



European Securities and  
Markets Authority

# Consultation Paper

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



## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions outlined in it. Comments are most helpful if they:

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

ESMA will consider all comments received by 2 September 2021.

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

### Publication of responses

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

### Data protection

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

### Who should read this paper?

All interested stakeholders are invited to respond to this consultation paper. In particular, responses are sought from counterparties of OTC derivatives transactions which are subject to the clearing obligation or to the derivative trading obligation as well as from CCPs and Trading Venues.

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## Acronyms used

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

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

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# 1 Executive Summary

## Reasons for publication

This consultation paper (CP) 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 on to new Risk-Free Rates (RFR).

Following Benchmark reforms, EONIA and LIBOR are due to cease at the end of 2021 with the exception of USD LIBOR<sup>1</sup> which publication is scheduled to run until June 2023. However, various communications<sup>2</sup> have been made with the objective to stop USD LIBOR from being used as a reference rate in new contracts as soon as possible and in any event by 31 December 2021. In order to replace these benchmarks, there have been international efforts from regulators and market participants to transition to new RFRs in a number of currencies. More specifically with respect to the OTC derivative market, this means that new derivative contracts are thus expected to no longer reference EONIA or LIBOR from 3 January 2022, whereas derivatives referencing RFRs such as €STR in EUR, SONIA in GBP or SOFR in USD are being traded and cleared.

There are currently three Commission Delegated Regulations on the CO and one on the DTO. They mandate a range of interest rate and credit derivative classes to be cleared, and for a subset of these, to also be traded on venue. In view of this transition, there is a need to review the scope of the CO and the DTO for the classes and currencies impacted by these changes, namely interest rate derivative classes in EUR, GBP, JPY and USD. The draft RTS in Annex II of the CP include the proposed amendments to reflect the changes deriving from this transition.

ESMA has discussed this revision of the scope of the clearing obligation with the staff of the European Systemic Risk Board (ESRB) during the development of the consultation paper and will now consult the ESRB in order to get its input for the finalisation of the draft RTS on the clearing obligation. Furthermore, ESMA has also discussed this initiative with a number of authorities from third countries that are responsible for the clearing or trading mandates in their jurisdiction, in order to facilitate international convergence to the extent possible.

## Content

Section 2 presents the context for this review of the clearing and trading obligations. Section 3 details the progress in the benchmark transition. Section 4 describes the general approach for the coordinated revision of the clearing and trading obligations. Sections 5 and 6 include the analyses and the conclusions for how to amend the scopes of the clearing and trading

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obligations respectively and the related implementation timing. In particular, for the CO, it proposes to remove the EONIA, GBP LIBOR and JPY LIBOR classes, to introduce the €STR class, to extend the SONIA class, and to consider introducing the SOFR class. And for the DTO, it proposes to remove the GBP LIBOR class. Lastly, the CP also questions whether and when USD LIBOR should be removed in view of the communications to stop its use. Finally, section 7 talks about the way forward.

## Next Steps

The public consultation on the draft RTS on the CO and the DTO runs until 2 September 2021. ESMA will then review all the responses to this consultation submitted by the deadline in order to finalise the draft RTS this Autumn.

The draft RTS will then be submitted to the European Commission for endorsement in the form of Commission Delegated Regulations.

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

<sup>2</sup> IOSCO statement: [Statement on Benchmarks Transition \(iosco.org\)](https://www.iosco.org/secretariat/publications/Pages/Statement-on-Benchmarks-Transition.aspx)



## 2 Introduction

1. With the common objective to ensure the accuracy and integrity of benchmarks, and thus increase contracts' robustness, several jurisdictions have introduced benchmark reforms. 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).
2. Following these benchmark reforms, a number of benchmarks are due to cease soon, notably EONIA and LIBOR which are widely used as benchmarks in a range of financial instruments and contracts, including OTC derivative contracts (to be noted that CHF LIBOR and EUR LIBOR are part of the benchmarks due to cease at the end of the year, but as explained in the next section 3.1, they are not covered in the CP as they do not correspond to classes currently in scope of the CO or the DTO, so this is not impacting them). Specifically, EONIA as well as LIBOR for a number of currencies but USD are due to cease around the year-end, whereas USD LIBOR will continue to be published until June 2023<sup>3</sup>.
3. In order to replace these benchmarks, there have been international efforts from regulators and market participants to transition to new benchmarks, and primarily Risk-Free Rates (RFR), in a number of currencies. These RFRs include:

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

4. In the OTC derivative market, first of all, this means that new derivative contracts are thus expected to no longer reference EONIA, GBP LIBOR or JPY LIBOR by 3 January 2022 as these benchmarks will no longer be produced. Regarding USD LIBOR, its publication continues until June 2023. However, a number of communications have been made with the objective that entities stop using any of the LIBOR settings, including USD LIBOR, as reference rates in new contracts as soon as practicable and in any event by 31 December 2021. This thus also means that new derivative contracts are expected to no longer reference USD LIBOR either by 3 January 2022.
5. Secondly, all the efforts that have been, and continue to be undertaken, in support of the transition away from EONIA and LIBOR and on to new rates mean that by now there is

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

trading and clearing activity in OTC interest rate derivatives referencing €STR, SOFR, SONIA or TONA, albeit with different levels of activity amongst them.

6. These fundamental changes in both the benchmarks being used and the OTC derivative market activity mean that there is a need to accompany this transition away from EONIA and LIBOR and on to new rates by reviewing the scope of the CO and the scope of the DTO.
7. This CP looks into the state of progress in the transition and thus in the resulting levels of activity in derivatives referencing the new RFRs, in order to propose certain amendments to the scopes of the CO and the DTO. The proposed amendments are then presented in the form of amending draft RTS in Annex II.

<b>Question 1: Are there any general comments you would need to raise?</b>
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### 3 Current status of the benchmark transition

#### 3.1 Benchmarks and the related classes of OTC derivatives impacted by the transition

8. The CO and the DTO mandate a number of classes of OTC derivatives referencing a range of benchmarks but only some of these classes reference benchmarks that are scheduled to cease soon. The CO and the DTO are thus impacted by the benchmark transition but not with regards to all the classes. In this section, we are looking into which benchmarks are subject to change and when in order to see which classes of the CO and the DTO are impacted.
9. Starting with EONIA, on 31 May 2019, the European Money Markets Institute (EMMI), the administrator for EONIA, communicated in a public statement<sup>4</sup> the planned cessation date of EONIA, i.e. that the publication of EONIA will be discontinued on 3 January 2022. More recently, on 12 February 2021, EMMI reminded in a public statement<sup>5</sup> the planned cessation of EONIA over the upcoming year end, encouraging “users to accelerate their transition to the €STR and to finalise without delay their phasing-out in the few months remaining before the benchmark’s planned cessation.”
10. Regarding LIBOR, on 5 March 2021, the ICE Benchmark Administrator (IBA), the administrator for LIBOR, published a feedback statement following its consultation that closed on 25 January 2021. The statement contained IBA’s intention to cease the publication of CHF, EUR, GBP and JPY LIBOR at the end of the year and USD LIBOR<sup>6</sup> by mid-2023. It indicated that “IBA has to cease the publication of the relevant LIBOR settings on such dates, unless the FCA exercises its proposed new powers [...] to require IBA to continue publishing such LIBOR settings using a changed methodology (also known as a “synthetic” basis).” On that same day, on 5 March 2021, the UK FCA confirmed in a public statement<sup>7</sup> that all LIBOR settings will indeed either cease to be provided by any administrator or no longer be representative.
11. We are thus now only a few months away before new derivative trades can no longer reference these EONIA and LIBOR benchmarks. The CO includes classes of OTC interest derivatives referencing EONIA (EUR), GBP LIBOR, JPY LIBOR or USD LIBOR and the CO is thus impacted for these classes and currencies. The DTO does not include classes of OTC interest derivatives referencing EONIA but includes classes referencing GBP LIBOR and USD LIBOR. Hence the impact on the DTO is limited to these classes and currencies.
12. In addition, the CO and the DTO also include classes of interest rate derivatives referencing other IBORs than those discussed above. These are EURIBOR, NIBOR, STIBOR and WIBOR for the CO and EURIBOR only for the DTO. However, these IBORs are not discontinued. As a result, the related classes in the CO and the DTO are not impacted by the benchmark transition covered in this CP.

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<sup>4</sup> [https://www.emmi-benchmarks.eu/assets/files/D0194C-2019%20EONIA\\_consultation\\_feedback\\_press\\_release.pdf](https://www.emmi-benchmarks.eu/assets/files/D0194C-2019%20EONIA_consultation_feedback_press_release.pdf)

<sup>5</sup> [https://www.emmi-benchmarks.eu/assets/files/Public%20statement%20Eonia%20demise\\_Final.pdf](https://www.emmi-benchmarks.eu/assets/files/Public%20statement%20Eonia%20demise_Final.pdf)

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

<sup>7</sup> [FCA announcement on future cessation and loss of representativeness of the LIBOR benchmarks](#)

13. Lastly, the CO and the DTO mandate some credit derivative classes to be cleared or traded on venue too, but the characteristics defining these classes that are set out in the related Regulatory Technical Standards and also in the related Public Registers do not reference EONIA or IBOR, so these classes do not need to be looked at nor amended in this context. This does not mean that the benchmark transition does not impact these classes, since for valuation purposes the shift from EONIA and LIBOR to the new RFRs also applies to credit derivatives. However, this is not impacting the scope of the CO and DTO obligations as defined in the Regulations.
14. In short, the only classes and currencies impacted by this transition are the interest rate derivative classes referencing EONIA (EUR), GBP LIBOR, JPY LIBOR and USD LIBOR. As a result, the CP focuses only on the interest rate derivative classes denominated in EUR, GBP, JPY and USD for the CO and on the interest rate derivative classes denominated in EUR, GBP and USD for the DTO.

## 3.2 State of progress with the transition

### 3.2.1 Key steps in the benchmark transition with respect to derivative markets

15. The implementation of the benchmark reforms and the related efforts to transition to new benchmarks have been going on for several years now. More specifically with regards to OTC derivatives, we could mention a few important steps, amongst others, that have been taken towards this transition or that are scheduled to take place, in particular:
  - a. the introduction of fall-backs in derivative contracts,
  - b. the expansion of the CCP clearing offerings to include classes of OTC interest derivatives referencing RFRs,
  - c. the switch of the CCP discounting curves to RFRs, and
  - d. the CCP conversion of legacy contracts to contracts referencing the new RFRs.
16. Starting with fall-backs introduced in OTC derivative contracts<sup>8</sup>, they reflect written plans which set out the actions that counterparties would take in the event that the benchmark used in these contracts materially changes or ceases to be provided. As a reminder, the ESAs (and ESMA with regards to the clearing obligation) issued a statement<sup>9</sup> in relation to fall-backs on 5 December 2019, in support of the transition.
17. The statement explained the ESA's view that amendments made to outstanding uncleared OTC derivative contracts for the sole purpose of introducing such fall-backs should not create new obligations on these legacy contracts, and in particular, that margining requirements (and clearing requirements from ESMA's perspective) should not apply to these legacy contracts where they were not subject to those requirements before the introduction of the fall-backs.

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<sup>8</sup> Such as fall-backs introduced via the ISDA Protocol: [ISDA 2020 IBOR Fallbacks Protocol – International Swaps and Derivatives Association](#)

<sup>9</sup> [esas 2019\\_19 statement on the introduction of fallbacks in otc derivative contracts to increase contract robustness.pdf \(europa.eu\)](#)

18. This statement echoed the clarifications made by the BCBS and IOSCO in March 2019 that these types of amendments, made for the purpose of the benchmark reforms, were not meant to be subject to the margining requirements:

“The Basel Committee and IOSCO realise that market participants may need to amend derivatives contracts in response to interest rate benchmark reforms. Amendments to legacy derivative contracts pursued solely for the purpose of addressing interest rate benchmark reforms do not require the application of the margin requirements for the purposes of the BCBS/IOSCO framework, although the position may be different under relevant implementing laws.”

19. In more practical terms, this risk-based supervisory statement helped facilitate the transition and bridge the gap until legal certainty could be ensured with the related amendments to EMIR that have been introduced first via the CCP Recovery and Resolution Regulation and then via the amendments to the Benchmark Regulation.
20. The second important step mentioned above is the expansion of CCP clearing offerings to include OTC interest rate derivatives referencing RFRs.
21. ESMA has looked into the eligible classes at CCPs that are referencing RFRs, also in comparison to those referencing the benchmarks due to cease and in scope of this paper, i.e. EONIA as well as GBP, JPY and USD LIBOR. To that end, Table 1<sup>10</sup> below provides an overview of what EU and third country (TC) CCPs<sup>11</sup> are currently clearing in terms of derivatives referencing the new RFRs denominated in the G4 currencies (€STR, SOFR, SONIA and TONA).

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

CCP	Asset-Class	Type	Underlying	Settlement currency	Range of tenor
<b>EU-CCPs<sup>12,13</sup></b>					
BMEC <sup>14</sup>	Interest Rate	Basis	€STR	EUR	1D-30Y
BMEC	Interest Rate	OIS	€STR	EUR	6Y
Eurex	Interest Rate	Basis	€STR	EUR	1D-51Y
Eurex	Interest Rate	Basis	SOFR	USD	1D-51Y
Eurex	Interest Rate	Basis	SONIA	GBP	1D-51Y

<sup>10</sup> The table includes information publicly available on the CCPs' websites and those included in the ESMA Public Register for the Clearing Obligation under EMIR.

<sup>11</sup> The distinction between EU and TC CCPs is based on ESMA's registers of authorised and recognised CCPs.

