



European Securities and  
Markets Authority

# Consultation Paper

**Clearing Obligation under EMIR (no.4)**



## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the questions listed in this Consultation Paper on the Clearing Obligation under EMIR (no.4).

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

Please follow the instructions given in the document 'Reply form for the Consultation Paper on the Clearing Obligation under EMIR (no.4)' also published on the ESMA website ([http://www.esma.europa.eu/system/files/esma-2015-807\\_-\\_reply\\_form\\_for\\_the\\_consultation\\_paper\\_no\\_4\\_on\\_the\\_clearing\\_obligation\\_irs\\_2.docx](http://www.esma.europa.eu/system/files/esma-2015-807_-_reply_form_for_the_consultation_paper_no_4_on_the_clearing_obligation_irs_2.docx)).

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **15 July 2015**

### Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

### Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](#).

### Who should read this paper

All interested stakeholders are invited to respond to this consultation paper. In particular, responses are sought from financial and non-financial counterparties of OTC derivatives transactions which will be subject to the clearing obligation, as well as central counterparties (CCPs).

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## Acronyms used

AIF	Alternative Investment Fund
AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Managers Directive (Directive 2011/61/EU)
CCP	Central Counterparty
CDS	Credit Default Swap
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
FC	Financial Counterparty
FX	Foreign Exchange
IRS	Interest Rate Swap
LEI	Legal Entity Identifier
MiFID	Markets in Financial Instruments Directive – Directive 2004/39/EC of the European Parliament and the Council
NCA	National Competent Authority
NDF	Non-Deliverable Forward
NFC	Non-Financial Counterparty
NFC+	Non-Financial Counterparty subject to the clearing obligation, as referred to in Article 10(1)(b) of EMIR
OTC	Over-the-counter
Q&A on EMIR	Questions and Answers on the implementation of EMIR available on ESMA's website
RTS	Regulatory Technical Standards
RTS on OTC Derivatives	Commission Delegated Regulation (EU) No 149/2013
RTS on CCP	Commission Delegated Regulation (EU) No 153/2013
TR	Trade Repository

# 1 Executive Summary

## Reasons for publication

This consultation paper seeks stakeholders' views on proposed regulatory technical standards on the clearing obligation under Regulation (EU) No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories (EMIR).

This paper follows the publication of three consultation papers on the clearing obligation on interest rate derivative classes<sup>1</sup>, credit derivative classes<sup>2</sup>, foreign-exchange non-deliverable forward classes<sup>3</sup>, as well as the publication of a final report on the clearing obligation on interest rate derivative classes<sup>4</sup>, and a feedback statement on non-deliverable forward classes<sup>5</sup>.

The input from stakeholders will help ESMA in finalising the relevant technical standards to be drafted and submitted to the European Commission for endorsement in the form of Commission Regulations, i.e. a legally binding instrument directly applicable in all Member States of the European Union. One essential element in the development of draft technical standards is the analysis of the costs and benefits that those legal provisions will imply. Input in this respect and any supportive data will be highly appreciated and kept confidential where required.

## Contents

This paper provides explanations on the draft regulatory technical standards establishing a clearing obligation on additional classes of OTC interest rate derivatives that were not included in the first RTS on the clearing obligation for interest rate swaps. The addition consists of the following classes: fixed-to-float interest rate swaps denominated in CZK, DKK, HUF, NOK, SEK and PLN as well as forward rate agreements denominated in NOK, SEK and PLN. The structure of this paper is the following: Section 3 provides an overview of the clearing obligation procedure. Section 4 provides clarifications on the structure of the classes of OTC interest rate derivatives that are proposed for the clearing obligation. Section 5 includes the determination of the classes of OTC derivatives that should be subject to mandatory clearing with an analysis of the relevant criteria. Section 6 presents the approach for the definition of the categories of counterparties, and the proposals related to the dates from which the clearing obligation should apply per category of counterparties. Section 7 provides explanations on the definition of the minimum remaining maturities for the application of frontloading.

## Next Steps

As provided for by Regulation No 1095/2010 of the European Parliament and Council establishing ESMA, a public consultation is conducted on the draft technical standards before they are submitted to the European Commission for endorsement in the form of Commission Regulations. In addition ESMA shall consult the ESRB and, where relevant, the competent authorities of third-countries when developing the technical standards on the clearing obligation.

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<sup>1</sup> 2014/ESMA/799 Consultation Paper, Clearing Obligation under EMIR no. 1 published on 11 July 2014

<sup>2</sup> 2014/ESMA/800 Consultation Paper, Clearing Obligation under EMIR no. 2 published on 11 July 2014

<sup>3</sup> 2014/ESMA/1185 Consultation Paper, Clearing Obligation under EMIR no. 3 published on 1 October 2014

<sup>4</sup> 2014/ESMA/1184 Final Report, Clearing Obligation under EMIR no. 1 published on 1 October 2014

<sup>5</sup> 2015/ESMA/234 Feedback Statement, Clearing Obligation for non-deliverable forwards published on 4 February 2015

## 2 Introduction

1. With the overarching objective of reducing systemic risk, the European Market Infrastructure Regulation (“EMIR”) introduces the obligation to clear certain classes of OTC derivatives in Central Counterparties (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.
2. Following the first CCP authorisations, the process of identification started with the bottom-up approach of Article 5(2) of EMIR in Q1 2014. The corresponding analysis by ESMA of the classes of OTC derivatives cleared by authorised or recognised CCPs has been on-going since.
3. This work led to the publication of several consultation papers on interest rate swaps<sup>6</sup> (IRS), credit default swaps<sup>7</sup> (CDS) and foreign-exchange non-deliverable forwards<sup>8</sup> (NDF) proposing some OTC derivative classes to be subject to the clearing obligation. On 01 October 2014, ESMA published a final report<sup>9</sup> whereby it submitted to the European Commission for endorsement the draft RTS on the clearing obligation for IRS denominated in EUR, GBP, JPY and USD (the G4 currencies).
4. In that final report, ESMA indicated it was working on further analysis of the classes of OTC interest rate derivatives denominated in other currencies than the ones included in the first RTS<sup>10</sup>.
5. This consultation paper is the result of this extended analysis. Since the first consultation paper on OTC interest rate derivatives, ESMA has received additional data and has also used data from the European trade repositories (TRs). This data has been leveraged to establish additional metrics, enhance the breakdown of the activity from a geographical point of view and allow a more granular analysis.
6. This consultation paper presents the analysis of some OTC interest rate derivative classes cleared by CME Clearing Europe (UK), KDPW\_CCP (Poland), LCH.Clearnet Ltd (UK) and Nasdaq OMX (Sweden), and proposes to subject some of them to the clearing obligation<sup>11</sup>.

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<sup>6</sup> 2014/ESMA/799 Consultation Paper, Clearing Obligation under EMIR no. 1 published on 11 July 2014

<sup>7</sup> 2014/ESMA/800 Consultation Paper, Clearing Obligation under EMIR no. 2 published on 11 July 2014

<sup>8</sup> 2014/ESMA/1185 Consultation Paper, Clearing Obligation under EMIR no. 3 published on 1 October 2014

<sup>9</sup> 2014/ESMA/1184 Final Report, Clearing Obligation under EMIR no. 1 published on 1 October 2014

<sup>10</sup> In particular, paragraphs 78 to 80 of the first final report described the scope of the first RTS and the next steps for a possible extension of this scope.

<sup>11</sup> Eurex Clearing AG is another CCP authorised to clear IRS, but at the time of publication of the consultation paper, the CCP does not clear the IRS classes covered by this paper. However, the CCP has communicated publicly its intention to offer clearing of some of these classes in the future, c.f. the following link: <http://www.eurexclearing.com/clearing-en/cleared-markets/eurex-otc-clear/interest-rate-swaps/>

### 3 The clearing obligation procedure

7. 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 and provides ESMA with the responsibility and the tools to propose which classes should be subject to the clearing obligation. ESMA shall then submit to the European Commission for endorsement RTS specifying those classes.
8. The first CCP authorisation occurred in March 2014 and several other European CCPs have been authorised since. This series of authorisations triggered each time the bottom-up approach of Article 5(2) of EMIR, which details how the relevant classes of OTC derivatives should be identified amongst the classes cleared by authorised and recognised CCPs<sup>12</sup>.
9. The list of CCPs that have been authorised to clear OTC derivatives and the classes that they are authorised to clear are available in the public register<sup>13</sup>. In order to give an overview, Table 1 below presents the European CCPs that are authorised, or in the process of being authorised, with an indication of the asset-class that they clear<sup>14</sup>.

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<sup>12</sup>A first set of third-country CCPs were recognised on 27 April 2015 under the procedure of Article 25 of EMIR. The list of recognised CCPs is available at the following address:

<http://www.esma.europa.eu/page/Registries-and-Databases>

The classes that have been reviewed for this consultation paper have been the classes cleared by EU CCPs.

<sup>13</sup> The Public Register for the Clearing Obligation under EMIR is available under the post-trading section of : <http://www.esma.europa.eu/page/Registries-and-Databases>

<sup>14</sup> This list may be updated in the future following possible extensions of activities and services.

**Table 1: Asset-Classes cleared by European CCPs**

#	CCP Name	Country	Authorised on	OTC Interest Rate	OTC Credit	OTC Commodity	OTC Equity	OTC FX
1	Nasdaq OMX Clearing AB	Sweden	18-Mar-14	1			1	
2	KDPW_CCP	Poland	08-Apr-14	1				
3	Eurex Clearing AG	Germany	10-Apr-14	1				
4	LCH.Clearnet SA	France	22-May-14		1			
5	European Commodity Clearing (ECC)	Germany	11-Jun-14			1		
6	LCH.Clearnet Limited	UK	12-Jun-14	1		1	1	1
7	CME Clearing Europe	UK	4-Aug-14	1		1		
8	LME Clear	UK	3-Sept-14			1		
9	OMI Clear	Portugal	31-Oct-14			1		
10	Holland Clearing House	Netherlands	12-Dec-14				1	
11	ICE Clear Europe	UK	Not yet authorised		1			1
	<b>Number of CCP per asset class</b>			<b>5</b>	<b>2</b>	<b>5</b>	<b>3</b>	<b>2</b>

Expansion of the scope of the clearing obligation

10. Beyond the initial scope that can be determined through the bottom-up approach, there are multiple ways on how the scope of the clearing obligation can evolve, in particular on how it can be expanded, in order to align the scope of the clearing obligation to the overarching objective of reducing systemic risk on an on-going basis.
11. It includes the review of additional notifications of classes from newly authorised CCPs or from the extension of activity and services of already authorised CCPs, the analysis of the classes cleared by recognised third-country CCPs, the top-down approach described in Article 5(3) when no clearing offering exists for certain classes, as well as the possibility for ESMA to propose some new or amended RTS complementing the set of previously drafted RTS on the clearing obligation.
12. In particular, in the event that a class of OTC derivatives has not been declared to be subject to the clearing obligation under the bottom-up procedure of Article 5 of EMIR, ESMA may propose a clearing obligation on the same class of OTC derivatives at a later point in time, in order to take into account e.g. market developments.
13. The existence of this possibility is fundamental to ensure that the objective of reduction of systemic risk pursued by EMIR is achieved. Indeed, in the absence of such a review process, a class that has not been declared subject to the clearing obligation during the 6 months following the authorisation of the first CCP to clear could not be considered again, unless a second CCP is authorised to clear the same class, which cannot be the intention of the legislator.

14. The present consultation paper results from this review process: it consists of a proposal to submit new RTS to the European Commission related to the clearing obligation for additional classes of OTC interest rate derivatives denominated in certain non-G4 European currencies (CZK, DKK, HUF, NOK, PLN, and SEK). For the sake of simplicity, this set of 6 currencies is referred to as “*EEA currencies*” in the rest of the paper.
15. In comparison to the first consultation paper on the clearing obligation on OTC interest rate derivatives denominated in the G4 currencies, the analysis presented below makes use of additional data and in particular data from European trade repositories. This additional data allows for a thorough and more detailed assessment of the various criteria that are relevant in the context of the clearing mandate.
16. As a result, with this consultation paper, ESMA submits an updated analysis of some classes of OTC interest rate derivatives denominated in EEA currencies and proposes to submit some of them to the clearing obligation via a new RTS, which complements the first RTS on the clearing obligation for similar classes denominated in the G4 currencies. The resulting draft RTS is included in Annex III.

**Question 1: Do you have any comment on the clearing obligation procedure described in this section?**

## 4 Structure of the interest rate derivative classes

17. This consultation paper is an extension of the analysis previously conducted on some classes of OTC interest rate derivatives. The first final report explained the approach used to define the classes of OTC interest rate derivatives, taking into account the feedback from both the discussion paper on the clearing obligation and the consultation paper on the clearing obligation No.1.
18. With this second consultation paper on IRS classes, ESMA proposes to keep the same approach and therefore the same set of characteristics to define the classes. First of all, ESMA's proposal is to continue creating one class of OTC derivative per product type, when product types are defined as follows:
  - Fixed-to-float interest rate swaps (IRS), also referred to as plain vanilla IRS
  - Float-to-float swaps, also referred to as basis swaps
  - Forward Rate Agreements (FRA)
  - Overnight Index Swaps (OIS)
19. In addition, within each of those product types, the following characteristics are used to further define the class: the floating reference rate, the settlement currency, the currency type (i.e. whether the contracts are based on a single currency or on multiple currencies), the maturity, the existence of embedded optionality and the notional amount type (constant, variable or conditional).
20. Therefore, the additional classes on the new currencies proposed in the draft RTS included in Annex III are structured in the same way as the classes on the G4 currencies included in the draft RTS previously submitted to the Commission.

**Question 2: Do you have any comment on the structure of the interest rate derivative classes described in this section?**

## 5 Determination of the classes of OTC derivatives to be subject to the clearing obligation

### 5.1 Framework for the assessment of the classes

#### 5.1.1 Further analysis of the criteria defined in EMIR

21. 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 classes of OTC derivatives that should be subject to the clearing obligation) shall take into consideration the following criteria:
  - the degree of standardisation of the contractual terms and operational processes of the relevant class of OTC derivatives;
  - the volume and liquidity of the relevant class of OTC derivatives;
  - the availability of fair, reliable and generally accepted pricing information in the relevant class of OTC derivatives.
22. Those criteria are further specified in Article 7 of the RTS on OTC derivatives.
23. Based on those criteria, the first final report on the clearing obligation for IRS concluded that some classes denominated in the G4 currencies should be subject to the clearing obligation. As a matter of fact, the analysis conducted by ESMA and its conclusion converged with the majority of the responses to the consultation and was broadly consistent with the scope of mandatory clearing internationally in other jurisdictions.
24. However, many more classes are cleared by the authorised CCPs. In terms of currencies, these CCPs clear OTC interest rate derivatives denominated in up to 18 currencies.
25. Although the consultation paper and the final report indicated lower levels of liquidity for the classes denominated in currencies other than the G4, the final report also made clear that further analysis was required to determine whether interest rate contracts denominated in other currencies could be proposed for the clearing obligation in view of the criteria defined in EMIR and the overarching objective of reducing systemic risk.
26. Further work was in fact made possible thanks to data sourced from the EU TRs and the next sections 5.2 to 5.5 present an updated analysis of certain classes of interest rate derivatives denominated in EEA currencies against these criteria and the objective of reduction of systemic risk.

#### 5.1.2 Systemic relevance of the classes in scope

27. The previous section 5.1.1 reaffirms that (a) the goal of the clearing obligation is to reduce systemic risk, and that (b) in order to achieve this goal, EMIR includes the specific procedure to be used to determine which classes of OTC derivatives should become subject to the clearing obligation. The previous section developed in more details how further work could be conducted within the framework

of the procedure of point (b), whereas this section intends to give more colour on how systemic risk is considered when pursuing the objective of reduction of systemic risk while conducting the assessment of the criteria of EMIR.

28. First of all, with regards to systemic risk in the context of the European Union, when setting up the European framework for the oversight of the financial system, the legislators considered systemic risk in the following manner, as per Recital 27 of Regulation (EU) 1092/2010<sup>15</sup>: “systemic risks included risks of disruption to financial services caused by a significant impairment of all or parts of the Union’s financial system that have the potential to have serious negative consequences for the internal market and the real economy”.
29. From the above, it is clear that systemic risk needs to be considered in all its nuances within the EU. In particular, systemic risk can exist at the level of the EU or at Member State level and may have the potential to spread through interconnectedness. The ESRB’s response to the first consultation paper re-affirmed this aspect and referenced this Recital 27, adding “be they groups of or even individual Member States” when the text refers to “all or parts of the Union’s financial system”.
30. Furthermore, Recital 27 also adds that: “any type of financial institution and intermediary, market, infrastructure and instrument has the potential to be systemically significant.” Systemic risk at the level of a Member State can also be of broader concern to the extent that the financial sector in that country is systematically important. With regards to the domestic countries for the six currencies in scope in this paper, four of them fall in the category of systemically significant as assessed by the IMF<sup>16</sup>, exhibiting strong cross-border linkages. More broadly speaking, some risks may seem small on the aggregate but can be concentrated in individual financial institutions that are systemically important at domestic level or at a broader level, possibly up to the global level.
31. The assessment of the criteria from EMIR is conducted in the next sections 5.2 to 5.5 and systemic risk is considered in this analysis according to the description of the previous three paragraphs. In particular, geographical concentration, counterparty concentration and interconnectedness are taken into account in section 5.3 on liquidity.

**Question 3: Do you agree with the principle that, in the context of the clearing obligation, systemic risk should be considered not only at the aggregated EU level, but also at country or even institution level?**

## 5.2 Criteria 1: degree of standardisation

32. 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. The analysis of the level of standardisation of the IRS classes performed in the first consultation paper on IRS was not performed at the level of the currency as it is broadly consistent across currencies.
33. As a result, the analysis of the classes against this criterion of degree of standardisation that was presented in the first consultation paper can be referenced here in this new consultation paper. The responses to the first consultation largely supported the analysis conducted by ESMA, including the analysis of the level of standardisation of the IRS classes in general.

