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ESMA70-446-772

Final Report

On the clearing and derivative trading obligations in view of the 2022 status of the benchmark transition

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Acronyms used

BCBS	Basel Committee on Banking Supervision
CA	Competent Authority
CCP	Central Counterparty
CDS	Credit Default Swap
CO	Clearing Obligation for derivatives
CO RTS	Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation
DTO	Trading obligation for derivatives
DTO RTS	Commission Delegated Regulation (EU) 2017/2417 of 17 November 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the trading obligation for certain derivatives
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories
EMMI	European Money Markets Institute
EONIA	Euro OverNight Index Average
ESA	European Supervisory Authorities
ESRB	European Systemic Risk Board
€STR	Euro Short-Term Rate
ESMA	European Securities and Markets Authority
EU	European Union
EURIBOR	Euro InterBank Offered Rate
FIRDS	Financial Instruments Reference Data System
FRA	Forward Rate Agreements
IBOR	InterBank Offered Rate
IOSCO	International Organisation of Securities Commissions
IRS	Interest Rate Swap
LIBOR	London InterBank Offered Rate

MiFID II	Directive 2014/65/EU of the European Parliament and the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012
MTF	Multilateral Trading Facility
OIS	Overnight Index Swaps
OTC	Over-the-counter
OTF	Organised Trading Facility
RFR	Risk Free Rates
RM	Regulated Market
RTS	Regulatory Technical Standard
SONIA	Sterling Overnight Index Average
SOFR	Secured Overnight Financing Rate
TONA	Tokyo Overnight Average Rate
TR	Trade repository

1 Executive Summary

Reasons for publication

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

ESMA ran a public consultation until 30 September 2022 with a proposal to further amend the scope of the CO and the DTO to accompany the benchmark transition. ESMA received eighteen responses from a well-diversified range of stakeholders and has taken this feedback into account in the finalisation of the proposed amendments to the CO and DTO RTSs. In parallel, ESMA has continued to monitor the progress made with the benchmark transition, including an analysis of more recent EMIR TR data, in order to calibrate the changes to be made to the scope of the CO and DTO. Furthermore, ESMA has continued its dialogue with the authorities from other jurisdictions to facilitate coordination and convergence to the extent possible. Last but not least, ESMA has received input from the European Systemic Risk Board (ESRB) on the amendments to the clearing obligation which have been reflected in the analysis and in the draft RTS. The report presents all these elements and includes the amending draft RTS in Annex.

Content

Section 2 presents the current status of the benchmark reform with a focus on the regulatory initiatives undertaken in other jurisdictions, the status of the CO and DTO in the EU and highlighting the changes compared to the CP published in July 2022.

Section 3 details the progress in the benchmark transition across the different currencies and Section 4 describes the general approach for the second coordinated revision of the CO and DTO. Sections 5 and 6 include the analyses and the conclusions on how to amend the scope of the CO and DTO respectively and the related implementation timing. These amendments have been finalised with the objective to ensure a smooth transition while maintaining an effective scope for the CO and DTO. In particular, for the CO, it is proposed to introduce the TONA OIS class and to extend the SOFR OIS class (up to 50 years). For the DTO, it proposes to introduce the €STR OIS class. For the RTS amending the scope of the DTO, it should be noted that ESMA proposes that the date of application should coincide with the one of the MiFIR review so as to address some of the concerns expressed by respondents in the consultation.

Section 7 covers the way forward.

Next Steps

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

2 Introduction

1. ESMA published a consultation paper (CP) on 11 July 2022 on the review of the clearing (CO) and derivative trading (DTO) obligation as a follow-up work in the context of the benchmark transition.

2. As explained in the CP, several jurisdictions have introduced benchmark reforms, with the common objective to ensure the accuracy and integrity of benchmarks, and thus increase contracts' robustness. With respect to the EU, this corresponds to Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (Benchmarks Regulation).

3. This reform led to the discontinuation of certain widely used benchmarks in a range of financial instruments and contracts and to the development in parallel of a few new ones. This benchmark transition was also reflected in the derivatives market, meaning that new benchmarks started being used as reference rates in derivative contracts as well, as further detailed in the following sections.

4. Consequently, this reform impacted the CO and the DTO which required clearing and trading of certain classes of OTC derivatives referencing those benchmarks that ceased (or are due to cease, such as most settings of USD LIBOR) to be published.

5. It should be reminded that ESMA published a Final Report (FR)[1] in November 2021, following the publication of a CP in July 2021[2], presenting a first set of draft regulatory technical standards (RTS) amending Commission Delegated Regulation (EU) 2015/2205 (CO RTS)[3] and Commission Delegated Regulation 2017/2417 (DTO RTS)[4]. The amended RTSs on the CO (CDR 2022/750) and the DTO (CDR 2022/749) were adopted by the European Commission on 8 February 2022, published in the Official Journal (OJ) on 17 May 2022[5] and entered into force on the following day (18 May 2022). With the first set of amendments, EONIA and LIBOR classes were removed from the scope of the obligations, while OIS classes referencing €STR (EUR) and SOFR (USD) were added to the CO, and additional maturities for the OIS class referencing SONIA (GBP) were introduced.

6. In its FR, ESMA committed to continue monitoring the benchmark transition and to reconsider the classes of derivatives subject to these obligations, where necessary. In this

[1] esma70-156-4953_final_report_on_the_co_and_dto_re_benchmark_transition.pdf (europa.eu)
[2] https://www.esma.europa.eu/sites/default/files/library/consultation_paper_on_the_co_and_dto_for_swaps_referencing_rfrs.pdf
[3] Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation, OJ L 314, 1.12.2015, p. 13–21.
[4] Commission Delegated Regulation (EU) 2017/2417 of 17 November 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the trading obligation for certain derivatives, OJ L 343, 22.12.2017, p. 48.
[5] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:138:FULL&from=EN

context, the most recent market developments since the publication of the 2021 FR were presented in the last CP. In the CP, ESMA proposed further amendments to the classes of derivatives subject to the CO and the DTO in the form of amending RTSs. In the finalisation of these RTSs (see Annex III), ESMA has taken into account the progress made in the transition, the feedback received from stakeholders (eighteen responses received) and the need to ensure international convergence. ESMA also requested the views of the Securities and Markets Stakeholder Groups (SMSG), which decided not to provide a response to the consultation.

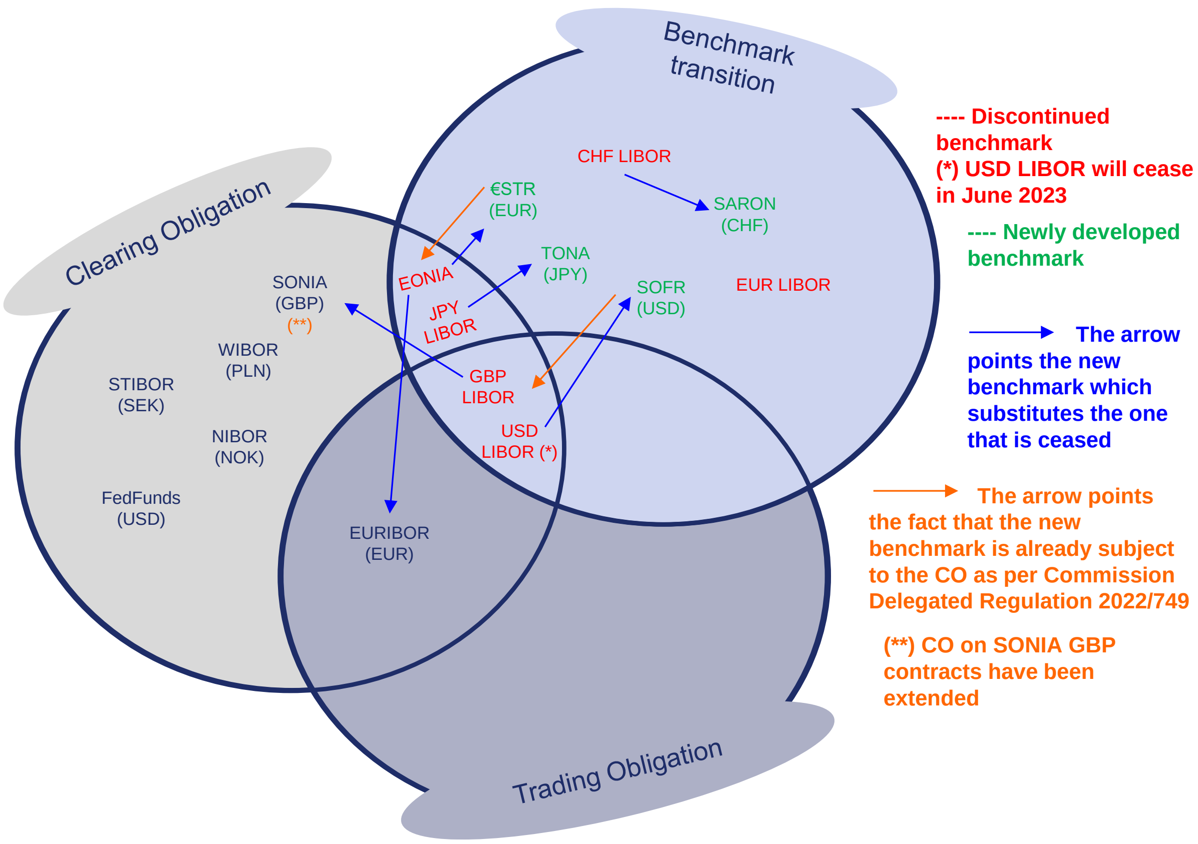
7. These aspects are presented in detail in the next sections of this report.

2.1 Status of the benchmark reform

8. As explained in the CP, the CO and the DTO mandate several classes of derivatives referencing a range of benchmarks to be cleared and traded on trading venues. Some of those referenced benchmarks have ceased or will cease soon in the context of the benchmark reform, such as GBP and JPY LIBOR which were discontinued at the end of 2021 and EONIA on 3 January 2022. At the same time, USD LIBOR will continue to be published until June 2023 (except for two settings already discontinued)[6]. Therefore, the CO and the DTO were impacted by the benchmark transition with regard to the subset of classes referencing those four benchmarks. As mentioned in the introduction, new benchmarks, namely €STR, SOFR and TONA have been developed and are already largely in use in the interest rate derivatives market. Therefore, they are now recognised as the primary alternatives to those benchmarks that were or will be discontinued.

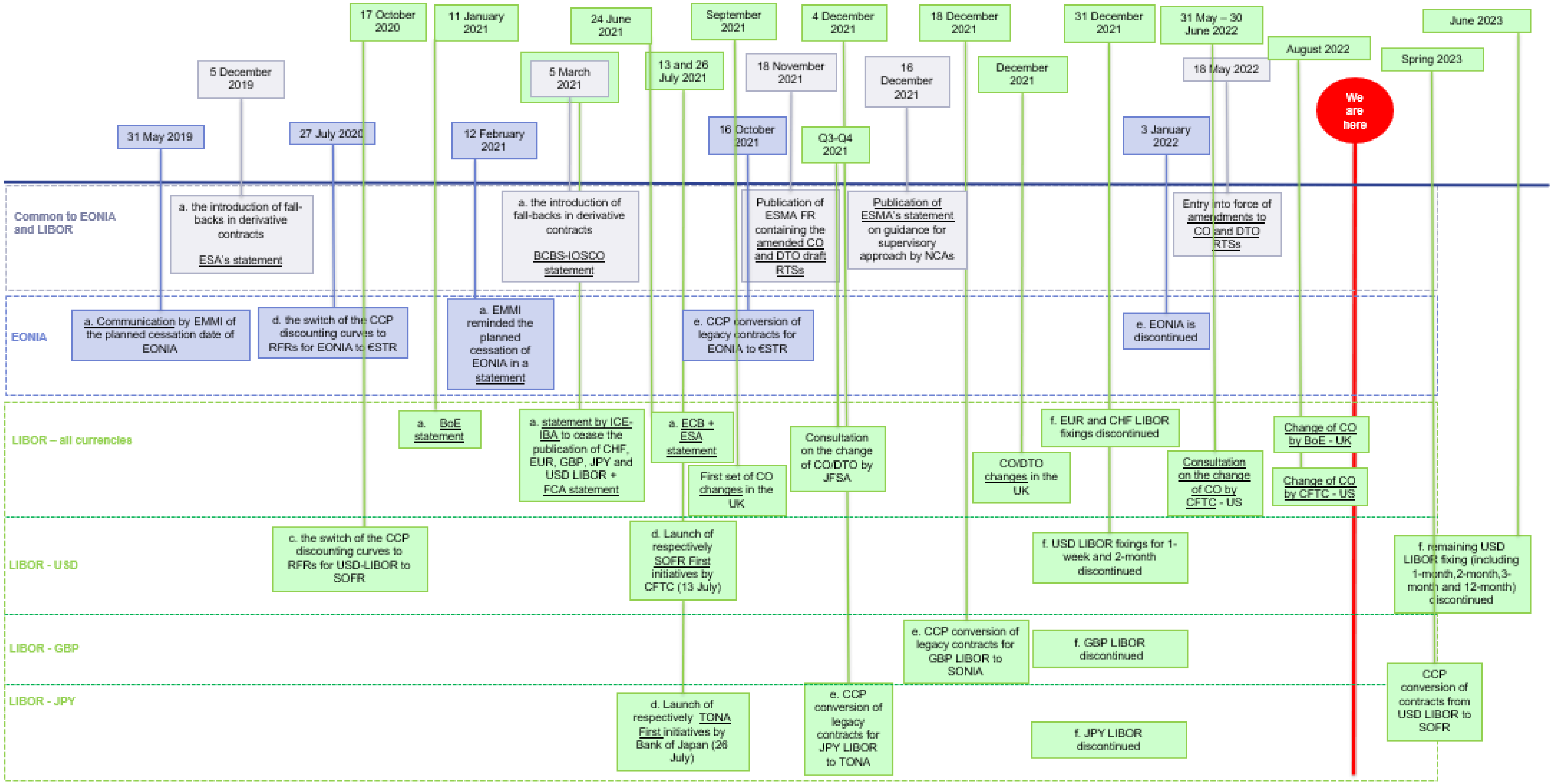
[6] Two USD LIBOR fixings (1-week and 2-month) were discontinued at the end of 2021 but the majority and the most commonly used USD LIBOR fixings (such as the 1-month, 3-month, 6-month and the 12-month USD LIBOR) in derivative contracts are currently scheduled to be published until June 2023.

FIGURE 1 – CURRENT STATUS OF CO AND DTO VS. BENCHMARK TRANSITION



9. The implementation of the benchmark reforms and the related efforts to transition to new benchmarks have been going on for several years now. The CP described in detail the milestones of this process in Section 2.