<sup>12</sup> [https://www.esma.europa.eu/sites/default/files/library/ccps\\_authorized\\_under\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/ccps_authorized_under_emir.pdf)

<sup>13</sup> [https://www.esma.europa.eu/sites/default/files/library/public\\_register\\_for\\_the\\_clearing\\_obligation\\_under\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/public_register_for_the_clearing_obligation_under_emir.pdf)

<sup>14</sup> <https://www.bmeclearing.es/ing/Segments/Swaps/Swaps-Products>

Eurex	Interest Rate	Basis	TONA	JPY	1D-51Y
Eurex	Interest Rate	OIS	€STR	EUR	1D-51Y
Eurex	Interest Rate	OIS	SOFR	USD	1D-51Y
Eurex	Interest Rate	OIS	SONIA	GBP	1D-3Y
Eurex	Interest Rate	OIS	TONA	JPY	1D-51Y
KDPW_CCP	Interest Rate	OIS	€STR	EUR	1D-30Y
<b>TC-CCPs<sup>15</sup></b>					
CME US <sup>16</sup>	Interest Rate	Basis	SOFR vs FedFunds	USD	Up to 51Y
CME US	Interest Rate	Basis	SOFR vs USD LIBOR	USD	Up to 51Y
CME US	Interest Rate	OIS	SOFR	USD	Up to 51Y
CME US	Interest Rate	OIS	SONIA	GBP	30Y
CME US	Interest Rate	OIS	TONA	JPY	30Y
HKFE <sup>17</sup>	Interest Rate	Basis	€STR vs EURIBOR	EUR	Up to 11Y
HKFE	Interest Rate	Basis	SOFR vs FedFunds	USD	Up to 11Y
HKFE	Interest Rate	Basis	SOFR vs LIBOR	USD	Up to 11Y
HKFE	Interest Rate	OIS	€STR	EUR	Up to 11Y
HKFE	Interest Rate	OIS	SOFR	USD	Up to 11Y
JSCC <sup>18</sup>	Interest Rate	OIS	TONA	JPY	NA
LCH Ltd <sup>19</sup>	Interest Rate	Basis	EURIBOR vs €STR	EUR	Up to 51Y
LCH Ltd	Interest Rate	Basis	FedFunds vs SOFR	USD	Up to 51Y
LCH Ltd	Interest Rate	Basis	GBP LIBOR vs SONIA	GBP	Up to 51Y
LCH Ltd	Interest Rate	Basis	JPY LIBOR vs TONA	JPY	Up to 41Y

<sup>15</sup> [https://www.esma.europa.eu/sites/default/files/library/third-country\\_ccps\\_recognised\\_under\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/third-country_ccps_recognised_under_emir.pdf)

<sup>16</sup> <https://www.cmegroup.com/trading/interest-rates/cleared-otc.html>

<sup>17</sup> [https://www.hkex.com.hk/Products/OTC-Derivatives/Interest-Rate-Swaps?sc\\_lang=en](https://www.hkex.com.hk/Products/OTC-Derivatives/Interest-Rate-Swaps?sc_lang=en)

<sup>18</sup> <https://www.jpex.co.jp/jsc/en/cash/irs/product.html>

<sup>19</sup> <https://www.lch.com/services/swapclear/what-we-clear>

LCH Ltd	Interest Rate	Basis	USD LIBOR vs SOFR	USD	Up to 51Y
LCH Ltd	Interest Rate	OIS	€STR	EUR	Up to 51Y
LCH Ltd	Interest Rate	OIS	SOFR	USD	Up to 51Y
LCH Ltd	Interest Rate	OIS	SONIA	GBP	Up to 51Y
LCH Ltd	Interest Rate	OIS	TONA	JPY	Up to 41Y

Sources: CCPs, ESMA public register for the CO

22. For comparative purposes, a similar analysis has been carried out in relation to those CCPs offering clearing of derivatives referencing EONIA or LIBOR. The results are presented in Table 2<sup>20</sup> below.

**TABLE 2: LIST OF EU AND TC-CCPs OFFERING CLEARING OF DERIVATIVES REFERENCING EONIA OR LIBOR**

CCP	Asset-Class	Type	Underlying	Settlement currency	Range of tenor
<b>EU CCPs</b>					
BMEC	Interest Rate	OIS	EONIA	EUR	1D-30Y
Eurex	Interest Rate	Basis	EONIA	EUR	1D-51Y
Eurex	Interest Rate	Basis	GBP LIBOR	GBP	1D-50Y
Eurex	Interest Rate	Basis	JPY LIBOR	JPY	2D-30Y
Eurex	Interest Rate	Basis	USD LIBOR	USD	1D-50Y
Eurex	Interest Rate	Fixed- to-Float	GBP LIBOR	GBP	1D-50Y
Eurex	Interest Rate	Fixed- to-Float	JPY LIBOR	JPY	2D-30Y
Eurex	Interest Rate	Fixed- to-Float	USD LIBOR	USD	1D-50Y
Eurex	Interest Rate	FRA	GBP LIBOR	GBP	1D-3Y
Eurex	Interest Rate	FRA	JPY LIBOR	JPY	1D-3Y

<sup>20</sup> The table includes information publicly available on the CCPs' websites and those included in the ESMA Public Register for the Clearing Obligation under EMIR.

Eurex	Interest Rate	FRA	USD LIBOR	USD	1D-3Y
Eurex	Interest Rate	OIS	EONIA	EUR	1D-3Y
KDPW_CCP	Interest Rate	OIS	EONIA	EUR	1D-30Y
<b>TC-CCPs</b>					
CME US	Interest Rate	Basis	1/3M GBP LIBOR vs 3/6M GBP LIBOR	GBP	Up to 51Y
CME US	Interest Rate	Basis	1/3M JPY LIBOR vs 3/6M JPY LIBOR	JPY	Up to 31Y
CME US	Interest Rate	Basis	JPY LIBOR	JPY	3D-3Y
CME US	Interest Rate	Basis	USD LIBOR	USD	3D-3Y
CME US	Interest Rate	FRA	GBP LIBOR	GBP	3D-3Y
CME US	Interest Rate	OIS	EONIA	EUR	30Y
JSCC	Interest Rate	Fixed-to-Float	JPY LIBOR	JPY	NA
JSCC	Interest Rate	Basis	JPY LIBOR	JPY	NA
JSCC	Interest Rate	Basis	JPY LIBOR vs Z TIBOR	JPY	NA
JSCC	Interest Rate	Basis	JPY LIBOR vs D TIBOR	JPY	NA
HKFE	Interest Rate	Basis	USD LIBOR	USD	Up to 11Y
LCH Ltd	Interest Rate	Basis	EUR LIBOR	EUR	Up to 51Y
LCH Ltd	Interest Rate	Basis	EURIBOR vs EONIA	EUR	Up to 51Y
LCH Ltd	Interest Rate	Basis	GBP LIBOR	GBP	Up to 51Y
LCH Ltd	Interest Rate	Basis	JPY LIBOR	JPY	Up to 41Y
LCH Ltd	Interest Rate	Basis	USD LIBOR	USD	Up to 51Y
LCH Ltd	Interest Rate	Basis	USD LIBOR vs FedFunds	USD	Up to 51Y
LCH Ltd	Interest Rate	FRA	EUR LIBOR	EUR	Up to 3Y



LCH Ltd	Interest Rate	FRA	GBP LIBOR	GBP	Up to 3Y
LCH Ltd	Interest Rate	FRA	JPY LIBOR	JPY	Up to 3Y
LCH Ltd	Interest Rate	FRA	USD LIBOR	USD	Up to 3Y
LCH Ltd	Interest Rate	OIS	EONIA	EUR	Up to 51Y
LCH Ltd	Interest Rate	OIS	GBP LIBOR	GBP	Up to 51Y
LCH Ltd	Interest Rate	OIS	JPY LIBOR	JPY	Up to 51Y
LCH Ltd	Interest Rate	OIS	USD LIBOR	USD	Up to 51Y

Sources: CCPs, ESMA public register for the CO

23. As also made evident by the above tables, the transition away from EONIA and LIBOR to RFRs is not just a simple change of the name of the benchmarks being referenced, they are also used in a different manner. Indeed, where market participants have been trading Fixed-to-Float swaps and Forward Rate Agreements with 1M/3M/6M/12M LIBOR, in other words term rates, with RFRs they are now trading Overnight Index Swaps (OIS) based on compounded RFRs. As tables 1 and 2 indicate, where CCPs were clearing a range of product types referencing LIBOR, they are now only clearing OISs and Basis swaps (basis swaps can be useful derivative contracts to help counterparties with the transition of their portfolios and trading to the new RFRs).
24. It follows from Tables 1 and 2 that for each of the OISs referencing one of the 4 RFRs being looked into in this CP (€STR, SOFR, SONIA and TONA) there is at least one EU CCP or more offering clearing of such OIS. Now taking into account both authorised EU CCPs and recognised TC CCPs, this corresponds to at least 4 CCPs offering clearing for each such OIS. In addition, they offer clearing with a relatively large maturity range, with some CCPs offering clearing of trades up to long maturities such as 30Y or 50/51Y.
25. The third important step mentioned above has been the CCPs discounting switch to RFRs. Discounting curves are used by CCPs for the pricing and valuation of interest rate derivatives and its collateral (including the price alignment interest calculation for the collateral posted), and thus the discounting switch to RFRs was an important milestone contributing to the development of a liquid market of interest rate derivatives referencing RFRs.
26. The discounting switch for EUR denominated cleared interest rate derivatives to €STR took place on 27 July 2020 at several CCPs. Likewise, the discounting switch for USD denominated cleared interest rate derivatives to SOFR took place on 17 October 2020 also at several CCPs. For GBP or JPY denominated cleared interest rate derivatives, discounting was already based on SONIA and TONA, respectively.
27. The fourth important step mentioned is the legal trade conversion of legacy contracts to contracts referencing RFRs that has been prepared by some CCPs. The largest part of the cleared market is preparing for a few conversion dates when legacy contracts referencing EONIA (EUR), GBP LIBOR or JPY LIBOR will be converted to contracts

- referencing the corresponding RFRs, i.e. €STR, SONIA and TONA respectively, with CCPs also removing these contracts from their lists of clearing eligible contracts. These correspond to:
- a. the weekend of 16 October 2021 for EONIA to €STR,
  - b. the weekend of 4 December 2021 for JPY LIBOR to TONA, and
  - c. the weekend of 18 December 2021 for GBP LIBOR to SONIA.
28. No date has been communicated so far for USD LIBOR. For EONIA (EUR), GBP LIBOR and JPY LIBOR it is expected that after the conversion dates in Q4 2021 any liquidity with regards to classes referencing these benchmarks would sharply decrease, and hence that some or most of the liquidity, depending on the currency and the available benchmarks then, will have switched to the products referencing RFRs.
29. Indeed, at this stage it is not always clear where the bulk of the liquidity may shift to for certain currencies. This is mainly due to the fact that certain alternative rates, in particular term rates, in addition to the RFRs, are also being considered. For each benchmark due to cease there is thus not necessarily just one possible single successor rate that would be an RFR. The situation is quite different across the four currencies looked into the CP:
- a. Regarding EUR, as previously mentioned, EURIBOR stays, so €STR is more an immediate replacement of EONIA. This replacement is even more facilitated since the conversion from EONIA to €STR is now fixed, and one could even argue that at this stage they both represent the same liquidity pool. In short, for EUR the situation is relatively clear as one overnight rate replaces another. Beyond that, at this stage it remains to be seen whether compounded €STR will develop for EUR in a similar fashion as SONIA for GBP, but this is not expected in the short term.
  - b. Regarding GBP, (compounded) SONIA appears to have developed as the new market standard, alternative term rates have remained so far marginal, and the Bank of England has communicated that such alternative term rates should only be used for limited cases (e.g. trade finance). And thus, for now it is reasonable to consider that most of the liquidity will shift from GBP LIBOR to SONIA by the end of the year.
  - c. With respect to USD, the situation is quite different. Indeed, (compounded) SOFR still only represents a fraction of the overall USD interest rate derivative activity, while a number of initiatives are being discussed with respect to a range of term rate proposals. None of these term rates are offered for clearing at the time of drafting this CP, so they are not in scope of this analysis. They are however mentioned here to explain that there are still a number of market changes or regulatory choices to be monitored over the coming months to understand where the liquidity might migrate to when market participants move away from USD LIBOR.
  - d. With respect to JPY, there is also a need to continue monitoring upcoming market changes or regulatory choices over the coming months. On the one hand, the legal trade conversion for JPY LIBOR derivative trades is scheduled to switch to TONA derivatives, which will thus migrate an important part of the outstanding JPY risk to derivatives referencing this RFR. On the other hand, there are still a number of discussions ongoing to know which successor benchmark or benchmarks (for financial contracts as a whole, not just specific to derivatives) will be adopted (whether TONA, TIBOR or else) and thus for the

time being the level of trading and clearing in derivatives referencing TONA remains relatively small.

30. In order to better understand these disparate situations between these four currencies and their impact on the revision of the CO and the DTO in the EU, the next section looks into some data analysis conducted by ESMA.

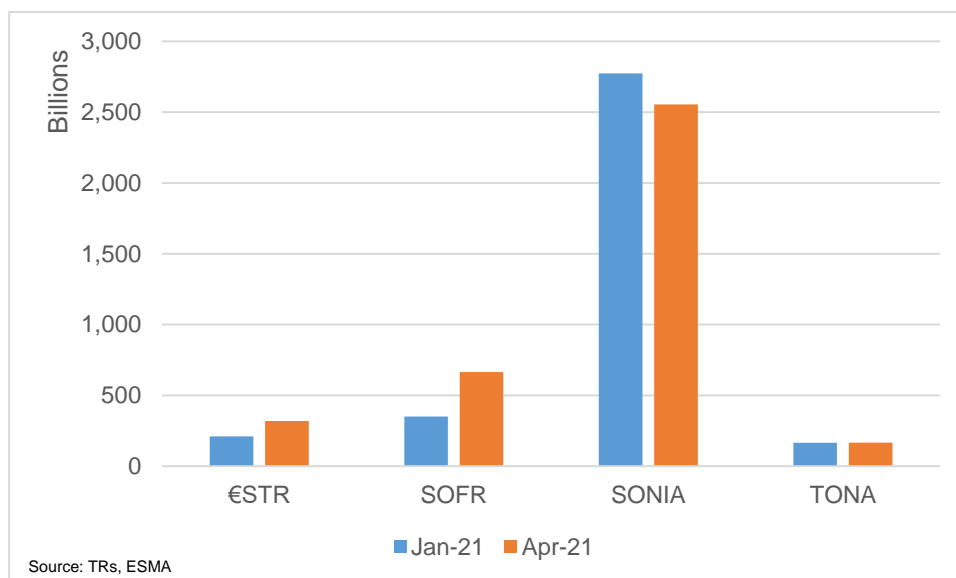
### 3.2.2 Analysis of the transition in OTC interest rate derivatives denominated in the G4 currencies

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

#### 3.2.2.1 General

32. The data analysis looked at various indicators such as the notional outstanding volumes for each of the new RFR taking as reference dates January and April 2021. More in detail, as observed in Figure 1 below, SONIA remains the most advanced benchmark attracting more liquidity than any other RFR, although volumes seem to have slightly dropped over the observation period in absolute terms.