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<sup>15</sup> Regulation (EU) 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board is accessible on the ESRB website at the following link: <http://www.esrb.europa.eu/shared/pdf/ESRB-en.pdf>

<sup>16</sup> Denmark, Norway, Poland, Sweden

34. In addition, there have not been major changes in terms of contracts or processes since the first consultation paper. In summary, ESMA considers that the contractual terms and operational processes of the OTC IRS classes in the scope of this consultation paper demonstrate an appropriate level of standardisation, as was already the case for the IRS classes denominated in the G4 currencies.

## 5.3 Criteria 2: liquidity

### 5.3.1 Criteria 2(a): Proportionate margins – EMIR 5(4)(b) and RTS 7(2)(a)

35. 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. The margins and financial requirements at the EU CCPs clearing interest rate OTC derivatives, including these classes, were reviewed as part of the CCP applications and authorisation process.
36. In this respect there could be two situations in which the margins would be considered as disproportionate: if they are too high or if they are too low.
37. The case of margins that are too low is covered by various provisions in EMIR on the margins and financial resources requirements for CCPs. This includes e.g. stringent requirements on the confidence intervals to be applied when calculating initial margins, the time horizon for the calculation of the liquidation period and for the calculation of historical volatility as well as conditions under which portfolio margining can be applied.
38. The case of margins that are too high is of greater importance in the context of the clearing obligation. The risk of prohibitively high margins is naturally mitigated by the existence of competition. At the time of publication of this paper, there are 4 CCPs authorised to clear the IRS classes proposed in this paper. Therefore it is likely that competition would prevent CCPs from imposing margins that are disproportionately high compared to the risks that they intend to mitigate.
39. Overall, ESMA is confident that the determination process would follow the overarching goal of reducing systemic risk, and that for instance a less liquid product currently cleared but with a disproportionate margin would not be part of a class. ESMA has determined that the inclusion of the OTC derivative classes presented in this consultation paper for the clearing obligation would not result in disproportionate margin and financial requirements.

### 5.3.2 Criteria 2(b): Stability of the market size and depth – EMIR 5(4)(b) and RTS 7(2)(b)

40. 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.
41. The corresponding section in the first consultation paper had already demonstrated growth over time in the market size and depth for interest rate swaps and forward rate agreements globally and across currencies. However, the predominance of derivatives denominated in the G4 currencies in the interest rate derivative market naturally influenced the overall trend. Further breakdown is done in this paper in order to look at these statistics at a more granular level and confirm the same trends have

applied to derivatives denominated in the non-G4 currencies, in particular in the currencies in scope in this paper, the 6 EEA currencies: CZK, DKK, HUF, NOK, PLN and SEK.

**OTC Interest rate derivatives denominated in the G4 currencies are largely predominant at both the global and the EU levels**

42. First of all, as shown in Table 2 and Table 3 below, for IRS and FRA respectively, the volumes of OTC derivatives denominated in the clearable currencies, other than the G4, represented between 6% and 10% of the total market from 2007 to 2013, according to the BIS triennial Central Bank surveys. Indeed the first consultation paper had already illustrated that the OTC interest rate derivatives denominated in the G4 currencies accounted for the vast majority of the activity in this market.

**Table 2: Global volume (daily average notional amounts) in Interest rate swaps**

IRS	2007		2010		2013	
	Turnover (million USD)	%	Turnover (million USD)	%	Turnover (million USD)	%
<b>G4</b>	<b>1,083,065</b>	<b>89.5%</b>	<b>1,120,491</b>	<b>87.9%</b>	<b>1,219,087</b>	<b>86.1%</b>
EUR	527,521	43.6%	562,485	44.1%	693,465	49.0%
USD	321,679	26.6%	302,445	23.7%	373,716	26.4%
GBP	124,183	10.3%	141,677	11.1%	92,287	6.5%
JPY	109,682	9.1%	113,884	8.9%	59,618	4.2%
<b>Non G4 Clearable</b>	<b>76,023</b>	<b>6.3%</b>	<b>103,225</b>	<b>8.1%</b>	<b>139,495</b>	<b>9.9%</b>
CHF	14,219	1.2%	8,297	0.7%	5,335	0.4%
AUD	14,060	1.2%	27,599	2.2%	62,854	4.4%
SEK	13,462	1.1%	6,838	0.5%	14,618	1.0%
CAD	11,644	1.0%	38,215	3.0%	26,794	1.9%
HKD	8,778	0.7%	2,878	0.2%	1,992	0.1%
NZD	5,550	0.5%	2,988	0.2%	3,498	0.2%
MXN	4,634	0.4%	4,440	0.3%	9,285	0.7%
SGD	2,291	0.2%	2,873	0.2%	3,349	0.2%
NOK	869	0.1%	8,305	0.7%	2,560	0.2%
DKK	516	0.0%	790	0.1%	1,808	0.1%
ZAR		0.0%		0.0%	4,198	0.3%
PLN		0.0%		0.0%	2,138	0.2%
CZK		0.0%		0.0%	416	0.0%
HUF		0.0%		0.0%	648	0.0%
<b>Other</b>	<b>51,338</b>	<b>4.2%</b>	<b>50,838</b>	<b>4.0%</b>	<b>57,526</b>	<b>4.1%</b>
<b>Grand Total</b>	<b>1,210,427</b>	<b>100.0%</b>	<b>1,274,554</b>	<b>100.0%</b>	<b>1,416,108</b>	<b>100.0%</b>

Source: BIS Triennial Central Bank Survey. Average Daily Turnover reported in the month of April.

**Table 3: Global volume (daily average notional amounts) in FRA**

FRA	2007		2010		2013	
	Turnover (million USD)	%	Turnover (million USD)	%	Turnover (million USD)	%
<b>G4</b>	<b>209,883</b>	<b>81.2%</b>	<b>539,624</b>	<b>89.9%</b>	<b>680,302</b>	<b>90.0%</b>
USD	97,903	37.9%	281,705	46.9%	193,759	25.6%
EUR	66,492	25.7%	202,367	33.7%	398,505	52.7%
GBP	41,606	16.1%	53,309	8.9%	87,745	11.6%
JPY	3,882	1.5%	2,242	0.4%	292	0.0%
<b>Non G4 Clearable</b>	<b>35,676</b>	<b>13.8%</b>	<b>48,496</b>	<b>8.1%</b>	<b>70,261</b>	<b>9.3%</b>
SEK	18,467	7.1%	9,680	1.6%	19,373	2.6%
NOK	7,040	2.7%	6,514	1.1%	6,694	0.9%
CHF	3,912	1.5%	12,074	2.0%	8,871	1.2%
AUD	3,195	1.2%	8,058	1.3%	11,224	1.5%
NZD	1,046	0.4%	724	0.1%	1,362	0.2%
CAD	1,011	0.4%	9,116	1.5%	2,002	0.3%
DKK	446	0.2%	1,122	0.2%	2,139	0.3%
SGD	346	0.1%	1,199	0.2%	126	0.0%
MXN	163	0.1%	8	0.0%	30	0.0%
HKD	49	0.0%	1	0.0%	48	0.0%
PLN		0.0%		0.0%	5,135	0.7%
ZAR		0.0%		0.0%	11,198	1.5%
CZK		0.0%		0.0%	278	0.0%
HUF		0.0%		0.0%	1,781	0.2%
<b>Other</b>	<b>12,822</b>	<b>5.0%</b>	<b>12,339</b>	<b>2.1%</b>	<b>4,951</b>	<b>0.7%</b>
<b>Grand Total</b>	<b>258,380</b>	<b>100.0%</b>	<b>600,459</b>	<b>100.0%</b>	<b>755,514</b>	<b>100.0%</b>

Source: BIS Triennial Central Bank Survey. Average Daily Turnover reported in the month of April.

43. Table 2 and Table 3 indicate that the predominance of the G4 currencies in OTC interest rate derivatives applies similarly to IRS and FRA, 87% of the total and 90% of the total respectively, from a flow perspective. Table 5 and Table 10 from the first consultation paper indicated the same figures from a stock perspective. IRS denominated in the G4 currencies represent 88% in notional terms of outstanding IRS trades. FRA denominated in the G4 currencies represent 92% in notional terms of outstanding FRA trades.
44. So overall, the G4 currencies represent around 90% of the volume of OTC interest rate derivatives from both a flow and a stock perspective. These numbers give the global perspective which is an important aspect when considering the liquidity profile of these classes.
45. However, the regional perspective is also key in this respect. And in fact, the figures detailed below show that the predominance of the G4 currencies is also demonstrated at the European level.

**Table 4: Volume (daily average notional amounts in million USD) in OTC interest rate derivatives at EU and global levels**

Daily turnover (in million USD)	Executed in the EU	Total volume (all countries)
OTC IRD in EUR	1,277,744	1,336,075
OTC IRD in GBP	201,284	206,643
OTC IRD in JPY	15,758	84,335
OTC IRD in USD	180,866	776,268
OTC IRD in G4 currencies	1,675,651	2,403,321
Total OTC IRD volume (all currencies)	1,813,917	2,758,583
Share of EUR in total volume	70%	48%
Share of GBP in total volume	11%	7%
Share of JPY in total volume	1%	3%
Share of USD in total volume	10%	28%
Share of G4 in total volume	92%	87%

Source: BIS Triennial Central Bank Survey. Average daily turnover reported in the month of April 2013, ESMA calculations

46. Using the same BIS data for OTC interest rate derivatives, a comparison is done in Table 4 between the activity in the G4 currencies at the global level and at the EU level:
- At the global level: the daily turnover in OTC interest rate derivatives denominated in the G4 currencies represent 87% of the total, of which EUR represents 48% and USD 28%;
  - At the EU level: the daily turnover in OTC interest rate derivatives denominated in the G4 currencies represented 92% of the total of which, EUR represents 70% and USD 10%.
47. Although the relative share of each of the G4 currencies differ (unsurprisingly the EU G4 currencies represent a much higher share of the total activity at the EU level than at the global level), the volume in OTC interest rate derivatives denominated in the G4 currencies represent a similar share in relative terms in the EU (92%) and at the global level (87%). Therefore, the same conclusion as in paragraph 43 can be drawn: at both the EU level and at the global level, the G4 currencies represent around 90% of the volume of OTC interest rate derivatives. It also means that in relative terms the non G4 currencies only represent 10% of the total volume of OTC interest rate derivatives.

**OTC interest rate derivatives denominated in the non G4 currencies still represent a significant share of the OTC interest rate derivative market as well as the overall OTC derivative market**

48. However, in line with the fact that the interest rate derivative market is very large and by far the largest of all asset classes of OTC derivatives (Table 5 indicates that OTC interest rate derivatives represented 81.5% of the total OTC derivatives market in notional terms as of June 2014), the segment of the non-G4 currencies can still be considered significant.
49. Indeed, around 10% of an asset class that represents 81.5% of the total OTC derivative market, thus represents a share of the total OTC derivative market (around 8%) that is :
- similar to the second largest asset class (OTC foreign exchange derivatives representing 10.8%) and;
  - similar to the rest of all the other asset classes combined (Equity-linked, commodity, credit and unallocated derivatives adding up altogether to 7.7%).

**Table 5: Notional amounts outstanding in OTC derivatives, per asset class**

<i>as of June 2014</i>	<b>Notional Amounts Outstanding (trillion of USD)</b>	<b>% of total</b>
<b>Foreign exchange contracts</b>	74.7	<b>10.8%</b>
<b>Interest rate contracts</b>	563.3	<b>81.5%</b>
<b>Equity-linked contracts</b>	6.9	<b>1.0%</b>
<b>Commodity contracts</b>	2.2	<b>0.3%</b>
<b>Credit default swaps</b>	19.5	<b>2.8%</b>
<b>Unallocated</b>	24.8	<b>3.6%</b>
<b>TOTAL</b>	<b>691.4</b>	<b>100%</b>

**Source: BIS semi-annual OTC derivatives statistics**

50. Looking at the details, among the non-G4 currencies, at the global level and from a flow perspective, Table 2 and Table 3 indicate that the top currencies ranked by average daily volumes are a mix of EEA and non-EEA currencies, all clearable. Referring to the first consultation paper on the clearing obligation, also at the global level but from a stock perspective this time, Table 5 and Table 9 of that first consultation paper indicate that the top currencies ranked by average daily volumes are also a mix of EEA and non-EEA currencies, all clearable, and in similar order although not in an identical order.
51. However, the EEA and the non-EEA currencies contribute differently to the non-G4 volume. Table 6 below presents the share of the clearable EEA currencies (CZK, DKK, HUF, NOK, PLN and SEK) in the total volume of non-G4 OTC interest rate derivatives.

**Table 6: Volume in OTC interest rate derivatives denominated in the clearable EEA and non-G4 currencies (USD notional)**

IRS	Flow (daily turnover)	Stock (outstanding)
EEA	22,188,000,000	6,039,350,943,089
Non-G4	139,495,000,000	37,954,099,937,945
% EEA Vs total Non-G4	16%	16%
FRA	Flow (daily turnover)	Stock (outstanding)
EEA	35,400,000,000	5,326,121,781,119
Non-G4	70,261,000,000	8,294,241,564,615
% EEA Vs total Non-G4	50%	64%

*Source: BIS Data and DTCC data, ESMA calculations*

52. Table 6 indicates that IRS in the 6 clearable EEA currencies referenced above represent altogether 16% of the total non-G4 IRS volume from both a flow and a stock perspective. Table 6 also indicates that FRA in the 6 clearable EEA currencies referenced above represent altogether 50% of the total non-G4 IRS volume from a flow perspective and 64% from a stock perspective. As a result, overall, they represent an important share of the volume in OTC interest rate derivatives denominated in the non-G4 currencies.
53. The liquidity of IRS contracts denominated in the EEA currencies is compared in outstanding notional terms, in Table 7 below, to the liquidity of some classes of credit derivatives which have been proposed for the clearing obligation in previous consultations.

**Table 7: Comparison of the outstanding notional of IRS and FRA in the EEA currencies and the most liquid European CDS indices**

IRS	Outstanding Notional in USD
SEK	2,621,194,611,941
PLN	1,393,424,037,778
NOK	802,953,412,386
HUF	694,453,918,838
CZK	527,324,962,146
FRA	Outstanding Notional in USD
SEK	3,042,130,286,099
NOK	756,672,919,873
PLN	714,206,920,600
HUF	575,655,486,219
DKK	152,013,886,951
CZK	85,442,281,377
CDS	Outstanding Notional in USD
iTraxx Europe Main	3,208,830,502,886
iTraxx Europe Crossover	529,874,834,149

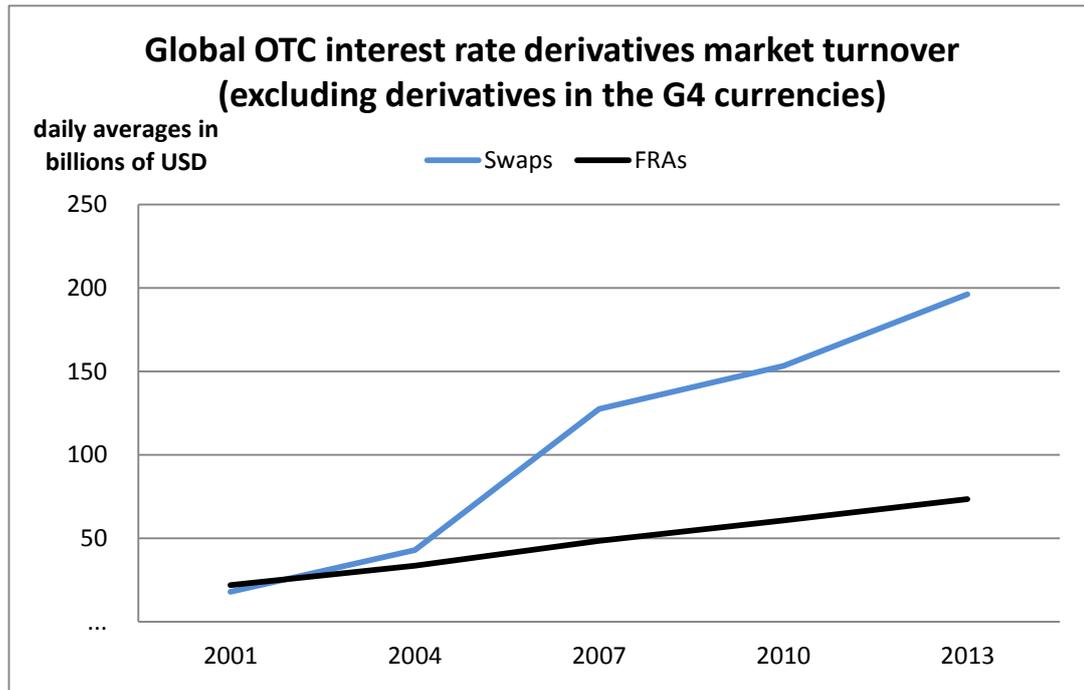
Source: DTCC data, ESMA calculations (DTCC data not available for IRS denominated in DKK)

54. Table 7 indicates that the outstanding notional of the two most liquid European CDS indices were 3,209 billion USD for the iTraxx Europe Main and 530 billion USD for the iTraxx Europe Cross Over. The outstanding notional in the iTraxx Europe Main is thus comparable to the outstanding notional in IRS denominated in SEK (2,621 billion USD) or FRA denominated in SEK (3,042 billion USD). The outstanding notional in the iTraxx Europe Crossover is thus comparable to the outstanding notional in IRS denominated in CZK (527 billion USD) or HUF (694 billion USD) or FRA denominated in HUF (576 billion USD), PLN (714 billion USD) or NOK (757 billion USD).
55. As per the paragraphs above, using data to compare the volume of activity between the various classes indicates that from a global perspective the activity on these classes can already be considered important. However, using data on the volume of activity at the European level rather than at the global level reinforces even more the importance of the activity on these classes, compared to the activity on the other classes. A breakdown at the EU level is conducted in section 5.3.4 for the analysis of the criteria 2(d) related to the number and the value of the transactions.
56. In fact, when looking at the regional perspective in that section 5.3.4, it is determined that the volume of OTC derivatives in the clearable EEA currencies can be almost entirely attributed to the EEA area. It means that the volume of the classes in scope in this paper is even more significant at the regional level than at the global level when compared to other classes of instruments, i.e. in relative terms. Indeed, the quasi totality of the volume of these classes is attributed to the EEA area whereas it is not necessarily the case for other classes of OTC derivatives, therefore the share of these classes versus all the other classes at the EU level is higher than the share of these classes versus all the other classes at the global level.
57. Based on the above, ESMA is of the opinion that OTC interest rate derivatives denominated in the non-G4 currencies represent a significant share of the OTC derivative market and that OTC interest rate derivatives denominated in the EEA currencies contribute in a significant proportion to this share of the market. As detailed in section 5.3.4, most of the activity in OTC interest rate derivatives denominated in the EEA currencies is attributable to the EU area, which means the systemic risk associated to the large volumes detailed in the above paragraphs is also concentrated in the EU area.