FIGURE 2 – TIMELINE OF BENCHMARKS TRANSITION AND CO AND DTO IN OTHER JURISDICTIONS



10. Figure 2 above provides for the detailed timeline of the transition for each affected benchmark. ESMA noted in the CP that the discontinuation of EONIA and JPY LIBOR as well as the legal conversion to €STR and TONA by CCPs, made €STR (even despite the continuation of EURIBOR) and TONA to significantly pick up as new market standards. ESMA also noted that the same happened around the end of 2021 for GBP LIBOR. However, the situation for GBP LIBOR was somewhat different since SONIA was already at a more developed stage, probably also due to the fact that the GBP RFR was an existing benchmark instead of a newly developed one during the benchmark reform.

11. As far as SOFR is concerned, the situation also remains slightly different as most USD LIBOR settings will continue to be published until June 2023. However, as already mentioned in the previous reports, the SOFR First approach started to produce its effect from July 2021 and a sharper increase of trading in derivatives referencing SOFR was evident already in the data presented in the last CP, notwithstanding the continued relevance of USD LIBOR (See Figure 21). The CCP conversion which will take place in Spring 2023 will be another important milestone to the USD transition from LIBOR to SOFR.

12. ESMA presents an updated analysis showing the market evolution for these four currencies in Section 3. The assessment of their impact on the CO and the DTO, as well as the proposed changes to the scope of the obligations, is then presented in Sections 5 and 6 respectively.

2.2 Status of the CO and DTO in other jurisdictions

13. In the context of the CP, ESMA pointed out that international convergence should be taken into account when proposing amendments to the classes of derivatives subject to the obligations, given the international dimension of the benchmarks transition. While no major changes occurred between the publication of the CP and this FR, ESMA considers that the relevant steps undertaken by other jurisdictions, as presented above in Figure 2, remains of interest.

14. Furthermore, it should be mentioned that ESMA discussed this topic with a number of third country authorities responsible for the clearing or trading mandates in their jurisdictions, in order to facilitate international convergence.

15. In particular, ESMA monitored the developments in the US, the UK and Japan and has continued doing so for the purpose of this FR.

16. Regarding the US, the CFTC published a request for information and comments on 17 November 2021[7], inviting public feedback on the changes to the swap clearing requirement in order to address the LIBOR cessation and the adoption of alternative reference rates,

[7] CFTC Issues Request for Information and Comment on Swap Clearing Requirement to Address IBOR Transition | CFTC

such as SOFR. Based on that, on 9 May 2022, the CFTC published the proposed amendments to the CO rule[8] and issued its final rule on 12 August 2022[9]. The final rules contain the removal from the scope of the CO of swaps referencing GBP LIBOR, JPY LIBOR and EONIA as well as the inclusion of OIS referencing TONA (7 days to 30 years), €STR (7 days to 3 years), SOFR (7 days to 50 years) and SONIA (additional maturities up to 50 years). In the same amendment, the CFTC also remove swaps denominated in USD that reference LIBOR. However, such change on USD LIBOR will only become effective as of 1 July 2023.[10] No actions have been taken with respect to the DTO yet.

17. With respect to the UK, the Bank of England (BoE) consulted in May[11] and in September 2021[12] and released its final policy decisions in September[13] and December 2021[14], respectively. The main changes consist in removing swaps referencing GBP LIBOR, JPY LIBOR and EONIA and to introduce obligations in OIS referencing SONIA (7 days to 50 years), €STR (7 days to 3 years) and TONA (7 days to 30 days) to the scope of the CO. In addition, the BoE consulted in June 2022[15] and released its final policy decision in August 2022[16] where it was decided to include SOFR OIS (maturity 7 days to 50 years) to the CO (starting from 31 October 2022) and to subsequently remove contracts referencing USD LIBOR.

18. Concerning the DTO, the UK-FCA published a consultation paper in July 2021 (CP21/22)[17] and a policy statement in October 2021 (PS21/13)[18] removing derivatives referencing GBP LIBOR under the current DTO and replacing them with OIS referencing SONIA but applying to trade start types spot-starting and IMM (next 2 IMM dates) in the tenors of 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 15, 20, 25 and 30 years. Those changes entered into force on 20 December 2021.

19. Finally, also the Japanese Authorities have aligned their obligation by replacing JPY LIBOR with TONA in the scope of the CO[19]. Similarly, TONA has also replaced JPY LIBOR in the Japanese DTO.

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[8] CFTC Issues Proposed Rule to Modify Swap Clearing Requirement to Address Transition from LIBOR and Other Interbank Offered Rates to Alternative Reference Rates | CFTC.

[9] CFTC Issues Final Rule Modifying the Swap Clearing Requirement In Support of the Transition from LIBOR and Other Interbank Offered Rates to Alternative Reference Rates | CFTC

[10] It shall be noted that changes to the US Clearing Obligation rule also concerned CHF LIBOR, SARON and SORA but those are not considered for the purpose of this report.

[11] https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-modifications-to-reflect-interest-rate-benchmark-reform-amendments

[12] https://www.bankofengland.co.uk/paper/2021/~/link.aspx?_id=21CCC569D6C04000860ABEDB6E377444&_z=z

[13] https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-modifications-to-reflect-interest-rate-benchmark-reform

[14] https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-introduction-of-contracts-referencing-tona-ps

[15] https://www.bankofengland.co.uk/paper/2022/derivatives-clearing-obligation-modifications-reflect-usd-interest-rate-benchmark-reform-amendment

[16] https://www.bankofengland.co.uk/paper/2022/derivatives-clearing-obligation-modifications-to-reflect-usd-interest-rate-benchmark-reform

[17] CP21/22: LIBOR transition and the derivatives (fca.org.uk)

[18] PS21/13: LIBOR transition and the derivatives trading obligations (fca.org.uk)

[19] A consultation paper by the Japanese Financial Services Agency (JFSA) on 8 September 2021 - https://www.fsa.go.jp/news/r3/shouken/20210908/20210908.html#%EF%BC%91

2.3 Status of the CO and DTO RTSs affected by the benchmark reform

20. The benchmark transition has led to a significant amendment of the classes of derivatives subject to the CO and the DTO. Before the benchmark transition the CO RTS specifying the classes of derivatives subject to the CO as well as the dates from which this takes effect included: basis swaps and fixed-to-float interest rate swaps denominated in EUR, GBP, USD and JPY and forward rate agreements (FRAs) as well as overnight index swaps (OIS) in EUR, GBP and USD in certain benchmark, as specified in the Annex, were subject to the CO. The CO RTS also included fixed-to-float interest rate swaps and FRAs in NOK, PLN and SEK together with two classes of index credit default swaps (CDSs)[20].

21. Similarly, the DTO RTS specified the classes of derivatives subject to the DTO as well as the dates from which this takes effect. According to the DTO RTS, fixed-to-float interest rate swaps denominated in EUR, USD and GBP in certain benchmark as specified in the Annex, were subject to the DTO, as well as two classes of index CDSs.

22. As mentioned in the introductory section, in view of the market pivoting to one set of benchmarks to another, ESMA published on 18 November 2021 a FR submitting to the European Commission an amendment to both the CO and the DTO RTSs which were both adopted and entered into force already on 18 May 2022[21].

23. The amended RTS of the CO (i) removed all contracts referencing JPY, USD and GBP LIBOR as well as EONIA (EUR), (ii) extended the obligation to OIS on SONIA (GBP) to maturities beyond 3 years and up to 50 years, as well as to OIS referencing €STR (EUR) and SOFR (USD) up to 3 years. The DTO RTS removed all contracts referencing USD and GBP LIBOR. The table below provides the details of the amendments.

TABLE 1 – FIRST SET OF AMENDMENTS TO THE CO AND DTO RTS IN NOV-2021 ESMA'S FR

	Remove the following classes of derivatives from the obligation	Add the following classes of derivatives to the obligation
Clearing Obligation	• basis swaps (maturity 28D-50Y) referencing GBP LIBOR	• OIS (7D-50Y) referencing SONIA • OIS (7D-3Y) referencing €STR

[20] Fixed-to-Float and FRA in NOK, PLN and SEK as well as the two classes of index CDS are not interested by the benchmark transition and therefore not included in the analysis.
[21] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:138:FULL&from=EN

	• basis swaps (maturity 28D-30Y) referencing JPY LIBOR • basis swaps (maturity 28D-50Y) referencing GBP LIBOR • fixed-to-float IRS (maturity 28D-50Y) referencing GBP LIBOR • fixed-to-float IRS (maturity 28D-30Y) referencing JPY LIBOR • fixed-to-float IRS (maturity 28D-50Y) referencing USD LIBOR • FRA (maturity 3D-3Y) referencing GBP LIBOR • FRA (maturity 3D-3Y) referencing USD LIBOR • OIS (7D-3Y) referencing EONIA • OIS (7D-3Y) referencing SONIA	• OIS (7D-3Y) referencing SOFR
Derivatives Trading Obligation	• fixed-to-float IRS referencing GBP LIBOR • fixed-to-float IRS referencing USD LIBOR	None

24. Finally, ESMA acknowledges that in the MiFIR Review proposed by the European Commission the DTO framework might be subject to some modifications. In particular, it is proposed to provide for the possibility to suspend the DTO for certain investment firms that would be subject to overlapping obligations when interacting with non-EU counterparties

on non-EU platforms subject to meeting certain conditions. ESMA will continue monitoring the negotiations of co-legislators on the MiFIR review proposal.

3 Analysis of the transition in OTC interest rate derivatives denominated in the G4 currencies

3.1 General

25. In view of the benchmark transition and after the publication of the last CP, ESMA has continued assessing how liquidity pivoted from derivatives referencing EONIA or LIBOR to interest rate derivatives referencing the new RFRs in the related currencies. To that end, and in line with previous reports, ESMA updated the analysis with the inclusion of a few additional datapoints.

26. More specifically, on top of the previous datapoints of 15 January, 16 April, 10 September and 15 October 2021 presented in the first FR and of the four datapoints that were added for the purpose of the last CP (26 November 2021, 14 January 2022, 25 March 2022 and 20 May 2022), ESMA has now added a few other observation dates, i.e. 15 July 2022 and 30 September 2022.

27. The data was taken from trade-state reports of EMIR data which provide information about outstanding notional amount of transactions including at least one EEA counterparty at the end of the day calculated by the respective Trade Repositories (TR)[22]. All the statistics in this section (Section 3) refer to all interest rate derivatives referencing a certain benchmark irrespectively from the contract type (e.g. options, futures, swaps).

28. In line with previous analysis, ESMA's data analysis looked at different indicators describing the development of liquidity of the different RFRs concerned. Figure 3 provides an overview of the notional outstanding per benchmark, where it can be seen that liquidity has now picked up in all currencies.

29. It should be noted that the great majority of stakeholders responding to the CP agreed with the analysis and considered that ESMA assessed all relevant indicators.

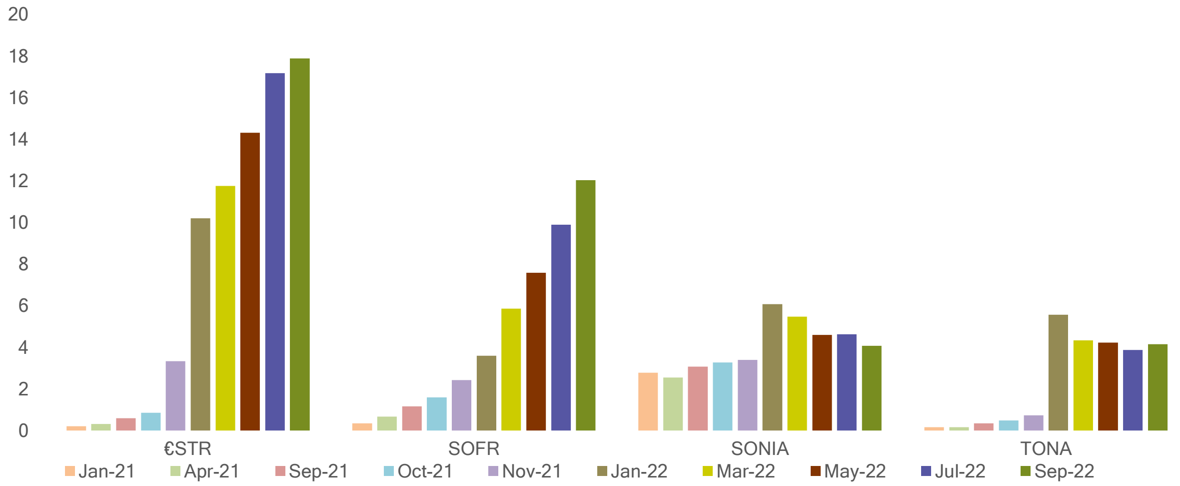
30. The October and December 2021 CCP legal switches together with the discontinuation of EONIA and JPY LIBOR at the end of 2021, resulted in the respective RFRs, €STR and

[22] The trades have been reconciled to account for double reporting obligation and anomalous values in notional amount (converted in EUR using the exchange rates provided by the ECB) have been removed.
The benchmarks and new risk-free rates have been identified using the reporting fields 55 and 58 "Floating rate of leg 1" and "Floating rate of leg 2" included in the Section 2f dedicated specifically to interest rates derivatives. These fields are populated with the name of the index: for the major indices, a standard code is reported in the Implementing Technical Standards to standardise the reporting. For the indices not included in the list (including the new RFRs) the format of the fields allows for (up to) 25 alphanumerical characters. For the identification of these fields, a string-matching technique has been used to identify the strings "SONIA", "TONA", "SOFR", "ESTR", "ESTER" in the reporting fields 55 and 58.
Venues of trading have been identified using market identifier codes (MIC, ISO 10383) reported in the field venue of execution.

TONA, to become the new market standards. The data suggest that the growing trend for €STR has continued in July and September 2022, while liquidity in TONA seems to have stabilised around the March 2022 value.

31. With respect to SONIA and SOFR, it should be noted that, while the GBP RFR was the most advanced benchmarks at the early phase of the transition, its liquidity growth seems also to have stabilised over the last few months. The situation is different with regards to SOFR, as EMIR data suggests that the notional outstanding keeps increasing constantly despite most USD LIBOR settings will only be discontinued in July 2023.