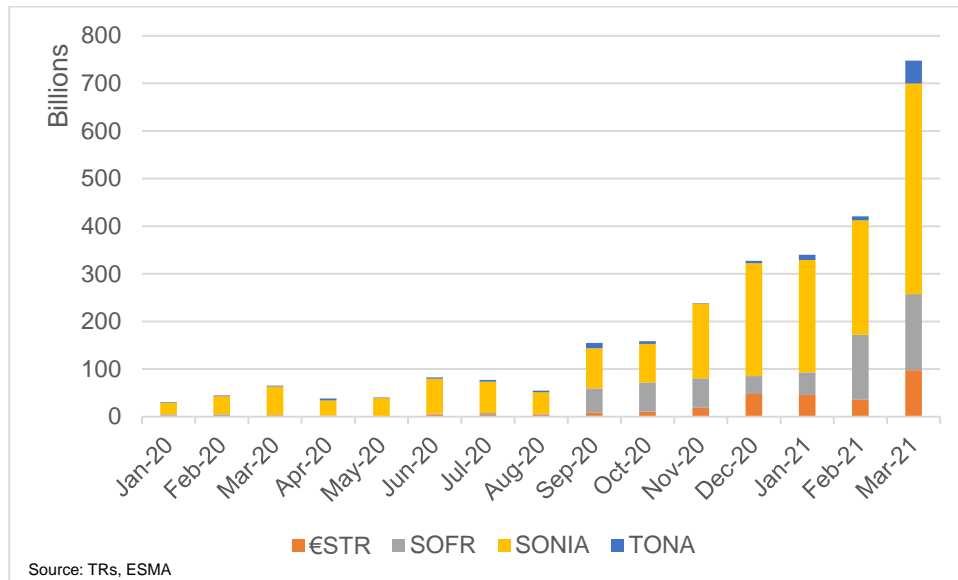
**FIGURE 1: NOTIONAL OUTSTANDING (JANUARY AND APRIL 2021) - PER RFR**



33. Similar conclusions can be drawn when observing the notional outstanding (as of 16 April 2021) displayed per execution date and covering the January 2020-March 2021 period.

From that perspective, SONIA remains indeed the most active market followed by SOFR, €STR and TONA. This is shown in Figure 2<sup>21</sup> below.

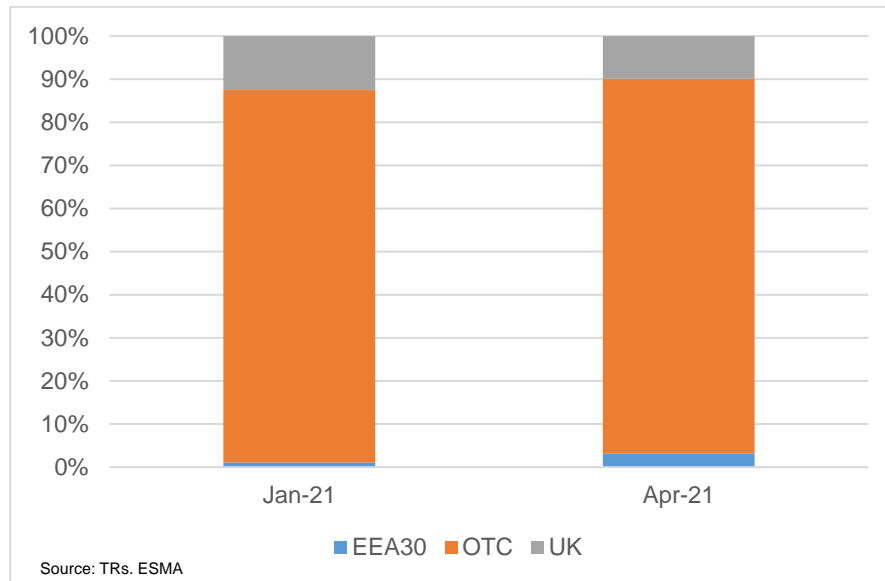
**FIGURE 2: NOTIONAL OUTSTANDING PER EXECUTION DATE (JANUARY 2020-MARCH 2021) – PER RFR**



34. In addition, looking at the venue of execution, it is clear that most trading activity in interest rate derivatives referencing RFR in terms of notional outstanding is executed OTC (about 85% in both January and April 2021, see Figure 3). Out of the activity of EU counterparties (i.e. those entities subject to EMIR reporting) only a small, but increasing notional outstanding is executed on venue. Moreover, there is significant trading activity by EU counterparties in contracts referencing RFRs on UK trading venues, while noting that the share of UK trading venues slightly decreased from January to April 2021. The latter covers in particular the trading activity in contracts referencing (compounded) SONIA, which being currently outside a trading obligation in the EU and in the UK can be freely traded on any trading venue.

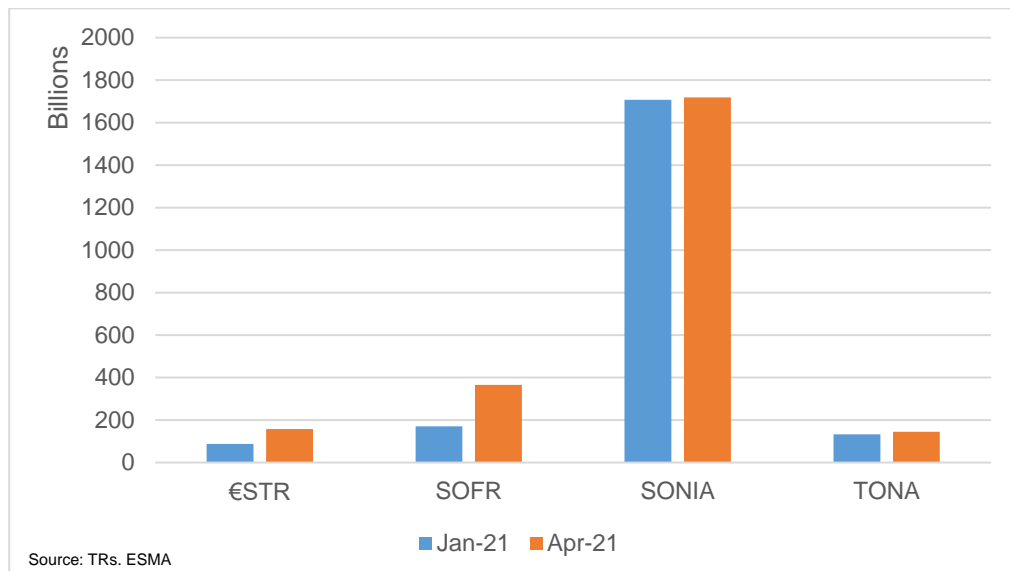
<sup>21</sup> Figure 2 does not provide for April 2021 data as the data extraction was performed on 16 April and therefore it was decided not to include April data to keep a high-level of comparability between the different months. The series shows the outstanding contracts as of 16 April 2021 plotted per execution date. It shall be noted that the series may have a survival bias: the more the execution dates are distant from the reference date (16 April), the higher the possibility that some contracts have matured in the meantime and do not appear in the series.

**FIGURE 3: NOTIONAL OUTSTANDING (JANUARY AND APRIL 2021) - EXECUTION VENUE**



35. ESMA also analysed the cleared volumes in January and April 2021 on the basis of data reported by CCPs and the analysis has led to similar results. In fact, although volumes in both €STR and SOFR have increased over the observed period, SONIA remains the most cleared benchmark. Figure 4 below confirms that the transition from the GBP LIBOR to the new GBP RFR is at a far more advanced stage compared to the other RFRs.

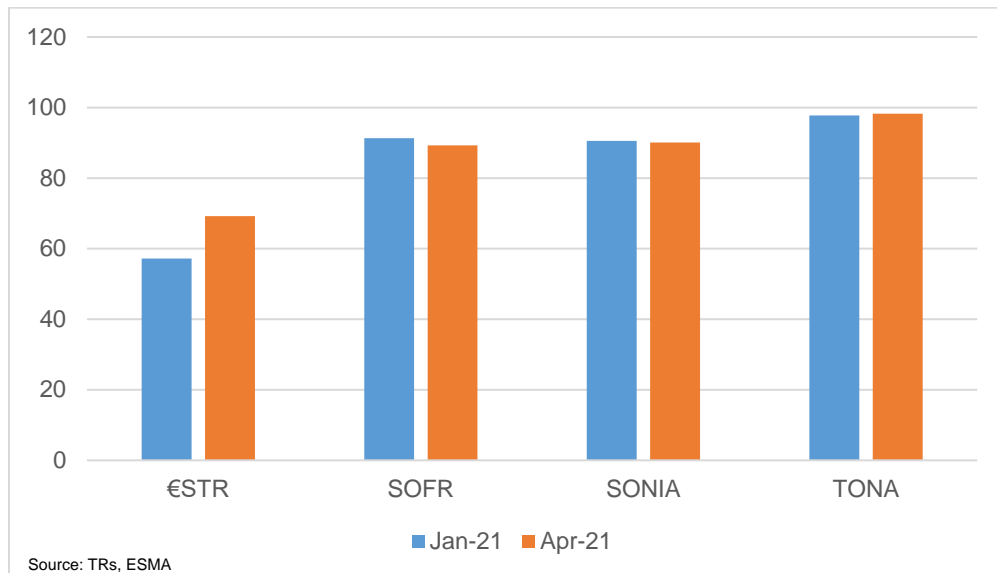
**FIGURE 4: CLEARED VOLUMES (JANUARY AND APRIL 2021) - PER RFR**



36. With respect to the clearing rates (the percentages of cleared volumes over the total notional traded, cleared and uncleared), Figure 5 below shows that between 80% and 100% of notional in SOFR, SONIA and TONA is currently cleared. A lower share of

notional is cleared for €STR, though the clearing rate increased from around 58% January to 70% in April.

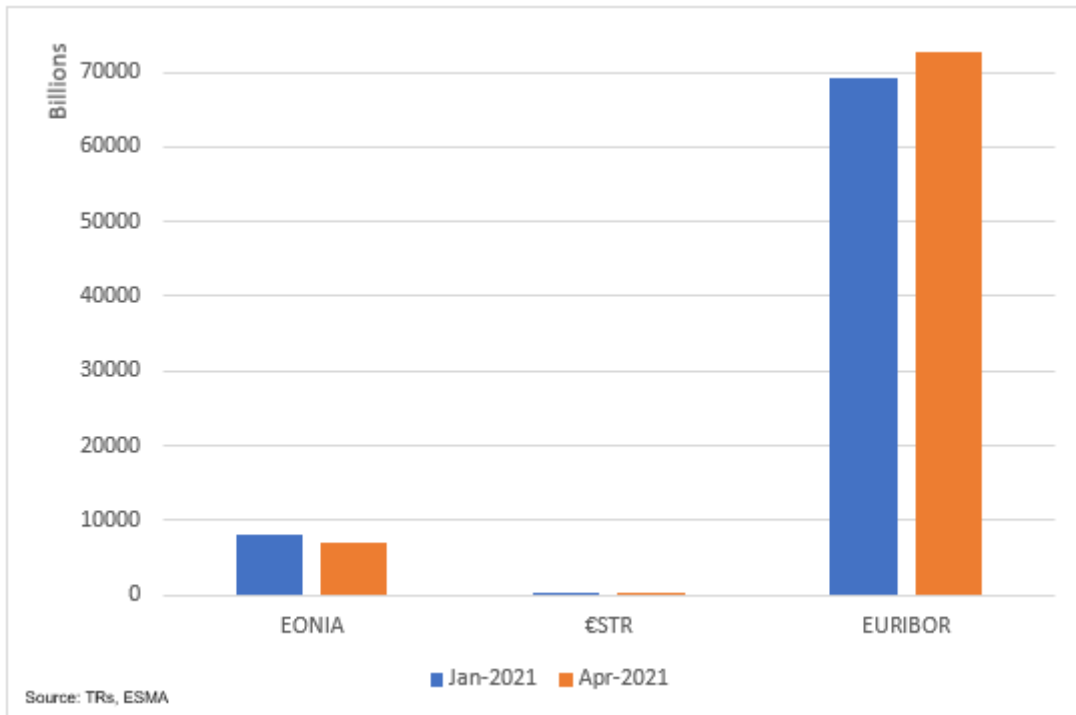
**FIGURE 5: SHARE OF CLEARED VOLUMES (JANUARY AND APRIL 2021) - PER RFR**



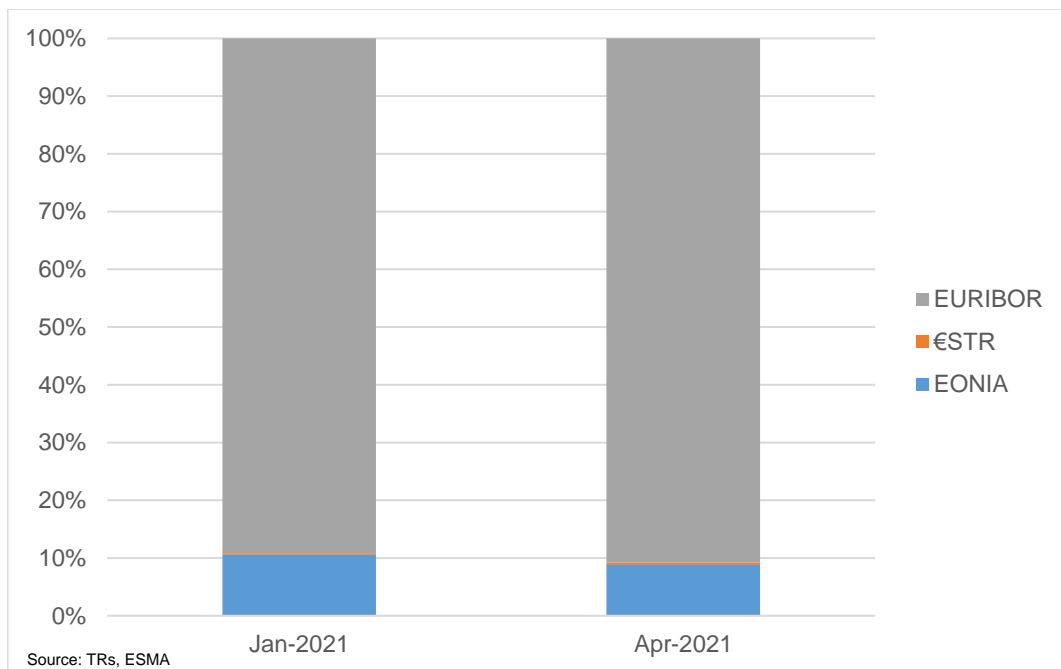
### 3.2.2.2 EUR

37. Regarding EUR, the activity in contracts referencing €STR is still significantly lower than in contracts referencing the other two benchmarks, EONIA and EURIBOR. Figure 6 and Figure 7 provide a comparison of the activity of contracts referencing EONIA, €STR and EURIBOR. Figure 8 shows the distribution in €STR by different bucket of tenors with a strong predominance of the 0-2Y maturities.