The segment of the non-G4 OTC Interest rate derivatives market experienced similar growth trends over time as the market of OTC Interest rate derivatives denominated in the G4 currencies

58. Furthermore, to add perspective on these metrics over time, the same set of data that was used in the first consultation paper to look at the growth of the OTC interest rate derivative market is also used in this paper in Figure 1 but with a filter to exclude the G4 currencies.

**Figure 1: Turnover of IRS and FRA denominated in the non-G4 currencies**



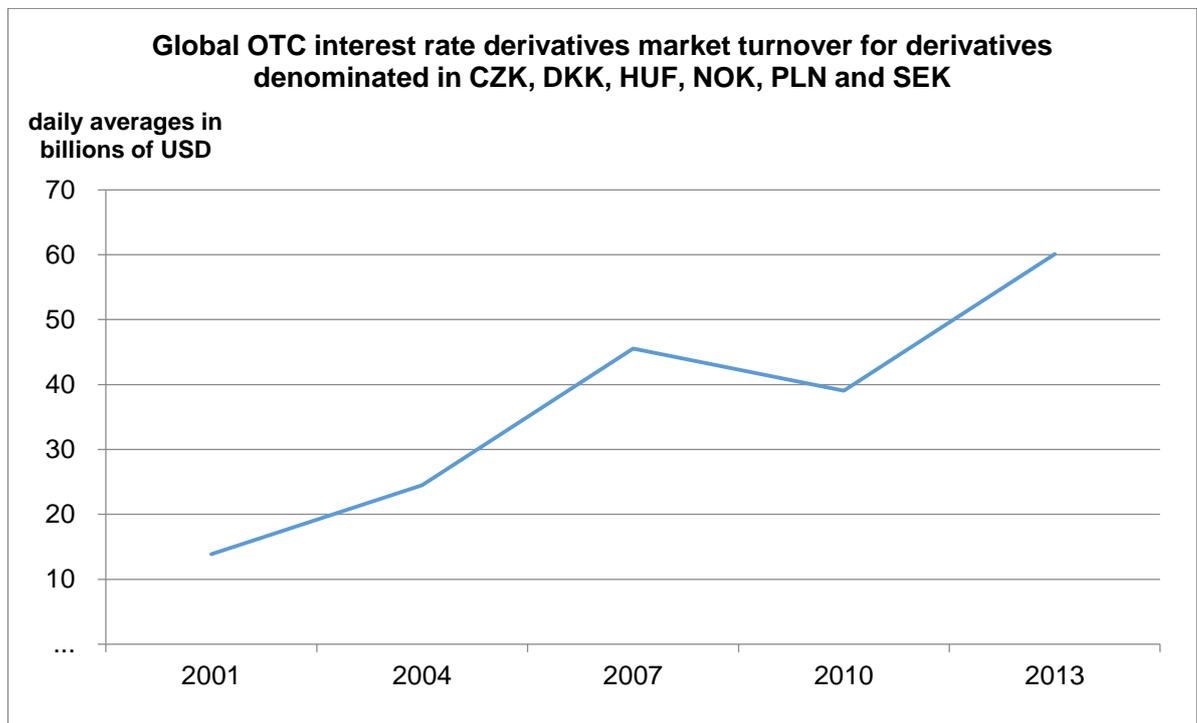
*Source: BIS Triennial Central Bank Survey. Average daily turnover reported in the month of April*

59. Figure 1 indicates that, overall, the growth experienced by interest rate derivatives denominated in the G4 currencies was also experienced by the segment of the interest rate derivatives market denominated in the non G4 currencies.

60. In summary, although the level of activity in the clearable non-G4 currencies is much lower than that in the G4 currencies in relative terms, it is still considered to be significant in absolute terms given the size of the OTC interest rate derivative market. In addition, these figures also demonstrate that the segment of the market denominated in the non-G4 currencies has also experienced important growth over the last decade.

61. When drilling further down and looking only at the 6 non-G4 currencies from the EEA that are cleared by authorised EU CCPs (CZK, DKK, HUF, NOK, PLN and SEK), a similar trend can be established as displayed in Figure 2.

**Figure 2: Turnover of OTC interest rate derivatives denominated in the EEA currencies**



*Source: BIS Triennial Central Bank Survey. Average daily turnover reported in the month of April*

62. In line with the approach taken with the previous graphs, using BIS data on the daily turnover in the months of April in specific years over the past fifteen years for OTC interest rate derivatives denominated in CZK, DKK, HUF, NOK, PLN and SEK, Figure 2 confirms this segment of the OTC interest rate derivative market experienced a similar expansion overall as what the rest of the OTC interest rate derivative market experienced, demonstrating size and depth.
63. Finally, although there are several factors that can influence the level of activity in the interest rate derivative market, such as compression exercises for example that have the objective of reducing the amount of outstanding notional and the number of outstanding trades, there are reasons to believe that from a flow perspective the volume of transactions in the non-G4 currencies, and more specifically in the currencies in scope in this paper (CZK, DKK, HUF, NOK, PLN and SEK), will continue to be significant.

### 5.3.3 Criteria 2(c): Market dispersion – EMIR 5(4)(b) and RTS 7(2)(c)

64. 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.
65. The first consultation paper on the clearing obligation for IRS provided an analysis of the clearing members of the CCPs that were clearing the classes denominated in the G4 currencies, i.e. LCH.Clearnet Ltd, Eurex, Nasdaq OMX and CME Clearing Europe. A fifth CCP, KDPW\_CCP, should be considered here as this CCP is authorised to clear IRS denominated in PLN, which is one of the classes in the scope of this consultation paper.

66. Since the publication of the first consultation paper, the number of IRS clearing members in European CCP has increased. As shown in Table 8 below, the total number of clearing members for OTC interest rate derivatives grew from 77 to 88 at group level, and from 110 to 127 at entity level. Those numbers are adjusted for duplicates, i.e. when the same entity or group is a clearing member of several CCPs, it is counted only once in the total.
67. This growth in the number of clearing members could be interpreted as encouraging evidence of the preparation process towards the clearing obligation. This increase is also positive in general as it can help develop the choice of clearing members offering client clearing services for counterparties that will not become direct members of CCPs.

**Table 8: Clearing Members in OTC interest rate**

	Number of Clearing Members				Difference between May 2014 and January 2015	
	As of May 2014		As of January 2015		At Group Level	At Entity Level
	At Group Level*	At Entity Level	At Group Level	At Entity Level		
CME Clearing Europe	8	9	8	9	0	0
EUREX	31	33	39	41	8	8
KDPW_CCP	8	8	14	14	6	6
LCH.CLEARNET Ltd	61	91	63	98	2	7
NASDAQ OMX	5	5	6	7	1	2
<b>Total (with duplicates)</b>	<b>113</b>	<b>146</b>	<b>130</b>	<b>169</b>	<b>17</b>	<b>23</b>
<b>Total (without duplicates**)</b>	<b>77</b>	<b>110</b>	<b>88</b>	<b>127</b>	<b>11</b>	<b>17</b>

(\*) Several entities of the same group are counted only once

(\*\*) Clearing Members of multiple CCPs are counted only once

68. Turning to the analysis of market dispersion for a specific set of currencies, it should be noted that the clearing membership is not specified per currency or product type within the IRS asset class. Therefore, one approach to estimate the number of clearing members per class of OTC derivatives (including currency and product type) would be based on the assumption that a clearing member of a certain CCP can be active in the market with respect to all the classes that this CCP clears. It is to be noted that in practice it is not strictly the case with all clearing members of all authorised CCPs, but overall, this assumption is still meaningful in the analysis of this criterion, combined with the second approach detailed in paragraph 72.
69. With this approach in mind, Table 9 below shows which CCP clears each combination of product types (Basis Swaps, Fixed-to-Float, FRA and OIS) and currencies. Taking into account the number of clearing members in each CCP, and eliminating duplicates (i.e. clearing members of multiple CCPs), the last column shows the total number of clearing members per combination.
70. To produce this table, ESMA used the information on clearing members that each CCP makes publicly available (as of January 2015) in accordance with the requirement under the RTS on CCP<sup>17</sup>. In addition, the legal entity identifiers (LEI) of the clearing members were used to eliminate duplicates.
71. Table 9 provides evidence of a substantial number of clearing members for nearly all the classes of IRS swaps that are cleared by European CCPs. When looking at the classes in the scope of the consultation paper, i.e. OTC interest rate derivatives denominated in the 6 EEA currencies, all the

<sup>17</sup> Article 10 (Disclosure) of Regulation (EU) No 153/2013 with regard to regulatory technical standards on requirements for central counterparties

classes would have around 90 to 100 clearing members under the assumption described in paragraph 68. This important number of clearing members supports the idea that market dispersion would likely be sufficient in case of a default.

**Table 9: Number of CCPs and clearing members per class**

	CME CE	KDPW_CCP	LCH.CLEAR NET Ltd	NASDAQ OMX	Number of CCP	Number of Clearing Member (without duplicate)
<b>Basis</b>		1	1		2	
CZK			1		1	98
DKK			1		1	98
HUF			1		1	98
NOK			1		1	98
PLN		1	1		2	111
SEK			1		1	98
<b>Fixed-to-Float</b>	1	1	1	1	4	
CZK	1		1		2	98
DKK	1		1	1	3	100
HUF	1		1		2	98
NOK	1		1	1	3	100
PLN	1	1	1		3	111
SEK	1		1	1	3	100
<b>FRA</b>		1	1	1	3	
CZK			1		1	98
DKK			1	1	2	100
HUF			1		1	98
NOK			1	1	2	100
PLN		1	1		2	111
SEK			1	1	2	100
<b>OIS</b>		1		1	2	
PLN		1			1	14
SEK				1	1	7

Sources: CCP websites, ESMA calculations.

72. However, a second approach can also be envisaged to estimate the likelihood of market dispersion in the case of the default of a clearing member, based on an analysis of the market concentration in the actual trading of the classes in scope in the consultation paper. This approach takes into consideration the fact that clearing members have different levels of activity in these markets and can complement the information on the absolute number of clearing members.
73. To that effect, ESMA calculated the Herfindahl indices<sup>18</sup> using data reported by clearing members to European trade repositories during March, April and May 2014<sup>19</sup>. Table 10 below also includes the Herfindahl indices calculated by the BIS in June 2014 on IRS denominated in the G4 currencies to have a basis for comparison.

**Table 10: Herfindahl Indices for IRS**

		Herfindahl Indices
1	<b>CZK</b>	524
1	<b>DKK</b>	1,892
1	<b>HUF</b>	717
1	<b>NOK</b>	1,219
1	<b>PLN</b>	605
1	<b>SEK</b>	666
2	<b>EUR</b>	514
2	<b>GBP</b>	858
2	<b>JPY</b>	600
2	<b>USD</b>	640

Source for (1): European trade repositories data reported by clearing members from March to May 2014, including IRS, basis, FRA and OIS, ESMA calculation

Source for (2): BIS OTC derivatives statistics at end-June 2014

74. Four of the six currencies (CZK, HUF, PLN and SEK) that are in the scope of the consultation paper exhibit a level of concentration, as measured by the Herfindahl index, that is similar to the level observed in the G4 currencies. This supports the idea that the market dispersion in the classes denominated in these 4 currencies would be comparable to the one of the classes denominated in the G4 currencies.
75. For the other two currencies, DKK and NOK, the level of concentration is higher than the level observed in the G4 currencies: indeed in those two markets, one bank (the same one) has a market share well above that of the other market participants, as measured by the number of transactions. On that basis, the assessment of whether market dispersion would remain sufficient in the event of a default of that particular bank, which is a clearing member of three European CCPs, may deserve some more analysis.

<sup>18</sup> The Herfindahl index represents a measure of market concentration and is defined as the sum of the squares of the market shares of each individual institution. It ranges from 0 to 10,000. The more concentrated the market, the higher the measure becomes. If the market is fully concentrated (only one institution), the measure will have the (maximum) value of 10,000.

<sup>19</sup> All trade repositories data mentioned in this paper cover the same time period i.e. March, April and May 2014. This database was built by extracting and aggregating data from the 6 registered European Trade Repositories. This is a complex task which cannot easily be reproduced on a frequent basis. Therefore, although the dataset dates from Q2 2014, ESMA is of the view that the results derived thereof are relevant in the present context. The same dataset was used for several purposes within ESMA, including in the context of MiFID II/MIFIR.

76. The risk of having insufficient market dispersion in the event of a default of that clearing member (under a clearing mandate) should be balanced against the systemic risk that this clearing member currently poses in a bilateral environment.
77. Although this clearing member holds significant positions in those two currencies, EU TR data indicates that there are 33 and 44 other clearing members with reported transactions in DKK and NOK respectively. Therefore, a reasonable number of counterparties would be able to participate in the auction process in the event of a default.
78. In addition, in the current situation where those transactions are not cleared, this clearing member has reported IRS transactions in NOK or DKK with around 170 counterparties. Therefore, a clearing obligation on the corresponding classes would likely mean that a majority of these trades would be cleared, allowing the netting process to materialise with the CCP. As a result, the corresponding gross exposure of this clearing member towards its various counterparties would be reduced.
79. Based on the above, it would be reasonable to conclude that the objective of reduction of systemic risk, which is the overarching objective of the clearing obligation, could be addressed by including the NOK and DKK classes in the scope of the clearing mandate.
80. Taking in consideration all of the above, i.e. the two approaches described above, for the classes that are proposed to be subject to the clearing obligation as per this consultation paper, ESMA is of the view that market dispersion would likely remain sufficient in the event of the default of a clearing member.

#### 5.3.4 Criteria 2(d): Number and value of the transactions – EMIR 5(4)(b) and RTS 7(2)(d)

81. 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.
82. In this section, in order to assess this criteria for the OTC interest rate derivatives denominated in the 6 clearable currencies from the EEA that are CZK, DKK, HUF, NOK, PLN and SEK, the paper is leveraging some information presented in the first consultation paper and in the first final report, in addition to data from the EU trade repositories. Therefore, the analysis will leverage three main data sources: data from the BIS and data from DTCC GTR as was the case with the previous two papers mentioned above as well as new data from the EU TRs.
83. It should be noted that the three data sources differ in terms of definition of the metrics they report on as well as the time span they cover. As a result, they are used to cross check results and validate trends that are established throughout the analysis rather than to reconcile figures on identical terms.

#### OTC Interest rate derivatives denominated in the six EEA currencies show significant activity, geographical concentration and interconnectedness within Europe.

84. The first consultation paper had confirmed the large predominance of OTC interest rate derivatives denominated in the G4 currencies and the first final report also indicated that the activity in OTC interest rate derivatives denominated in the G4 currencies was the largest at the EU level. However, beyond these 4 currencies, the responses to the consultation and information presented in the final report both indicated that the activity in OTC interest rate derivatives denominated in the other clearable currencies from the EEA may be of significant proportion in their domestic markets and for

the European Union. Further analysis and additional data have confirmed this aspect as detailed in the next paragraphs.

85. Starting with BIS data, Table 11 shows the geographical breakdown of the daily turnover in OTC interest rate derivatives denominated in the 6 EEA currencies, i.e. interest rate derivatives denominated in CZK, DKK, HUF, NOK, PLN and SEK. However, before looking at the specific results, the next paragraphs introduce the structure of the table.
86. Table 11 breaks down geographically the daily average turnover in millions of USD in interest rate derivatives denominated in the EEA currencies with a focus on the activity in the corresponding EEA countries and at the level of the EU. Specifically:
87. Column A indicates the total daily average turnover in OTC interest rate derivatives across all currencies (not just the 6 EEA but all currencies including EUR, GBP, etc.) per country. For example, the total daily average turnover in the Czech Republic was 157 million USD, while the total daily average turnover in Denmark was 59 billion USD.
88. Column B indicates the share of the daily turnover of interest rate derivatives denominated in the domestic currency against the total across all currencies as reported under column A. For example, the daily turnover in interest rate derivatives denominated in CZK represented 90% of total daily turnover in interest rate derivatives in the Czech Republic, while for Denmark the DKK represented 5% of the total daily turnover in Denmark.
89. Column C indicates the daily average turnover per currency and geographical location in absolute terms. For instance, the daily average turnover of interest rate derivatives denominated in CZK in the Czech Republic was 142 million USD while the daily average turnover of interest rate derivatives denominated in DKK in the Czech Republic was 1 million USD.
90. Rows D give information on the daily average turnover in the 6 countries (Czech Republic, Denmark, Hungary, Norway, Poland and Sweden) corresponding to the 6 EEA currencies as reported under Columns A, B and C as explained above.
91. Row E indicates for each of the 6 EEA currencies the share of the daily turnover in the domestic country versus the total daily turnover of interest rate derivatives denominated in the given currency across all countries (not just the EU Member States). For instance, 15% of the total daily turnover in interest rate derivatives denominated in CZK was in the Czech Republic, while 70% of the total daily turnover in interest rate derivatives denominated in DKK was in Denmark.
92. Rows F indicate in absolute and relative terms for each of the 6 EEA currencies the share of the daily turnover in the European Union versus the total daily turnover of interest rate derivatives denominated in the given currency across all countries (not just the EU Member States). For instance, 804 million USD and 87% of the total daily turnover in interest rate derivatives denominated in CZK was in the European Union, while 4.3 billion USD and 96% of the total daily turnover in interest rate derivatives denominated in DKK was in the European Union.
93. Row G gives for each of the 6 EEA currencies the total daily average turnover of interest rate derivatives denominated in the given currency across all countries (not just the EU Member States). For instance, the total daily average turnover in interest rate derivatives denominated in CZK across all countries was 929 million USD, while the total daily average turnover in interest rate derivatives denominated in DKK across all countries was 4.5 billion USD.