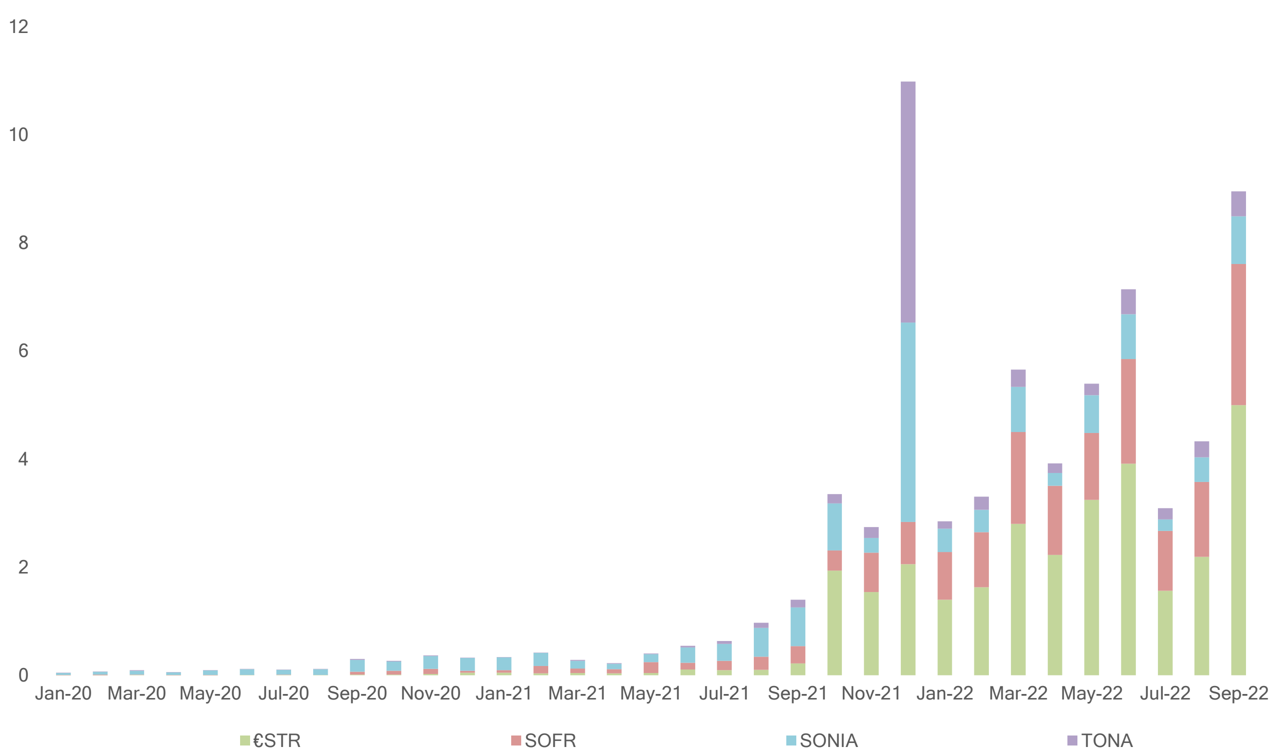
Figure 3 - Notional outstanding at specific datapoints over January 2021 - September 2022 – per RFR



Note: Outstanding amounts (EUR bn)
Sources: TRs, ESMA

32. The scenario appears rather similar when observing the notional outstanding displayed per execution date (Figure 4) and covering the January 2020-September 2022 period. The growing trend across the four benchmarks is rather stable and €STR covers the majority of the notional outstanding executed from October 2021 onwards, except for December 2021. Indeed, for the last month of 2021, the data shows that most of the outstanding volumes executed in this period reference TONA and SONIA probably in light of the discontinuation of GBP and JPY LIBOR. The growing relevance of SOFR can also be observed by looking at the September 2022 distribution.

FIGURE 4 – NOTIONAL OUTSTANDING PER EXECUTION DATE AT SPECIFIC DATAPOINTS OVER JANUARY 2020-SEPTEMBER 2022 – PER RFR

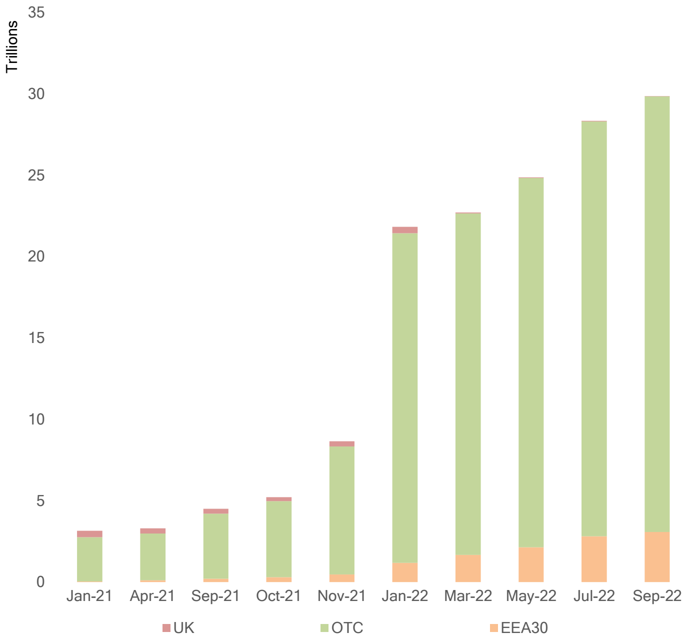


Sources: TRs, ESMA

33. The analysis also focuses on the execution venues of trades referencing those benchmarks. However, as already mentioned in the previous CP, it is important to remark that contrary to MiFIR, under EMIR only regulated markets are considered as trading venues, while MTFs and OTFs are not. Therefore, this analysis might suffer from an overestimation of OTC trading to the detriment of other execution venues. Indeed, for trades executed on MTFs and OTFs, reporting entities are not required to provide the relevant MIC code when reporting to TR but are rather required to use the code for OTC trades. Furthermore, it has to be noted that also trading executed on US-SEF or other third-country trading venues by European counterparties is captured under the OTC category under EMIR.

34. Despite the limitation in the use of EMIR data, when considering all RFRs, it can be noted that the amount of notional outstanding executed OTC and on EEA venues has kept increasing since January 2021, with a steep increase over the first quarter of 2022, as shown in Figure 5.

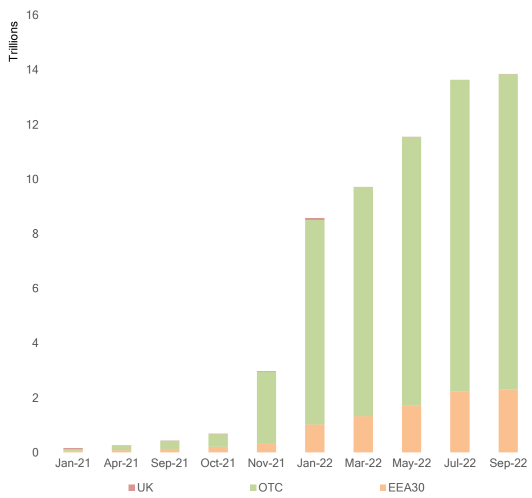
FIGURE 5 – NOTIONAL OUTSTANDING AT SPECIFIC DATAPOINTS OVER JANUARY 2021-SEPTEMBER 2022 – PER EXECUTION VENUE



Sources: TRs, ESMA

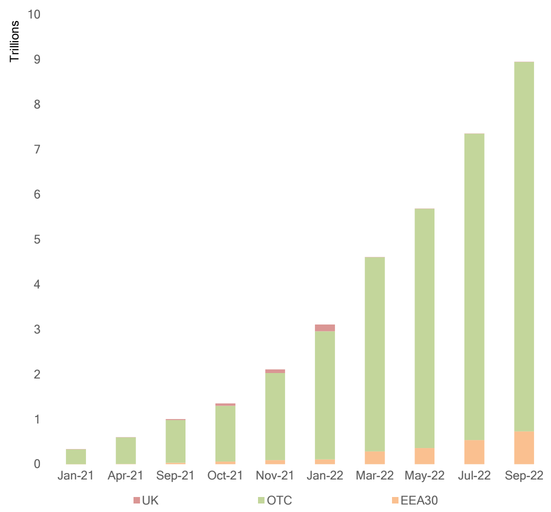
35. The same analysis presented in Figure 5 above is replicated individually for each of the four benchmarks in Figures 6-9 below. What appears evident is that, according to EMIR TR data, the greatest majority of these trades was executed OTC although the share of €STR and SOFR trading executed on EU venues keeps increasing month after month (see Figure 6 and Figure 7).

Figure 6 - Notional outstanding in €STR at specific datapoints over January 2021-September 2022 – per execution venue



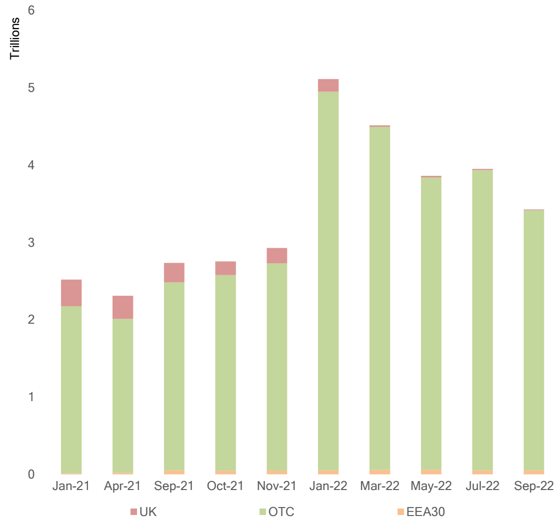
Sources: TRs, ESMA

Figure 7 - Notional outstanding in SOFR at specific datapoints over January 2021-September 2022 – per execution venue



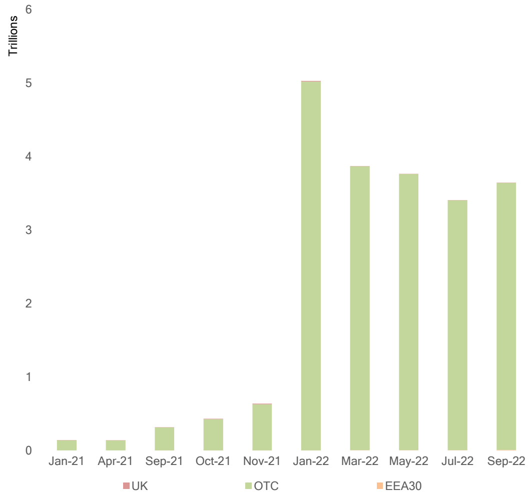
Sources: TRs, ESMA

Figure 8 - Notional outstanding in SONIA at specific datapoints over January 2021-September 2022 – per execution venue



Sources: TRs, ESMA

Figure 9 - Notional outstanding in TONA at specific datapoints over January 2021-September 2022 – per execution venue

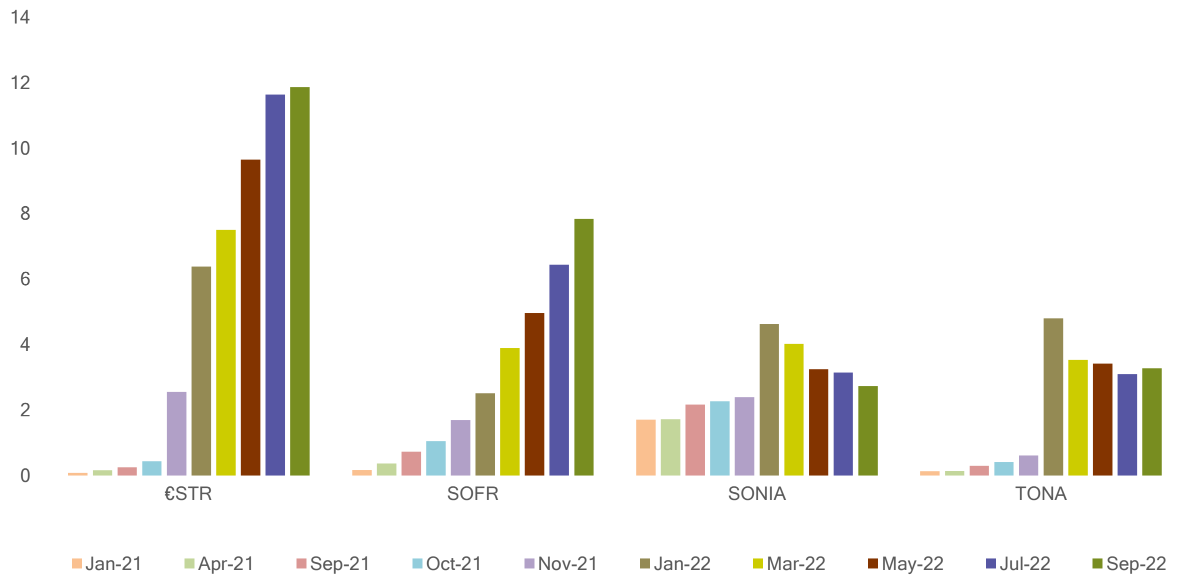


Sources: TRs, ESMA

36. However, contrary to the last CP, ESMA could not complement the analysis based on the additional data sources observed in July[23]. While a similar data analysis was indeed not produced, it is fair to say that the analysis conducted last summer Is likely to remain valid given the limited market developments observed in EMIR TR data over the last couple of months.

37. Separately, looking again at EMIR TR data, ESMA analysed the cleared volumes which are in line with the evolution of the outstanding notional. While a general rise can be observed for all RFRs, the last couple of datapoints show a different trend for €STR and SOFR on the one hand, and SONIA and TONA on the other hand. As it can be noted in Figure 10 below, indeed the increase in cleared volumes continues to be relevant for the EUR and USD RFRs (with €STR being the RFR with the highest share of cleared volumes), whilst cleared volumes for SONIA and TONA have reached their respective peaks in March 2022 and have stabilised after that date.

FIGURE 10 – CLEARED VOLUME AT SPECIFIC DATAPOINTS OVER JANUARY 2021-SEPTEMBER 2022 – PER RFR



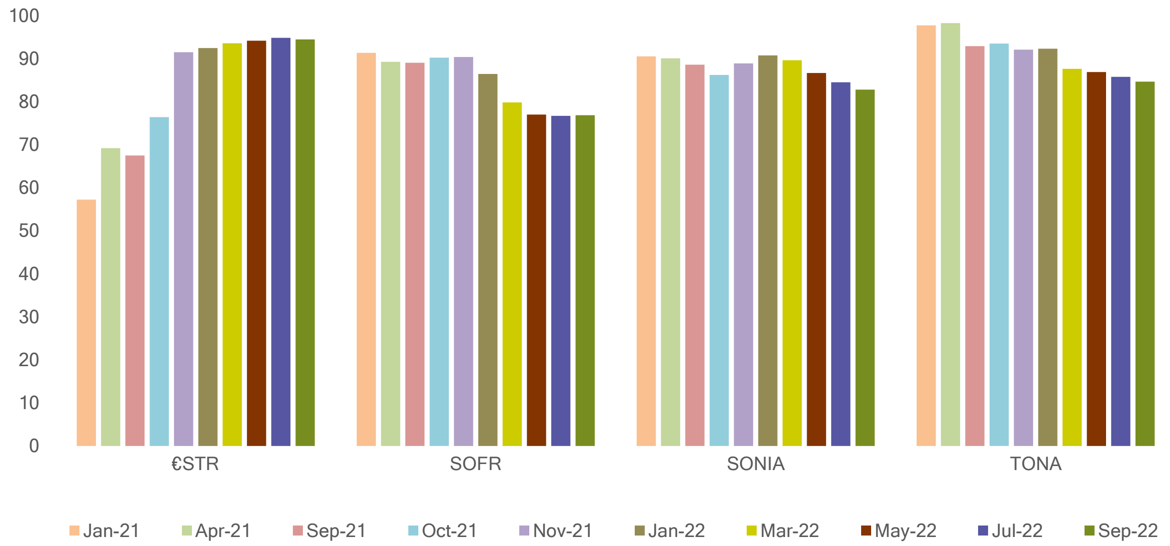
Sources: TRs, ESMA

38. To complement the above analysis, ESMA has also looked at the clearing rates (i.e. the percentages of cleared traded volume over the total notional traded). In line with previous analysis, the latest datapoints suggest that the trend remains rather heterogeneous among the different currencies. On the EUR side, more than 90% of the volume in €STR is

[23] Please refer to section 3.1. of the ESMA Consultation Paper On the clearing and derivative trading obligations in view of the 2022 status of the benchmark transition. https://www.esma.europa.eu/sites/default/files/library/esma70-446- 9_consultation_paper_on_co_and_dto_referencing_estr.pdf

currently cleared, and this aligns with the previous observation, representing a relevant increase compared to the September/October 2021 figures where the percentage ranged between 67% and 77%. In parallel, the share of cleared volumes for SOFR remains stable over the last few months, with a slightly decreased (around than 80% in September 2022 from roughly 90% in September/October 2021). For TONA and SOFR, in both case the percentage of volume cleared is around 85% (see Figure 11).

