCY IRS SUBJECT TO THE DTO²³

Type	Settlement Currency	Reference Index	Trade Start Type	Optionality	Tenor	Notional Type
Fixed-Float	EUR	EURIBOR 6M	Spot (T+2)	No	2 to 10, 12, 15, 20, 30y	Constant
Fixed-Float	EUR	EURIBOR 3M	Spot (T+2)	No	2 to 7, 10, 15, 20, 30y	Constant
Fixed-Float	USD	LIBOR 3M	Spot (T+2)	No	2 to 7, 10, 12, 15, 20, 30y	Constant
Fixed-Float	USD	LIBOR 3M	IMM (next 2 IMM dates)	No	2 to 7, 10, 12, 15, 20, 30y	Constant

²² <https://www.fca.org.uk/publication/policy/ps21-13.pdf>

²³ The table only covers a subset of the specifications of fixed-to-float single currency interest rate swaps subject to the DTO.

Fixed- Float	USD	LIBOR 6M	Spot (T+2)	No	2 to 7, 10, 12, 15, 20, 30y	Constant
Fixed- Float	USD	LIBOR 6M	IMM (next 2 IMM dates)	No	2 to 7, 10, 12, 15, 20, 30y	Constant
Fixed- Float	GBP	LIBOR 6M	Spot (T+0)	No	2 to 7, 10, 15, 20, 30y	Constant
Fixed- Float	GBP	LIBOR 3M	Spot (T+0)	No	2 to 7, 10, 15, 20, 30y	Constant

147. As explained earlier in the CP as well as in this Final Report, ESMA will continue to monitor the progress with the transition to RFRs, and how the trading and the liquidity in these new benchmarks develop. ESMA will in particular keep an eye on how certain milestones may further enhance liquidity in OIS referencing €STR, such as the CCP transition from EONIA to €STR that occurred in mid-October and the €STR First Initiative.

148. As many respondents to the CP stressed the need for international alignment on derivatives subject to the DTO, ESMA would reiterate its approach as mentioned in section 4, i.e. that ESMA has been in regular contact with the Bank of England, the FCA, JFSA and the CFTC and that it has taken into account the discussions with these regulators for its proposed changes to the scope of the CO and DTO. Where relevant, ESMA will continue this engagement.

149. Concerning the implementation of these changes, ESMA recommends following the same approach as suggested for the CO. This would mean entry into force of the amended DTO requirements on 3 January 2022, the date as of which (amongst others) the GBP LIBOR benchmarks can no longer be referenced and as of which counterparties are expected to no longer enter into OTC interest rate derivatives referencing USD LIBOR.

150. This would require a quick adoption and non-objection process for the Delegated Regulation based on the draft RTS submitted by ESMA, a process which is not under ESMA's control.

151. The draft RTS in Annex II reflect the above proposed amendments to the Commission Delegated Regulation on the DTO.

7 Way forward

153. With this final report, ESMA is submitting the draft RTS to the Commission for endorsement in the form of a Delegated Regulation. Following a non-objection review by the European Parliament and Council they would only enter into force after publication. ESMA's proposal would be for the changes to apply from 3 January 2022 (or 20 days after publication, whichever is the latest).
154. ESMA is mindful that the approval process can take some time although it would see benefits in a quick process to accompany the actual benchmark transition milestones taking place shortly but as well to facilitate coordination and convergence with regards to the changes introduced by authorities in other jurisdictions to the scopes of their mandatory and trading obligations. The same applies with regards to counterparties own preparations to the benchmark transitions and the related upcoming changes to the CO and DTO.
155. Beyond the changes presented in the final report, ESMA will continue to monitor the benchmark transition in the OTC interest rate derivative market and may thus need to review the scope of the CO and/or the DTO depending on how the liquidity evolves across the various rates referenced in OTC interest rate derivatives being traded and cleared.

8 Annexes

8.1 Annex I - Commission mandates to develop technical standards

8.1.1 Clearing obligation

Article 5(2) of Regulation (EU) No 648/2012

Clearing obligation procedure

2. Within six months of receiving notification in accordance with paragraph 1 [of Article 5] or accomplishing a procedure for recognition set out in Article 25, ESMA shall, after conducting a public consultation and after consulting the ESRB and, where appropriate, the competent authorities of third countries, develop and submit to the Commission for endorsement draft regulatory technical standards specifying the following:

- (a) the class of OTC derivatives that should be subject to the clearing obligation referred to in Article 4;
- (b) the date or dates from which the clearing obligation takes effect, including any phase in and the categories of counterparties to which the obligation applies.