**Table 11: Geographical breakdown of the daily average turnover (daily averages, in millions of US dollars) in interest rate derivatives in the 6 EEA currencies**

OTC IRD Turnover	A Total for the country	B Percentage of domestic currency in total for the country	C non-G4 EU & EEA currencies cleared by one or more EU CCPs						
			CZK	DKK	HUF	NOK	PLN	SEK	
<b>Domestic (EU)</b>									
Czech Republic	157	90%	142	1	-	-	-	-	-
Denmark	59,354	5%	-	3,189	3	377	80	4,391	
D Hungary	83	100%	-	-	83	-	-	-	-
Poland	3,038	96%	13	-	-	-	2,916	-	-
Sweden	16,998	78%	-	61	-	778	-	13,228	
<b>Domestic (EEA)</b>									
Norway	5,651	80%	-	-	-	4,536	11	133	
E Percentage in domestic country			15%	70%	3%	39%	32%	30%	
<b>European Union</b>									
F Total			804	4,389	2,976	6,804	9,093	43,362	
Percentage in EU			87%	96%	96%	58%	98%	98%	
G <b>Total (all countries)</b>			929	4,568	3,098	11,706	9,244	44,257	

Source: BIS Triennial Central Bank Survey. Average daily turnover reported in the month of April 2013, ESMA calculations

94. Looking now at what the numbers of Table 11 indicate, three main aspects with respect to the volume of OTC interest rate derivatives denominated in the 6 EEA currencies are evidenced and developed in the following paragraphs, as well as summarised in paragraph 98.
95. Firstly, from a flow perspective, Table 11 confirms that the vast majority of the turnover of OTC interest rate derivatives in these 6 EEA currencies is in the European Union. On a currency by currency basis, between 87% (CZK) and 98% (PLN and SEK) of the daily turnover of interest rate derivatives denominated in these currencies is in the European Union. The only exception is derivatives denominated in NOK. However, adding the turnover in Norway to the turnover in the European Union for derivatives denominated in NOK then gives the same conclusion. As a result, the liquidity for the derivatives denominated in these 6 currencies is indeed concentrated in Europe, and thus is less dependent on international coordination with regulators from outside Europe.
96. Secondly, Table 11 also indicates that in their respective domestic markets, the vast majority of the daily turnover is attributed to OTC interest rate derivatives denominated in the domestic currency. Apart from Denmark, the share of daily turnover in the domestic market that is attributed to derivatives denominated in the domestic currency ranges from 78% (Sweden) to close to 100% (Hungary). For example, 78% of the daily turnover of OTC interest rate derivatives in Sweden in April 2013 was attributed to OTC interest rate derivatives denominated in SEK. As a result, OTC interest rate derivatives classes denominated in SEK are thus of significant importance in Sweden. Likewise, OTC interest rate derivatives classes denominated in any of the currencies discussed in this section are of significant importance in their domestic country. This includes Denmark too. In Denmark, when excluding OTC interest rate derivatives denominated in EUR, which have been addressed with the first final report and draft RTS, the same conclusion is indeed reached. Within these 6 countries, an important part of the systemic risk associated to the OTC interest rate derivatives market is thus concentrated in OTC interest rate derivatives denominated in the domestic currency.
97. Thirdly, Table 11 shows that a large share of the daily turnover in OTC interest rate derivatives denominated in these currencies takes place outside their domestic country. In fact, apart from the case of interest rate derivatives denominated in DKK, for which the majority (70%) of the daily turnover took place in Denmark, for the other currencies, the majority of the daily turnover in OTC interest rate

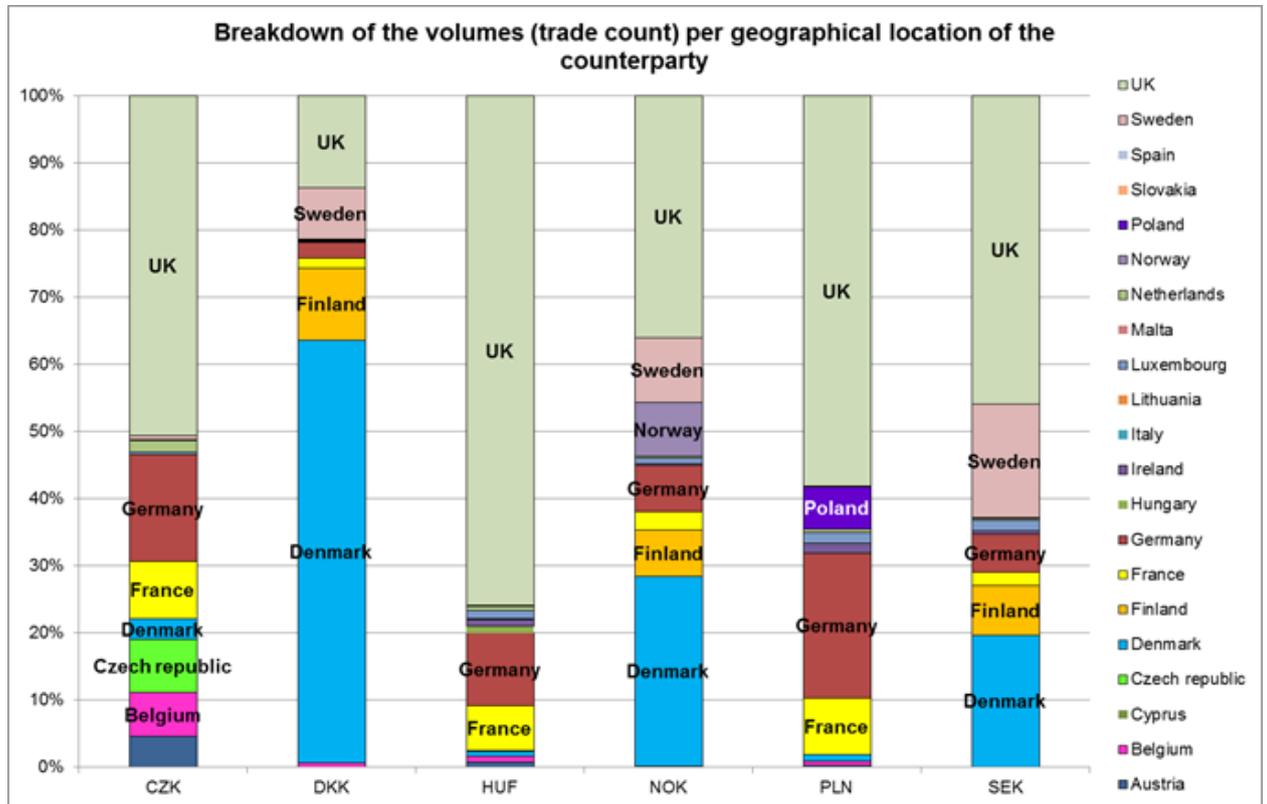
derivatives denominated in the domestic currency took place elsewhere in Europe than in the domestic country. Indeed, except with DKK, Table 11 indicates that the daily turnover in OTC interest rate derivatives denominated in one of the other 5 EEA currencies and attributed to the domestic country only ranges from 3% (HUF) to 39% (NOK). This confirms an important level of linkage within Europe for this segment of the OTC interest rate derivative market.

98. In summary:

- a) the daily turnover in OTC interest rate derivatives denominated in these 6 currencies (CZK, DKK, HUF, NOK, PLN and SEK) is for the most part taking place in the EEA area, thus being less dependent on actions and activity taking place outside the EEA area than other classes;
- b) for the corresponding six countries, the very large majority of the daily turnover in OTC interest rate derivatives is denominated in the domestic currency, thus showing a significant sensitivity to the activity in the corresponding class; and
- c) for the six EEA currencies, the daily turnover in OTC interest rate derivatives denominated in the domestic currency is in the majority taking place outside the domestic country, showing a level of interdependency with the activity in the corresponding classes in the rest of the EEA.

99. This situation can also be evidenced using data from the European trade repositories. Using this data source, Figure 3 provides data on the volume (as measured by trade count) in the 6 currencies, broken down by geographical location of the counterparties.

**Figure 3: Geographical breakdown of the daily average turnover in interest rate derivatives in the 6 EEA currencies**



Source: EU TR data, March to May 2014

100. On the one hand, for 4 of the currencies (CZK, DKK, HUF and SEK), the numbers are broadly consistent between the two data sources. Looking at the details, Figure 3 does confirm the predominance of Danish counterparties active in DKK (above 60% compared to 70% as reported by BIS) as well as the limited proportion of Czech, Hungarian and Swedish counterparties active in interest rate derivatives denominated in CZK, HUF and SEK respectively. Both sets of result are broadly aligned and so are the corresponding conclusions.
101. On the other hand, BIS data and TR data differ for the part of the activity in NOK and PLN attributed to counterparties established in Norway and Poland respectively. However, they differ on the levels but not on the overall trend. Indeed, both data sources confirm the main argument that only a minority of the activity in OTC interest rate derivatives denominated in the domestic currency (NOK and PLN) is located in the domestic country (Norway and Poland), and thus the important level of interdependency with the other countries.
102. Briefly commenting on the differences between the two data sources as they do not modify the main observations, certain factors may explain them. One such factor can be the EMIR scope of the reporting obligation and thus its impact of available data in the EU TRs. In particular, counterparties in Norway are not directly captured under the EMIR reporting requirements, which can affect the related numbers. Another such factor can be the fact that the two data sources differ in their definitions and their time span. In particular, BIS data and EU TR data present different metrics (volume as measured by notional amounts in the case of the BIS data, volume as measured by trade count in the case of TR data), are based on different approaches to attribute the geographical origin of the derivative activity

(submissions of national central banks to the BIS versus trade reporting by counterparties based on their country of establishment), and finally that they cover limited and different time periods (April 2013 for BIS, March to June 2014 in the case of TR data).

103. Overall, although some figures differ, they lead to the same conclusion. Figure 3 confirms and displays the important level of interdependency in the activity in interest rate derivatives denominated in these 6 clearable EEA currencies. As a result, with regard to the objective of the reduction of systemic risk, there appears to be good reasons to consider classes denominated in these 6 currencies (CZK, DKK, HUF, NOK, PLN and SEK) for the clearing obligation.
104. The following paragraphs continue the analysis of the criterion at a more granular level, per product types, currencies and maturities of the classes.

#### Varying levels of activity across the main IRS and FRA product types

105. In order to look at the volume and the liquidity of OTC interest rate derivatives denominated in the 6 EEA currencies at a more granular level, a first breakdown is done at the level of the product type, thus differentiating interest rate swaps and forward rate agreements in the overall volume. Table 12 is using BIS data to indicate the relative share of IRS and FRA in the total daily turnover in OTC interest rate derivatives denominated in each of the 6 EEA currencies.

**Table 12: FRA and IRS volumes (daily turnover in notional amounts in million USD) in the 6 EEA currencies**

OTC IRD Turnover	non-G4 EU & EEA currencies cleared by one or more EU CCPs					
	CZK	DKK	HUF	NOK	PLN	SEK
FRA	278	2,139	1,781	6,694	5,135	19,373
% of FRAs vs. total	37%	53%	72%	72%	69%	54%
Swaps	416	1,808	648	2,560	2,138	14,618
% of Swaps vs. total	56%	45%	26%	27%	29%	40%
Other products	55	53	46	66	138	2,165
Total	748	4,000	2,475	9,320	7,411	36,157

Source: BIS Triennial Central Bank Survey. Average daily turnover reported in the month of April 2013, ESMA calculations

106. Table 12 thus indicates that in notional terms, the proportion between the daily turnover of IRS and FRA varies across the 6 currencies, but that in general, the share of FRA is comparable yet slightly larger than the share of IRS. Specifically, apart from CZK (37% of the daily turnover of interest rate derivatives denominated in CZK is attributed to FRA), the share of FRA in notional terms ranges from 53% (DKK) to 72% (both HUF and NOK) for the other 5 currencies.
107. Using European TR data, although the figures do not exactly match with the figures of the previous table, mainly due to the difference in the definition of the metrics and the time of the corresponding data as developed in paragraph 102, Table 13 still indicates that the overall conclusion remains the same across the two data sources. In Table 13 as well, in notional terms, the turnover of FRAs is in general in the same order of magnitude as the turnover of IRS and often slightly higher.

**Table 13: FRA and IRS volumes (trade count and notional amounts) in the 6 EEA currencies**

	Daily Average Trade Count (number of trade)	Daily Average Trade Count (%)	Daily Average Notional Amounts (EUR bn)	Daily Average Notional Amounts (%)
<b>IRS</b>	<b>1,643.10</b>	<b>100.00%</b>	<b>50.3</b>	<b>100.00%</b>
SEK	676.2	41.20%	24.5	48.70%
NOK	270.5	16.50%	6.5	12.90%
PLN	265.7	16.20%	5.6	11.10%
HUF	179.2	10.90%	2.5	5.00%
DKK	171.2	10.40%	9.8	19.50%
CZK	80.3	4.90%	1.4	2.80%
<b>FRA</b>	<b>320.3</b>	<b>100.00%</b>	<b>58.5</b>	
SEK	124.4	38.80%	29.9	51.10%
NOK	81.4	25.40%	11.4	19.60%
PLN	55.6	17.30%	7.9	13.50%
HUF	40.9	12.80%	7.3	12.40%
DKK	16.6	5.20%	1.8	3.10%
CZK	1.4	0.40%	0.2	0.40%

Source: European TR data from March to May 2014, ESMA calculations

108. However, looking at the turnover from the perspective of the number of transactions rather than in notional terms, Table 13 shows a much larger volume of IRS than FRA. Looking at the specific numbers, although the ratio for each of these currencies can vary significantly, in general there is a factor of 5 to 10 between the trade count for IRS and for FRA. For instance, Table 13 indicates about 5 times more IRS trades denominated in SEK than FRA trades denominated in SEK.
109. The above numbers are presenting a flow perspective. In order to look at the stock perspective, the below tables (Table 14 and Table 15) are used. Table 14 and Table 15 are extracts of Tables 5 and 8 of the first consultation paper based on data from DTCC from March 2014 and are representing metrics on the outstanding number of trades and notional amounts. DTCC data from the first consultation paper was representative of activity at the global level, however as detailed in paragraph 94 the vast majority of the activity in OTC interest rate derivatives denominated in CZK, DKK, HUF, NOK, PLN and SEK is attributed to Europe. Therefore, although the data source does not have the same EU focus as with data derived from European trade repositories, these metrics can still be considered to be good indicators of the stock perspective in Europe.

**Table 14: Volume of outstanding IRS in 5 of the 6 currencies**

Product	Currency	Gross Notional (Native)	Gross Notional (USD)	Trade Count
Swap	SEK	16,718,892,233,335	2,621,194,611,941	55,606
	PLN	4,257,885,271,404	1,393,424,037,778	55,502
	NOK	4,789,616,917,779	802,953,412,386	25,159
	HUF	157,148,269,729,643	694,453,918,838	36,538
	CZK	10,397,482,522,268	527,324,962,146	22,162
	Total			311,453,022,160,418

Source: DTCC, March 2014, consultation paper on the clearing obligation No.1 (DTCC data not available for IRS denominated in DKK)

**Table 15: Volume of outstanding FRA in the 6 currencies**

Product	Currency	Gross Notional (Native)	Gross Notional (USD)	Trade Count
FRA	SEK	19,403,766,581,143	3,042,130,286,099	11,548
	NOK	4,513,553,791,000	756,672,919,873	5,457
	PLN	2,182,401,800,000	714,206,920,600	4,902
	HUF	130,265,322,400,000	575,655,486,219	3,610
	DKK	817,880,500,000	152,013,886,951	2,018
	CZK	1,684,700,500,000	85,442,281,377	732
	Total			108,211,308,104,564

Source: DTCC, March 2014, consultation paper on the clearing obligation No.1

110. Table 14 and Table 15 above indicate that in notional terms, the share of trades between IRS and FRA are of the same order of magnitude. The ratio is thus similar to the flow perspective, although this time, from a stock perspective there is slightly more IRS than FRA. One explanation could be that IRS are traded with longer maturities and can stay longer on the books of the counterparties.
111. Table 14 and Table 15 above also indicate that from the perspective of the number of trades, there are many more IRS trades than there are FRA trades. Overall, for the stock perspective the ratio between IRS and FRA trades is also similar to the ratio discussed for the flow perspective, the same factor of 5 to 10 between the two product types seems to apply in these tables. For instance, Table 14 and Table 15 indicate about 5 times more IRS trades denominated in SEK than FRA trades denominated in SEK.
112. Under provision 7(2)(d) of the RTS on OTC derivatives, in relation to the volume and liquidity of the relevant classes of OTC derivatives, both the number and the value of the transactions are to be taken into consideration. Based on the above tables, both from the perspectives of the flow and the stock, IRS and FRA denominated in CZK, DKK, HUF, NOK, PLN and SEK seem to be comparable in notional terms but with a larger number of IRS trades than FRA trades, in general 5 to 10 times more. As a result, the consultation paper does not discount either and the analysis is continued for both product types.
113. However, within the IRS category, there needs to be a distinction between Fixed-to-Float swaps, Basis swaps and Overnight Index swaps. Table 16 below displays the volume of outstanding interest rate derivatives per product type for each of the 6 EEA currencies. Table 16 is an extract of Tables 5 to 7 from the first consultation paper. Table 16 confirms that the volume of Basis swap and Overnight Index swap trades denominated in any of the 6 currencies are clearly much smaller, both in relative and absolute terms, compared to the volume of Fixed-to-Float swap trades denominated in the same currency.