FIGURE 11 – SHARE OF CLEARED VOLUME AT SPECIFIC DATAPOINTS OVER JANUARY 2021-SEPTEMBER 2022 – PER RFR



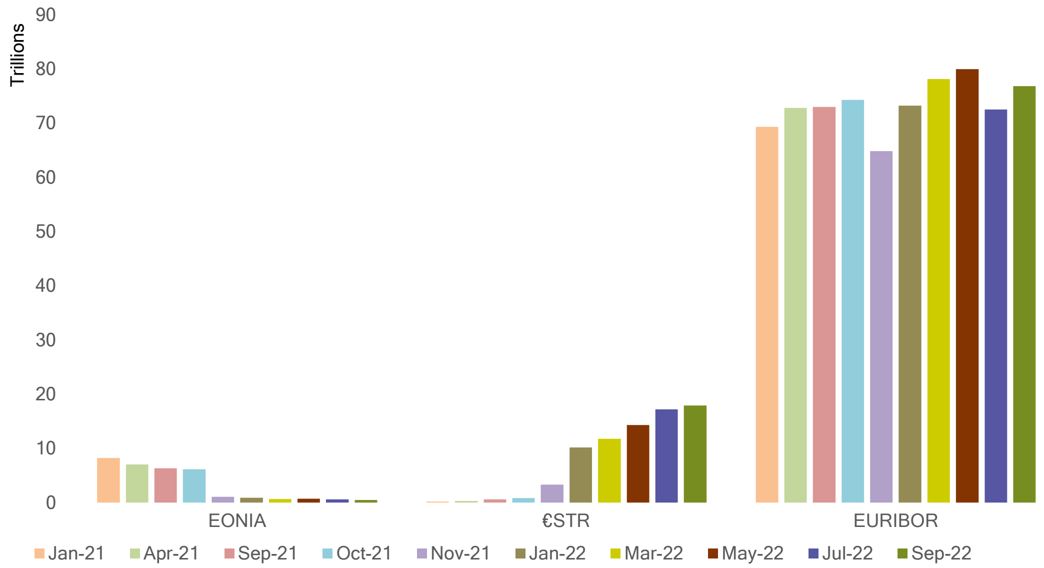
Sources: TRs, ESMA

3.2 EUR

39. As it can be inferred from the figures previously presented, €STR's replacement of EONIA has become clear and the term rate is now the reference rate for interest rate swaps denominated in EUR. Indeed, the weight of €STR in terms of notional outstanding in the market has reached 19% of the total EUR denominated benchmarks in September 2022 (it was 15% in May 2022), exceeding the highest EONIA's level over the observation period, i.e., 11%, reached in January 2021 (see Figure 12 below).

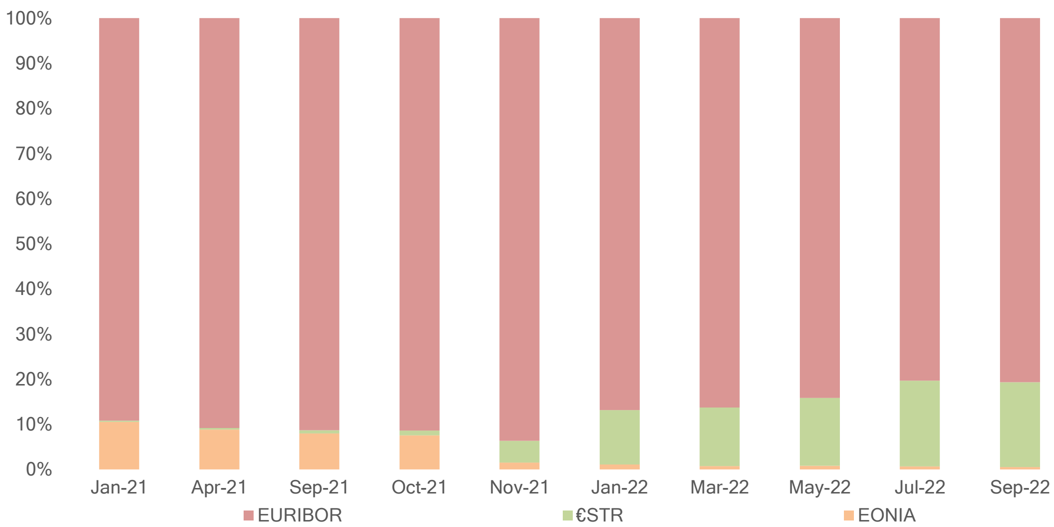
40. However, most of liquidity in the EUR interest rate derivatives market remains absorbed by EURIBOR which will not be discontinued. A more detailed overview is provided in Figure 12 and Figure 13.

FIGURE 12 – NOTIONAL AMOUNT OUTSTANDING IN CONTRACTS REFERENCING EONIA VS €STR VS EURIBOR OVER JANUARY 2021-SEPTEMBER 2022



Sources: TRs, ESMA

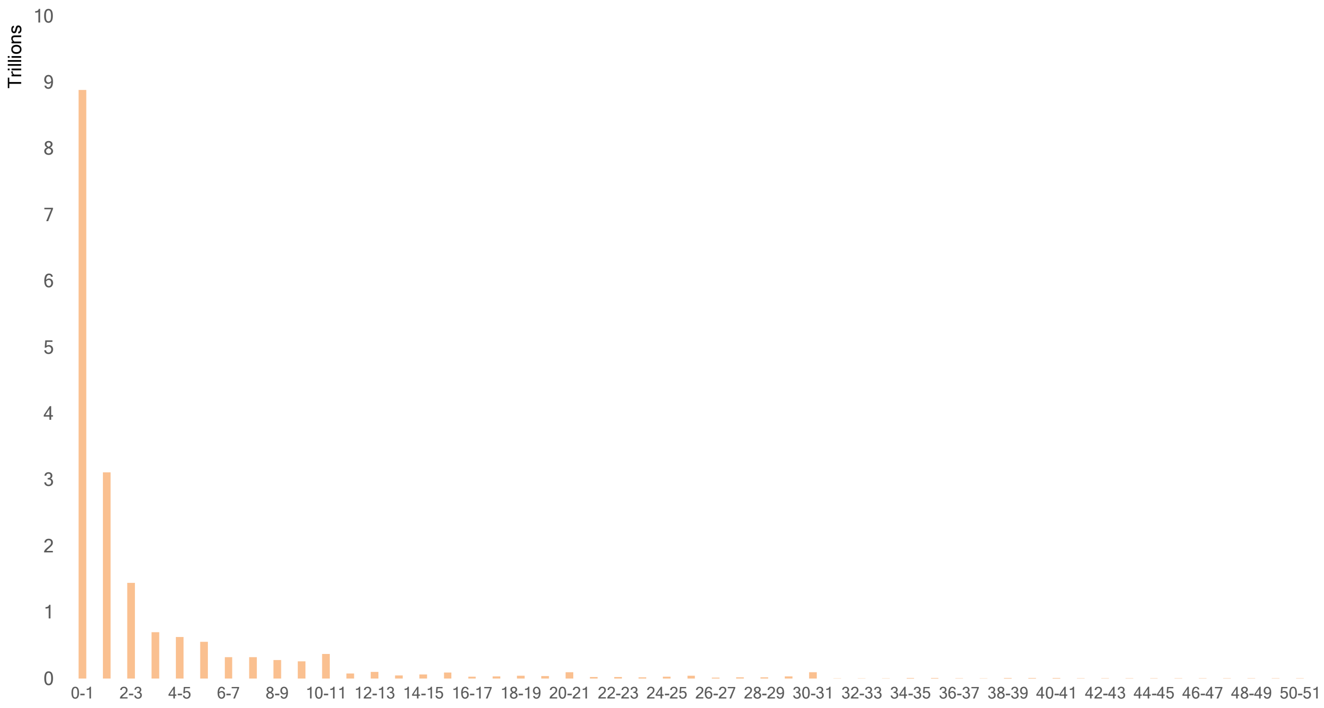
FIGURE 13 – PERCENTAGE OF NOTIONAL AMOUNT OUTSTANDING IN CONTRACTS REFERENCING EONIA VS €STR VS EURIBOR OVER JANUARY 2021-SEPTEMBER 2022



Sources: TRs, ESMA

41. Finally, ESMA also looked at the distribution per bucket of tenors. According to EMIR TR data, there is not much difference with previous observations as there appears to be a strong predominance of shorter maturities (0-3 years) over the longer ones. At the same time, Figure 14 also shows that liquidity is spread across the entire curve, up until 50 years.

FIGURE 14: €STR, DISTRIBUTION OF NOTIONAL OUTSTANDING PER BUCKET OF TENORS

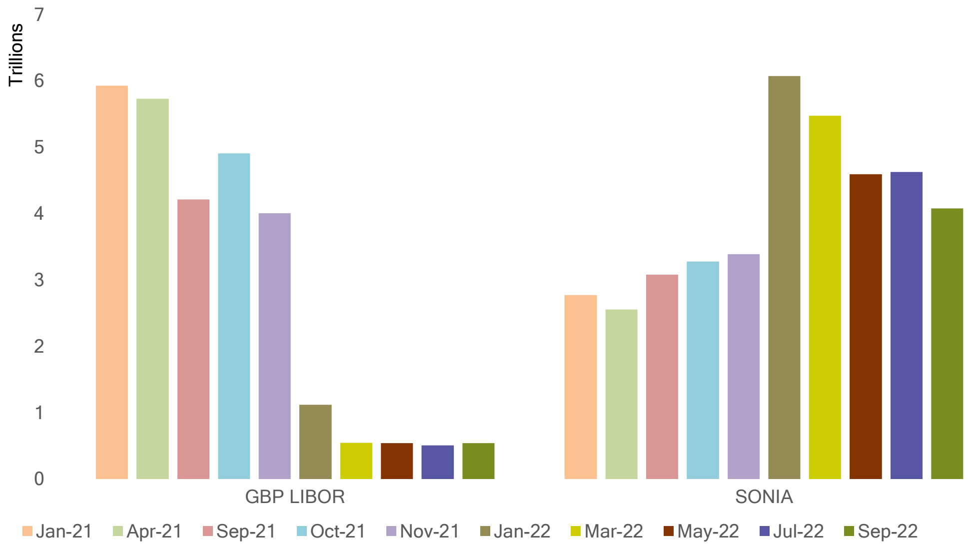


Sources: TRs, ESMA

3.3 GBP

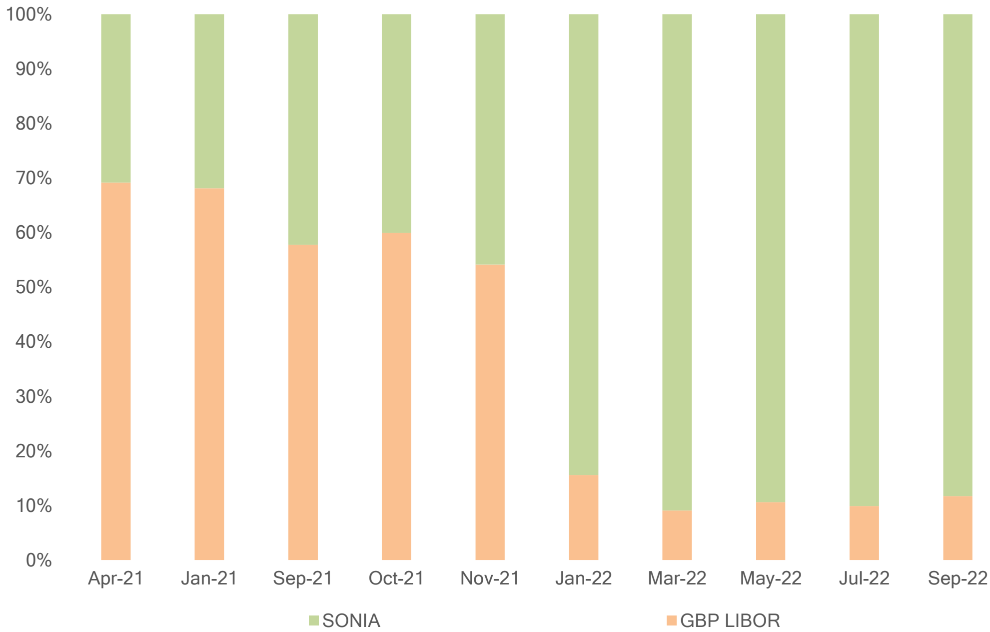
42. While the transition from GBP LIBOR to SONIA started at an early phase of the whole benchmark transition, the relevance of SONIA has been amplified by the CCP legal switch and the discontinuation of GBP LIBOR in late 2021. As shown by EMIR TR data, the notional outstanding in derivatives referencing SONIA has almost doubled from November 2021 to January 2022, despite a slight decrease is observed starting from March 2022 un until September 2022 (see Figure 15 and Figure 16).