Power is delegated to the Commission to adopt regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In the developing of the draft regulatory technical standards under this paragraph ESMA shall not prejudice the transitional provision relating to C6 energy derivative contracts as laid down in Article 95 of Directive 2014/65/EU.

8.1.2 Derivative trading obligation

Article 32 of Regulation (EU) No 600/2014

Derivative trading obligation

1. ESMA shall develop draft regulatory technical standards to specify the following:

(a) Which of the class of derivatives declared subject to the clearing obligation in accordance with Article 5(2) and (4) of Regulation (EU) No 648/2012 or a relevant subset thereof shall be traded on the venues referred to in Article 28(1) of this Regulation;

(b) The date or dates from which the trading obligation takes effect, including any phase-in and the categories of counterparties to which the obligation applies where such phase-in and such categories of counterparties have been provided for in regulatory technical standards in accordance with Article 5(2)(b) of Regulation (EU) No 648/2012.

ESMA shall submit those draft regulatory technical standards to the Commission within six months after the adoption of the regulatory technical standards in accordance with Article 5(2) Regulation (EU) No 648/2012 by the Commission.

Before submitting the draft regulatory technical standards to the Commission for adoption, ESMA shall conduct a public consultation and, where appropriate, may consult third-country competent authorities.

2. In order for the trading obligation to take effect:

(a) The class of derivatives pursuant to paragraph 1(a) or a relevant subset thereof must be admitted to trading or traded on at least one trading venue as referred to in Article 28(1); and

(b) There must be sufficient third-party buying and selling interest in the class of derivatives or a relevant subset thereof so that such a class of derivatives is considered sufficiently liquid to trade only on the venues referred to in Article 28(1).

3. In developing the draft regulatory technical standards referred to paragraph 1, ESMA shall consider the class of derivatives or a relevant subset thereof as sufficiently liquid pursuant to the following criteria:

(a) The average frequency and size of trades over a range of market conditions, having regard to the nature and lifecycle of products within the class of derivatives;

(b) The number and type of active market participants including the ratio of market participants to products/contracts traded in a given product market;

(c) The average of the size of the spreads.

In preparing those draft regulatory technical standards, ESMA shall take into consideration the anticipated impact that trading obligation might have on the liquidity of a class of derivatives or a relevant subset thereof and the commercial activities of end users which are not financial entities.

ESMA shall determine whether the class of derivatives or relevant subset is only sufficiently liquid in transactions below a certain size.

4. ESMA shall, on its own initiative, in accordance with the criteria set out in paragraph 2 and after conducting a public consultation, identify and notify to the Commission the classes of derivatives or individual derivative contracts that should be subject to the obligation to trade on the venues referred to in Article 28(1), but for which no CCP has yet received authorisation under Article 14 or 15 of Regulation (EU) No 648/2012 or which is not admitted to trading or traded on a trading venue referred to in Article 28(1).

Following the notification by ESMA referred to in the first subparagraph, the Commission may publish a call for development of proposals for the trading of those derivatives on the venues referred to in Article 28(1).

5. ESMA shall in accordance with paragraph 1, submit to the Commission draft regulatory technical standards to amend, suspend or revoke existing regulatory technical standards whenever there is a



material change in the criteria set out in paragraph 2. Before doing so, ESMA may, where appropriate, consult the competent authorities of third countries.

8.2 Annex II - Draft technical standards

8.2.1 Clearing obligation

COMMISSION DELEGATED REGULATION (EU) .../..

amending Delegated Regulation (EU) 2015/2205 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation, to account for the transition to new benchmarks referenced in certain OTC derivative contracts

of []