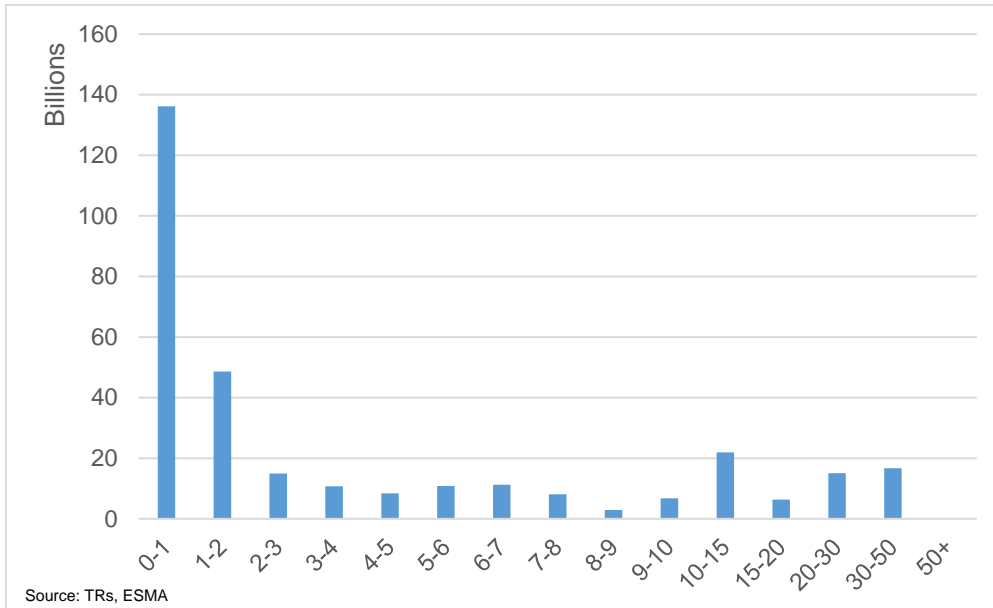
**FIGURE 6: ACTIVITY ON CONTRACTS REFERENCING EONIA VS €STR VS EURIBOR (JANUARY AND APRIL 2021) - IN NOTIONAL AMOUNT**



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



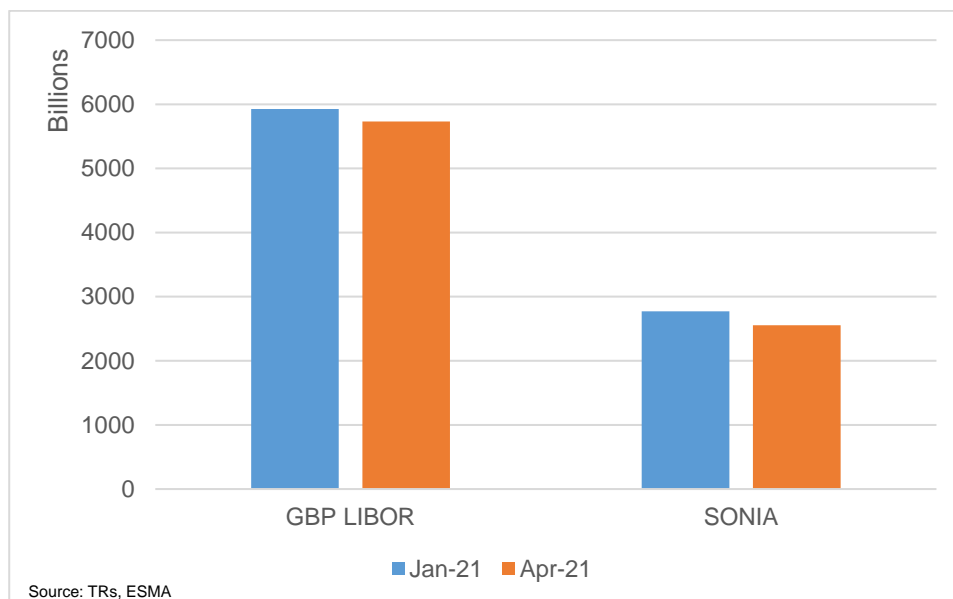
**FIGURE 8: €STR, DISTRIBUTION PER BUCKET OF TENORS**



3.2.2.3 GBP

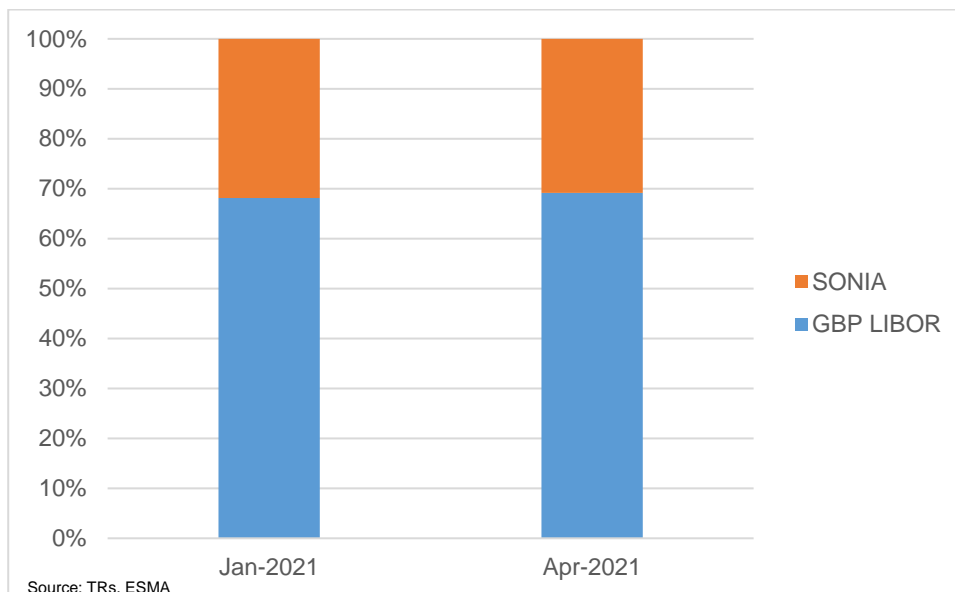
38. Regarding more specifically GBP, SONIA appears to gradually replace GBP LIBOR as the reference index for GBP denominated OTC interest rate derivatives. Trades in SONIA account now for a large share of the volume in total GBP denominated OTC interest rate derivatives (i.e. LIBOR and SONIA) (see Figure 9 and Figure 10 below) and with liquidity across the entire maturity curve, including up to 50Y (see Figure 11).

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

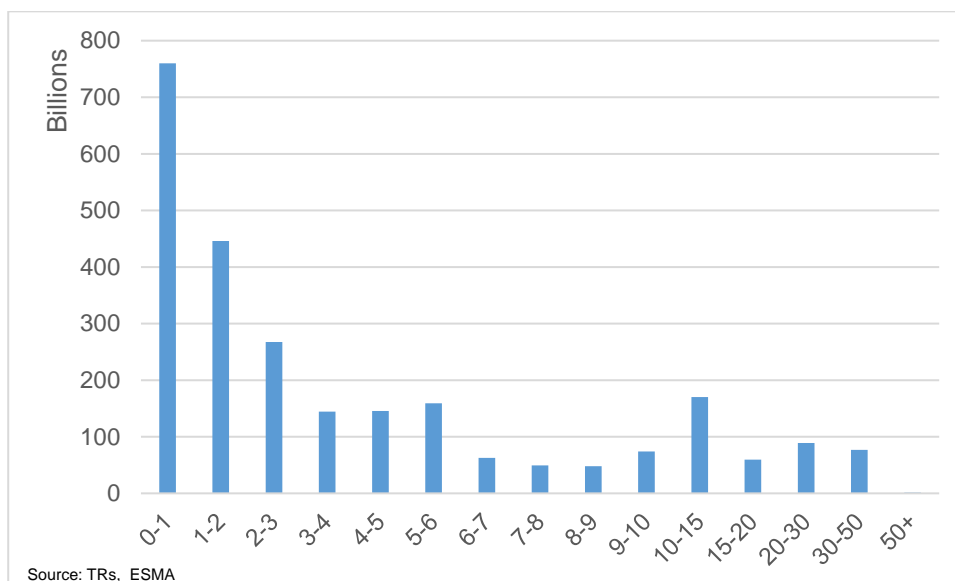




**FIGURE 10: AGGREGATED ACTIVITY ON CONTRACTS REFERENCING GBP LIBOR VS SONIA (JANUARY AND APRIL 2021) IN PERCENTAGE**



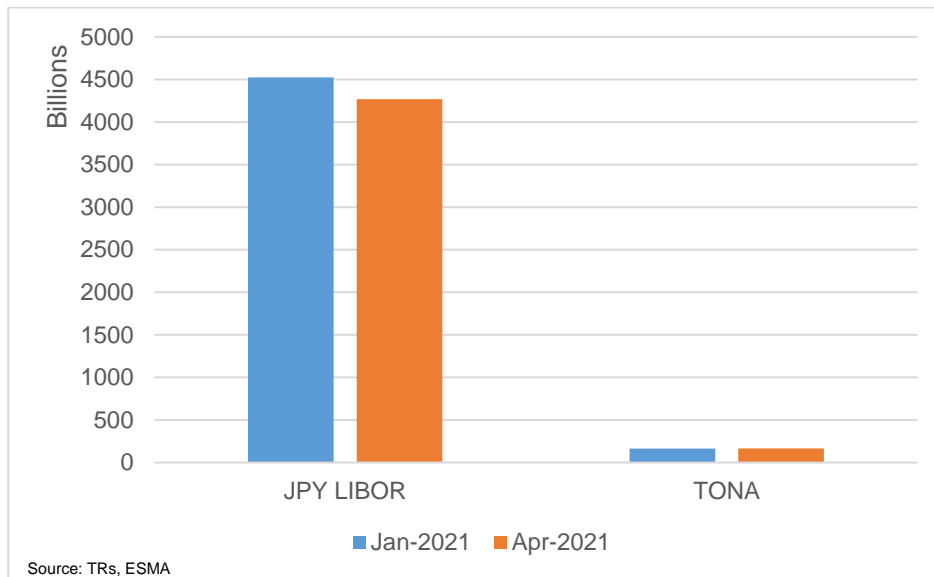
**FIGURE 11: SONIA, DISTRIBUTION PER BUCKET OF TENORS**



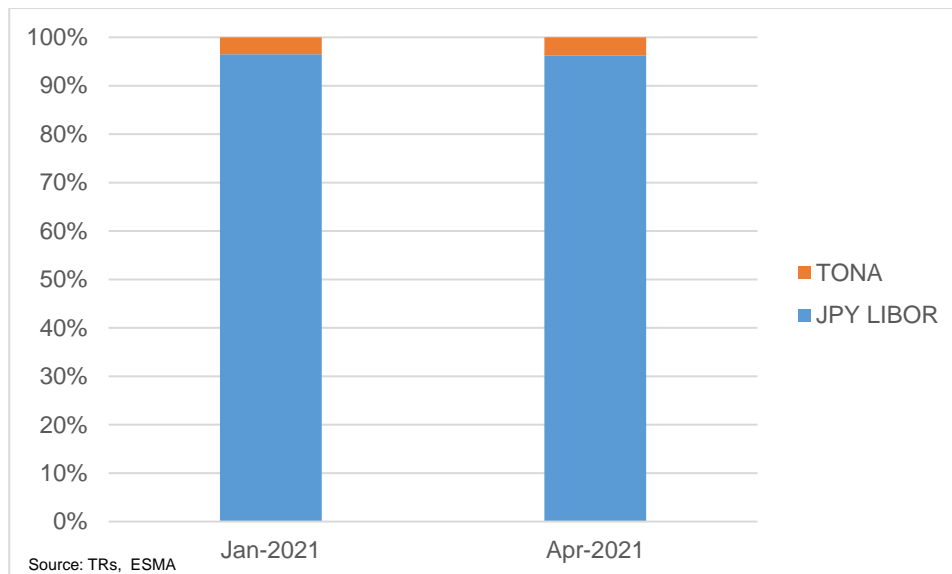
### 3.2.2.4 JPY

39. The transition to RFR for JPY is the least advanced compared to the other major currencies discussed in the CP. JPY LIBOR is due to cease at the end of the year, but it remains uncertain which index will be used instead since, TONA, the JPY RFR, does not seem to attract much liquidity so far as shown both in Figure 12 and Figure 13.

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

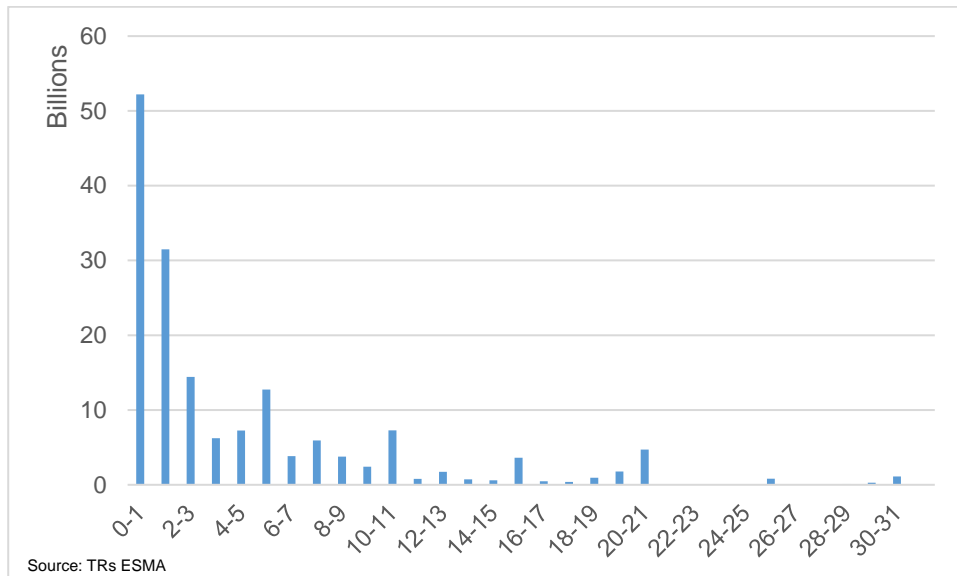


**FIGURE 13: AGGREGATED ACTIVITY ON CONTRACTS REFERENCING JPY LIBOR VS TONA (JANUARY AND APRIL 2021) IN PERCENTAGE**



40. The slow transition from JPY LIBOR to TONA emerges also when looking at the maturity of the contracts referencing the new JPY RFR. Most of the activity is in contracts up to 2Y with almost no activity for long maturity tenors.