**Table 16: Volume of outstanding IRS, FRA, OIS and Basis denominated in the 6 EEA currencies**

Product	Currency	Gross Notional (Native)	Gross Notional (USD)	Trade Count
Swap	CZK	10,397,482,522,268	527,324,962,146	22,162
FRA	CZK	1,684,700,500,000	85,442,281,377	732
OIS	CZK	N/A	N/A	N/A
Basis	CZK	8,366,390,786	424,314,895	27

Product	Currency	Gross Notional (Native)	Gross Notional (USD)	Trade Count
Swap	DKK	N/A	N/A	N/A
FRA	DKK	817,880,500,000	152,013,886,951	2,018
OIS	DKK	50,200,000,000	9,330,332,640	46
Basis	DKK	N/A	N/A	N/A

Product	Currency	Gross Notional (Native)	Gross Notional (USD)	Trade Count
Swap	HUF	157,148,269,729,643	694,453,918,838	36,538
FRA	HUF	130,265,322,400,000	575,655,486,219	3,610
OIS	HUF	N/A	N/A	N/A
Basis	HUF	N/A	N/A	N/A

Product	Currency	Gross Notional (Native)	Gross Notional (USD)	Trade Count
Swap	NOK	4,789,616,917,779	802,953,412,386	25,159
FRA	NOK	4,513,553,791,000	756,672,919,873	5,457
OIS	NOK	N/A	N/A	N/A
Basis	NOK	55,841,549,180	9,361,534,175	61

Product	Currency	Gross Notional (Native)	Gross Notional (USD)	Trade Count
Swap	PLN	4,257,885,271,404	1,393,424,037,778	55,502
FRA	PLN	2,182,401,800,000	714,206,920,600	4,902
OIS	PLN	7,035,000,000	2,302,255,107	38
Basis	PLN	N/A	N/A	N/A

Product	Currency	Gross Notional (Native)	Gross Notional (USD)	Trade Count
Swap	SEK	16,718,892,233,335	2,621,194,611,941	55,606
FRA	SEK	19,403,766,581,143	3,042,130,286,099	11,548
OIS	SEK	446,720,000,000	70,036,940,288	187
Basis	SEK	4,823,875,474	756,289,127	28

Source: DTCC, March 2014, consultation paper on the clearing obligation No.1 (The source DTCC tables display the top 20 currencies per product type, thus the figures are not available for currencies that are not part of the top 20 currencies ('N/A'))

114. As a result, in light of the low volume of OIS and Basis swaps denominated in these currencies, the corresponding classes do not appear as a priority for the clearing obligation.

An important share of this market is already being cleared

115. Moving to the share of centrally cleared transactions, Table 17 uses data from the BIS to display the ratio of cleared versus uncleared transactions amongst the total population of IRS and FRA transactions denominated in the 6 EEA currencies,

**Table 17: Share of centrally cleared IRS and FRA trades denominated in the 6 currencies**

% cleared	Swaps	FRAs
SEK	10	32
NOK	12	38
PLN	33	45
DKK	12	48
HUF	57	74
CZK	20	76

Source: BIS, The OTC interest rate derivatives market in 2013

116. Table 17 confirms that a good amount of transactions are already cleared in all 6 EEA currencies. BIS data indicates that between 10% (SEK) and 57% (HUF) of IRS are cleared while between 32% (SEK) and 76% (CZK) of FRA are cleared.
117. This indicates among other things that many participants have already adapted to central clearing for OTC interest rate derivatives in these 6 currencies. A clearing obligation on the corresponding classes would benefit from the existing flow of trades in these currencies that is already going through the clearing process.

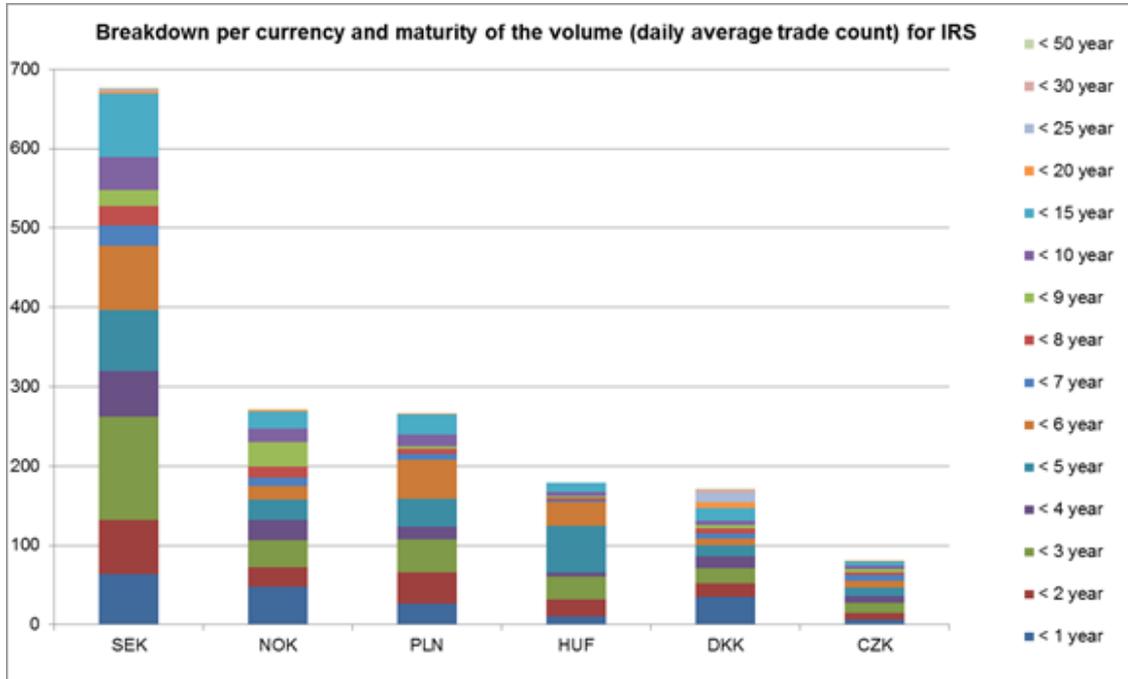
Volume of activity per maturity buckets

118. In order to determine which classes would be fit to become subject to the clearing obligation, further breakdown is conducted in order to look at the corresponding classes in more granular terms, in particular taking into account the level of activity per maturity bucket. The below paragraphs provide this analysis first for IRS and then for FRA.

Analysis of the liquidity per maturity bucket for IRS

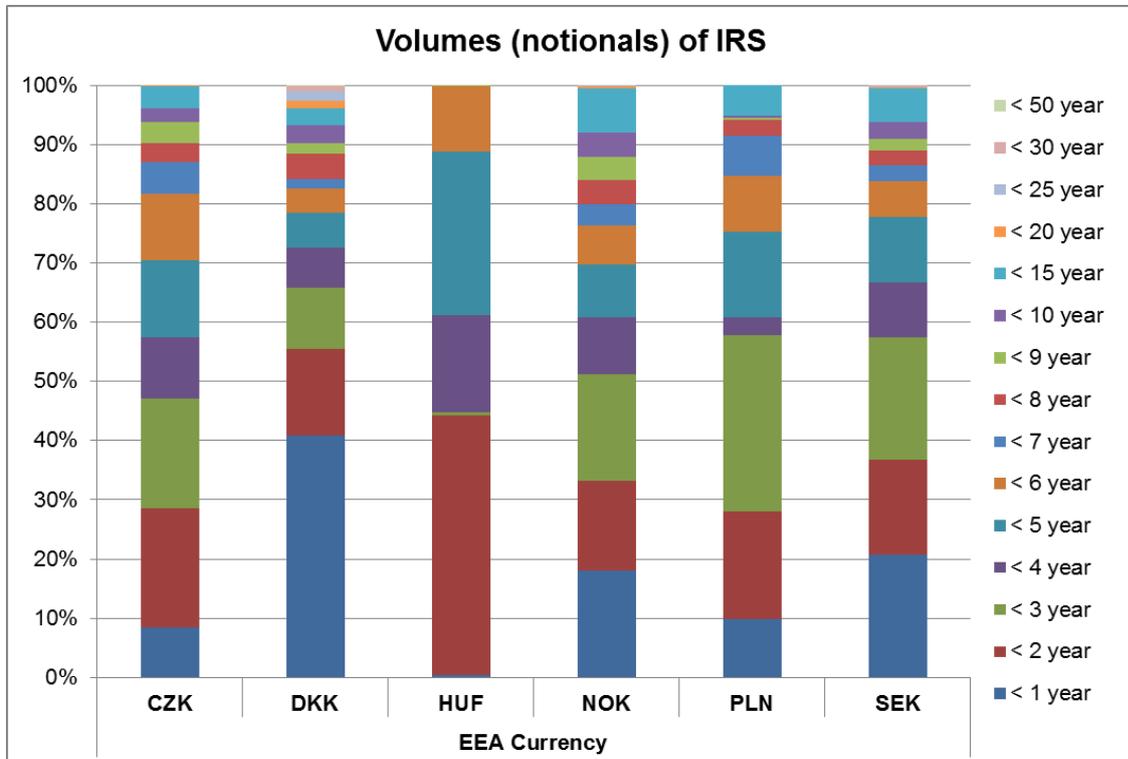
119. Figure 4 and Figure 5 indicate the volume of IRS trades denominated in the 6 EEA currencies per maturity bucket. Figure 4 displays the volume in trade count and in absolute terms, while Figure 5 displays the volume in notional terms and in relative terms. The first graph, which is presented in absolute terms, enables to compare the volumes between the currencies, whereas the second graph, which is presented in relative terms, provides a clearer view of the breakdown per maturity within each currency.

**Figure 4: IRS Volume (daily average trade count) in EEA currencies – Breakdown per maturity**



Source: European TR data, ESMA calculations

**Figure 5: IRS Volume (notional amounts) in EEA currencies – Breakdown per maturity**



Source: European TR data, ESMA calculations

120. In addition, Table 18 gives an indication of the number of days without trading for IRS denominated in the 6 EEA currencies.

**Table 18: Percentage of days without IRS trades – Breakdown per currency and maturity bucket**

	CZK	DKK	HUF	NOK	PLN	SEK
< 1 year	25%	9%	14%	8%	6%	6%
< 2 year	17%	11%	11%	11%	3%	5%
< 3 year	8%	2%	9%	6%	5%	6%
< 4 year	14%	11%	25%	8%	12%	5%
< 5 year	9%	12%	8%	6%	3%	5%
< 6 year	23%	18%	12%	15%	9%	6%
< 7 year	25%	26%	60%	15%	28%	6%
< 8 year	31%	20%	46%	9%	31%	0%
< 9 year	32%	28%	62%	11%	57%	6%
< 10 year	31%	23%	40%	8%	23%	6%
< 15 year	26%	14%	18%	11%	11%	0%
< 20 year	92%	15%	100%	71%	98%	31%
< 25 year	100%	14%	100%	95%	100%	48%
< 30 year	100%	34%	100%	98%	100%	65%
< 50 year	100%	85%	100%	98%	100%	94%

Source: European TR data, ESMA calculations. The total number of days in the study period is 65.

121. The two graphs and the table above indicate that the IRS denominated in the 6 EEA currencies display different levels of activity.
122. IRS denominated in SEK demonstrate a level of activity that is much larger than the levels of activity of IRS denominated in the other 5 currencies. All tables and graphs in this section support this aspect. For instance, the daily average turnover reported by BIS and located in the EU is four times the daily average turnover for NOK or PLN.
123. When looking at the level of activity of IRS denominated in SEK at the maturity level, there appear to be a significant level of activity up to the maturity bucket of 15 years. Figure 4 shows that close to the all the IRS volume in trade count (99%) is made of maturities up to 15 years. Figure 5 also displays that the IRS volume in SEK is composed of maturities up to 15 years in notional terms. Finally, Table 18 shows that the number of days without trading in the period that was analysed is in the single digits in percentage terms up to the 15 years bucket and that it rapidly increases in the following buckets.
124. IRS denominated in NOK and PLN demonstrate comparable levels of activity, with 270 and 280 trades per day on average across currencies. IRS denominated in DKK or HUF demonstrate lower levels of activity, with around 170 trades per day on average across currencies, which is not significantly different from the volume of activity in IRS denominated in NOK and PLN. Finally, the average daily number of trades of IRS denominated in CZK is the lowest at 80 per day across currencies.
125. The activity on those five currencies is concentrated in the maturities below [5-10] years as indicated in Figure 4 and Figure 5: as measured by notional amounts, 90% of the liquidity is observed at maturities below 8 years, 9 years, 5 years, 10 years and 7 years for CZK, DKK, HUF, NOK and PLN

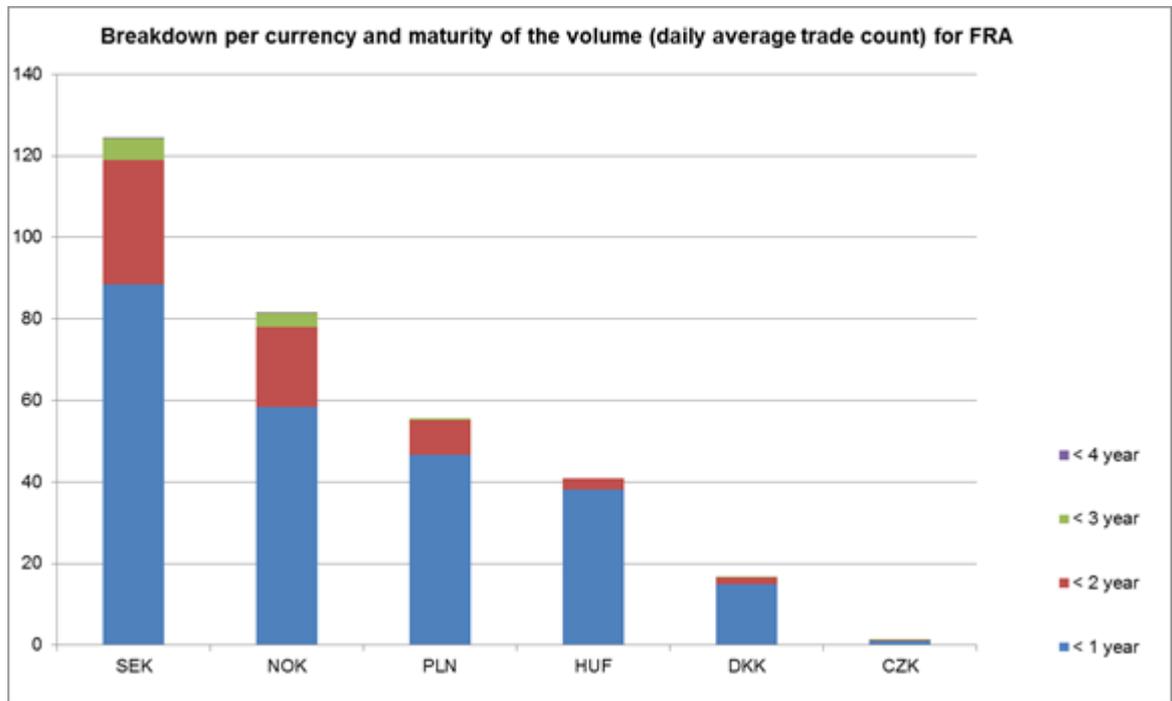
respectively and a bit beyond as measured by trade count, with 90% of the liquidity observed at maturities below 9 years, 15 years, 9 years, 10 years, and 10 years for CZK, DKK, HUF, NOK and PLN respectively.

126. In terms of days without trades for those 5 currencies, as displayed in Table 18, there is a clear drop in liquidity (i.e. percentage of days without trades above 70%) after the 15 year maturity for all currencies except DKK where this sharp decline is only observed after the 30 year maturity. As for the rest of the maturities it is less evident to draw a clear conclusion from Table 18. Given that the overall liquidity of those 5 currencies is lower than that of the SEK, the number of days without trades are naturally higher and often in the double digits, irrespective of the maturity bucket. The narrow size of the sample (65 days) should also be taken into consideration when interpreting these numbers.
127. Overall, with these five currencies, it appears that the percentage of days without trades remains below 20% for maturities below 5/6 years, with the exception of NOK for which the percentage remains below 20% until the 15 year maturity bucket.
128. In summary, IRS denominated in SEK demonstrate an important level of activity up to maturities of 15 years whereas IRS denominated in the other 5 currencies (CZK, DKK, HUF, NOK, PLN) demonstrate lower levels of activity, yet for these 5 currencies there is still a good amount of activity up to maturities of 5 years.

#### Analysis of the liquidity per maturity bucket for FRA

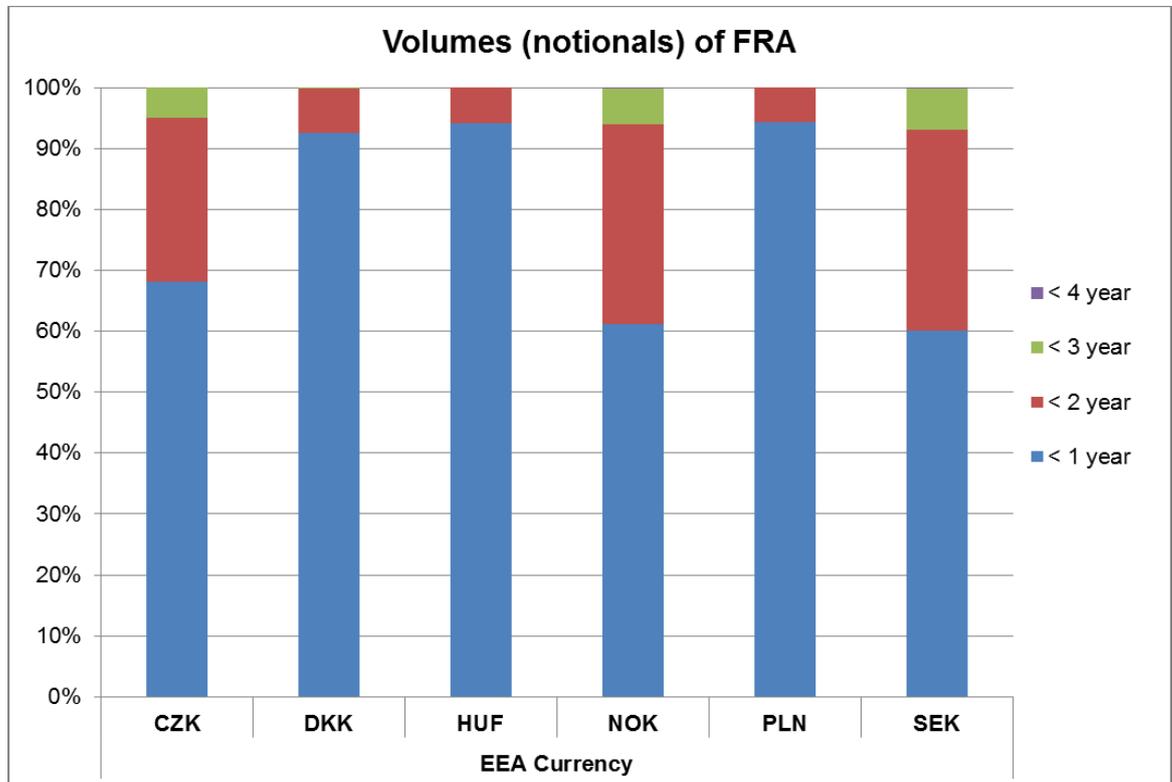
129. The same analysis is being conducted below for the volume of FRA denominated in CZK, DKK, HUF, NOK, PLN and SEK across maturity buckets. Figure 6 and Figure 7 indicate the volume of FRA trades denominated in the 6 EEA currencies per maturity bucket. Figure 6 displays the volume in trade count and in absolute terms, while Figure 7 displays the volume in notional terms and in relative terms. In addition, Table 19 gives an indication of the number of days without trading for FRA denominated in the 6 EEA currencies.