(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 ⁽²⁴⁾, and in particular Article 5(2) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2015/2205 ⁽²⁵⁾ specifies, among others, the classes of over-the-counter (OTC) interest rate derivatives denominated in Euro (EUR), Pound Sterling (GBP), Japanese Yen (JPY) and US Dollar (USD) that are subject to the clearing obligation. These classes include one class denominated in EUR that references EONIA as well as several classes denominated in GBP, JPY or USD that reference LIBOR, whereas EONIA and LIBOR are two benchmarks that are due to cease
- (2) The European Money Markets Institute, the administrator for EONIA, communicated that the cessation of EONIA will take place at the end of 2021. Similarly, the ICE Benchmark Administrator, the administrator for LIBOR, communicated that the cessation of GBP LIBOR, JPY LIBOR and certain fixings of USD LIBOR will also take place at the end of 2021, whereas the publication of all remaining settings of USD LIBOR will cease in June 2023. On 5 March 2021, the Financial Conduct Authority from the United Kingdom confirmed that all LIBOR settings will indeed either cease to be provided by any administrator or no longer be representative. In addition, the European Commission, the European Central Bank in its banking supervisory capacity (ECB Banking Supervision), the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) issued a joint statement to strongly encourage counterparties to stop using any of the LIBOR settings, including USD LIBOR, as a reference rate in new contracts as soon as practicable and in any event by 31 December 2021.
- (3) From 3 January 2022, counterparties will hence no longer be able to enter into OTC interest rate derivatives referencing EONIA, GBP LIBOR or JPY LIBOR as these benchmarks will have ceased

²⁴ OJ L 201, 27.7.2012, p. 1.

²⁵ Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 314, 1.12.2015, p. 13).

or are expected to no longer enter into OTC interest rate derivatives referencing USD LIBOR. On that date, this means that there will thus be no volume nor liquidity in derivatives referencing EONIA, GBP LIBOR or JPY LIBOR and that these trades will also not be cleared by central counterparties (CCPs). On that same date, this also means that there should not be any material liquidity in derivatives referencing USD LIBOR. Therefore, the classes of derivatives currently in scope of the clearing obligation and that are referencing EONIA, GBP LIBOR or JPY LIBOR will no longer meet two of the conditions to be subject to the clearing obligation set out in Regulation (EU) No 648/2012, i.e. to have a sufficient level of liquidity and to be cleared by an authorised or recognised CCP, while the classes of derivatives currently in scope of the clearing obligation and that are referencing USD LIBOR will no longer meet one of the conditions to be subject to the clearing obligation set out in Regulation (EU) No 648/2012, i.e. to have a sufficient level of liquidity. It follows that these classes should be removed from the scope of the clearing obligation.

- (4) Regulators and market participants have been working on replacement rates for these currencies, and in particular on the development of new risk-free rates, which are now being used as benchmarks in financial instruments and financial contracts. Notably, the €STR, SOFR, SONIA and TONA risk-free rates are produced for EUR, USD, GBP and JPY respectively. More specifically with respect to the OTC derivative market, it now means that OTC interest rate derivative contracts referencing €STR, SOFR, SONIA and TONA are being traded by counterparties and are being cleared at certain CCPs.
- (5) ESMA has been notified of the classes of OTC interest rate derivatives referencing €STR, SOFR, SONIA or TONA that certain CCPs have been authorised to clear. For each of those classes ESMA has assessed the criteria that are essential for subjecting them to the clearing obligation, including the level of standardisation, the volume and liquidity, and the availability of pricing information. With the overarching objective of reducing systemic risk, ESMA has determined the classes of OTC interest rate derivatives referencing some of these risk-free rates that should be subject to the clearing obligation in accordance with the procedure set out in Regulation (EU) No 648/2012. It follows that these classes should be included in the scope of the clearing obligation.
- (6) In general, different counterparties need different periods of time for putting in place the necessary arrangements to start clearing their OTC interest rate derivatives subject to the clearing obligation. However, in this case, counterparties have had time to prepare for the benchmark transition and for the planned cessation of EONIA, EUR LIBOR, GBP LIBOR or JPY LIBOR taking place at the end of 2021, including with respect to their clearing arrangements. For counterparties already subject to the clearing obligation and clearing OTC interest rate derivatives denominated in EUR or GBP, clearing the classes referencing the new risk-free rates in these currencies does not require significant changes, if any at all, to their clearing contracts or processes. Indeed, when counterparties have clearing arrangements in place to clear OTC interest rate derivatives denominated in EUR or GBP, then clearing OTC interest rate derivatives referencing the risk-free rates in these currencies does not require establishing and implementing brand new clearing arrangements as was the case when they first started clearing OTC interest rate derivatives denominated in these currencies. Because clearing derivatives referencing the new risk-free rates is part of a bigger implementation preparation to transition away from EONIA and LIBOR and on to new benchmarks, there is no need to introduce an additional phase-in in order to ensure an orderly and timely implementation of that obligation. The changes made to introduce the new classes of OTC interest rate derivatives referencing the risk-free rates and denominated in EUR and GBP should enter into application on the day of entry into force of this Regulation.
- (7) Following the joint statement from the European Commission, ESMA, ECB Banking Supervision and EBA to strongly encourage counterparties to stop using any of the LIBOR settings as a reference rate in new contracts as soon as practicable and in any event by 31 December 2021, counterparties have had to plan for the end of when they could reference USD LIBOR, including with respect to their clearing arrangements. The same considerations with regards to the ability of counterparties having clearing arrangements in place to clear OTC interest rate derivatives denominated in a certain