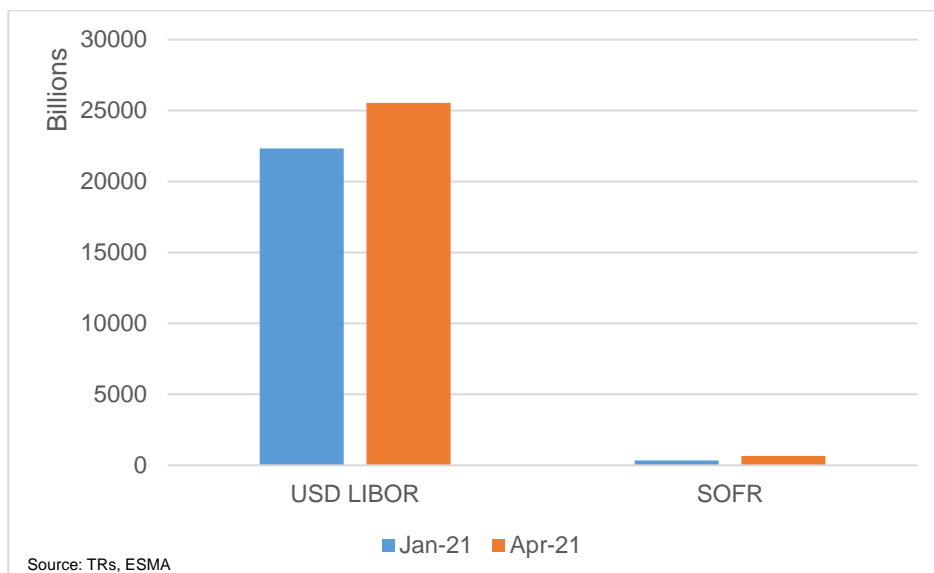
**FIGURE 14: TONA, DISTRIBUTION PER BUCKET OF TENORS**



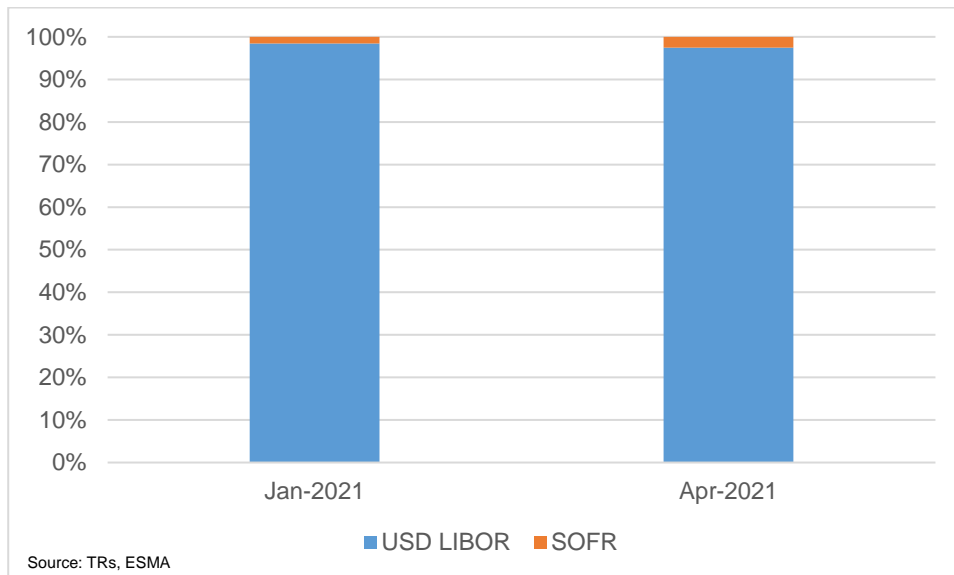
3.2.2.5 USD

41. Activity in SOFR remains rather limited especially when compared to USD LIBOR. To that end, Figure 15 and Figure 16 provide an overview of the current situation whereas Figure 17 shows the SOFR distribution across the curve with very limited activity over 20Y.

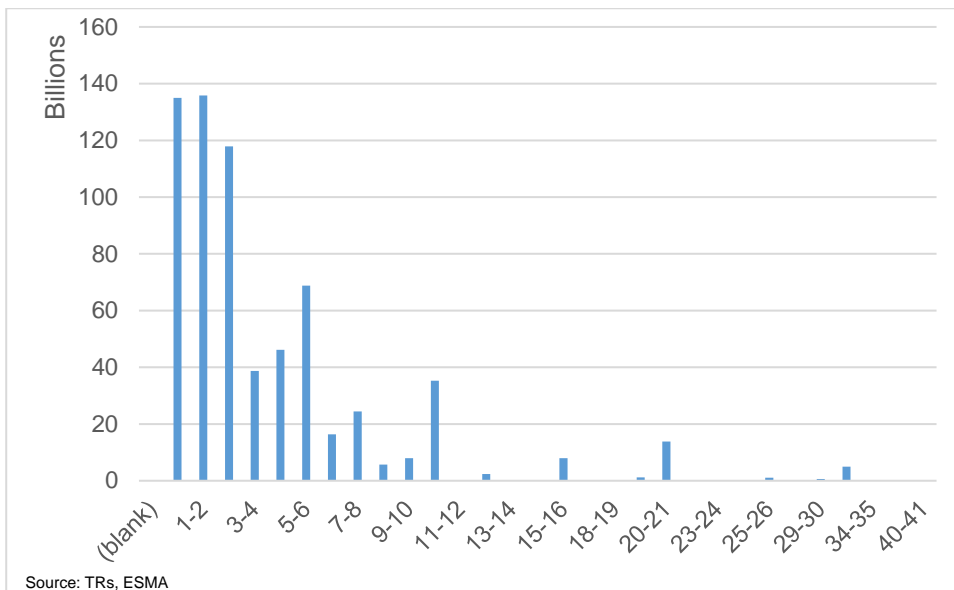
**FIGURE 15: ACTIVITY ON CONTRACTS REFERENCING USD LIBOR VS SOFR (JANUARY AND APRIL 2021) – IN NOTIONAL AMOUNT**



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



**FIGURE 17: SOFR, DISTRIBUTION PER BUCKET OF TENORS**



**Question 2: Are there any other aspects of the transition that need to be taken into account? Please share any data that would help qualify further the progress with the transition or any other aspects that you think should be considered.**

## 4 General approach

42. As detailed in the previous section, the benchmark transition drives a number of changes in the trading and clearing activity of interest rate derivatives, in particular with respect to the actual classes of derivatives being traded or cleared. These structural changes have originated a few years back (including regulatory changes, the design and the roll-out of new RFRs, etc.) and the transition will continue beyond the end of this year.
43. There are various aspects that can influence how changes will continue beyond the end of the year. For instance, if compounded RFRs have emerged as the norm for certain currencies, once a growing number of counterparties have adapted their trading strategies to trade primarily OISs in one currency, this might trigger requests to harmonise this approach with other currencies, which could push compounded RFRs volumes to go up in other currencies. Also, some benchmarks may grow in importance or new benchmarks might be developed to address some specific needs and thus the trading activity would also change as a result. Likewise, some counterparties may also decide to use other types of financial instruments than OTC interest rate derivatives to cover some of their trading and hedging needs.
44. Nevertheless, the 2021 year-end is certainly one of the most important deadlines for this transition as new interest rate derivative trades are no longer expected to reference EONIA or LIBOR beyond that date and with the CCP legal trade conversions scheduled to take place in Q4. This marks an important shift in where the liquidity will be in OTC interest rate derivatives denominated in EUR, GBP, JPY and USD and hence clearly impacts the CO and the DTO.
45. This review of the CO and the DTO is not the standard case of analysing whether a new product is fit for the CO and/or the DTO. Indeed, this exercise is about accompanying a transition where the products are broadly similar but with different benchmarks.
46. With this in mind, ESMA's approach is thus to consider both the CO and the DTO at the same time in this CP. ESMA is of the view that this approach would benefit stakeholders as this market change is driven by the benchmark transition rather than the usual market developments that can lead to new products. The OTC interest rate derivative markets will be different after this transition and it thus appears reasonable to consider the changes to two of its key components at the same time, the clearing and trading aspects, and the corresponding obligations.
47. Secondly, although the transition is still ongoing and as seen above the volume for certain classes referencing some of the RFRs is still relatively low for certain currencies or maturities, taking into account the time it takes to develop new RTSs and then for these RTSs to enter into force as Commission Delegated Regulations, now would be a good time to start this process in view of the upcoming timelines.
48. The CP thus covers both aspects, the CO and the DTO in the following sections, as well as the corresponding RTSs in the Annex. Following the public consultation, ESMA will analyse the responses, and by then there will also be more clarity on how the interest rate derivative markets are continuing to adapt across the four currencies in scope.
49. By the time of the final report, targeted for this Autumn, ESMA's plan is to finalise the amendments to the classes of derivatives in scope of the CO RTS and the DTO RTS and submit them to the Commission. However, depending on ESMA's analysis and taking into

account the feedback from the consultation, ESMA would still have the flexibility to proceed with the two RTSs distinctly if need be.

50. Furthermore, as mentioned above, changes related to this transition will continue to take place beyond the end of the year, which means that after the RTS proposed in this consultation are finalised and submitted later this year, ESMA will continue to monitor the classes of OTC interest rate derivatives being traded and cleared and may need to review further the scopes of the CO and the DTO.
51. Lastly, ESMA has also discussed this initiative with a number of authorities from third countries that are responsible for the clearing or trading mandates in their jurisdiction, in order to facilitate international convergence to the extent possible. ESMA will continue to engage with them and will monitor the possible changes also introduced in these other jurisdictions as the benchmark transition and the structural changes described in the consultation paper also have an international dimension.

**Question 3: Are there any other aspects that you think that ESMA should take into account or that might justify a different approach?**

## 5 Clearing obligation

### 5.1 Legal framework

52. EMIR introduces the obligation to clear certain classes of OTC derivatives in CCPs that have been authorised (for European CCPs) or recognised (for third-country CCPs) under the EMIR framework. Ensuring that the clearing obligation reduces systemic risk requires a process of identification of classes of derivatives that should be subject to mandatory clearing.
53. EMIR foresees two possible processes for the identification of the relevant classes of OTC derivatives:
  - a. The “bottom-up” approach described in EMIR Article 5(2), according to which the determination of the classes to be subject to the clearing obligation will be done based on the classes which are already cleared by authorised or recognised CCPs.
  - b. the “top-down” approach described in EMIR Article 5(3), according to which ESMA will on its own initiative identify classes which should be subject to the clearing obligation but for which no CCP has yet received authorisation.
54. Following the first CCP (re)authorisations under EMIR, ESMA conducted the clearing obligation procedure a few times following the bottom-up approach of Article 5(2) of EMIR. This work led to the publication of several consultation papers and final reports, and eventually to the publication of 3 Commission Delegated Regulations on the clearing obligation, mandating a number of classes of OTC interest rate derivatives denominated in EUR, GBP, JPY, NOK, PLN, SEK and USD as well as classes of OTC index credit derivatives denominated in EUR. The list of CCPs that have been authorised to clear OTC derivatives, the classes that they are authorised to clear as well as the classes subject to the clearing obligation are available in the public register published on ESMA’s website.
55. This CP is based once again on the bottom-up approach, i.e. on what the CCPs are authorised to clear. However, since the entry into force of EMIR Refit, the frontloading requirement has been removed, such that this time the clearing obligation procedure only needs to specify the classes and the relevant timelines and not the minimum remaining maturities defining the frontloading requirement. More specifically, in accordance with the clearing obligation procedure and the Commission mandate shown in Annex I, ESMA shall develop and submit to the European Commission for endorsement draft technical standards specifying:
  - a. the class (or classes) of OTC derivatives that should be subject to the clearing obligation referred to in Article 4; and
  - b. the date or dates from which the clearing obligation takes effect, including any phase in and the categories of counterparties to which the obligation applies.
56. Furthermore, in accordance with Article 5(4) of EMIR, with the overarching aim of reducing systemic risk, the draft RTS for the part referred to in Article 5(2)(a) of EMIR (i.e. the specification of the class of OTC derivatives that should be subject to the clearing obligation) shall take into consideration the following criteria:
  - a. the degree of standardisation of the contractual terms and operational processes of the relevant class of OTC derivatives;
  - b. the volume and liquidity of the relevant class of OTC derivatives; and

- c. the availability of fair, reliable and generally accepted pricing information in the relevant class of OTC derivatives.

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

## 5.2 Assessment for the purpose of the clearing obligation

58. There are two aspects covered in this CP with regards to the clearing obligation, these being which classes should be removed from the clearing obligation and which classes should be added.
59. For the first aspect, the classes to be removed, in the context of the benchmark transition there is no need to go extensively through all the criteria. We only restate the reasons developed in the above sections why the criteria under EMIR will no longer be met.
60. Indeed, by the end of the year, as explained in section 3, EONIA (EUR), GBP LIBOR and JPY LIBOR will have ceased to be produced, the classes referencing these benchmarks will no longer be traded or offered for clearing, and thus the EMIR criteria will no longer be met. The classes referencing these benchmarks thus need to be removed from the scope of the clearing obligation.
61. Regarding USD LIBOR, the situation is slightly different. As explained, on the one hand, there have been a number of communications, including in the EU<sup>22</sup>, with the objective that counterparties prepare in order to no longer enter into new derivative trades referencing USD LIBOR by the end of the year, so the activity in OTC interest rate derivatives referencing this benchmark should be drastically reduced.
62. On the other hand, USD LIBOR will continue to be published until June 2023, the CCP legal trade conversion for derivatives referencing USD LIBOR has not been scheduled yet at the time of drafting of this CP and there is more broadly a need to continue monitoring the transition for trades denominated in USD. Lastly, it is not yet known what the US authorities may decide with respect to the scope of mandatory clearing in respect of USD LIBOR derivatives.
63. At this stage, ESMA is thus considering whether or not to maintain USD LIBOR in the scope of the CO. For now, it remains included in the amended scope of the clearing obligation for the purpose of the public consultation. However, ESMA will still be able to remove it at the time of the final report following the responses to the consultation and depending on how the situation has evolved by then, or later once the transition away from USD LIBOR is more advanced.
64. For the second aspect, the classes to be added, ESMA has looked at possible new classes of OTC interest rate derivatives denominated in the G4 currencies referencing RFRs and offered for clearing by CCPs as per Table 1 in Section 3, namely:
  - €STR OIS,
  - SONIA OIS,
  - SOFR OIS, and
  - TONA OIS.