FIGURE 15 - NOTIONAL AMOUNT OUTSTANDING IN CONTRACTS REFERENCING GBP LIBOR VS SONIA OVER JANUARY 2021 – SEPTEMBER 2022



Sources: TRs, ESMA

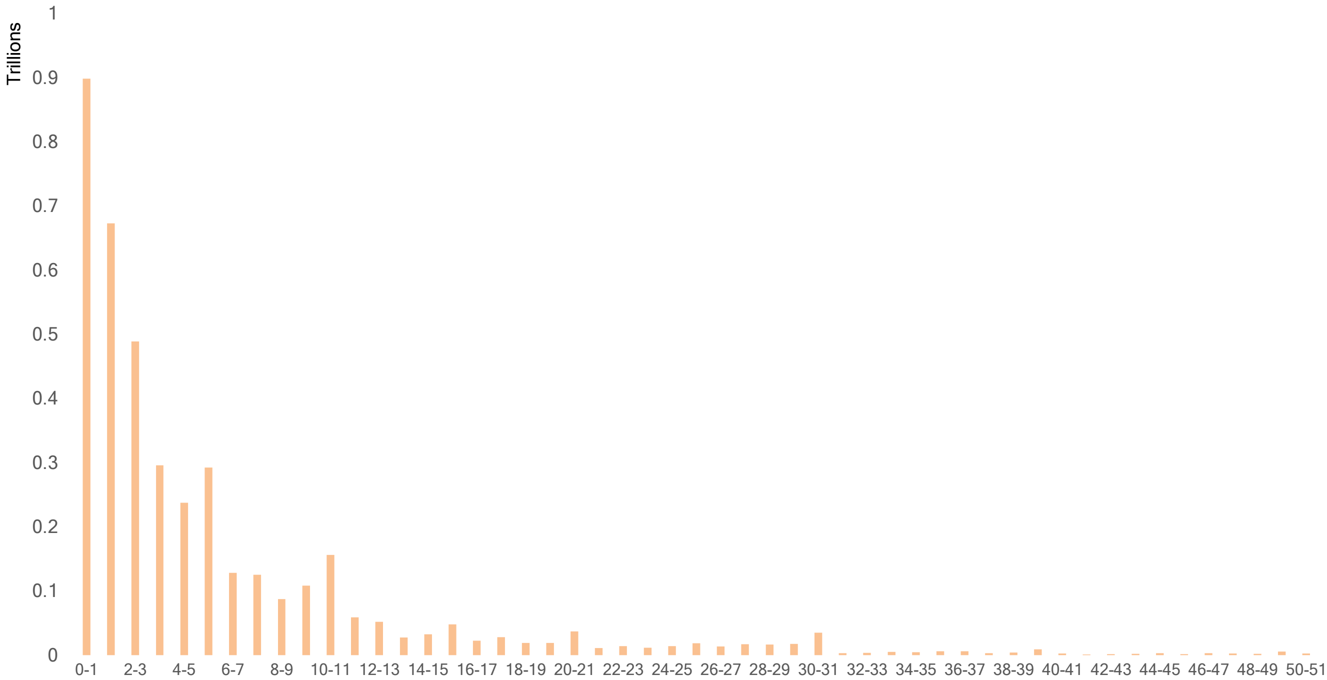
FIGURE 16 - PERCENTAGE OF NOTIONAL AMOUNT OUTSTANDING IN CONTRACTS REFERENCING GBP LIBOR VS OVER JANUARY 2021 – SEPTEMBER 2022



Sources: TRs, ESMA

43. In terms of maturities, liquidity is spread across the entire curve but also in this case, in line with previous observations, most of the liquidity is absorbed by the short or very short maturities (mostly 0-1 years), as shown in Figure 17.

FIGURE 17 - SONIA, DISTRIBUTION OF NOTIONAL OUTSTANDING PER BUCKET OF TENORS



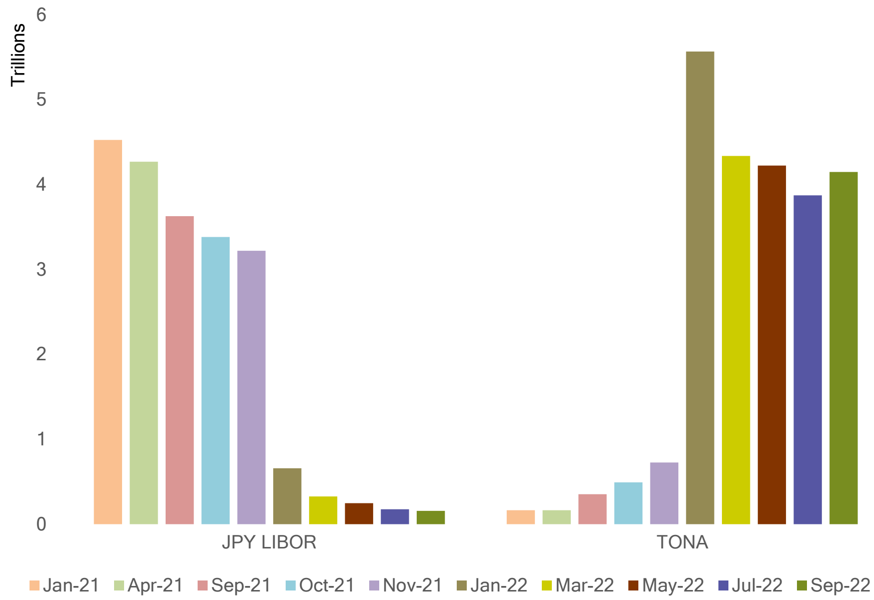
Sources: TRs, ESMA

3.4 JPY

44. Regarding JPY, liquidity in TONA surged starting from November 2021. EMIR TR data clearly indicates that TONA has become the reference rate for the JPY market, following the CCPs legal switch and the JPY LIBOR discontinuation.

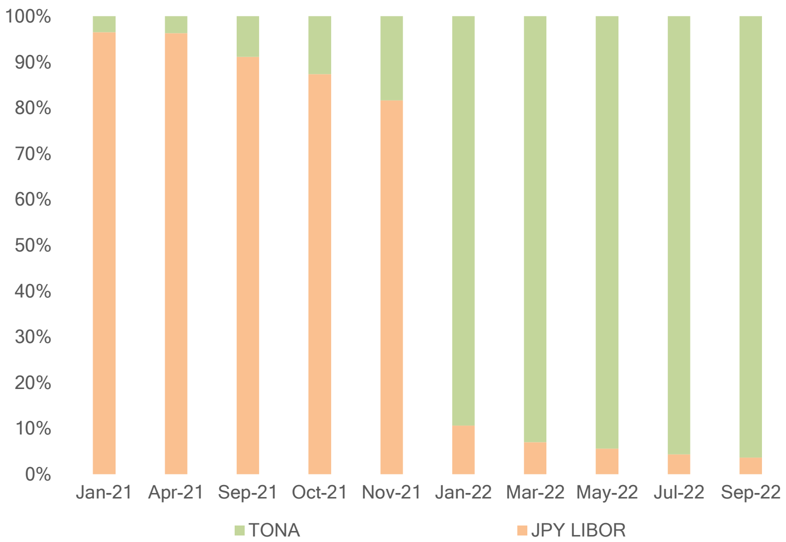
45. As presented in the CP, activity in TONA skyrocketed between November 2021 and January 2022, increasing by more than 700% and liquidity has remained rather stable through 2022. A historical comparison between TONA and JPY LIBOR covering the January 2021-September 2022 period is presented in Figure 18Figure 18 and Figure 20 below, while Figure 20 shows the distribution per bucket of tenors where it emerges that liquidity is concentrated in contracts until 41 years, with an important concentration in the 1-3 and 5-6 buckets.

FIGURE 18 - NOTIONAL AMOUNT OUTSTANDING IN CONTRACTS REFERENCING JPY LIBOR VS TONA OVER JANUARY 2021 – SEPTEMBER 2022



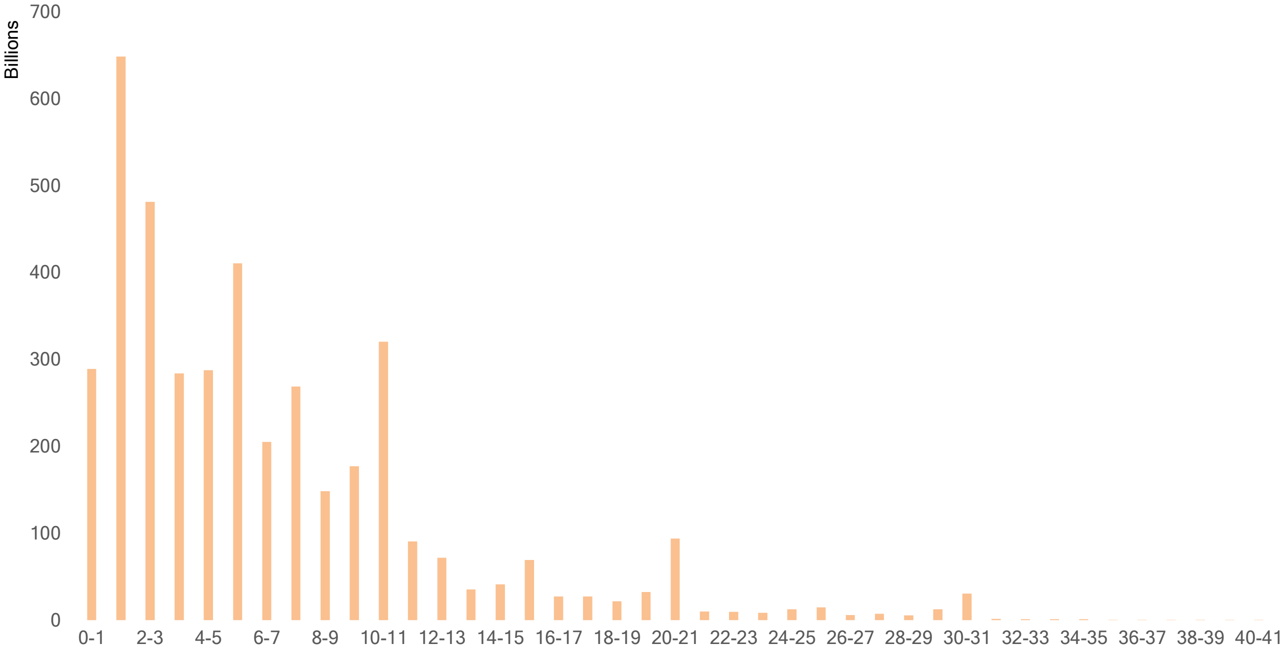
:Sources: TRs, ESMA

FIGURE 19 - PERCENTAGE OF NOTIONAL AMOUNT OUTSTANDING IN CONTRACTS REFERENCING JPY LIBOR VS TONA OVER JANUARY 2021 – SEPTEMBER 2022



Sources: TRs, ESMA

FIGURE 20 - TONA, DISTRIBUTION OF NOTIONAL OUTSTANDING PER BUCKET OF TENORS



Sources: TRs, ESMA

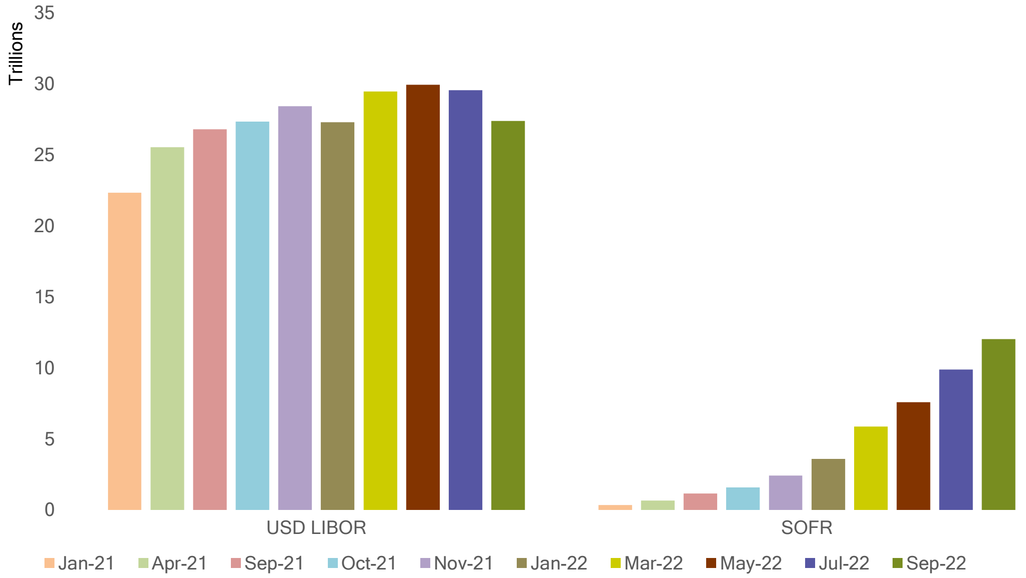
3.5 USD

46. EMIR TR data show that while there is still room for further growth, SOFR has been elected by market participants as the replacement of USD LIBOR. As already mentioned in the CP, the new benchmark represents indeed a relevant portion of the overall USD interest derivative market even though volumes in USD LIBOR remain quite significant, probably in light of the fact that most of the benchmark's settings will be discontinued only in June 2023. To that end, the efforts from regulators and the various initiatives launched in the US (e.g. SOFR First) have positively contributed to the development of SOFR, whose activity has steadily increased over the latest months, as confirmed by the latest data gathered by ESMA (see Figure 21).

47. In particular, EMIR TR data, which show the stock value of the notional outstanding in the derivative market, indicate that SOFR now accounts for more than 30% of the overall outstanding volume in interest rate derivatives denominated in USD (it was 20% in May 2022), representing a significant increase compared to January 2021 (1.5%) (see Figure 22).

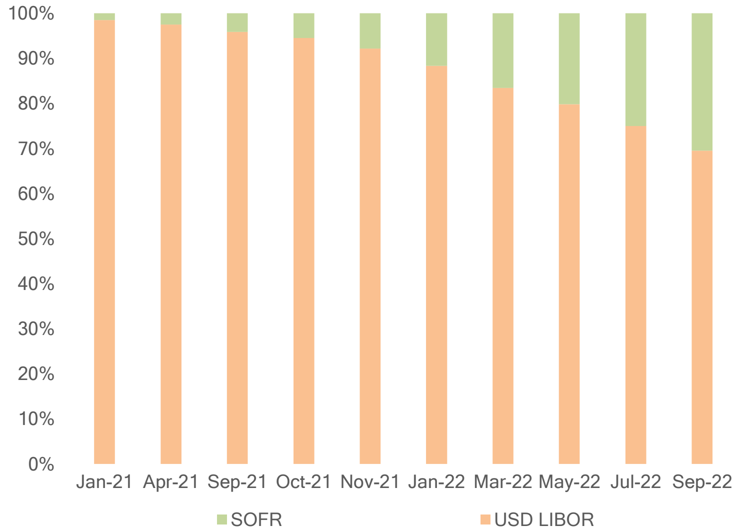
48. Therefore, it can be concluded that the market is adapting to SOFR and that liquidity in the USD RFR is expected to increase even more in the coming months. In this context, it is also worth adding that the CCP switch in Spring 2023 is expected to contribute moving the markets towards the USD RFR, in line with what has happened with the other currencies.