currency to adapt them rather with a rather short turnaround time in order to clear OTC interest rate derivatives referencing the risk-free rates in that same currency also apply to USD, but some additional elements mean that their preparations are less advanced for USD. In particular, CCPs have not yet communicated when they will convert the currently cleared OTC interest rate derivatives referencing USD LIBOR into OTC interest rate derivatives referencing SOFR and it is not yet clear either how mandatory clearing will be adapted in the domestic market for these derivatives. This additional complexity means that counterparties need more time to prepare for the clearing obligation of OTC interest rate derivatives referencing the USD RFR and thus that there is a need to introduce an additional phase-in in order to ensure an orderly and timely implementation of that obligation. The changes made to introduce the new class of OTC interest rate derivatives referencing the risk-free rate denominated in USD should enter into application three months after the day of entry into force of this Regulation.

- (8) The planned cessation of EONIA, GBP LIBOR and JPY LIBOR is scheduled for the end of 2021 such that it will not be possible to trade or clear OTC interest rate derivatives referencing these benchmarks as of 3 January 2022 onwards. Similarly, following the joint statement from the European Commission, ESMA, ECB Banking Supervision and EBA to strongly encourage counterparties to stop using any of the LIBOR settings as a reference rate in new contracts as soon as practicable and in any event by 31 December 2021, counterparties will be expected to not trade or clear OTC interest rate derivatives referencing USD LIBOR as of 3 January 2022 onwards. Instead, from 3 January 2022, counterparties will trade or clear other OTC interest rate derivatives, in particular OTC interest rate derivatives referencing the risk-free rates. This Regulation should thus enter into force on 3 January 2022 or soon after if the publication of this Regulation in the Official Journal of the European Union takes place on a later date.
- (9) Delegated Regulation (EU) 2015/2205 should be amended accordingly.
- (10) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (11) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits, requested the advice of the Security and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010, and consulted the European Systemic Risk Board.

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) 2015/2205

Delegated Regulation (EU) 2015/2205 is amended as follows:

- (1) Article 3(1a) is added:

’1a. By way of derogation from paragraph 1, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex in rows D.4.1, D.4.2 of Table 4, the clearing obligation for such contracts shall take effect on [*the date of entry into force of this Regulation*].’

- (2) Article 3(1b) is added:

’1b. By way of derogation from paragraph 1, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex in rows D.4.3 of Table 4, the clearing obligation for such contracts shall take effect on [*three months from the date of entry into force of this Regulation*].’

(3) In Article 3(2), the first subparagraph is replaced by:

’2. By way of derogation from paragraphs 1, 1a and 1b, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex and concluded between counterparties which are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the Union, the clearing obligation shall take effect on:

(a) 30 June 2022 in case no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country;

(b) the later of the following dates in case an equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts referred to in the Annex to this Regulation in respect of the relevant third country:

(i) 60 days after the date of entry into force of the decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts referred to in the Annex to this Regulation in respect of the relevant third country;

(ii) the date when the clearing obligation takes effect pursuant to paragraph 1.’

(4) Article 3(3) is replaced by:

’3. By way of derogation from paragraphs 1, 1a, 1b and 2, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex, the clearing obligation shall take effect from 18 February 2022 where the following conditions are fulfilled:

(a) the clearing obligation has not been triggered by 18 February 2021;

(b) the contracts are novated for the sole purpose of replacing the counterparty established in the United Kingdom with a counterparty established in a Member State.’