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<sup>22</sup> [Microsoft Word - 2021-06-18 Joint Public Statement USD LIBOR.docx \(europa.eu\)](#)



65. For these classes, ESMA has looked at the EMIR criteria in more detail, but for several of these criteria, it can build on the previous assessments conducted for the current classes of OTC interest rate derivatives in scope of the clearing obligation as they are essentially the same category of OIS classes. This means that it is mainly the second criterion (liquidity) that is driving the determination process for these new or extended classes.
66. Lastly, it is also important to take into account that this revision of the CO takes place shortly after the end of the transition period for the UK withdrawal from the EU, and in particular, in parallel to the separate exercise looking at the level of exposure of EU counterparties to UK CCPs and at the EU clearing capacity.
67. For this benchmark transition review, ESMA is taking into account both authorised and recognised CCPs as well as the communication from the Commission to EU counterparties to reduce their exposure. The review of the CO regarding benchmarks will have been completed ahead (Final report is targeted for this Autumn, which would then be followed by the review and adoption process) of the scheduled expiry of the UK CCP equivalence decision (the temporary exemption regarding UK CCPs runs until June 2022), there will thus be many months in-between the two separate exercises. In addition, there are several CCPs, including EU CCPs, other than UK CCPs, that clear these classes. Therefore, this adaptation of the scope of the CO to accompany the benchmark transition should not affect the exercise concerning the EU clearing strategy. In fact, as EU counterparties adapt their clearing arrangements for the benchmark transition, in particular with regards to the transition from EONIA to €STR, this could be the opportunity to continue reducing reliance on UK CCPs. This aspect is thus not discussed further in the CP as this is not the focus of this document.

### 5.2.1 Criterion 1: degree of standardisation

68. The first criterion referenced in EMIR is the degree of standardisation of the relevant class, both in terms of the contractual terms as well as the operational process. In this CP, ESMA is considering introducing new OIS classes referencing new benchmarks, for example €STR OIS, or to extend the maturity of existing OIS classes, for example to extend the SONIA OIS class from maturities currently up to 3Y to maturities up to 50Y as detailed in the draft RTS in Annex. These OIS classes do benefit from a high level of standardisation, both from a contractual terms perspective 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. Indeed, this high level of standardisation is one key aspect that enables these OISs to be cleared and to be routed electronically. This high level of standardisation is also what allows to trade an important number of these trades on venue.
69. This is consistent with what ESMA assessed the first time around a few years ago when looking at whether OISs denominated in the G4 currencies were fit for the clearing obligation. In fact, if anything, the level of standardisation looks to have increased further in terms of contracts or processes since the time of the first RTS.
70. Therefore, ESMA considers that the contractual terms and operational processes of the OTC interest rate derivative classes in scope of this CP (i.e. OIS referencing the new RFRs) demonstrate an appropriate level of standardisation to be considered for the clearing obligation.

## 5.2.2 Criterion 2: Liquidity

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

71. First of all, provision 7(2)(a) of the RTS on OTC derivatives states that, in relation to the volume and liquidity of the relevant classes of OTC derivative contracts, ESMA shall take into consideration whether the margins or financial requirements of the CCP would be proportionate to the risk that the clearing obligation intends to mitigate. It should also be noted that the margins and financial requirements at the EU CCPs (or TC-CCPs) clearing interest rate OTC derivatives, including these classes, were reviewed as part of the CCP supervision and authorisation (or recognition) process.
72. Secondly, provision 7(2)(c) of the RTS on OTC derivatives states that, in relation to the volume and liquidity of the relevant classes of OTC derivatives, ESMA shall take into consideration the likelihood that market dispersion would remain sufficient in the event of the default of a clearing member.
73. For these two sub-criteria, it is useful to consider the nature of the change being looked into in this CP, i.e. a shift of activity from classes referencing EONIA or LIBOR in the G4 currencies to OIS classes referencing RFRs denominated in these G4 currencies. Indeed, the market is pivoting gradually from one set of products to another one, there is thus some continuity in terms of market activity, counterparties being active in these products, clearing members offering clearing services, CCPs clearing these products, etc.
74. Taking the above into account, and in particular the fact that despite the change of benchmarks being referenced there is continuity in how the market is structured and how market participants are trading and clearing OTC interest rate derivatives, 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.

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

75. Provision 7(2)(b) of the RTS on OTC derivatives states that, in relation to the volume and liquidity of the relevant classes of OTC derivative contracts, ESMA shall take into consideration the stability of the market size and depth in respect of the product over time.
76. Provision 7(2)(d) of the RTS on OTC derivatives states that, in relation to the volume and liquidity of the relevant classes of OTC derivatives, ESMA shall take into consideration the number and value of the transactions.
77. For this section, ESMA is cross-referring to the analysis conducted in Section 3, where the levels of activity in these 4 classes have been presented. In addition, beyond the levels currently described in Section 3, it is also fair to say that the transition will continue over the coming months and as we get closer to the end-of-year deadline there is a reasonable expectation that the levels will have developed further for the most part.
78. Starting with €STR OIS, Figures 6, 7 and 8 still indicate a rather low level of activity, but as explained in Section 3.2.1, there is now a fixed relation between EONIA and €STR. This means in particular that by the time EONIA will have ceased, the same liquidity pool

should be available for €STR OIS. In addition, as EURIBOR stays (and covers the long maturities) and as €STR is replacing EONIA (overnight and thus shorter maturities), the activity for €STR alone (or €STR/EONIA combined assuming it is the same liquidity pool) is more apparent on the short end of the curve, in particular up to 3 years. ESMA thus considers that the €STR OIS class with maturities up to 3 years benefits from an appropriate level of liquidity to be considered for the clearing obligation.

79. Moving to SONIA OIS, it should first be recalled that the current CO already mandates SONIA OIS up to 3 years, therefore the question looked into in this CP is whether the CO can cover a longer maturity range. Figures 9, 10 and 11 in Section 3 evidence clearly that SONIA is gradually becoming the reference index for OTC interest rate derivatives denominated in GBP. It also shows that there is a relatively important level of activity across the entire maturity curve and up to the 50-year tenor included. ESMA thus considers that the SONIA OIS class with maturities up to 50 years benefit from an appropriate level of liquidity to be considered for the clearing obligation. In addition, it should be mentioned that the Bank of England launched a consultation<sup>23</sup> in May 2021 on the clearing obligation in the UK, where the Bank of England also proposes to extend the SONIA OIS class up to the 50-year tenor.
80. With respect to SOFR OIS, the situation is quite different as explained in Section 3.2.1. At this stage there is still a relatively small level of activity, although a few percentages of the USD market still represent an important level given the size of the USD market. There appears to be more activity in the short end of the curve, even if there is some activity beyond the short end.
81. Furthermore, the fact that USD LIBOR will continue to be published until June 2023 and that a number of discussions are taking place on potential alternative rates may not have presented market participants with the same level of prioritisation in their transition for USD trades. However, there have been various communications, including communications from US authorities<sup>24</sup>, a joint communication from EU authorities<sup>25</sup> as well as an IOSCO communication, thus at the international level<sup>26</sup>, asking market participants to prepare to not trade USD LIBOR by the end of the year for new risk. These various communications should continue to drive activity in SOFR OIS upward as we get closer to the end of the year. Introducing a CO on SOFR OIS would come in support of this regulatory and supervisory objective to move away from USD LIBOR by the end of the year and onto new rates, in particular SOFR.
82. Last but not least, the CFTC's Market Risk Advisory Committee's (MRAC) Interest Rate Benchmark Reform Subcommittee communicate <sup>27</sup> their so-called 'SOFR first' recommendation on 8 June 2021. This Subcommittee recommends a change in market practice, i.e. to switch interdealer trading conventions from LIBOR to SOFR for linear interest rate swaps denominated in USD on 26 July 2021. This could constitute an important step towards an increase in liquidity in derivatives referencing SOFR and towards the transition away from USD LIBOR.

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<sup>23</sup> [Derivatives clearing obligation – modifications to reflect interest rate benchmark reform: Amendments to BTS 2015/2205 | Bank of England](#)

<sup>24</sup> [Statement on LIBOR Transition - November 30, 2020 \(federalreserve.gov\)](#) and [The Fed - SR 21-7: Assessing Supervised Institutions' Plans to Transition Away from the Use of the LIBOR \(federalreserve.gov\)](#)

<sup>25</sup> [Microsoft Word - 2021-06-18 Joint Public Statement USD LIBOR.docx \(europa.eu\)](#)

<sup>26</sup> [Statement on Benchmarks Transition \(iosco.org\)](#)

<sup>27</sup> [CFTC's Interest Rate Benchmark Reform Subcommittee Recommends July 26 for Transitioning Interdealer Swap Market Trading Conventions from LIBOR to SOFR | CFTC](#)

83. Taking all this into account, ESMA is thus still reflecting on whether the SOFR OIS class could be deemed to benefit from an appropriate level of liquidity to be considered for the clearing obligation, and if yes, for what maturity range. It should also be noted that it is not yet known what the US authorities may decide for SOFR OIS with respect to mandatory clearing, and that SOFR OIS are not part of the public consultation conducted by the Bank of England either. The situation thus needs to be further monitored over the coming months and the responses to the consultation analysed in order to help decide whether to include SOFR at the time of the final report.
84. The SOFR OIS class is included in the draft proposal in Annex, but this is only for the purpose of the public consultation and in order to collect views from stakeholders.
85. Finally, regarding TONA OIS, the figures indicate a rather low level of activity and the situation for JPY more broadly is still unclear in terms of what benchmark will prevail when JPY LIBOR ceases. Unlike the other RFRs mentioned above, it is not yet clear that as we get closer to the end of year deadline that there should necessarily be an increased activity in this class. As a result, ESMA thus considers that the TONA OIS class does not yet benefit from an appropriate level of liquidity to be considered for the clearing obligation at this stage.
86. Last but not least, these classes are already voluntarily cleared in their large majority as explained in Section 3.2.2.1 in Figure 5, which is a further indication that some of these classes could be fit for the clearing obligation and that market participants have been preparing or updating their clearing arrangements as part of the benchmark transition in order to clear these classes at authorised EU CCPs or recognised TC-CCPs.

### 5.2.3 Criterion 3: availability of the pricing information

87. With regard to the third criterion in EMIR, i.e. in relation to the availability of fair, reliable and generally accepted pricing information in the relevant classes of OTC derivative contracts, Article 7(3) of the RTS on OTC derivatives requires ESMA to take into consideration whether the information needed to accurately price the contracts within the relevant class of OTC derivative contracts is easily accessible to market participants on a reasonable commercial basis and whether it would continue to be easily accessible if the relevant class of OTC derivative contracts became subject to the clearing obligation.
88. The analysis of the level of access to reliable pricing data following these terms for OTC interest rate derivative classes in general was performed in the context of the first two RTS on the clearing obligation of OTC interest rate derivatives.
89. As a result, the analysis of the classes against this criterion of access to reliable pricing data that was presented then in the first consultation paper can be referenced here in this new consultation paper. The responses to the first consultations largely supported the analysis conducted by ESMA, including the analysis of the availability and reliability of pricing information for OTC interest rate derivative classes in general.
90. In summary, ESMA considers that the OTC IRS classes in scope in this CP benefit from an appropriate availability of fair, reliable and generally accepted pricing information, as was already the case for the classes of the first two RTS on OTC interest rate derivative classes.

### 5.3 Overview of proposals for amending the scope of the CO

91. In conclusion, in terms of scope of the CO, first of all ESMA would thus remove the classes referencing EONIA, GBP LIBOR and JPY LIBOR as these benchmarks will cease to be produced at the end of the year.
92. Secondly, with regards to USD LIBOR, on the one hand it will keep being published until June 2023 and the US authorities have not indicated yet what might happen to USD LIBOR regarding mandatory clearing, while on the other hand there have been communications for market participants to stop using it by the end of the year. ESMA is thus considering whether to maintain it or not, and will continue monitoring the transition for USD. For the purpose of the public consultation, ESMA would thus keep the classes referencing USD LIBOR in the CO for now and will decide whether to remove it at the time of the final report or later, depending on the responses to the consultation and as well based on how the situation evolves.
93. Lastly, ESMA would introduce the classes of interest rate derivatives referencing some RFRs for which there seems to be apparent liquidity<sup>28</sup>, namely OIS referencing €STR for short maturities and extending OIS referencing SONIA for a much larger maturity range.
94. With regards to SOFR, there is still a need to continue monitoring the situation, although based on the latest developments, including the “SOFR first” communication, liquidity might be expected to continue developing further. Therefore, for the purpose of the public consultation, ESMA is including SOFR OIS for short maturities in order to receive input from stakeholders on this question, which will be further assessed at the time of the final report, based on how the liquidity evolves and based on the responses to the consultation.
95. The proposed changes are summarised in Tables 3 to 6 below.

**TABLE 3: BASIS SWAP CLASSES**

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

**TABLE 4: FIXED-TO-FLOAT INTEREST RATE SWAP CLASSES**

<sup>28</sup> This is only a very succinct description and the CP will assess these classes of derivatives in more details against the EMIR criteria that are standardisation, liquidity and access to reliable pricing information.

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

**TABLE 5: FORWARD RATE AGREEMENT CLASSES**

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

**TABLE 6: OVERNIGHT INDEX SWAP CLASSES**

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

**Question 4: Do you agree with the assessment of the EMIR criteria and with the proposed classes (except for USD which is dealt with in a dedicated Question 5)? If not please detail how the assessment could differ and please also provide data and information to justify a different assessment.**

**Question 5: Will the transition regarding USD have made sufficient progress by this Autumn to decide on whether to maintain or remove USD LIBOR classes. Will there be sufficient liquidity to introduce SOFR OIS to the CO and for which maturity range? Please provide the relevant data and information to explain your assessment, in accordance with the EMIR framework.**

## 5.4 Proposed implementation

96. Beyond the question of which classes to remove and which classes to introduce, there is also the question of how to implement.
97. First of all, as these changes concern the classes denominated in the G4 currencies, ESMA's approach is to propose an amendment of the Commission Delegated Regulation on the clearing obligation for OTC interest derivative classes denominated in EUR, GBP, JPY and USD. More specifically, instead of a new RTS that could lead to a brand-new Commission Delegated Regulation, ESMA is developing an amending RTS that will lead to an amendment of the current Commission Delegated Regulation that relate to these currencies. Therefore, to reflect the change of classes to be in scope of the clearing

obligation, ESMA is thus proposing to amend the annex of the Commission Delegated Regulation where the classes are listed.