FIGURE 21 - NOTIONAL AMOUNT OUTSTANDING IN CONTRACTS REFERENCING USD LIBOR VS SOFR OVER JANUARY 2021 – SEPTEMBER 2022



Sources: TRs, ESMA

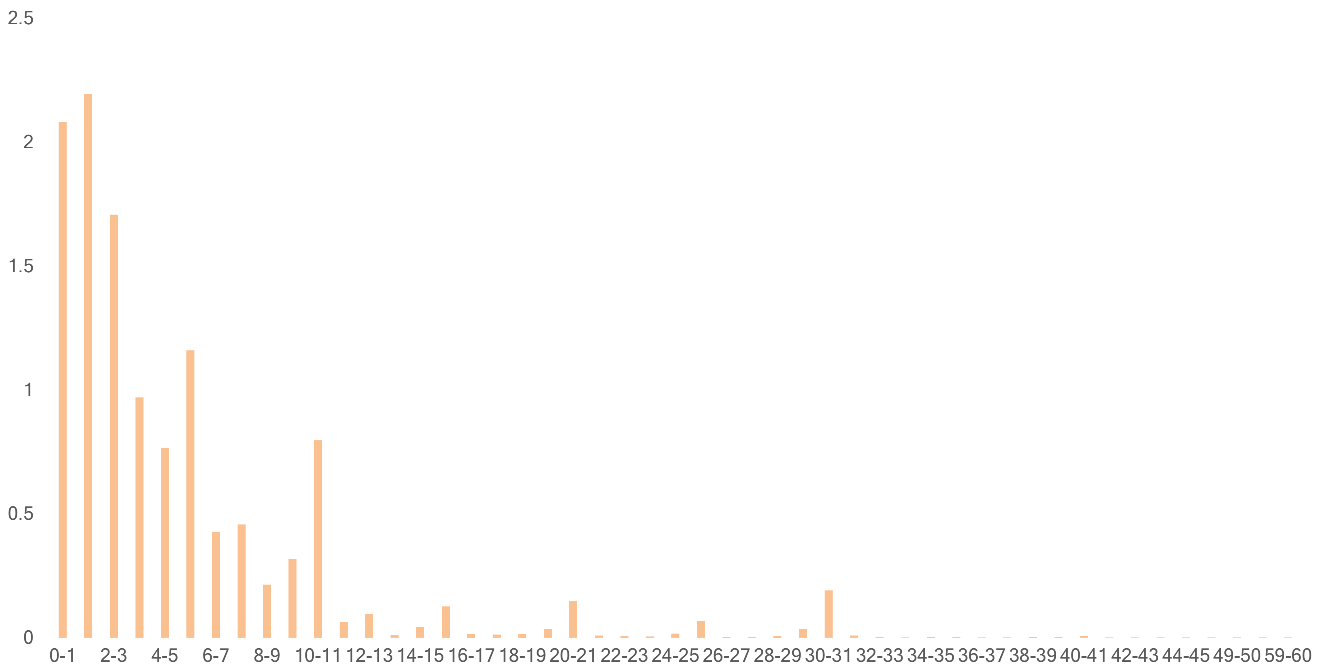
FIGURE 22 - PERCENTAGE OF NOTIONAL AMOUNT OUTSTANDING IN CONTRACTS REFERENCING USD LIBOR VS SOFR OVER JANUARY 2021 – SEPTEMBER 2022



Sources: TRs, ESMA

49. Finally, when looking at the different buckets of tenors in Figure 23, the situation is similar to what was observed in the context of the last CP. Indeed, liquidity is spread across the entire curve, including contracts with maturities up to 50 years, although with larger trading activity in the shorter end of the curve.

FIGURE 23 - SOFR, DISTRIBUTION OF NOTIONAL OUTSTANDING PER BUCKET OF TENORS



Sources: TRs, ESMA

4 General approach of this final report

50. As detailed in the previous sections, the benchmark transition has driven and will further drive changes in the trading and clearing of interest rate derivatives.

51. As explained in the CP, ESMA considered its assessment to be a data-driven exercise as it looked at EMIR TR data, and where relevant, at other data sources in order to have a broad overview of the state of play of the transition. The data analysis conducted by ESMA was broadly supported by stakeholders in both rounds of consultation and ESMA has thus decided to continue with this approach, as evidenced in Section 3 above.

52. In addition, for the purpose of determining whether the classes of interest rate derivatives referencing €STR should be subject to the DTO, it should be highlighted that ESMA also looked in the CP at additional data sources, extending its data analysis of EMIR TR data to trade flow reports and requesting ad-hoc data for certain instruments and in certain currencies from EU trading venues (see Section 6).

53. In addition, ESMA considered the various elements that influenced this reform, including the different communications from regulators, initiatives from market participants including CCPs and TVs. As explained in Section 2.2, coordination with third-country authorities has also been crucial through the whole assessment to allow for international convergence.

54. In terms of general approach, ESMA has followed the same logic as in the 2021 FR and considered both the CO and the DTO at the same time.

55. ESMA remains of the view that tackling the CO and the DTO at the same time would benefit stakeholders as the market change was driven by the benchmark transition rather than the usual market developments that can lead to new products. The OTC interest rate derivative market has indeed changed significantly since the beginning of the transition and it thus appeared reasonable to consider the changes to two of its key components at the same time, the clearing and trading aspects, and the corresponding obligations.

56. However, different elements emerged in the context of the consultation. While the great majority of respondents agreed with proceeding with the changes regarding the scope of the CO, it seems that most respondents disagreed with the proposal to add any €STR OIS IRS into the EU DTO at this stage, pending the finalisation of the on-going MiFIR review.

57. Taking the above into account, ESMA finalised the amendments to the classes of derivatives subject to the CO RTS and the DTO RTS but is proposing a delayed date of application for the RTS amending the DTO, as explained in Section 6 below.

5 Clearing obligation

5.1 TONA and SOFR

5.1.1 Proposal in the CP

58. Before focusing on the changes proposed in the CP published in July 2022, it is worth recalling that in 2021 ESMA had already assessed for the purpose of the clearing obligation the classes of OTC interest rate derivatives impacted by the benchmark transition and denominated in EUR, GBP, JPY and USD. As mentioned in the introductory section, this led to the removal of classes referencing EONIA or LIBOR and to the addition of classes referencing some of the risk-free rates.

59. Building on last year's analysis, ESMA noted in the CP that no class denominated in any of these four currencies and referencing the old EONIA and LIBOR benchmarks was left in the scope of the clearing obligation. Therefore, the CP indicated that there is no additional class that would no longer meet the criteria set in EMIR that would need to be removed from the clearing obligation.

60. However, in view of the increase in liquidity of classes referencing risk-free rates since the time of the draft RTS developed in 2021, ESMA considered in the last CP whether additional classes should be added to the scope of the clearing obligation.

61. While all the classes denominated in EUR, GBP, JPY and USD, referencing the related risk-free rates and offered for clearing by CCPs were considered in 2021, only some of

these classes met the EMIR criteria at the time. ESMA therefore looked again into those currencies which are not included (or only with a partial coverage of maturities) in the scope of the CO to see whether they would now be fit for the clearing obligation, following the assessment foreseen by EMIR criteria.

62. As a consequence, the CP looked at possible new classes of OTC interest rate derivatives denominated in JPY or USD referencing RFRs and offered for clearing by CCPs, namely:

- SOFR OIS, and
- TONA OIS.

63. For these classes, ESMA looked at the EMIR criteria in more detail, but for several of these criteria, it built on the assessment carried out in 2021. ESMA explained that it is indeed the second criterion (liquidity) that is driving the determination process for these new or extended classes.

5.1.1.1 Criteria 1 and 3: Degree of standardisation and availability of the pricing information

64. The first criterion referenced in EMIR and assessed by ESMA is the degree of standardisation of the relevant class, both in terms of the contractual terms as well as the operational processes.

65. In the CP, ESMA concluded that the OIS classes assessed (OIS referencing TONA and OIS referencing SOFR) benefitted from a high level of standardisation, both from a contractual terms perspective as well as from an operational process perspective. Indeed, standard master agreements are widely used for these contracts and the processes are widely automated enabling straight through processing. This high level of standardisation is one key aspect that enables these OISs to be cleared and to be routed electronically. It also allows trading an important number of these trades on venue.

66. 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, ESMA considered that these OIS classes benefitted from a high level of access to fair, reliable and generally accepted pricing data, much like the other OIS classes referencing risk-free rates already in scope of the clearing obligation.

5.1.1.2 Criterion 2: Liquidity

67. As already mentioned, the EMIR criteria that has the biggest impact when assessing whether a class is fit for the clearing obligation is its liquidity.

68. In the CP, ESMA assessed criteria 2(a) and 2(c) which refer, respectively, to proportionate margins and market dispersion. The assessment carried out by ESMA in 2021 remained

valid in the context of the last CP. Indeed, ESMA concluded that it is reasonable to expect that the margins or financial requirements of CCPs would remain proportionate to the risk that the clearing obligation intends to mitigate, and that the likelihood that market dispersion would be sufficient would remain the same in the event of the default of a clearing member.

69. As required by EMIR, ESMA also looked at criteria 2(b) and 2(d), respectively on the stability of the market size and depth and number and value of the transactions. Based on the more quantitative analysis carried out with the help of EMIR TR data, ESMA considered that the TONA OIS class with maturities up to 30 years benefitted from an appropriate level of liquidity to be considered for the clearing obligation. ESMA also noted in the CP that other jurisdictions have since added TONA OIS to the scope of their respective clearing obligations or have been consulting on the proposal to do so (see the section regarding the status of similar obligations in other jurisdictions for more details on recent developments there, such as TONA OIS in the CFTC final rules).

70. With respect to USD, the figures presented in the CP evidenced that SOFR has continued to gradually increase in volume in the OTC interest rate derivatives denominated in USD and, following a more in-depth analysis, ESMA considered that the SOFR OIS class with maturities up to 50 years would benefit from an appropriate level of liquidity to be considered for the clearing obligation. It should also be noted that such trend is confirmed by the July and September 2022 (see Section 3) datapoints which show an additional growth of liquidity in the US risk-free rate.

71. In conclusion, ESMA proposed in the CP to introduce the class of interest rate derivatives referencing TONA, i.e. TONA OIS classes up to 30 years, and extend the class of interest rate derivatives referencing SOFR, i.e. SOFR OIS classes up to 50 years. The changes proposed by ESMA in July 2022 are shown in Table 2 below.

TABLE 2 - OVERNIGHT INDEX SWAP CLASSES

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

OIS	TONA	JPY	7D-30Y	Single currenc	No	Constant or Variable

5.1.2 Feedback from the consultation

72. With respect to the proposal of introducing a clearing obligation for OIS classes referencing TONA and that the maturities for SOFR OIS could be extended up to 50 years, respondents expressed broad support. Indeed, all respondents (16) but one agreed with ESMA's proposal and most of these stakeholders noted that such change would ensure international convergence without having any major implication in terms of market impact.

73. While agreeing with the changes proposed by ESMA, a couple of stakeholders provided some specific comments. One respondent flagged that liquidity for SOFR OIS with a maturity above 35 years is still low, while another respondent suggested that the clearing obligation for €STR could equally benefit from an extension in scope given the market developments.

74. One respondent disagreed with ESMA's proposal, considering that the clearing obligations for all OIS classes should be equal to the €STR OIS (from 7 days up to 3 years), as: i) the market standard of clearing obligations for OIS has always been up to 3 years; ii) the extension of clearing obligations would affect banks' risk management capabilities; and iii) extending tenors could entail operational costs for market participants.

75. In addition to the responses to the CP, ESMA received input from the ESRB which was consulted on the proposed approach and expressed full support for the proposed way forward.

5.1.3 ESMA's assessment and next steps

76. ESMA has continued monitoring how markets have adapted to the new benchmarks. To that end, the analysis presented in the CP, supplemented by the addition of a few data points as presented in Section 3 of this FR, show that liquidity has largely picked up for all risk-free rates albeit some minor differences depending on the currencies analysed.

77. On that basis and considering also the strong support received by the large majority of respondents to the CP and by the ESRB, the classes referencing TONA (JPY) up to 30 Y and SOFR (USD) up to 50 Y are proposed to be introduced in the scope of the CO via the amending RTS.

78. While a set of OIS classes referencing certain risk-free rates (with different maturities) have already been included in the scope of the CO, ESMA will nonetheless continue monitoring the progress made with the transition and how benchmarks develop and attract liquidity.

5.2 Implementation timeline

5.2.1 Proposal in the CP

79. Following the assessment and the proposal of which classes of OTC interest rate derivatives would be fit for the clearing obligation and thus should be added to the scope, there is also the question of how and when to implement this change in the scope of the clearing obligation.

80. On the first aspect, on the how, in the CP, ESMA proposed to follow a similar approach as with the first set of changes developed in 2021 (which consisted in an amendment of Commission Delegated Regulation (EU) 2015/2205 on the clearing obligation for OTC interest derivative classes denominated in EUR, GBP, JPY and USD), i.e. submitting a draft RTS also amending Commission Delegated Regulation (EU) 2015/2205 on the clearing obligation. Accordingly, to reflect the change of classes to be in scope of the clearing obligation, ESMA proposed in the CP to amend the annex of the first Commission Delegated Regulation (EU) 2015/2205 on the clearing obligation where the classes are listed.

81. Regarding the second aspect, on the when, in the consultation paper, ESMA also proposed to follow a similar approach as with the first set of changes developed in 2021.

82. Unlike when the clearing obligation was first rolled out, the RTS developed in 2021 did not include a phase-in per category of counterparties. As a reminder, the initial Commission Delegated Regulation (EU) 2015/2205 on the clearing obligation contained a phase-in, as in general, different counterparties need different periods of time for putting in place the necessary arrangements to start clearing for the first time their OTC interest rate derivatives subject to the clearing obligation. However, in this case, counterparties who were already subject to the clearing obligation and clearing other classes of OTC interest rate derivatives denominated in the same currencies but referencing the old benchmarks, had had time to prepare for the benchmark transition, including with respect to their clearing arrangements.

83. It is also important to recall that responses to the public consultation conducted in 2021 had raised two sets of feedback, with some in support of applying the changes quickly and align them as much as possible to what was being done in other jurisdictions and others asking for an implementation period. Taking all this into account, ESMA had not included a phase-in (except for SOFR, with a three-month phase-in) as this RFR was in a slightly different situation than the other three currencies considered then. Following the entry into force of the Commission Delegated Regulation on the clearing obligation relating to the benchmark transition and based on the ESMA RTS (Commission Delegated Regulation (EU) 2022/750), no particular issue has been raised to ESMA regarding its implementation.

84. This time around, in the CP, ESMA thus proposed the same approach, i.e. not including an additional phase-in, and thus for the changes to start applying as of the entry into force of the Delegated Regulation based on the draft RTS that would be submitted by ESMA.