(5) The Annex is replaced by the following:

ANNEX

Interest rate OTC derivatives classes subject to the clearing obligation

Table 1

Basis swaps classes

id	Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
A.1.1	Basis	Euribor	EUR	28D-50Y	Single currency	No	Constant or variable

Table 2
Fixed-to-float interest rate swaps classes

id	Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
A.2.1	Fixed-to-float	Euribor	EUR	28D-50Y	Single currency	No	Constant or variable

Table 3
Forward rate agreement classes

id	Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
A.3.1	FRA	Euribor	EUR	3D-3Y	Single currency	No	Constant or variable

Table 4
Overnight index swaps classes

id	Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
A.4.2	OIS	FedFunds	USD	7D-3Y	Single currency	No	Constant or variable
D.4.1	OIS	€STR	EUR	7D-3Y	Single currency	No	Constant or variable
D.4.2	OIS	SONIA	GBP	7D-50Y	Single currency	No	Constant or variable
D.4.3	OIS	SOFR	USD	7D-3Y	Single currency	No	Constant or variable

Article 4

Entry into force

This Regulation shall enter into force on the later of the following dates:

- a) 3 January 2022;
- b) 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,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

8.2.2 Derivative trading obligation

COMMISSION DELEGATED REGULATION (EU) .../..

amending Delegated Regulation (EU) 2017/2417 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on the derivative trading obligation, to account for the transition to new benchmarks referenced in certain OTC derivative contracts

of []

(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 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⁽¹⁾, and in particular Article 32(1) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2017/2417⁽²⁾ specifies, among others, the classes of over-the-counter (OTC) derivatives denominated in EURO (EUR), the Pound Sterling (GBP) and US dollar (USD) that are subject to the derivative trading obligation. The classes denominated in GBP and USD reference the LIBOR benchmarks.
- (2) The European Money Markets Institute, the administrator for EONIA, communicated that the cessation of EONIA will take place at the end of 2021. Similarly, the ICE Benchmark Administrator, the administrator for LIBOR, communicated that the cessation of GBP and JPY LIBOR settings will also take place at the end of 2021, whereas the publication of certain settings of USD LIBOR will cease in June 2023. On 5 March 2021, the Financial Conduct Authority from the United Kingdom confirmed that all LIBOR settings will indeed either cease to be provided by any administrator or no longer be representative. In addition, the European Commission, the European Central Bank in its banking supervisory capacity (ECB Banking Supervision), the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) issued a joint statement to strongly encourage counterparties to stop using any of the LIBOR settings, including USD LIBOR, as a reference rate in new contracts as soon as practicable and in any event by 31 December 2021.
- (3) From 3 January 2022, counterparties will hence no longer be able to enter into OTC interest rate derivatives referencing GBP LIBOR as this benchmark will have ceased and counterparties are expected to no longer enter into OTC interest rate derivatives referencing USD LIBOR. This means that there will be no volume or material liquidity in these derivatives. No trade in derivatives referencing GBP LIBOR will therefore be cleared by central counterparties (CCPs) or traded on trading venues and no material volume or liquidity is expected for derivatives referencing USD LIBOR. These events lead to a change in the scope of the clearing obligation and a subsequent

¹ OJ L 173, 12.6.2014, p. 84.

² Commission Delegated Regulation (EU) 2017/2417 of 17 November 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the trading obligation for certain derivatives (OJ L 343, 22.12.2017, p. 48.).

amendment in Delegated Regulation (EU) 2015/2205, whereby derivatives referencing GBP LIBOR and USD LIBOR are removed from the scope. As a consequence, the classes of derivatives currently in scope of the derivative trading obligation that reference GBP LIBOR or USD LIBOR will no longer meet the precondition in Article 32(1) of Regulation (EU) No 600/2014 for making derivatives subject to the derivatives trading obligation as of 3 January 2022. It follows that these classes need to be removed from the scope of the derivative trading obligation.

- (4) The planned cessation of GBP LIBOR is scheduled for the end of 2021 such that it will not be possible to trade or clear OTC interest rate derivatives referencing this benchmark from 3 January 2022 onwards. Similarly, following the joint statement from the European Commission, ESMA, ECB Banking Supervision and EBA to strongly encourage counterparties to stop using any of the LIBOR settings as a reference rate in new contracts as soon as practicable and in any event by 31 December 2021, counterparties will be expected to not trade or clear OTC interest rate derivatives referencing USD LIBOR either from 3 January 2022 onwards. Instead, as of 3 January 2022, counterparties will trade or clear other OTC interest rate derivatives, in particular OTC interest rate derivatives referencing the risk-free rates for GBP or USD. This Regulation should thus enter into force on 3 January 2022 or soon after if the publication of this Regulation in the Official Journal of the European Union takes place on a later date.
- (5) Delegated Regulation (EU) 2017/2417 should be amended accordingly.
- (6) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (7) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Security and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) 2017/2417

Delegated Regulation (EU) 2017/2417 is amended as follows:

- (1) Tables 2 and 3 in the Annex are deleted.