**Figure 6: FRA Volume (trade count) in EEA currencies – Breakdown per maturity**



Source: European TR data, ESMA calculations

**Figure 7: FRA Volume (notional amounts) in EEA currencies – Breakdown per maturity**



Source: European TR data, ESMA calculations

**Table 19: Percentage of days without FRA trades – Breakdown per currency and maturity bucket**

	CZK	DKK	HUF	NOK	PLN	SEK
< 1 year	75%	25%	8%	6%	11%	5%
< 2 year	88%	85%	62%	14%	25%	11%
< 3 year	98%	98%	100%	38%	85%	29%
< 4 year	100%	100%	100%	95%	100%	95%

Source: European TR data, ESMA calculations. The total number of days in the study period is 65.

130. As previously mentioned, although the volume of FRA and IRS can be compared in notional terms, from a trade count perspective the volume is much lower for FRA than for IRS, which impacts the results displayed in the above tables and graphs. In addition, as previously seen in the first consultation paper, FRA are traded on short maturities, so the analysis of the maturity buckets can only confirm that the liquidity is concentrated in the short maturities.
131. In terms of trade count, compared to the situation described above for IRS, the difference between FRA in SEK on one side, and FRA in the other 5 currencies on the other side is not as clear cut. In fact, the daily average number of trades progressively declines from 120 for SEK to 80, 55, 40 and 17 for NOK, PLN, HUF and DKK respectively and finally to 1.5 for CZK.
132. However, looking in parallel at the respective volumes (as measured by notional amounts in Table 13) and the notional amounts outstanding (Table 15), the discrepancies in the level of liquidity per currency for FRA denominated in the 6 EEA currencies are more apparent: SEK clearly exhibits the highest level of activity and CZK the lowest, while the differences between the four other currencies are less obvious.
133. In terms of days without trades, as displayed in Table 19, there is a clear drop in liquidity (for instance when considering the percentage of days without trades above 60%) after the 1 year maturity for DKK and HUF, after the 2 year maturity for PLN, and after the 3 year maturity for SEK and NOK. In the case of CZK, the number of days without trade is already very high (75%) at the 1 year maturity bucket, which is easily explained by the low level of activity overall on this currency.
134. In light of the limited size of the sample (65 days) and the absolute number of transactions, which is lower in the case of FRA than in the case of IRS, any further interpretation of Table 19 should only be considered with caution.
135. On that basis it seems reasonable to focus on the first three most liquid FRAs (i.e. the ones denominated in SEK, NOK and PLN) for the purpose of the clearing obligation, and to adjust cautiously the maturities of the respective classes, taking into account the absolute higher liquidity of SEK compared to the two other currencies.

## 5.4 Criteria 3: availability of the pricing information

136. 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.

137. The analysis of the level of access to reliable pricing data following these terms for IRS classes in general was performed in the first consultation paper on IRS. This was not performed at the level of the currency as it is broadly consistent across all the currencies that are offered for clearing.
138. As a result, the analysis of the classes against this criterion of access to reliable pricing data that was presented in the first consultation paper can be referenced here in this new consultation paper. The responses to the first consultation largely supported the analysis conducted by ESMA, including the analysis of the availability and reliability of pricing information for the IRS classes in general. In addition, there have not been major changes in terms of access to pricing information since the first consultation paper.
139. In summary, ESMA considers that the OTC IRS classes in scope in this consultation paper benefit from an appropriate availability of fair, reliable and generally accepted pricing information, as was already the case for the IRS classes denominated in the G4 currencies.

## 5.5 Conclusion: OTC derivative class to be subject to the clearing obligation

140. Following the review of the classes against the 3 criteria set in EMIR and their analysis in light of the overarching principle of systemic risk, ESMA is of the view that the following interest rate OTC classes should be subject to the clearing obligation:

**Table 20: Fixed-to-float interest rate swaps class**

Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
Fixed-to-Float	PRIBOR	CZK	28D-5Y	Single currency	No	Constant or Variable
Fixed-to-Float	CIBOR	DKK	28D-5Y	Single currency	No	Constant or Variable
Fixed-to-Float	BUBOR	HUF	28D-5Y	Single currency	No	Constant or Variable
Fixed-to-Float	NIBOR	NOK	28D-5Y	Single currency	No	Constant or Variable
Fixed-to-Float	WIBOR	PLN	28D-5Y	Single currency	No	Constant or Variable
Fixed-to-Float	STIBOR	SEK	28D-15Y	Single currency	No	Constant or Variable

**Table 21: Forward rate agreement class**

Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
FRA	NIBOR	NOK	3D-1Y	Single currency	No	Constant or Variable
FRA	WIBOR	PLN	3D-1Y	Single currency	No	Constant or Variable
FRA	STIBOR	SEK	3D-2Y	Single currency	No	Constant or Variable

**Question 4: In view of the criteria set in Article 5(4) of EMIR, do you consider that this set of classes addresses appropriately the systemic risk associated to interest rate OTC derivatives? Please include relevant data or information where applicable.**

## 6 Determination of the dates on which the obligation applies and the categories of counterparties

141. Article 5(2)(b) of EMIR requires ESMA to include in the draft technical standards on the clearing obligation 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.
142. In defining the dates from which the clearing obligation applies and the categories of counterparties, ESMA shall take into consideration the criteria listed in Article 5(5) of EMIR:
- (a) the expected volume of the relevant class of OTC derivatives
  - (b) whether more than one CCP already clear the same class
  - (c) the ability of the CCP to handle the expected volume
  - (d) the type and number of counterparties active in the market
  - (e) the period of time a counterparty subject to the clearing obligation needs to put in place arrangements to clear
  - (f) the risk management and the legal and operational capacity of the counterparties
143. Those criteria are analysed in the following paragraphs.

### 6.1 Determination of the categories of counterparties

144. The analysis of the relevant criteria to determine the categories of counterparties and what could thus be the resulting approach in the draft RTS was covered in six prior papers: the discussion paper on the clearing obligation, the first three consultation papers on the clearing obligation, which covered interest rate derivatives, credit derivatives and non-deliverable forwards respectively, the Final Report on the clearing obligation for IRS and the Opinion on the draft RTS on the clearing obligation for IRS<sup>20</sup>.
145. The approach was progressively refined to take into consideration the feedback received from every consultation. In particular, taking into account the feedback from the first consultation paper on IRS, ESMA modified its initial proposal as explained in the Final Report on the clearing obligation for IRS (as submitted to the European Commission for endorsement on 1 October 2014), which led to the classification of counterparties into four categories.
146. The approach that serves as a basis for the present consultation is the one included in the Opinion submitted by ESMA to the European Commission on 29 January 2015, as this is the most recent version of the draft RTS on the clearing obligation.
147. In this Opinion, the four categories of counterparties are defined as follows:

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<sup>20</sup> ESMA-2015-223 Opinion on draft RTS on the clearing obligation published on 29 January 2015. The revised opinion published on 6 March 2015 (ESMA-2015-511 Revised Opinion on draft RTS on the clearing obligation) did not include any modification of the draft RTS, i.e. the draft RTS included in both the Opinion and the revised Opinion are the same.

- Category 1: clearing members of one of the IRS classes subject to the clearing obligation (i.e. only the classes included in Annex I of the draft RTS);
  - Category 2: financial counterparties and AIFs that are NFC+, not included in Category 1, and which belong to a group whose aggregate month-end average of outstanding gross notional amount of non-centrally cleared derivatives for *[three months after the publication of the RTS in the OJ excluding the month of publication]* is above EUR 8 billion;
  - Category 3: financial counterparties and AIFs that are NFC+, not included in Category 1 nor in Category 2;
  - Category 4: NFC+ not included in Category 1, Category 2 nor Category 3.
148. Hence, ESMA is proposing to leverage the work and feedback from the consultations already performed in this respect. The proposal to align the definition of the categories of counterparties was already made in the third consultation paper on the clearing obligation for NDF and was largely supported by respondents to this consultation. However, although the overall approach is maintained, a few specificities linked to each category of counterparties are presented below in order to be taken into account in this new draft RTS.

### 6.1.1 Classification for clearing members

149. In this consultation, the classes that are proposed for the clearing obligation belong to the same asset class (OTC interest rate derivatives) as the classes proposed in the first RTS on the clearing obligation.
150. Consequently, for a very large majority, the clearing members in the first set of classes (G4 currencies) are the same as the clearing members in the second set of classes (EEA currencies).
151. However, some clearing members that are included in Category 1 in respect of the first RTS (G4 currencies) may not have pre-existing clearing arrangements for all the classes covered by the second RTS (EEA currencies). For example, clearing members of Eurex may not have pre-existing clearing arrangements for their transactions in the EEA currencies, because this CCP does not clear IRS in those currencies (unless they are also clearing members of another CCP clearing IRS).
152. To take this element into account, ESMA is proposing to frame the definition of the Category 1 in such a way that it encompasses only the counterparties which have existing clearing arrangements for at least one of the classes proposed in this second RTS.
153. This means that for example, counterparties which are clearing members of Eurex only would not be captured by the definition of Category 1 in respect of the second RTS.
154. To conclude, the draft RTS presented in Annex III is structured in such a way that Category 1 is composed of counterparties which, on the date of entry into force of the second RTS, are clearing members for at least one of the classes of OTC derivatives denominated in the EEA currencies, of at least one of the CCPs authorised or recognised before that date to clear at least one of those classes.

### 6.1.2 Category 2 and 3: Date of assessment of the quantitative threshold

155. In the first RTS on the clearing obligation for IRS, the definition of Category 2 and Category 3 depends on a quantitative threshold. For example, to be included in Category 2, the counterparty needs to belong to a group whose aggregate month-end average notional amount of non-centrally cleared derivatives for the three months following the date of publication of the RTS<sup>21</sup> in the Official Journal (excluding the month of publication) is above EUR 8 billion.
156. To avoid introducing unnecessary compliance costs, ESMA is proposing that the same three months are used for the assessment of the positions against the threshold in the draft RTS for IRS denominated in the new currencies.
157. The proposal to keep the dates of assessment identical in the different RTS on the clearing obligation was already suggested in the consultation paper on the clearing obligation for NDF and was supported by respondents to the consultation<sup>22</sup>.
158. This means that counterparties should perform the calculation only once to determine whether they belong to Category 2 or to Category 3 in respect of the two RTS on IRS. If they have determined that they belong to Category 2 for the IRS classes included in the first RTS, then they should also belong to Category 2 in respect of the IRS classes included in this second draft RTS on the new currencies.

### 6.1.3 Category 4

159. ESMA is proposing to keep the same definition of Category 4 as in the previous consultations, i.e. Category 4 encompasses non-financial counterparties that do not belong to Category 1, Category 2 or Category 3.
160. One amendment was introduced in this section of the RTS compared to the versions of the RTS presented in the previous consultations, which is the removal of the reference to non-financial counterparties “meeting the conditions referred to in Article 10(1)(b) of Regulation (EU) No 648/2012”. This modification occurred during the process of adoption by the Commission of the first RTS on the clearing obligation for IRS denominated in the G4 currencies.
161. It should be made very clear that this modification does not affect in any way the outcome of the text. In accordance with Article 4(1) of EMIR, **only NFCs meeting the conditions referred to in Article 10(1)(b) of EMIR (i.e. NFC above the clearing threshold or NFC+) are subject to the clearing obligation.** Therefore, it would be redundant to restate in the RTS on the clearing obligation that the NFC referred to in the definition of Category 4 “meet the conditions referred to in Article 10(1)(b) of Regulation (EU) No 648/2012”, as there is no ambiguity about this fact in EMIR.

### **Question 5: Do you consider that the proposals related to the definition of the categories of counterparties are appropriate in light of the criteria set out in EMIR?**

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<sup>21</sup> The period of assessment has changed in the different versions of the RTS on the clearing obligation for IRS in G4 currencies. In the first Final Report (IRS denominated in the G4 currencies), the assessment against the threshold was to be made during the three months preceding the date of entry into force of the RTS (see paragraph 107 of the Final Report). Subsequently, during the process of adoption by the Commission of this first RTS, the period of assessment was defined as the three months following the date of publication of the RTS in the Official Journal (excluding the month of publication), to avoid any retroactive effect and to ensure that the rules were finalised before the counterparties had to perform the assessment. The same approach is proposed in this consultation paper.

<sup>22</sup> See paragraph 36 of the Feedback Statement on the clearing obligation for NDF, 2015-ESMA-234

## 6.2 Determination of the dates from which the clearing obligation takes effect

162. The original approach regarding the dates from which the clearing obligation applies has been detailed in the first consultation paper on the clearing obligation for IRS. Following the public consultation on the IRS classes denominated in the G4 currencies, the approach has been modified as presented in the Final Report on the clearing obligation on IRS. The dates of application have not been further modified during the process of endorsement of the technical standards by the European Commission. The phase-in periods defined in this first RTS are as follows: 6 months for Category 1, 12 months for Category 2, 18 months for Category 3 and 3 years for Category 4.
163. In terms of scope, the proposal included in the present consultation paper consists in expanding the range of currencies of the classes subject to the clearing obligation. In this respect, it should be noted that the criteria to be taken into consideration for the determination of the dates of application have already been analysed in the clearing obligation procedure related to the classes denominated in the G4 currencies. Therefore, the analysis of the criteria presented below focusses on the differences between the two markets (G4 vs EEA non-G4) which are relevant for the purpose of defining the dates of application for this second set of currencies.

### Number of CCP clearing the classes

164. Article 5(5)(b) of EMIR requires ESMA to take into consideration whether more than one CCP already clear the same class of OTC derivatives. Not all CCPs clearing IRS offer the same combinations of product types (Basis Swaps, Fixed-to-Float, FRA and OIS) and currencies. It is therefore relevant to assess the number of CCP available for each class proposed for the clearing obligation, taking into account the currencies and product types.
165. Table 22 below shows the clearable classes of IRS denominated in the EEA currencies, and the CCPs authorised to clear them.

**Table 22: Number of CCP clearing IRS classes in EEA currencies**

	CME CE	KDPW_CCP	LCH.CLEAR NET Ltd	NASDAQ OMX	Number of CCP
<b>Basis</b>		1	1		2
CZK			1		1
DKK			1		1
HUF			1		1
NOK			1		1
PLN		1	1		2
SEK			1		1
<b>Fixed-to-Float</b>	1	1	1	1	4
CZK	1		1		2
DKK	1		1	1	3
HUF	1		1		2
NOK	1		1	1	3
PLN	1	1	1		3
SEK	1		1	1	3
<b>FRA</b>		1	1	1	3
CZK			1		1
DKK			1	1	2
HUF			1		1
NOK			1	1	2
PLN		1	1		2
SEK			1	1	2
<b>OIS</b>		1		1	2
PLN		1			1
SEK				1	1

Source: European CCPs, ESMA calculation

The classes proposed for mandatory clearing appear in green

166. As evidenced in this table, the classes proposed to be subject to the clearing obligation in this consultation paper are cleared by 2 or 3 CCPs. As a comparison, there are at least 3 CCPs available to clear IRS denominated in the G4 currencies included in the first RTS, and up to 4 CCPs for the classes in EUR.
167. Not surprisingly, the representation shown in Table 22 confirms that liquidity serves as an important factor driving the clearing offer of CCPs: less liquid contracts like OIS are only clearable in two currencies (PLN and SEK), and only one CCP clears each of them. Basis swaps, which are also less liquid than Fixed-to-float or FRA as demonstrated in the liquidity analysis of Section 5.3, are clearable in the same 6 currencies as the other product types, but with a more limited clearing offer: only 1 CCP clears them except for PLN which is cleared by 2 CCPs.
168. To conclude, although the clearing offer in the EEA currencies is slightly more limited, it is assessed to be proportionate to the volumes of the respective currencies.

### Counterparties active in IRS denominated in EEA currencies

169. With regard to criteria (e) of Article 5(5) of EMIR (the “period of time a counterparty subject to the clearing obligation needs in order to put in place arrangements to clear its OTC derivative contracts through a CCP”), it seems reasonable to consider that this period of time would not considerably differ depending on the currency of denomination of the IRS classes. Therefore, the outcome of the analysis of this criterion for the new classes would not differ from the one already performed for the G4-denominated classes.
170. However, with regards to criteria (d) and (f) which are linked to the type and number of counterparties active in the market, and their legal and operational capacity, a more granular analysis is needed, since the counterparties active in the IRS market are not necessarily the same across currencies.
171. ESMA used data from EU trade repositories to evaluate the number of counterparties active in the classes proposed in this paper. This number was estimated to be around 1,300, which represents roughly 25% of the total number of counterparties active in the IRS market across currencies in Europe. In terms of breakdown per currency, the number of active counterparties is the highest for SEK and PLN with a range of [560-580] counterparties, a range of around [200-250] counterparties for DKK, HUF and NOK, and below 100 counterparties for CZK (see Table 23 below).

**Table 23: Active counterparties in IRS denominated in EEA currencies**

	Number of Active Counterparties*	o/w Clearing Members (CM)	% of counterparties that are CM
<b>SEK</b>	586	59	10%
<b>PLN</b>	559	65	12%
<b>DKK</b>	243	39	16%
<b>HUF</b>	239	44	18%
<b>NOK</b>	206	56	27%
<b>CZK</b>	97	40	41%
<b>Total (with Duplicates)</b>	<b>1930</b>	<b>303</b>	
<b>Total (Without Duplicates)</b>	<b>1304</b>	<b>93</b>	

(\*) Only counterparties reporting with an LEI.