5.2.2 Feedback from consultation

85. No respondent commented on the first aspect, i.e. how to implement such change, meaning a draft RTS amending Commission Delegated Regulation (EU) 2015/2205 on the clearing obligation.

86. With respect to the second aspect, the timeline for implementing the changes to the scope of the CO, ESMA received a number of comments.

87. As with the previous public consultation, respondents had split views on the proposed implementation timing.

88. On the one hand, some respondents argued that there was in fact no need for a phase-in. One of the arguments put forward was that the CCP legal switch for JPY was already behind, such that entities clearing their JPY interest swaps are thus already ready to clear TONA OIS. Furthermore, they indicated that the level of voluntary clearing was further evidence of the market's readiness. Regarding SOFR, one important argument was that SOFR OIS is already in scope of the clearing obligation in the EU, and thus that there was no need for an additional phase-in to clear longer maturities.

89. On the other hand, the other respondents, a larger number of respondents than the number of respondents with the view just described above, argued that there was in fact a need for a sufficient implementation period. Some of these respondents did not specify a particular length for such an implementation period, while the other respondents, the majority of them, argued for a three-month period. Respondents arguing in favour of an implementation period made reference to the additional time needed to undertake the internal and external adaptations needed. Some respondents gave more specific details on what these adaptations encompassed.

90. These include adaptations of systems and processes to ensure compliance with the rules and relevant controls, internal communication and training, as well as external client communication. Regarding the former, adaptation of systems and processes, these may include the adaptation of the control framework to make sure all transactions that fall under the new clearing obligation are cleared, the adaptation of certain systems, such as middleware, which can include liaising with external suppliers who in turn may have their own notice periods, as well as the adaptation of reporting systems such as for EMIR reporting.

91. It should be mentioned also that some respondents made a slight distinction between a phase-in and a notice period. These respondents did not argue in favour of an explicit

regulatory phase-in per se but argued that counterparties still needed sufficient notice to be ready.

92. Beyond the question of whether a phase-in, or an implementation period or sufficient notice is needed, some respondents raised two additional aspects that ESMA should take into account when finalising the RTS. The first one is to consider the clearing obligation of such classes in the other jurisdictions. More specifically, some respondents asked that the obligation does not start in the EU before a similar obligation starts in certain other jurisdictions, in particular the US.

93. The second additional aspect raised by some respondents is with regards to the timing of the cessation of USD LIBOR in June 2023. These respondents argued that the start of the EU obligation should avoid coinciding with the USD LIBOR cessation.

5.2.3 ESMA's assessment and next steps

94. ESMA has considered the feedback received from stakeholders on the implementation of the proposed changes to the scope of the clearing obligation.

95. ESMA did not received any comments on the how, the practical implementation of the changes, and will therefore follow a similar approach as with the first set of changes developed in 2021. This consists in submitting 2a draft RTS amending Commission Delegated Regulation (EU) 2015/2205 on the clearing obligation where the relevant classes are listed.

96. ESMA then assessed the feedback on the when, the timeline for implementing such changes. First of all, taking into account the time it takes for a draft RTS to go through the entire adoption process until its entry into force, including the endorsement by the European Commission, the scrutiny period with the European Parliament and the Council, and the steps leading to its publication in the Official Journal, the proposed draft RTS will enter force later than the mandatory clearing rules for SOFR OIS in the US.

97. Secondly, regarding the request to avoid that the start of the clearing obligation coincides with the cessation of USD LIBOR, ESMA is of the view that the CCP legal switches (such that the cleared transactions have been converted to then reference SOFR) will minimise the potential issues of coinciding dates once completed. However, in view of the size of the USD market, ESMA also sees some merit in avoiding this particular date of the cessation of USD LIBOR. Here as well, without prejudice to the scrutiny process that the draft RTS will go through and taking into account the time it takes for a draft RTS to go through the entire adoption process until its entry into force, the two dates are thus not expected to coincide, with an entry into application of the RTS expected sometime after the cessation of USD LIBOR.

98. Thirdly, regarding the implementation period, ESMA takes note of the feedback that sufficient notice would be important to adapt systems and processes and to communicate

internally and externally. However, ESMA is of the view that there are even less reasons than with the RTS developed in 2021 to introduce a phase-in (as explained in the CP and in line with some respondent's feedback) and that ESMA was not made aware of any particular issues with the actual implementation of the previous RTS. In addition, without prejudice to the scrutiny process that the draft RTS will go through, ESMA staff is of the view that a number of preparatory steps can be taken to help make progress towards readiness for when the Delegated Regulation on the clearing obligation with respect to TONA OIS classes and classes of SOFR OIS with longer maturities would enter into force.

99. The draft RTS in Annex reflect these proposed amendments to the initial Commission Delegated Regulation (EU) 2015/2205 on the clearing obligation for interest rate derivatives.

6 Derivative trading obligation

6.1 TONA, SOFR, SONIA

6.1.1 Proposal in the CP

100. ESMA did not consider SONIA, TONA and SOFR as candidates for the DTO for different reasons: with regard to SONIA and TONA the trading activity in the EU was still limited overall, while for SOFR despite the gradual increase in the trading activity, the transition was still on-going, and the CFTC had not included contracts referencing SOFR, neither under the clearing nor the trading mandate. Therefore, ESMA considered it premature to consider SOFR for the DTO.

6.1.2 Feedback from the consultation

101. Almost all respondents agreed with ESMA's proposal not to include TONA, SOFR and SONIA to the scope of the DTO. However, a minority of respondents considered that the DTO should apply to contracts referencing SOFR since (i) the CFTC's clearing mandate for SOFR OIS became effective in September 2021 and (ii) there is significant volume and liquidity of EU trading in SOFR OIS. Furthermore, a minority of respondents supported the inclusion of TONA and SONIA OIS contacts under the DTO because of the trading activity recorded on those contracts and on the latter also because of the UK having already implemented a SONIA DTO.

6.1.3 ESMA's assessment and next steps

102. Considering the strong support not to include TONA, SOFR and SONIA to the scope of the DTO ESMA confirms that it will not extend the DTO to such contracts at this stage.

6.2 €STR

6.2.1 Proposal in the CP

103. From the analysis presented in the CP, it appeared that €STR was not only replacing EONIA, but it was also being more relevant compared to its predecessor in the EUR benchmarks market. Therefore, the swap contracts with the characteristics defined in the table below were proposed to be subject to the DTO.

OIS single currency interest rate swaps – €STR						
Settlement currency	EUR	EUR	EUR	EUR	EUR	EUR
Trade start type	IMM (next two IMM dates))	Spot (T+2)	Spot (T+2) or IMM (next two IMM dates)	Spot (T+0)	Spot (T+0) or Spot (T+2) or IMM (next two IMM dates)	Spot (T+0) or Spot (T+2) or IMM (next one IMM date)
Optionality	No	No	No	No	No	No
Tenor	3 months	3 months	1 year	1 year	2 years	3 years
Notional type	Constant	Constant	Constant	Constant	Constant	Constant
Fixed leg						
Payment frequency	Annual	Annual or Quarterly	Annual	Annual	Annual	Annual
Day count convention	Actual/360	Actual/360	Actual/360	Actual/360 or 366/360	Actual/360	Actual/360
Floating leg						
Reference index	€STR	€STR	€STR	€STR	€STR	€STR

Reset frequency	Annual	Quarterly	Annual	Annual	Annual	Annual
Day count convention	Actual/360	Actual/360	Actual/360	Actual/360	Actual/360	Actual/360

6.2.1.1 Feedback from the consultation

104. Most respondents did not provide feedback on the liquidity assessment. The majority of feedback received focussed on the timing of extending the DTO and disagreed with the proposal to add any €STR OIS IRS to the EU DTO at this stage pending the finalisation of the on-going MiFIR review. Respondents considered that prior to the introduction of the investment-firm specific suspension of the DTO when trading with non-EU clients under certain conditions proposed under the MiFIR review, the DTO should not be extended to new contracts.

105. One respondent did not support introducing new classes of derivatives for €STR OIS subject to the DTO since it may increase operational costs, which might discourage market participants to trade.

106. Only some respondents provided comments on the details of the proposals. Those respondents highlighted that the liquidity for Spot T0 was marginal compared to the other classes as well as for contracts with 3Y tenor and trade start date Next IMM2. Furthermore, it was noted that the number of contracts/notional traded in Oct 2021 (Table 7) was considerably larger than in other months (p.48) and that this could be related to the transition of EONIA contracts in CCPs. Respondents were concerned that it could have affected the liquidity assessment carried out and suggested to further analysed the number of contracts included for October 2021. Finally, one respondent supported the inclusion of swaps with daily floating leg reset frequency to the DTO given the liquidity of such swaps.

6.2.1.2 ESMA's assessment and next steps

107. In line with the comments received to the consultation, ESMA makes small adjustments to the characteristics defining the sub-class of interest rate swaps to be subject to the DTO.

108. More specifically, ESMA agrees in limiting the OIS single currency interest rate swaps – €STR with 1 year tenor to those with a trade start date equal to the next IMM date only and to exclude from the DTO those with trade start date spot (T+0). However, swaps with 1 year tenor and start date spot (T+2) and daily reset frequency of the floating leg are added. The table below provides the final proposal of interest rate derivatives to be subject to the DTO.

	OIS single currency interest rate swaps – €STR					
Settlement currency	EUR	EUR	EUR	EUR	EUR	EUR
Trade start type	IMM (next two IMM dates: IMM1 and IMM2)	Spot (T+2)	Spot (T+2)	IMM (next one IMM date)	Spot (T+2) or IMM (next one IMM date)	Spot (T+2) or IMM (next one IMM date)
Optionality	No	No	No	No	No	No
Tenor	3 months	3 months	1 year	1 year	2 years	3 years
Notional type	Constant	Constant	Constant	Constant	Constant	Constant
	Fixed leg					
Payment frequency	Annual	Annual or Quarterly	Annual	Annual	Annual	Annual
Day count convention	Actual/360	Actual/360	Actual/360	Actual/360	Actual/360	Actual/360
	Floating leg					
Reference index	€STR	€STR	€STR	€STR	€STR	€STR
Reset frequency	Annual	Quarterly	Annual or Daily	Annual	Annual	Annual

Day count convention	Actual/360	Actual/360	Actual/360	Actual/360	Actual/360	Actual/360

6.3 Implementation timeline

6.3.1 Proposal in the CP

109. Considering that the CO on those contracts entered into force in mid-May 2022 and that some time would have passed until the entry into force of these new obligations, ESMA considered it not necessary to provide for an implementation period. Therefore, it was proposed that the amended DTO should enter into force on the twentieth day following that of its publication in the OJ, as per common practice.

6.3.2 Feedback from the consultation

110. Most respondents disagreed with ESMA's proposal as they considered that market participants might need time to adapt their internal systems and procedures. One of these respondents considered that a three-months delay between the date of entry into force of the new regulation and its effective application date would be appropriate whilst another respondent noted that at least 6 months were needed to adjust all relevant internal trading and control systems. One respondent proposed that the rules would apply from the later of (i) the date [next available Monday] 6 months after submission of the final report to the EC or (ii) 3 months after publication in the OJ.

111. Furthermore, one respondent also pointed out that it should be avoided that the new obligation started applying around June 2023, since it would coincide with the final discontinuation of the USD LIBOR (which could be somehow defined as "a turning point"). Therefore, given the likelihood of this scenario, they proposed to provide for a delay between the date of entry into force of the proposed changes and their effective application, calibrated in such a way as to avoid a start of the obligation in June 2023.

112. Some of the stakeholders considered that the implementation timeline is irrelevant at this stage as the DTO regime should not be amended until the finalisation of the MiFIR review.

113. Finally, one respondent considered that 20 days should be sufficient as the changes to implement to comply with the new requirements are not that significant.

6.3.3 ESMA's assessment and next steps

114. ESMA appreciates the concerns of market participants concerning the need to wait for the finalisation of the MiFIR review and in particular the application of the proposed investment-firm specific suspension mechanism.

115. At the same time, ESMA considers that the liquidity assessment performed demonstrates that there is sufficient liquidity for introducing the DTO. Therefore, from a technical point of view, there is no reason to delay the extension of the DTO. ESMA is mindful of the political discussions and, in particular, the ongoing MiFIR review and recommends that the European Commission duly considers the timing of the finalisation of the MiFIR review before adopting the amended draft RTS.

116. Therefore, in order to provide the European Commission with the necessary flexibility, ESMA did not provide a specific application date for the amended RTS but included the standard provision on the entry into force occurring on the twentieth day after publication in the OJ of the amended RTS. Hence, it would be under the control of the European Commission to decide on the appropriate timing for adopting the RTS.

7 Way forward

117. With this FR, ESMA is submitting the draft RTSs on the CO and DTO to the European Commission for endorsement in the form of Delegated Regulation.

118. With respect to the RTS on CO, following a non-objection review by the European Parliament and Council, the RTS would only enter into force after publication. ESMA is mindful that the approval process can take some time although it would see benefits in a quick process to accompany the actual benchmark transition milestones taking place shortly but as well to facilitate coordination and convergence with regards to the changes introduced by authorities in other jurisdictions to the scopes of their mandatory and trading obligations.

119. In relation to the RTS on DTO, ESMA would recommend that the application date should coincide with that of the MiFIR review, as explained in section 6.

120. ESMA will continue to monitor the benchmark transition in the OTC interest rate derivative market and may further review the scope of the CO and/or the DTO depending on how the liquidity evolves across the various rates referenced in OTC interest rate derivatives being traded and cleared. Given the implications on the date of application of the RTS amending the scope of the DTO, ESMA will also continuing monitoring the negotiations on the MiFIR review.

8 Annexes

8.1 Annex I - Commission mandates to develop technical standards

8.1.1 Clearing obligation

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

Clearing obligation procedure

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

(a) the class of OTC derivatives that should be subject to the clearing obligation referred to in Article 4;

(b) the date or dates from which the clearing obligation takes effect, including any phase in and the categories of counterparties to which the obligation applies.

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

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

8.1.2 Derivative trading obligation

Article 32 of Regulation (EU) No 600/2014

Derivative trading obligation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. ESMA shall in accordance with paragraph 1, submit to the Commission draft regulatory technical standards to amend, suspend or revoke existing regulatory technical standards whenever there is a material change in the criteria set out in paragraph 2. Before doing so, ESMA may, where appropriate, consult the competent authorities of third countries.