Article 2

Entry into force

This Regulation shall enter into force on the later of the following dates:

- a) 3 January 2022;
- b) 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,



*For the Commission
The President*

*[For the Commission
On behalf of the President*

[Position]

8.3 Annex III – Data methodology

1. The source of the data used to produce the figures included in sections 3 and 6 of this CP is EMIR data. In particular, Article 9 of EMIR mandates the reporting of all derivatives traded by EEA counterparties to Trade Repositories (TRs). TRs centrally collect and maintain the records of all derivative contracts. EMIR data are provided at different levels of granularity to the authorities, with the highest level of granularity being trade activity (also referred to as flow data). TRs also provide a further level of data aggregation, trade-state data which provide information about only outstanding transactions at the time of aggregation by the respective TR at the end of a day.
2. The data used for this report are taken from a trade state report for 16 April, 10 September and 15 October 2021, except for the figures where notional flows are displayed. There, weekly trade state reports from November 2020 to end-September 2021 were used. Venues of trading have been identified using market identifier codes (MIC, ISO 10383) reported in the field venue of execution. The trades have been reconciled to account for double reporting obligation and anomalous values in notional amount (converted in EUR using the exchange rates provided by the ECB) have been removed. The benchmarks and new risk-free rates have been identified using the reporting fields 55 and 58 “Floating rate of leg 1” and “Floating rate of leg 2” included in the Section 2f dedicated specifically to interest rates derivatives. These fields are populated with the name of the index: for the major indices, a standard code is reported in the Implementing Technical Standards to standardise the reporting. For the indices not included in the list (including the new RFRs) the format of the fields allows for (up to) 25 alphanumeric characters²⁷. For the identification of these fields, a string-matching technique has been used to identify the strings "SONIA", "TONA", "SOFR", "ESTR", "ESTER" in the reporting fields 55 and 58.
3. With respect to the identification of the cleared trades, only transaction with one CCP as a counterparty are considered. The calculation of the clearing rates is performed according to the methodology developed by ESMA in its Annual Statistical Reports²⁸, adjusting for the non-reporting of UK counterparties (and CCPs) after the UK withdrawal from the EU.

²⁷ COMMISSION IMPLEMENTING REGULATION (EU) 2017/105 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0105&from=EN>)

²⁸ For a detail description of the methodology, see the section “Measuring central clearing in OTC markets” in 2018 ESMA EU Derivatives Markets Annual Statistical Report (https://www.esma.europa.eu/sites/default/files/library/esma50-165-639_esma-rae_asr-derivatives_2018.pdf)

8.4 Annex IV - Cost-benefit analysis

1. In general, most of the respondent supported ESMA's analysis presented in the CP. In particular, one respondent noted that the CP provides with a proportionate adaptation of the existing rules to reflect the ongoing transition away from older benchmark rates to the new RFRs.
2. However, a couple of additional points were raised:
 - a. Two respondents encouraged ESMA to fully document the observed benefits associated with implementing the CO and DTO. According to the respondents, these benefits suggest that it is important to update the CO and DTO in order to assist the market's transition to new benchmark rates and to ensure market integrity, transparency, liquidity, and competition.
 - b. One stakeholder mentioned that ESMA should be cautious drawing firm conclusions about market activity based on this period (i.e., recent Covid-19 crisis and Brexit).
3. Regarding the first feedback, we agree that the benefits of the CO and the DTO remain clear and this is also true in this context. However, these benefits do not need to be re-assessed here as they have been clarified and analysed at the time of the Level 1 legislative process.
4. With respect to the second feedback, Covid-19 and Brexit have had a number of impacts, some temporary, some longer lasting, on the interest rate derivative markets. However, the trends documented in the analysis and the feedback received from stakeholders confirms the description of market activity presented in the CP and now updated in the final report.
5. Lastly, a number of respondents did not provide any suggestions in terms of additional elements to take into account in the cost benefit analysis.
6. Taking all the above into account, no new elements have been added to the cost and benefit analysis. The proportionate adaptation of the existing rules, as well as the review of the classes of OTC derivatives that should be subject to the CO and/or the DTO, has been presented both in quantitative and qualitative terms in the explanatory part of the final report and is therefore not repeated in this section. In other words, this section cross refers to sections 3 to 6 of the final report as the impact assessment.