Source: EU TR data, ESMA calculation

172. Since fewer counterparties are active in the IRS classes denominated in the EEA currencies compared to the G4 currencies, one can expect that the risk of “bottleneck” (i.e. an important number of counterparties looking to establish clearing arrangements at the same time) is more limited in this case. Nevertheless, the absolute number of counterparties active in those markets remains significant and this risk should still be taken into consideration.
173. On the one hand, it could be argued that the counterparties active in both sets of classes are expected to leverage their experience with compliance with the clearing obligation in respect of the first set of classes, hence the steps to comply with the clearing obligation in the new currencies should be less burdensome and time consuming. On the other hand, some counterparties active in the second set of IRS classes may not participate in the first set of IRS classes, and even for counterparties active in

both markets, the time needed to put in place clearing arrangements in new currencies should not be totally discounted.

174. Taking into consideration all of the above, ESMA is proposing to use, as a minimum, the same phase-in periods for the four categories of counterparties as the ones proposed in the first RTS on the clearing obligation for IRS denominated in the G4 currencies.
175. In addition, ESMA considers that the overall calendar of implementation of the clearing obligation should also be taken into consideration when defining the dates of application for this second set of classes. Indeed, the process of implementation of the clearing obligation in Europe is designed in such a way that it will result in a series of implementation deadlines, one per RTS and per category of counterparties.
176. To take that calendar into account, ESMA is proposing to add an extra period of three months to the phase-in periods in case the two RTS on the clearing obligation, for IRS denominated in the G4 and in the EEA currencies, are adopted shortly one after the other. The objective of the extra three months is to avoid that counterparties in the same category face two implementation deadlines (one for each set of classes) within a short period of time.
177. More specifically, ESMA is proposing that the extra 3 month phase-in is granted only if the two RTS on the clearing obligation for IRS are adopted with less than 3 months difference.
178. As a result, the proposal regarding the dates of application of the clearing obligation in respect of the second RTS on EEA currencies is the following:
  - The date 6/12/18/36 months after the entry into force of the second RTS (on the EEA classes) for categories 1 to 4 respectively, if the second RTS is published in the Official Journal more than 3 months after the first RTS (on the G4 classes) is published in the Official Journal;
  - The date 9/15/21/39 months after the entry into force of the second RTS (on the EEA classes) for categories 1 to 4 respectively, if the second RTS is published in the Official Journal less than 3 months after the first RTS (on the G4 classes) is published in the Official Journal;
179. At the time the second RTS is published in the Official Journal, it will of course be known whether or not three months have elapsed since the publication of the first RTS. Therefore, only one date will appear in the resulting RTS published in the Official Journal.
180. The outcome of this approach is that counterparties will be granted a minimum phase-in period of 6/12/18/36 months, but in the case that the second RTS is published less than three months after the first RTS, they will be granted an additional phase-in period of 3 months.

**Question 6: Do you consider that the proposed dates of application for the different categories of counterparties ensure a smooth implementation of the clearing obligation? Please explain why and possible alternatives.**

### 6.3 Date of application for intragroup transactions

181. On 18 December 2014 the Commission sent a letter to ESMA indicating its intention to endorse with amendments the draft RTS on the clearing obligation for IRS denominated in the G4 currencies, which had been submitted to the Commission on 1 October 2014. The annex to this letter included the proposed modified RTS. On 29 January 2015 the Commission sent a corrigendum of this letter without modifying the proposed modified RTS.
182. One of the Commission's proposals was to add a provision, in the article related to the dates of application, which stated that for a period of three years third-countries shall be deemed equivalent within the meaning of Article 13(2) of EMIR for the purpose of point (i) of Article 3(2)(a) of that Regulation. The purpose of this new provision is to facilitate temporarily the use of the exemption from the clearing obligation for non-EU intragroup transactions in the absence of equivalence decision adopted by the Commission in accordance with Article 13(2) of EMIR.
183. ESMA has responded to the Commission's proposed amendments, and in particular to the point mentioned above, in an Opinion published on 29 January 2015<sup>23</sup>.
184. At the time of publication of this consultation paper, it is yet unknown if and how a provision related to a specific date of application for intragroup transactions concluded with third-country entities will be included in the first RTS on the clearing obligation on the G4 currencies. Therefore, this aspect is not covered in the present consultation and in the draft RTS presented in Annex III.

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<sup>23</sup> 2015/ESMA/223 Opinion on the draft RTS on the clearing obligation on interest rate swaps, published on 29 January 2015.

## 7 Minimum remaining maturity and frontloading

185. The frontloading requirement as foreseen by Article 4(1)(b)(ii) of EMIR is the obligation to clear the OTC derivative contracts (pertaining to a class of OTC derivatives that has been declared subject to the clearing obligation) that are entered into after the notification as referred to in Article 5(1) and before the date of application of the clearing obligation<sup>24</sup>.
186. The approach regarding frontloading was detailed in the first consultation papers on the clearing obligation, covering interest rate derivatives and credit derivatives. It was then modified following the first consultation on IRS as presented in the Final Report on the clearing obligation for IRS, and also modified after the delivery of the Final Report (see the 18 December 2014 letter from the Commission and the subsequent ESMA Opinion of 29 January 2015).
187. For consistency reasons ESMA has built the current draft RTS on the basis of the most recent version of the draft RTS on the clearing obligation, i.e. the version included in the ESMA Opinion.
188. Hence the approach reflected in the draft RTS presented in Annex III is such that frontloading only applies to financial counterparties in Category 1 and Category 2. In addition, to allow for a pragmatic implementation of the frontloading obligation (in line with the above mentioned letter from the Commission and the ESMA Opinion), the frontloading start date should be postponed by a few months after the entry into force of the RTS on the clearing obligation. This postponement will:
- provide counterparties in Category 2 or 3 with an appropriate period of time (5 months) to determine the category to which they belong before they become subject to the frontloading obligation; and
  - provide counterparties in Category 1 with an appropriate period of time (2 months) to apply for the intragroup exemption before they become subject to the frontloading obligation.
189. As a result, for counterparties in Categories 1 and 2, the minimum remaining maturity applicable to contracts concluded between (1) the date of entry into force of the RTS + [2/5 months] and; (2) the date of application of the clearing obligation for those counterparties, is proposed to be 6 months. For the other contracts and counterparties, frontloading is dis-applied by setting the minimum remaining maturities at a high level (i.e. equal to the maximum maturity of the contracts subject to the clearing obligation).

### **Question 7: Do you have any comment on the approach envisaged for frontloading?**

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<sup>24</sup> In accordance with EMIR Article 4(1)(b), the clearing obligation applies to contracts entered into or novated either:

- (i) on or after the date from which the clearing obligation takes effect; or
- (ii) on or after notification as referred to in Article 5(1) but before the date from which the clearing obligation takes effect if the contracts have a remaining maturity determined by the Commission in accordance with Article 5(2)(c).

## 8 Annexes

### 8.1 Annex I - Legislative mandate to develop technical standards

Article 5 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; and
  - (c) the minimum remaining maturity of the OTC derivative contracts referred to in Article 4(1)(b)(ii).

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.

## 8.2 Annex II - Cost-benefit analysis

### 8.2.1 Introduction

1. This impact assessment was conducted by ESMA while developing the regulatory technical standards (“RTS”) on the clearing obligation, as foreseen by the clearing obligation procedure of Regulation (EU) 648/2012 (EMIR).
2. It should be noted that this impact assessment only covers the technical options under the specific mandate of ESMA in respect of the clearing obligation, given that an impact assessment covering the general aspects of the clearing obligation has already been performed by the European Commission as part of the impact assessment of EMIR.
3. This impact assessment follows the publication of three consultation papers on the clearing obligation on interest rate classes<sup>25</sup>, credit classes<sup>26</sup>, foreign-exchange non-deliverable forward classes<sup>27</sup>, as well as the publication of a final report on the clearing obligation on interest rate classes<sup>28</sup>, and a feedback statement on non-deliverable forward classes<sup>29</sup>.
4. This consultation paper being the fourth one on the topic of the clearing obligation, many technical options have already been proposed, discussed in the responses to the various consultations and modified accordingly.
5. Therefore, this impact assessment only covers the technical options that are specific to the current classes, or for which a different approach is considered.
6. The determination of the classes of OTC derivatives that should be subject to the clearing obligation has been presented both in quantitative and qualitative terms in the explanatory part of the consultation paper and is therefore not repeated in the impact assessment.

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<sup>25</sup> 2014/ESMA/799 Consultation Paper, Clearing Obligation under EMIR no. 1 published on 11 July 2014

<sup>26</sup> 2014/ESMA/800 Consultation Paper, Clearing Obligation under EMIR no. 2 published on 11 July 2014

<sup>27</sup> 2014/ESMA/1185 Consultation Paper, Clearing Obligation under EMIR no. 3 published on 1 October 2014

<sup>28</sup> 2014/ESMA/1184 Final Report, Clearing Obligation under EMIR no. 1 published on 1 October 2014

<sup>29</sup> 2015/ESMA/234 Feedback Statement, Clearing Obligation for non-deliverable forwards published on 4 February 2015

## 8.2.2 Definition of the dates of application and categories of counterparties

<b>Policy Objective</b>	<b>Determine the categories of counterparties to which different phase-in would apply</b>
Option 1	The categories of counterparties for the OTC interest rate derivative classes denominated in the EEA currencies are defined <u>in the same way</u> as the categories of counterparties for the OTC interest rate derivative classes denominated in the G4 currencies.
Option 2	The categories of counterparties for the OTC interest rate derivative classes denominated in the EEA currencies are defined <u>in a different way</u> as the categories of counterparties for the OTC interest rate derivative classes denominated in the G4 currencies.
<b>Preferred Option</b>	<b>Option 1</b>

<b>Option 1</b>	<b>The categories of counterparties for the OTC interest rate derivative classes denominated in the EEA currencies are defined <u>in the same way</u> as the categories of counterparties for the OTC interest rate derivative classes denominated in the G4 currencies.</b>
	Qualitative description
<i>Benefits</i>	<p>The way in which the categories of counterparties are defined for the OTC interest rate derivative classes denominated in the G4 currencies introduces some compliance costs related to the classification of counterparties.</p> <p>The approach of keeping the definition of the categories of counterparties in the RTS unchanged is the simplest one, as most counterparties will not need to re-assess the category of counterparty to which they belong (under some conditions as developed further in the next tables). Counterparties will be able to leverage on the classification work already accomplished in relation with the first clearing obligation determination, for the interest rate derivative classes denominated in the G4 currencies.</p>
<i>Costs to regulator</i> One-off <sup>30</sup>	This is the baseline scenario and it is not expected to add specific costs to regulators or counterparties.
<i>Compliance costs</i> One-off	

<sup>30</sup> On-going costs are irrelevant with respect to phase-in.

<b>Option 2</b>	<b>The categories of counterparties for the OTC interest rate derivative classes denominated in the EEA currencies are defined <u>in a different way</u> as the categories of counterparties for the OTC interest rate derivative classes denominated in the G4 currencies.</b>
	Qualitative description
<i>Benefits</i>	This option, which is more complex, adds the flexibility to better take into account the nature of the counterparties that are specifically active in the classes of OTC derivatives included in the new RTS.
<i>Costs to regulator</i> One-off <sup>31</sup>	The costs would depend on the way such a new classification would be framed. In any case, this option would necessitate another round of counterparty classification on top of the one already performed in connection with the clearing obligation for the first set of OTC interest rate derivative classes. This would necessarily add costs to regulators and counterparties.
<i>Compliance costs</i> One-off	

#### 8.2.2.1 Category 1: Clearing Members

<b>Policy Objective</b>	<b>Determine the clearing members that are included in Category 1</b>
Option 1	Category 1 includes only the clearing members (in IRS) of the CCP authorised to clear at least one of the new classes (EEA currencies)
Option 2	Category 1 includes the clearing members (in IRS) of the CCP authorised to clear at least one of the new classes (EEA currencies) or one of the classes denominated in the G4 currencies included in the first RTS on the clearing obligation.
<b>Preferred Option</b>	<b>Option 1</b>

<b>Option 1</b>	<b>Category 1 includes only the clearing members (in IRS) of the CCP authorised to clear at least one of the new classes (EEA currencies)</b>
	Qualitative description
<i>Benefits</i>	The difference between the two approaches is relevant for clearing members of the first set of classes that are not clearing members of the second set of classes.  At the time of publication, this includes clearing members of Eurex Clearing AG, provided that those counterparties are not also clearing members of one of the CCPs clearing the new set of classes (EEA currencies). Indeed, this CCP clears some classes of the first RTS but does not clear the classes of the second RTS.

<sup>31</sup> On-going costs are irrelevant with respect to phase-in.

	<p>According to the information published by CCP on their clearing members, this population includes 14 clearing members established in 6 different jurisdictions.</p> <p>Under Option 1, those clearing members are not included in Category 1 for the second set of IRS classes (EEA currencies).</p> <p>This option creates a logical mapping between the clearing member definition and the set of classes in the scope of the clearing obligation. Therefore the approach is more granular and it takes better account of the fact that some clearing members do not have pre-existing clearing arrangements for some of the currencies in the scope of the second RTS.</p>
<p><i>Costs to regulator</i> One-off<sup>32</sup></p>	<p>There is no fundamental difference in terms of costs to regulator between the two options.</p>
<p><i>Compliance costs</i> One-off</p>	<p>Under Option 1, the clearing members described above have 6 more months to prepare compliance with the clearing obligation in respect of the second set of classes (EEA currencies).</p>

<b>Option 2</b>	<b>Category 1 includes the clearing members (in IRS) of the CCP authorised to clear at least one of the new classes (EEA currencies) or one of the classes denominated in the G4 currencies included in the first RTS on the clearing obligation.</b>
	Qualitative description
<i>Benefits</i>	Under Option 2 the clearing member category is composed of more counterparties than under Option 1. Since the clearing members are generally the most active counterparties, Option 2 results in swifter progress towards the clearing obligation compared to Option 1.
<p><i>Costs to regulator</i> One-off<sup>33</sup></p>	<p>There is no fundamental difference in terms of costs to regulator between the two options.</p>
<p><i>Compliance costs</i> One-off</p>	<p>Under Option 2, the clearing members described above belong to Category 1 for the second set of classes therefore they have less time than under Option 1 to prepare compliance with the clearing obligation in respect of the second set of classes (EEA currencies).</p>

<sup>32</sup> On-going costs are irrelevant with respect to phase-in.

<sup>33</sup> On-going costs are irrelevant with respect to phase-in.

### 8.2.2.2 Category 2/3: Non-clearing Members

<b>Policy Objective</b>	<b>Determine the relevant time period for the assessment of the position to be compared to the EUR 8bn threshold, to determine whether counterparties are in Category 2 or in Category 3</b>
Option 1	Use the same time period as in the first RTS on the clearing obligation for IRS (G4 currencies)
Option 2	Use a time period that is different than the one included in the first RTS on the clearing obligation for IRS (G4 currencies)
<b>Preferred Option</b>	<b>Option 1</b>

<b>Option 1</b>	<b>Use the same time period as in the first RTS on the clearing obligation for IRS (G4 currencies)</b>
	Qualitative description
<i>Benefits</i>	In terms of outcome, there is no fundamental difference between the two options, in particular if the two RTS on the clearing obligation for IRS (G4 and EEA currencies) are adopted shortly one after the other.
<i>Costs to regulator</i> One-off <sup>34</sup>	Option 1 may be considered slightly less costly since a classification deemed compliant under the first RTS would automatically also comply with the second RTS.
<i>Compliance costs</i> One-off	To determine whether they belong to Category 2 or 3, some counterparties need to calculate their positions in non-cleared OTC derivatives and compare them to the threshold defined in the RTS. This calculation is a month-end calculation covering three months. If the same three months are used in the two RTS on the clearing obligation for IRS, then counterparties will only need to perform the calculation once, which means reduced compliance costs compared to Option 2.

<b>Option 2</b>	<b>Use a time period that is different than the one included in the first RTS on the clearing obligation for IRS (G4 currencies)</b>
	Qualitative description
<i>Benefits</i>	In case a long period of time elapses between the adoption of two RTS on the clearing obligation for IRS (G4 and EEA currencies), Option 2 ensures that the calculation of the positions to be compared to the threshold are more up-to-date and that the resulting classification represents more accurately the status of the

<sup>34</sup> On-going costs are irrelevant with respect to phase-in.

	counterparties.
<i>Costs to regulator</i> One-off <sup>35</sup>	Option 2 may be considered slightly more costly than Option 1 because the classification in Category 2 or 3 would have to be demonstrated in respect of both RTS independently.
<i>Compliance costs</i> One-off	As explained above, the compliance costs are higher in this case because the counterparties will need to calculate twice their positions in non-cleared OTC derivatives to be compared to the threshold, once for the RTS on IRS denominated in the G4 currencies and once for the RTS on IRS denominated in the EEA currencies.

### 8.2.2.3 Dates on which the clearing obligation starts to apply

<b>Policy Objective</b>	<b>Define the dates on which the clearing obligation start to apply for the second RTS on the clearing obligation for IRS</b>
Option 1	Define the dates in respect of the second RTS (EEA currencies) in the same manner as in respect of the first RTS (G4 currencies) i.e. 6/12/18/36 months after the date of entry into force of the RTS for categories 1/2/3/4.
Option 2	Define the dates in respect of the second RTS (EEA currencies) in a similar manner as in respect of the first RTS (G4 currencies) i.e. 6/12/18/36 months after the date of entry into force of the RTS for categories 1/2/3/4 and in addition, include a minimum period of 3 months between the dates of application for the two RTS.
<b>Preferred Option</b>	<b>Option 2</b>

<b>Option 1</b>	<b>Define the dates in respect of the second RTS (EEA currencies) in the same manner as in respect of the first RTS (G4 currencies) i.e. 6/12/18/36 months after the date of entry into force of the RTS for categories 1/2/3/4.</b>
	Qualitative description
<i>Benefits</i>	This option ensures perfect consistency between the two sets of RTS. Counterparties are provided with exactly the same time to prepare for the clearing obligation in IRS denominated in G4 and in EEA currencies.
<i>Costs to regulator</i> One-off <sup>36</sup>	There is no difference in terms of costs to regulator under the two options. The dates of application are simply different in one case or the other.