98. Secondly, there is also a question of timing. The timetable of when classes become subject is the second aspect that ESMA is mandated to clarify in the draft RTS.
99. The current Commission Delegated Regulations on the CO contain a phase-in as 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.
100. However, in this case, counterparties have had to prepare for a while for the benchmark reforms and for the planned cessation of EONIA, EUR LIBOR, GBP LIBOR or JPY LIBOR taking place at the end of 2021, including with respect to their clearing arrangements. Indeed, for counterparties already subject to the clearing obligation and clearing OTC interest rate derivatives denominated in these currencies, clearing the classes referencing the new RFRs corresponds to an update of their clearing arrangements rather than looking to establish and implement brand new clearing arrangements as they had to do when they first started clearing OTC interest rate derivatives.
101. Because clearing derivatives referencing the new RFRs is part of a bigger implementation preparation to transition away from EONIA and LIBOR and on to new benchmarks, there is no need to introduce an additional phase-in in order to ensure an orderly and timely implementation of that obligation. As a result, ESMA expects the changes to start applying as of 3 January 2022 when these benchmarks can no longer be referenced. This would require a quicker adoption and non-objection process for the Delegated Regulation based on the draft RTS submitted by ESMA, a process which is not under ESMA's control.
102. The draft RTS in Annex II reflect these proposed amendments to the Commission Delegated Regulation on the clearing obligation for interest rate derivatives denominated in the G4 currencies.

**Question 6: Do you agree with the proposed implementation of the changes? if not please provide details that could justify a different implementation.**



## 6 Derivative trading obligation

### 6.1 Legal Framework

103. Article 28 of MiFIR introduces a DTO established in accordance with the procedure set out in Article 32 of MiFIR and further specified in Commission Delegated Regulation (EU) 2016/2020 of 26 May 2016<sup>29</sup> (RTS 4).
104. Article 32 of MiFIR outlines the procedure for establishing which derivatives should be declared subject to mandatory trading on trading venues. According to Article 32(1) of MiFIR once a class of derivatives has been made subject to the CO under EMIR, ESMA shall draft RTS specifying which derivatives (or a subset of them) should be subject to the DTO.
105. Article 32(2) of MiFIR specifies that the following two factors have to be met when determining whether a class of derivatives subject to the CO should also be made subject to the DTO:
- The venue test: the class of derivatives must be admitted to trading or traded on at least one admissible trading venue; and
  - The liquidity test: whether there is sufficient third party buying and selling interests in the class of derivatives so that a class of derivatives is ‘sufficiently liquid’ for the purpose of the DTO.
106. Article 32(3) of MiFIR lists a set of criteria for determining whether a class of derivatives or a relevant subset thereof is sufficiently liquid, and in particular: (i) the average frequency and size of trades, (ii) the number and type of active market participants, and (iii) the average size of spreads.
107. As mandated under Article 32(6) of MiFIR, RTS 4 further specifies the criteria for determining whether there is sufficient third-party buying and selling interests in a class of derivatives (or a subset) so that such a class of derivatives (or subset) is considered “sufficiently liquid” to trade on trading venues only.
108. Under Article 32(1) of MiFIR, every time a class of derivatives (or subset) is declared subject to the CO under EMIR, ESMA has 6 months to prepare, consult on, and present to the Commission a draft RTS specifying which derivatives should also be made subject to the DTO and as of which date.
109. Commission Delegated Regulation 2017/2417 (DTO RTS)<sup>30</sup> specifies the classes of derivatives subject to the DTO as well as the dates from which the DTO takes effect.
110. According to the DTO RTS, fixed-to-float interest rate swaps (IRS) denominated in EUR, USD and GBP in certain benchmark contracts and as specified in the Annex of the DTO

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<sup>29</sup> Commission Delegated Regulation (EU) 2016/2020 of 26 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation, OJ L 313, 19.11.2016, p. 2.

<sup>30</sup> 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.

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

## 6.2 Assessment for the purpose of the derivative trading obligation

111. According to the proposals in section 5, the scope of the CO would be amended and fixed-to-float IRS referencing GBP LIBOR removed from the scope of the CO. In consequence, the precondition in Article 32(1) of MiFIR for making derivatives subject to the DTO, i.e. the class of derivatives is subject to the CO, is no longer met and the DTO can no longer apply to these contracts.

112. ESMA therefore proposes to remove fixed-to-float IRS referencing GBP LIBOR from the DTO.

113. Moreover, according to the proposals in section 5, it is suggested to extend the scope of OIS contracts subject to the CO (see tables 3-6 in section 5):

- Broadening the maturity of OIS referencing SONIA from 7D-3Y to 7D-50Y; and
- Adding OIS referencing €STR with a maturity of 1D-3Y.

114. Furthermore, considerations are also made on whether to extend the CP to OIS referencing SOFR with a maturity of 1D-3Y.

115. As explained in section 3.2, the trading of fixed-to-float IRS in GBP LIBOR and USD LIBOR is migrating to the trading of OIS referencing (compound) SONIA and SOFR. In consequence, the market transitions for these currencies away from fixed-to-float IRS to OIS. It is therefore necessary to assess the liquidity of OIS referencing SONIA and SOFR for the purpose of the DTO.

116. Moreover, while EURIBOR will be maintained and, as such, there is currently no similar trend in EUR denominated contracts away from fixed-to-float to OIS, the trading activity in contracts referencing €STR, including compounded €STR has increased over the last months, and is expected to further speed up in the coming months ahead of the switch from EONIA to €STR by the end of 2021. It appears therefore appropriate to also assess whether OIS referencing €STR should be made subject to the DTO.

117. This assessment is carried out in the following subsections, starting with the venue test before looking at the liquidity of such contracts for the purpose of the DTO.

### 6.2.1 The venue test

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

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

120. In order to assess whether OIS referencing SONIA, SOFR and €STR are available for trading on EU trading venues, ESMA analysed reference data submitted by EU trading venues to ESMA’s Financial Instruments Reference Data System (FIRDS). According to Article 27 of MiFIR trading venues are required to report to ESMA and competent authorities reference data before trading commences in the financial instrument that it refers to. Therefore, FIRDS provides a good reference point to assess whether such OIS are available for trading on EU trading venues.

121. As can be seen in tables 7-9 below currently a wide variety of OIS referencing SONIA, SOFR and €STR are made available for trading on MTFs and OTFs, and covering a wide range of maturities (the maturities of the contracts traded are not covered in the tables presented below in order to keep the tables readable).

**TABLE 7: EU TRADING VENUES OFFERING TRADING OF DERIVATIVES REFERENCING SONIA**

MIC	Trading venue	Country	Asset-Class	Type	Underlying
BFTE	Bloomberg	NL	Interest Rate	OIS	SONIA
CAPI	CAPI OTF	ES	Interest Rate	OIS	SONIA
CIMV	CIMD S.V. S.A. - OTF	ES	Interest Rate	OIS	SONIA
HPCV	HPC SA – Voice OTF	FR	Interest Rate	Basis	GBP LIBOR vs SONIA
HPCV	HPC SA – Voice OTF	FR	Interest Rate	Basis	SOFR vs SONIA
HPCV	HPC SA – Voice OTF	FR	Interest Rate	OIS	SONIA
ISWN	ISWAP Euro MTF	NL	Interest Rate	OIS	SONIA
RESF	EBS MTF	NL	Interest Rate	Basis	GBP LIBOR vs SONIA
TPIR	TP ICAP - MTF	FR	Interest Rate	OIS	SONIA
TSAF	TSAF OTF	FR	Interest Rate	OIS	SONIA
TWEM	Tradeweb	NL	Interest Rate	OIS	SONIA

**TABLE 8: EU TRADING VENUES OFFERING TRADING OF DERIVATIVES REFERENCING SOFR**

MIC	Trading venue	Country	Asset-Class	Type	Underlying
AURO	Aurel – OTF	FR	Interest Rate	OIS	SOFR
BFTE	Bloomberg	NL	Interest Rate	Basis	FedFunds vs SOFR
BFTE	Bloomberg	NL	Interest Rate	Basis	USD LIBOR (3M) vs SOFR

BFTE	Bloomberg	NL	Interest Rate	OIS	SOFR
HPCV	HPC SA – Voice OTF	FR	Interest Rate	Basis	SONIA vs SOFR
RESF	EBS MTF	NL	Interest Rate	Basis	FedFunds vs SOFR
TPIR	TP ICAP – MTF	FR	Interest Rate	OIS	SOFR
TPIR	TP ICAP - MTF	FR	Interest Rate	Basis	€STR vs SOFR
TSAF	TSAF OTF	FR	Interest Rate	OIS	SOFR
TWEM	Tradeweb	NL	Interest Rate	OIS	SOFR

**TABLE 9: EU TRADING VENUES OFFERING TRADING OF DERIVATIVES REFERENCING €STR**

MIC	Trading venue	Country	Asset-Class	Type	Underlying
AURO	Aurel – OTF	FR	Interest Rate	FRA	€STR
AURO	Aurel – OTF	FR	Interest Rate	OIS	€STR
BFTE	Bloomberg	NL	Interest Rate	OIS	€STR
CIMV	CIMD S.V. S.A. - OTF	ES	Interest Rate	OIS	€STR
TPIR	TP ICAP - MTF	FR	Interest Rate	Basis	€STR vs SOFR
TPIR	TP ICAP - MTF	FR	Interest Rate	OIS	€STR
TSAF	TSAF OTF	FR	Interest Rate	OIS	€STR
TWEM	Tradeweb	NL	Interest Rate	OIS	€STR

122. Concerning the availability of derivatives referencing RFRs on equivalent third country trading venues, ESMA notes that there has been trading activity on US Swap Execution Facilities (SEFs) covering OIS referencing SONIA, SOFR and €STR over a broad range of maturities. ESMA does not have any information on the trading activity of derivatives referencing RFRs on Singapore trading venues.

123. Therefore, ESMA considers that the venue test for these three classes of derivatives is met.

### 6.2.2 The liquidity test

124. For the liquidity assessment, ESMA is required to assess whether the class of derivatives is 'sufficiently liquid' for the DTO to take effect. The criteria to be used for assessing the

liquidity of a class of derivatives are set out in Article 32(3) of MiFIR and further specified in RTS 4. In particular, ESMA should consider the following criteria:

- the average frequency of trades;
- the average size of trades,
- the number and type of active market participants, and
- the average size of spreads.

125. When performing the initial assessment for determining the classes of derivatives that should be subject to the DTO, ESMA opted for a holistic assessment of the criteria instead of setting minimum thresholds to be met for one or all criteria. This approach was chosen for two reasons: 1) due to data limitations for accessing sufficiently granular data and for gathering information on some of the criteria, in particular the criterion on the average size of spreads, and 2) to better consider and weight the various liquidity criteria.

126. ESMA suggests following the same approach for this assessment. Hence, the following assessment is based on a holistic assessment of the liquidity in IRS referencing €STR, SONIA and SOFR and not on a detailed assessment of every liquidity criterion.

#### 6.2.2.1 EUR

127. As highlighted in section 3.2.2.2 the bulk of trading activity in EUR denominated IRS remains concentrated in contracts referencing EURIBOR, followed by EONIA. Currently only very little trading volume is executed, both by EU counterparties and globally, in contracts referencing €STR, even though a slow and gradual increase could be observed over the last months. Also, it can be noted that contracts referencing €STR are available throughout a broad range of maturities. While most trading activity concentrates in short maturities (0-1 year), trading activity in maturities up to 50 years can be observed (see Figure 8).

128. When looking at the execution venue of €STR contracts based on EMIR trade state data reported by EU counterparties covering the reference period November 2020 to February 2021 (Figure 18), it can be observed that between 50-70% of the notional volume has been executed OTC.<sup>31</sup> Overall, a large fluctuation of execution venues from one month to the other can also be observed.

129. The trading activity on EU trading venue is currently low, but the notional volume traded on EU trading venues, in particular MTFs has been increasing constantly from December 2020 to February 2021, with a sharp increase in February 2021<sup>32</sup>. From November 2020 to January 2021 a significant share of notional volume traded on UK trading venues could be observed. However, the share of UK trading venues is only marginal in February 2021. This observation could be linked to the fact that following Brexit EU counterparties start shifting their trading activity in Euro denominated IRS to EU trading venues.

130. The observations above also align with market intelligence stressing that there is only limited trading activity, in particular on trading venues, in contracts referencing €STR to date due to limited demands from clients while noting that EU trading venues are ready to trade contracts referencing €STR.

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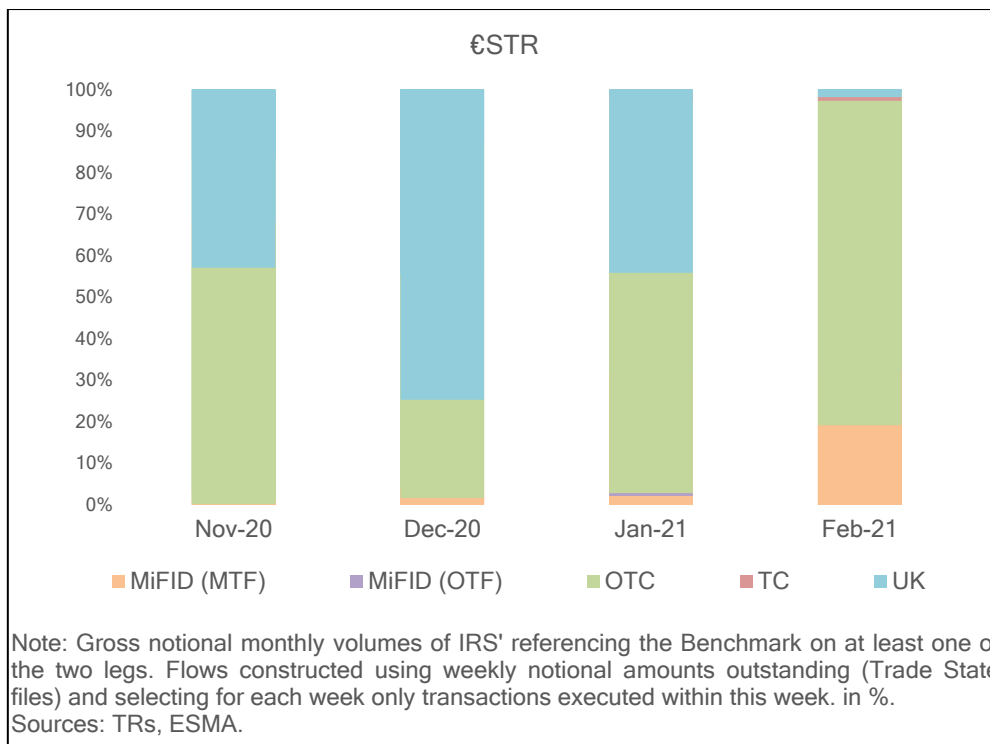
<sup>31</sup> It should be noted that the data displayed in Figure 18, and in the following figures of this section, cover trading activity in any IRS referencing to €STR (or SONIA and SOFR in the following subsections). The bulk of the trading activity consists of OIS or basis swaps.

131.