8.2 Annex II – Draft technical standards

8.2.1 Clearing obligation

COMMISSION DELEGATED REGULATION (EU) …/..

amending the regulatory technical standards laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts

of [ ]

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ([24]), and in particular Article 5(2) thereof,

Whereas:

(1) Commission Delegated Regulation (EU) 2015/2205 ([25]) specifies, among others, a set of classes of over-the-counter (OTC) interest rate derivatives that are subject to the clearing obligation. Commission Delegated Regulation (EU) 2015/2205 was amended by Commission Delegated Regulation (EU) 2022/750 ([26]) with regards to the set of classes of over-the-counter (OTC) interest rate derivatives denominated in Euro (EUR), Pound Sterling (GBP), Japanese Yen (JPY) and US Dollar (USD) that are subject to the clearing obligation. This change in the scope of classes that are subject to the clearing obligation reflect the transition to new benchmarks referenced in OTC derivatives, moving away from referencing the EONIA and LIBOR benchmarks and referencing instead new risk-free rates, as some classes no longer met the criteria that are essential for subjecting them to the clearing obligation while new classes started to meet these criteria.

(2) The ICE Benchmark Administrator, the administrator for LIBOR, had communicated that the cessation of JPY LIBOR and certain fixings of USD LIBOR was going to take place at the end of 2021, whereas the publication of all remaining settings of USD LIBOR will cease in June 2023. On 5 March 2021, the Financial Conduct Authority from the United Kingdom confirmed that all LIBOR settings would indeed either cease to be provided by any administrator or no longer be representative.

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[24] OJ L 201, 27.7.2012, p. 1.
[25] OJ L 314, 1.12.2015, p. 13
[26] OJ L 138, 17.5.2022, p. 6

In addition, the Commission, the European Central Bank in its banking supervisory capacity (ECB Banking Supervision), the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) issued a joint statement to strongly encourage counterparties to stop using any of the LIBOR settings, including USD LIBOR, as a reference rate in new contracts by 31 December 2021. Since 1 January 2022, counterparties are hence no longer able to enter into OTC interest rate derivatives referencing JPY LIBOR as this benchmark has ceased and counterparties are expected to no longer enter into OTC interest rate derivatives referencing USD LIBOR.

(3) Regulators and market participants have been working on replacement rates for those currencies, and in particular on the development of new risk-free rates, which are now being used as benchmarks in financial instruments and financial contracts. In particular, the Secured Overnight Financing Rate (SOFR) and the Tokyo Overnight Average Rate (TONA) risk-free rates are produced for USD and JPY respectively. More specifically with respect to the OTC derivative market, it now means that OTC interest rate derivative contracts referencing SOFR and TONA are being traded by counterparties and are being cleared at certain CCPs.

(4) ESMA has been notified of the classes of OTC interest rate derivatives referencing SOFR or TONA that certain CCPs have been authorised to clear. For each of those classes ESMA has assessed again 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 that these classes of OTC interest rate derivatives referencing those risk-free rates should now become subject to the clearing obligation in accordance with the procedure set out in Regulation (EU) No 648/2012. Those classes should be therefore included in the scope of the clearing obligation.

(5) In general, different counterparties need different periods of time for putting in place the necessary arrangements to start clearing their OTC interest rate derivatives subject to the clearing obligation. However, in this case, counterparties have had time to prepare for the benchmark transition, including the cessation of JPY LIBOR that took place at the end of 2021 or the planned cessation of most settings of USD LIBOR scheduled for June 2023, including with respect to their clearing arrangements. For counterparties already subject to the clearing obligation and clearing OTC interest rate derivatives denominated in JPY or in USD, clearing the new classes referencing the risk-free rates in JPY or USD does not require significant changes, if any at all, to their clearing contracts or processes. Indeed, counterparties who have had clearing arrangements in place to clear OTC interest rate derivatives denominated in JPY, then clearing OTC interest rate derivatives referencing the risk-free rate in this currency does not require establishing and implementing brand new clearing arrangements as was the case when they first started clearing OTC interest rate derivatives denominated in this currency. Furthermore, for counterparties who have had clearing arrangements in place to clear OTC interest rate derivatives referencing SOFR, as SOFR OIS classes of maturities up to 3 years are already in scope of the clearing obligation, then clearing OTC interest rate derivatives referencing SOFR for longer maturities does not require establishing and implementing brand new clearing arrangements. There is no need to introduce an additional phase-in in order to ensure an orderly and timely implementation of that obligation. The changes made to introduce the new classes of OTC interest rate derivatives referencing the risk-free rates and denominated in JPY and USD should start to apply on the date of entry into force of this Regulation.

(6) Delegated Regulation (EU) 2015/2205 should therefore be amended accordingly.

(7) This Regulation is based on the draft regulatory technical standards submitted to the Commission by ESMA.

(8) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits, requested the advice of the

Security and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council (3), and consulted the European Systemic Risk Board,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) 2015/2205

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

(1) Article 3 is amended as follows:

a. Paragraph 1c is added:

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

(2) The Annex is replaced by the text in the Annex to this Regulation.

ANNEX

Interest rate OTC derivative classes subject to the clearing obligation

Table 1

Basis swaps classes

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

Table 2

Fixed-to-float interest rate swaps classes

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

Table 3

Forward rate agreement classes

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

Table 4

Overnight index swaps classes

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

E.4.2	OIS	TONA	JPY	7D-30Y	Single currency	No	Constant or variable

Article 2

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

[For the Commission
On behalf of the President

[Position]

8.2.2 Derivative trading obligation

COMMISSION DELEGATED REGULATION (EU) …/..

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

of [ ]

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012[(1)], and in particular Article 32(1) thereof,

Whereas:

(1) Commission Delegated Regulation (EU) 2017/2417 [(2)] specifies, among others, the classes of over-the-counter (OTC) derivatives denominated in EURO (EUR) that are subject to the derivative trading obligation.

(2) In the context of the benchmark reform which provides for the cessation of the publication and use of certain interest rates and the parallel development of new market standards, in particular contracts referencing risk free rates developments in the OTC derivatives market have been monitored and, in particular, the trading activity in contracts referencing €STR.

(3) Over the last 18 months a significant and constant increase in the trading activity in those contracts referencing €STR has been observed, with trading activity sharply increasing following the cessation of EONIA at the end of 2021. Moreover, trading activity in €STR has not only replaced trading activity in EONIA but, due to the wider global trend of migrating to risk free rates, has also started replacing contracts referencing EURIBOR. Therefore, it is appropriate to assess whether there is sufficient liquidity in contracts referencing €STR for the determination of the trading obligation for derivatives.

(4) The analysis of trading activity in interest rate swaps referencing €STR based on data reported to data repositories and based on a data request to EU trading venues offering such contracts for trading, confirmed that there is significant liquidity in single currency fixed-to-float swaps contracts referencing €STR with short-term tenors of up to 3 years.

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1 OJ L 173, 12.6.2014, p. 84

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

(5) Based on a more detailed analysis it has been identified that trading activity is concentrated in interest rate swaps referencing €STR with further standardised characteristics for trade start type, notional type, day count convention, and payment and reset frequencies. It follows that the classes that should be included in the scope of the trading obligation shall have a tenor of 3 months, 1 year, 2 years or 2 years as well as a notional only of constant type, the payment frequencies of the fixed and floating leg should be annual or for certain contracts quarterly or daily. The day count convention of the floating legs should be Actual/360 and that of the fixed leg Actual/360 or for certain contracts 366/360.

(6) Delegated Regulation (EU) 2017/2417 should be amended accordingly.

(7) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(8) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Security and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2017/2417

(1) Article 1, second sub-paragraph is amended as follows:

A derivative referred to in Table 1 and Table 2 of the Annex shall be deemed to have a tenor of 3 months, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 15, 20 or 30 years where the period of time between the date at which the obligations under that contract come into effect and the termination date of that contract equals one of those periods of time, plus or minus 5 days.

(2) In the Annex to this Regulation, the following Table 2 is inserted.

Article 2

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

[For the Commission
On behalf of the President

[Position]

ANNEX

Derivatives subject to the trading obligation

Table 2

Overnight interest rate swaps denominated in EUR

	OIS single currency interest rate swaps – €STR									
Settlement currency	EUR									
Trade start type	IMM (next two IMM dates))	Spot (T+2)	Spot (T+2)	Spot (T+2)	Spot (T+2)	IMM (next one IMM date)	Spot (T+2)	IMM (next one IMM date)	Spot (T+2)	IMM (next one IMM date)
Optionality	No									
Tenor	3 months	3 months	3 months	1 year	1 year	1 year	2 years	2 years	3 years	3 years
Notional type	Constant									
	Fixed leg									
Payment frequency	Annual	Annual	Quarterly	Annual	Annual	Annual	Annual	Annual	Annual	Annual

Day count convention	Actual/ 360	Actual/ 360	Actual/ 360	Actual/ 360	Actual/ 360	Actual/ 360	Actual/ 360	Actual/ 360	Actual/ 360	Actual/ 360
	Floating leg									
Reference index	€STR									
Reset frequency	Annual	Quarterly	Quarterly	Daily	Annual	Annual	Annual	Annual	Annual	Annual
Day count convention	Actual/360									

8.3 Annex III - Cost-benefit analysis

121. Pursuant to Articles 10(1) the Regulation establishing ESMA[28], ESMA is empowered to develop draft RTS where the European Parliament and the Council delegate power to the Commission to adopt the RTS by means of delegated acts under Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts referred to in Article 1(2) of this Regulation, the Authority may develop draft regulatory technical standards.

122. The same Article requires ESMA to:

a. conduct open public consultations on draft RTS and to analyse the related potential costs and benefits, unless such consultations and analyses are highly disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter;

b. request the advice of the Securities and Markets Stakeholder Group referred to in Article 37.

123. This section contains a cost-benefit analysis (CBA) of the draft RTS with regard to the CO and DTO. However, this CBA only covers the technical options under the specific mandates of ESMA in respect of the CO and of the DTO, given that an impact assessment covering the general aspects of the CO and of the DTO have already been performed by the European Commission as part of the impact assessments of EMIR and MiFIR respectively where the CO and DTO regimes are set. Furthermore, please refer to sections 3, 5 and 6 with respect to some of the more quantitative elements feeding in the cost benefit analysis of the various technical options considered by ESMA for the CO and DTO.

Clearing obligation

Policy Objective	The policy objective of the CO is to ensure that certain classes of OTC derivative contracts are cleared through Central Counterparty Clearing (CCPs) in order to reduce counterparty risk and systemic risk. The proposed amendment goes in the same direction by ensuring that the scope of the obligation reflects the most recent market developments.

[28] CL2010R1095EN0030010.0001.3bi_cp 1..1 (europa.eu)

Technical Proposal	Under the draft RTS, certain classes of OIS referencing TONA are added to the scope of the CO. In addition, the obligation is extended to additional maturities of OIS classes referencing SOFR. See Annex 8.2.1 for more details on the draft RTS.
Benefits	The benefits of the amendments proposed in the draft RTS consist in providing clarity, legal certainty and predictability in relation to the classes of derivatives which are subject to the CO in light of the benchmark transition, which led to the discontinuation of certain rates and the development of new ones. In addition, the proposed amendments play an important role in fostering international convergence as many third country authorities have already taken or are in the process of taking similar actions in their jurisdictions.
Cost to regulators: - One-off - On-going	CAs may incur relatively marginal one-off costs to adapt their supervisory activities to ensure that the new derivative contracts subject to the CO are cleared through CCPs. However, this cost is expected to be rather limited as contracts referencing the benchmark replaced by TONA (JPY LIBOR) were already in the scope of the CO and SOFR contracts are already included in the scope of the obligation, albeit with different maturities. No major additional on-going costs to regulators are foreseen compared to the activity before the benchmark transition.
Compliance cost: - One-off - On-going	CCPs already offering clearing in those additional derivatives are not expected to incur additional costs whilst some minor costs are expected to be sustained by CCPs which will decide to start offering clearing in those instruments. In more details, CCPs may incur one-off IT and organisational costs in order to adapt their systems. However, these costs would be counterbalanced by the opportunity to capture some of the clearing flow underpinned by this clearing obligation proposal. Market participants might also face some costs in order to adapt their systems, structures and business model in order to comply with the revised scope of the obligation. Yet, the adaptation needed should be minimal as classes of OTC interest rate derivatives denominated in JPY and USD were already in scope of the CO before the benchmark transition.

Cost to other stakeholders	No additional costs are expected
Indirect costs	No additional indirect costs are expected.
Proportionality and sustainability	The changes proposed to the scope of the CO represent a natural replacement of the contracts that have been discontinued in the context of the benchmark transition. To that end, ESMA considers that the amendment proposed ensure proportionality and sustainability of the new obligation.

Derivatives trading obligation

Policy Objective	Ensuring trading in derivatives that are sufficiently liquid takes place on venue for more efficient markets in the context of the benchmark transition.
Technical Proposal	Under the draft RTS, the most standardised single currency fixed-to-float OIS on €STR are declared subject to the DTO. See Annex 8.2.2 for more details on the draft RTS.
Benefits	The benefits of the DTO were already assessed in the impact assessments of MiFIR respectively where the DTO regime is set. The RTS provides clarity, legal certainty and predictability with respect to derivatives subject to the DTO and further contributes to supervisory convergence in the context of the benchmark transition. Furthermore, in the context of the market's transition to new benchmark rates across different jurisdictions ensures market integrity, transparency, liquidity, and competition.
Cost to regulator: - One-off - On-going	CAs may incur relatively marginal one-off costs to adapt their supervisory activities to ensure that the new derivative contracts subject to the DTO are traded on an EU trading venue or an equivalent third-country venue.
Compliance cost: - One-off - On-going	Trading venues already offering trading in those additional derivatives subject to the DTO are not expected to incur additional costs. Trading venues which will decide to start offering trading in those additional derivatives subject to the DTO might incur one-off IT and human costs to adapt their systems, manage membership requests and on-going costs to monitor this additional trading flow.
Cost to other stakeholders	A number of market participants deciding to start trading those derivatives may incur one-off staff costs, including staff training, legal costs and IT costs to connect to trading venues, or additional trading venues offering trading in those derivatives referencing €STR subject to the DTO. Those market participants will incur on-going staff costs to ensure compliance with trading venues' rules, as well as on-going IT maintenance costs, in addition to on-going membership fees. For firms that trade derivatives subject to the DTO infrequently, those

	additional costs may be more significant and may lead them to switch to less perfect OTC derivative hedging or to reconsider their business model. However, since the new derivatives subject to the DTO are driven by the benchmark transition entailing the discontinuation of EONIA in favour of €STR, this is a scenario with a very small probability to happen. Indeed, it is expected that the most common scenario envisages firms already trading derivatives subject/not subject to the DTO which are already connected to those venues offering derivatives referencing €STR and, therefore, are expected to incur relatively marginal costs to comply with this obligation.
Indirect costs	Considering that the DTO is already in place for certain contracts no additional indirect costs are expected.
Proportionality and sustainability	The DTO on the €STR contracts remains focussed on a relatively small subset of those contracts, i.e. those with specific standard characteristics ensuring the proportionality and sustainability of the new obligation.