<sup>35</sup> On-going costs are irrelevant with respect to phase-in.

<sup>36</sup> On-going costs are irrelevant with respect to phase-in.

<p><i>Compliance costs</i></p> <p>One-off</p>	<p>In terms of compliance, counterparties could be confronted with a challenging compliance calendar if the two RTS on the clearing obligation for IRS are adopted shortly one after the other, because they would face two compliance deadlines close to one another, one for the IRS denominated in the G4 currencies and one for the IRS denominated in the EEA currencies.</p>
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<p><b>Option 2</b></p>	<p><b>Define the dates in respect of the second RTS (EEA currencies) in a similar manner as in respect of the first RTS (G4 currencies) i.e. 6/12/18/36 months after the date of entry into force of the RTS for categories 1/2/3/4 and in addition, include a minimum period of 3 months between the dates of application for the two RTS</b></p>
	<p>Qualitative description</p>
<p><i>Benefits</i></p>	<p>This option ensures that the time provided to counterparties to prepare for the second clearing obligation (IRS denominated in EEA currencies) is at least as much as the time to prepare for the first clearing obligation (IRS denominated in G4 currencies) i.e. 6/12/18/36 months after the date of entry into force of the RTS for categories 1/2/3/4.</p> <p>In addition, under this option, there is a minimum “buffer” of three months between the dates of application applicable to the same category of counterparties in respect of the two RTS. This would make the global compliance schedule less challenging for counterparties.</p>
<p><i>Costs to regulator</i></p> <p>One-off<sup>37</sup></p>	<p>There is no difference in terms of costs to regulator under the two options. The dates of application are simply different in one case or the other.</p>
<p><i>Compliance costs</i></p> <p>One-off</p>	<p>In terms of compliance, counterparties would be provided with a minimum time period of three months between the two dates of application for the clearing obligation for IRS denominated in the G4 currencies first, and then in the EEA currencies.</p>

**Question 8: Do you have any comment on the Cost-Benefit analysis?**

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<sup>37</sup> On-going costs are irrelevant with respect to phase-in.

### 8.3 Annex III - Draft Regulatory Technical Standards on the Clearing Obligation

COMMISSION DELEGATED REGULATION (EU) No .../..

of **XXX**

[...]

**supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council  
with regard to regulatory technical standards on the clearing obligation  
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<sup>38</sup>, and in particular Article 5(2) thereof,

Whereas:

- (1) The European Securities and Markets Authority (ESMA) has been notified of the classes of interest rate OTC derivatives that certain central counterparties (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 interest rate OTC derivatives that should be subject to the clearing obligation in accordance with the procedure set out in Regulation (EU) No 648/2012.
- (2) Interest rate OTC derivative contracts can have a constant notional amount, a variable notional amount or a conditional notional amount. Contracts with a constant notional amount have a notional amount which does not vary over the life of the contract. Contracts with a variable notional amount have a notional amount that varies over the life of the contract in a predictable way. Contracts with a conditional notional amount have a notional amount which varies over the life of the contract in an unpredictable way. Conditional notional amounts add complexity to the pricing and risk management associated to interest rate OTC derivative contracts and thus to the ability of CCPs to clear them. This feature should be taken into account when defining the classes of interest rate OTC derivatives to be subject to the clearing obligation.

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<sup>38</sup> OJ L 201, 27.7.2012, p. 1.

- (3) In determining which classes of OTC derivative contracts should be subject to the clearing obligation, the specific nature of OTC derivative contracts which are concluded with covered bond issuers or with cover pools for covered bonds should be taken into account. In this respect, the classes of interest rate OTC derivatives subject to the clearing obligation under this Regulation should not encompass contracts concluded with covered bond issuers or cover pools for covered bonds, provided they meet certain conditions.
- (4) Different counterparties need different periods of time for putting in place the necessary arrangements to clear the interest rate OTC derivatives subject to the clearing obligation. In order to ensure an orderly and timely implementation of that obligation, counterparties should be classified into categories in which sufficiently similar counterparties become subject to the clearing obligation from the same date.
- (5) A first category should include both financial and non-financial counterparties which, at the date of entry into force of this Regulation, are clearing members of at least one of the relevant CCPs and for at least one of the classes of interest rate OTC derivatives subject to the clearing obligation, as those counterparties already have experience with voluntary clearing and have already established the connections with those CCPs to clear at least one of those classes. Non-financial counterparties that are clearing members should also be included in this first category as their experience and preparation towards central clearing is comparable with that of financial counterparties included in it.
- (6) A second and third category should comprise financial counterparties not included in the first category, grouped according to their levels of legal and operational capacity regarding OTC derivatives. The level of activity in OTC derivatives should serve as a basis to differentiate the degree of legal and operational capacity of financial counterparties, and a quantitative threshold should therefore be defined for division between the second and third categories on the basis of the aggregate month-end average notional amount of non-centrally cleared derivatives. That threshold should be set out at an appropriate level to differentiate smaller market participants, while still capturing a significant level of risk under the second category. The threshold should also be aligned with the threshold agreed at international level related to margin requirements for non-centrally cleared derivatives in order to enhance regulatory convergence and limit the compliance costs for counterparties. As in those international standards, whereas the threshold applies at group level, for investment funds this threshold should be applied separately to each fund. However, this should only apply as long as, in the event of fund insolvency or bankruptcy, the investment funds are distinct legal entities that are not collateralised, guaranteed or supported by other investment funds or the investment manager itself.
- (7) Certain alternative investment funds (“AIFs”) are not captured by the definition of financial counterparties under Regulation (EU) No 648/2012 although they have a degree of operational capacity regarding OTC derivative contracts similar to that of AIFs captured by that definition. Therefore AIFs classified as non-financial counterparties should be included in the same categories of counterparties as AIFs classified as financial counterparties.
- (8) A fourth category should include non-financial counterparties not included in the other categories, given their limited experience and operational capacity with central clearing.
- (9) The date on which the clearing obligation takes effect for counterparties in the first category should take into account the fact that they do not necessarily have the necessary pre-existing connections with CCPs for all the classes subject to the clearing obligation. In addition,

counterparties in this category constitute the access point to clearing for counterparties that are not clearing members, client clearing and indirect client clearing being expected to increase substantially as a consequence of the entry into force of the clearing obligation. Finally, this first category of counterparties account for a significant portion of the volume of interest rate OTC derivatives already cleared, and the volume of transactions to be cleared will significantly increase after the date on which the clearing obligation set out in this Regulation will take effect. Therefore, a reasonable timeframe for counterparties in the first category to prepare for clearing additional classes, to deal with the increase of client clearing and indirect client clearing, and to adapt to increasing volumes of transactions to be cleared should be set at 6 months.

- (10) The date on which the clearing obligation takes effect for counterparties in the second and third categories should take into account the fact that most of them will get access to a CCP by becoming a client or an indirect client of a clearing member. This process may require between 12 and 18 months depending on the legal and operational capacity of counterparties and their level of preparation regarding the establishment of the arrangements with clearing members that are necessary for clearing the contracts.
- (11) The date on which the clearing obligation takes effect for counterparties in the fourth category should take into account their legal and operational capacity, and their limited experience with central clearing.
- (12) Regulation (EU) No 648/2012 requires the application of the clearing obligation to contracts concluded after the notification to ESMA that follows the authorisation of a CCP to clear a certain class of OTC derivatives, but before the date on which the clearing obligation takes effect, provided the remaining maturity of such contracts at the date on which the obligation takes effect justifies it. This obligation applies only to financial counterparties. The application of the clearing obligation to those contracts should pursue the objective of ensuring the uniform and coherent application of that Regulation, that is, ensuring financial stability and the reduction of systemic risk, as well as ensuring a level playing field for market participants when a class of OTC derivative contracts is declared subject to the clearing obligation. The minimum remaining maturity should therefore be set at a level that ensures the achievement of those objectives.
- (13) Before regulatory technical standards adopted pursuant to Article 5(2) of Regulation (EU) No 648/2012 enter into force, counterparties cannot foresee whether the OTC derivative contracts they conclude would be subject to the clearing obligation on the date that obligation takes effect. This uncertainty has a significant impact on the capacity of market participants to accurately price the OTC derivative contracts they enter into since centrally cleared contracts are subject to a different collateral regime than non-centrally cleared contracts. Imposing forward-clearing to contracts concluded before the entry into force of this Regulation, irrespective of their remaining maturity on the date in which the clearing obligation takes effect, could limit counterparties' ability to hedge their market risks adequately and either impact the functioning of the market and financial stability, or prevent them from exercising their usual activities by hedging them by other appropriate means. Moreover, contracts concluded after this Regulation enters into force and before the clearing obligation takes effect should not be subject to the clearing obligation until counterparties to those contracts can determine the category they are comprised in, whether they are subject to the clearing obligation for a particular contract, including their intragroup transactions, and before they can implement the necessary arrangements to conclude those contracts taking into account the

clearing obligation. Therefore, in order to preserve the orderly functioning and the stability of the market, as well as a level playing field between counterparties it is appropriate to consider that those contracts should not be subject to the clearing obligation, irrespective of their remaining maturities.

- (14) OTC derivative contracts concluded after the notification to ESMA that follows the authorisation of a CCP to clear a certain class of OTC derivatives, but before the date on which the clearing obligation takes effect should not be subject to the clearing obligation when they are not significantly relevant for systemic risk, or when subjecting those contracts to the clearing obligation could otherwise jeopardise the uniform and coherent application of Regulation (EU) No 648/2012. Counterparty credit risk associated to interest rate OTC derivative contracts with longer maturities remains in the market for a longer period than interest rate OTC derivatives with low remaining maturities. Imposing the clearing obligation on contracts with short remaining maturities would imply a burden on counterparties disproportionate to the level of risk mitigated. In addition, interest rate OTC derivatives with low remaining maturities represent a relatively small portion of the total market and thus a relatively small portion of the total systemic risk associated to this market. The minimum remaining maturities should therefore be set at a level ensuring that contracts with remaining maturities of no more than a few months are not subject to the clearing obligation.
- (15) Counterparties in the third category bear a relatively limited share of overall systemic risk and have a lower degree of legal and operational capacity regarding OTC derivatives than counterparties in the first and second categories. Essential elements of the OTC contracts, including the pricing of interest rate OTC derivatives subject to the clearing obligation and concluded before that obligation takes effect, will have to be adapted within short timeframes in order to incorporate the clearing that will only take place several months after the contract is concluded. This process of forward-clearing involves important adaptations to the pricing model and amendments to the documentation of those OTC derivatives contracts. Counterparties in the third category have a very limited ability to incorporate forward-clearing in their OTC derivative contracts. Thus, imposing the clearing of contracts concluded before the clearing obligation takes effect for those counterparties could limit their ability to hedge their risks adequately and either impact the functioning and the stability of the market or prevent them from exercising their usual activities if they cannot continue to hedge. Therefore, contracts concluded by counterparties in the third category before the date on which the clearing obligation takes effect should not be subject to the clearing obligation.
- (16) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.
- (17) 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 opinion of the Security and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>39</sup>, and consulted the European Systemic Risk Board.

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<sup>39</sup> Regulation (EU) No 1095/2010 of THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC OJ L 331, 15.12.2010, p.84

HAS ADOPTED THIS REGULATION:

*Article 1– Classes of OTC derivatives subject to the clearing obligation*

1. The classes of OTC derivatives set out in Annex I shall be subject to the clearing obligation.
2. The classes of OTC derivatives set out in Annex I shall not include contracts concluded with covered bond issuers or with covered pools for covered bonds, provided those contracts satisfy all of the following conditions:
  - (a) they are used only to hedge the interest rate or currency mismatches of the cover pool in relation with the covered bond;
  - (b) they are registered or recorded in the cover pool of the covered bond in accordance with national covered bond legislation;
  - (c) they are not terminated in case of resolution or insolvency of the covered bond issuer;
  - (d) the counterparty to the OTC derivative concluded with covered bond issuers or with covered pools for covered bonds ranks at least pari-passu with the covered bond holders except where the counterparty to the OTC derivative concluded with covered bond issuers or with covered pools for covered bonds is the defaulting or the affected party, or waives the pari-passu rank;
  - (e) the covered bond referred to in point (a) meets the requirements of Article 129 of Regulation (EU) No 575/2013;
  - (f) the covered bond referred to in point (a) is subject to a regulatory collateralisation requirement of at least 102%.

*Article 2 – Categories of counterparties*

1. For the purposes of Article 3, the counterparties subject to the clearing obligation shall be divided in the following categories:
  - (a) Category 1, comprising counterparties which, on the date of entry into force of this Regulation, are clearing members, within the meaning of Article 2(14) of Regulation (EU) No 648/2012, for at least one of the classes of OTC derivatives set out in Annex I of this Regulation, of at least one of the CCPs authorised or recognised before that date to clear at least one of those classes;
  - (b) Category 2, comprising counterparties not belonging to Category 1 which belong to a group whose aggregate month-end average of outstanding gross notional amount of non-centrally cleared derivatives for *[three months after the publication in the OJ of the RTS on the clearing obligation for IRS denominated in the G4 currencies excluding the month of publication]* is above EUR 8 billion and which are any of the following:
    - (i) financial counterparties;

(ii) alternative investment funds as defined in Article 4(1)(a) of Directive 2011/61/EU that are non-financial counterparties.

(c) Category 3, comprising counterparties not belonging to Category 1 or Category 2 which are any of the following:

(i) financial counterparties;

(ii) alternative investment funds as defined in Article 4(1)(a) of Directive 2011/61/EU that are non-financial counterparties.

(d) Category 4, comprising non-financial counterparties that do not belong to Category 1, Category 2 or Category 3.

2. For the purposes of calculating the group aggregate month-end average of outstanding gross notional amount referred to in point (b) of paragraph 1, all of the group's non-centrally cleared derivatives, including foreign exchange forwards, swaps and currency swaps, shall be included.

3. When counterparties are alternative investment funds as defined in Article 4(1)(a) of Directive 2011/61/EU or UCITS as defined in Article 1(2) of Directive 2009/65/EC, the EUR 8 billion threshold referred to in point (b) of paragraph 1 shall apply individually at fund level.

#### *Article 3 – Dates from which the clearing obligation takes effect*

1. In respect of contracts pertaining to a class of OTC derivatives set out in Annex I, the clearing obligation shall take effect on:

(a) *[the date 6/9 months after the date of entry into force of this Regulation]* for counterparties in Category 1;

(b) *[the date 12/15 months after the date of entry into force of this Regulation]* for counterparties in Category 2;

(c) *[the date 18/21 months after the date of entry into force of this Regulation]* for counterparties in Category 3;

(d) *[the date 3 years/39 months after the date of entry into force of this Regulation]* for counterparties in Category 4.

2. Where a contract is entered into between two counterparties included in different categories of counterparties, the date from which the clearing obligation takes effect for that contract shall be the later of the two.

#### *Article 4 – Minimum remaining maturity*

1. For financial counterparties in Category 1, the minimum remaining maturity referred to in point (ii) of Article 4(1)(b) of Regulation (EU) No 648/2012, at the date the clearing obligation takes effect, shall be:

(a) 15 years for contracts entered into or novated before [two months after the date of entry into force of this Regulation] that belong to the classes of Table 1 set out in Annex I;

(b) 2 years for contracts entered into or novated before [two months after the entry into force of this Regulation] that belong to the classes of Table 2 set out in Annex I;

(c) 6 months for OTC derivative contracts entered into or novated on or after [two months after the entry into force of this Regulation] that belong to the classes of Table 1 or Table 2 set out in Annex I.

2. For financial counterparties in Category 2, the minimum remaining maturity referred to in Article 4(1)(b)(ii) of Regulation (EU) No 648/2012, at the date the clearing obligation takes effect, shall be:

(a) 15 years for contracts entered into or novated before [five months after the date of entry into force of this Regulation] that belong to the classes of Table 1 set out in Annex I;

(b) 2 years for contracts entered into or novated before [five months after the entry into force of this Regulation] that belong to the classes of Table 2 set out in Annex I;

(c) 6 months for OTC derivative contracts entered into or novated on or after [five months after the entry into force of this Regulation] that belong to the classes of Table 1 or Table 2 set out in Annex I.

3. For financial counterparties in Category 3, the minimum remaining maturity referred to in Article 4(1)(b)(ii) of Regulation (EU) No 648/2012, at the date the clearing obligation takes effect, shall be:

(a) 15 years for contracts that belong to the classes of Table 1 set out in Annex I;

(b) 2 years for contracts that belong to the classes of Table 2 set out in Annex I.

4. Where a contract is entered into between two counterparties belonging to different categories, the minimum remaining maturity to be taken into account for the purposes of this Article shall be the longer of the two.

#### *Article 5 – Entry into force*

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

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

Done at Brussels,

*For the Commission*  
*The President*

## Annex I

### *Interest Rate OTC derivatives classes subject to the clearing obligation*

**Table 1: Fixed-to-float interest rate swaps classes**

ID	Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
C.1.1	Fixed-to-Float	PRIBOR	CZK	28D-5Y	Single currency	No	Constant or Variable
C.1.2	Fixed-to-Float	CIBOR	DKK	28D-5Y	Single currency	No	Constant or Variable
C.1.3	Fixed-to-Float	BUBOR	HUF	28D-5Y	Single currency	No	Constant or Variable
C.1.4	Fixed-to-Float	NIBOR	NOK	28D-5Y	Single currency	No	Constant or Variable
C.1.5	Fixed-to-Float	WIBOR	PLN	28D-5Y	Single currency	No	Constant or Variable
C.1.6	Fixed-to-Float	STIBOR	SEK	28D-15Y	Single currency	No	Constant or Variable

**Table 2: Forward rate agreement classes**

ID	Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
C.2.1	FRA	NIBOR	NOK	3D-1Y	Single currency	No	Constant or Variable
C.2.2	FRA	WIBOR	PLN	3D-1Y	Single currency	No	Constant or Variable
C.2.3	FRA	STIBOR	SEK	3D-2Y	Single currency	No	Constant or Variable

**Question 9: Do you have any comments on the draft RTS not already covered in the previous questions?**