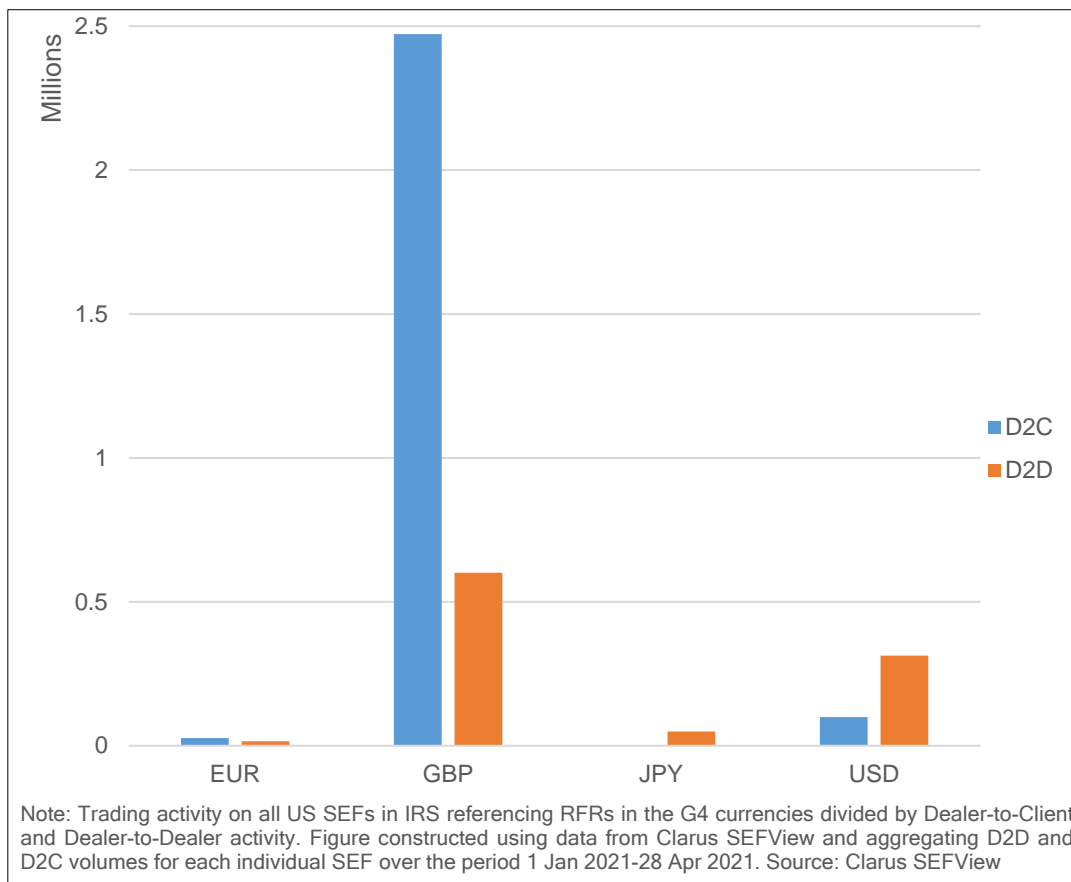
132.

133. Figure 19 shows the trading activity on US SEFs for IRS referencing RFR based on the reference period 1 January to 28 April 2021 and split by type of trading activity (dealer-to-client (D2C) and dealer-to-dealer (D2D)). It can be seen that the trading activity on SEFs for contracts referencing €STR is currently very low and only covers D2C activity.

**FIGURE 18: €STR – NOTIONAL VOLUME (NOV '20 TO FEB '21)**



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



134. In view of the low level of liquidity on EU trading venues for contracts referencing €STR and considering that currently no DTO is in force for EONIA contracts, ESMA does not recommend introducing the DTO to IRS referencing €STR at this point in time. ESMA will keep monitoring market developments and may consider expanding the DTO to €STR should trading activity on trading venues significantly pick up in the future.

#### 6.2.2.2 GBP

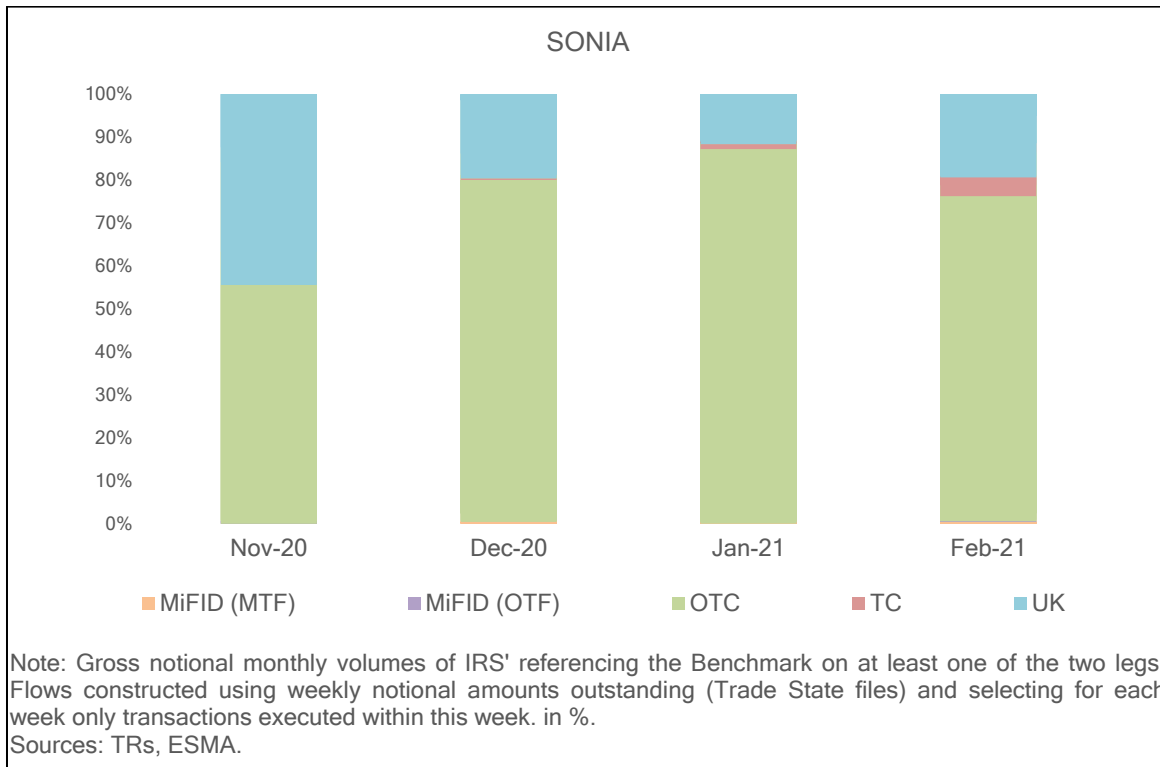
135. As highlighted in section 3.2.2.3 the transition to RFRs is most advanced for SONIA with already a large share of the trading volume in GBP LIBOR having migrated to SONIA. While trading is concentrated in short-term maturities, activity in longer maturities is quickly developing and there is significant trading activity across the curve.

136. Similarly, to the trading activity for €STR, a significant share of the trading activity in IRS referencing SONIA is executed OTC, with notional volume traded OTC fluctuating between 55-85% of the total outstanding notional over the period November 2020 to February 2021 (see Figure 20). Notional volume traded on EU trading venues (MTFs, OTFs) is only marginal and no trend could be observed from November 2020 to February 2021.

137. Finally, significant notional volume executed on third-country trading venues could be observed over that period, in particular UK trading venues ranging from slightly above 10% in January 2021 to more than 40% percent in November 2020. No trend for increased trading on third-country trading venues could be observed based on EMIR data.

138. There has been significant trading activity on US SEFs, in particular for D2C trading, in contracts referencing SONIA over the last months (see Figure 19).
139. These observations, in particular for on-venue trading, largely match with the feedback received from market intelligence, which confirmed that there is significant trading activity on UK and US trading venues and only very limited trading activity on EU trading venues.

**FIGURE 20: SONIA – NOTIONAL VOLUME (Nov '20 TO FEB '21)**



140. The liquidity in SONIA contracts traded on venue is split between US SEFs (which are equivalent trading venues for the purpose of the DTO) and third-country no-equivalent venues (in particular the UK). Given that there is only marginal liquidity in IRS referencing SONIA on EU trading venues, ESMA would not recommend including OIS referencing SONIA in the scope of the DTO.

### 6.2.2.3 USD

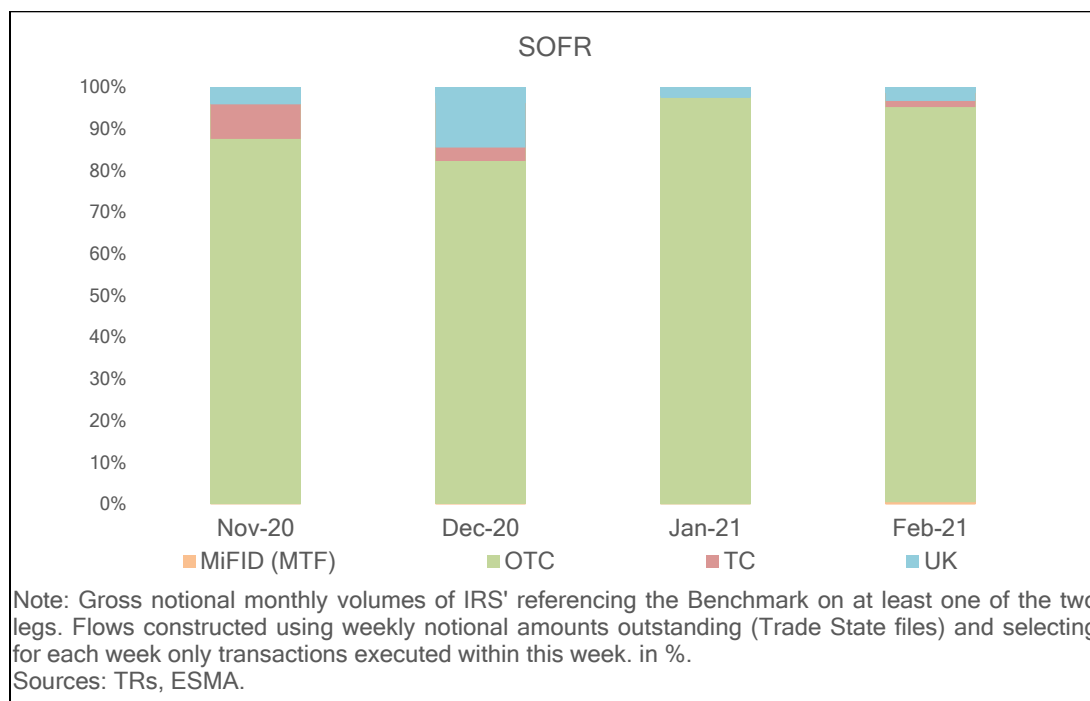
141. The transition from USD LIBOR to RFR (SOFR) is significantly less advanced compared to SONIA. While trading activity has been increasing somewhat over the last months and it can also be observed that trading picks up in longer maturities, trading activity in IRS referencing SOFR remains marginal compared to the remaining trading activity in USD LIBOR (see section **USD**3.2.2.5).
142. When looking at the execution venues used by EU counterparties based on EMIR data (see Figure 21), it can be observed that the vast majority of notional volume has been executed OTC over the period observed. Some limited trading activity on third-country trading venues, in particular UK trading venues and US SEFs, could be observed based



on EMIR data with only marginal trading activity on EU trading venues. These observations also match with market intelligence indicating only limited trading activity on EU trading venues, with the bulk of trading venue activity executed on US SEFs and UK trading venues. However, as for the other RFRs, EU trading venues, in particular those offering RFQ-protocols, stand ready to provide quotes in such contracts should there be demand by clients.

143. When looking at the trading activity on US SEFs, some liquidity, in particular on D2D platforms can be observed (see Figure 19). However, the level of trading activity is significantly lower than for SONIA, indicating that the transition to SOFR is less advanced than the migration to SONIA.

**FIGURE 21: SOFR - NOTIONAL VOLUME (NOV '20 TO FEB '21)**



144. The liquidity in IRS referencing SOFR traded on venue is split between US SEFs (which are equivalent trading venues for the purpose of the DTO) and third-country no-equivalent venues (in particular the UK). Given that there is only marginal liquidity in IRS referencing SONIA on EU trading venues, and in view of the uncertainty on whether those contracts will be subject to the CO, ESMA would consider it premature to include OIS referencing SOFR in the scope of the DTO.

145. Concerning the way forward on USD LIBOR, ESMA is seeking stakeholders' feedback on whether to keep IRS referencing to USD LIBOR in the scope of the DTO. On the one hand, as explained in section 5.2, it is likely that trading activity in these contracts will drastically reduce by end of this year since counterparties should no longer enter into new transactions referencing USD LIBOR by the end of 2021.<sup>33</sup> This should result in a

<sup>33</sup> This is also reflected in the various statement issued on USD LIBOR and calling for counterparties to prepare in order to no longer enter into new derivatives transactions referencing USD LIBOR by the end of 2021.

significant decline in liquidity for IRS referencing USD LIBOR by end of this year. On the other hand, USD LIBOR will continue to be published until June 2023, the CCP legal trade conversion for derivatives referencing USD LIBOR has not been scheduled at the time of drafting of this CP, it is not yet known what the US authorities might decide on USD LIBOR regarding mandatory trading and currently there remains ample liquidity in IRS referencing USD LIBOR, in particular on US SEFs.

146. Hence, the result of the assessment differs depending on whether it is based on the current situation or the expected situation by end of this year. Based on the current situation, IRS referencing USD LIBOR should remain in the scope of the DTO, whereas an assessment based on the expected situation by end of 2021 could speak in favour of removing USD LIBOR from the DTO. At this stage, for the purpose of the publication consultation, ESMA is keeping USD LIBOR in the scope of the DTO and will continue closely monitoring market developments. In any case, ESMA would be in a position to remove the DTO for USD LIBOR IRS at a later stage, whether at the time of the final report or once the transition is more advanced.

### 6.3 Overview of proposals for amending the scope of the DTO

147. Table 10 below presents the suggested changes to the DTO. As explained above, ESMA does not recommend at this stage including IRS referencing RFRs to the scope of the DTO given the marginal trading activity on EU trading venues. Furthermore, given that GBP LIBOR will no longer be subject to the CO and will cease to exist by end 2021, fixed-to-float IRS referencing to GBP LIBOR should no longer be subject to the DTO. Finally, as explained in section 6.2.2.3, ESMA is keeping USD LIBOR in scope for the purpose of the public consultation and is asking stakeholders feedback on this aspect.

TABLE 10: FIXED-TO-FLOAT SINGLE CURRENCY IRS SUBJECT TO THE DTO<sup>34</sup>

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

<sup>34</sup> The table only covers a subset of the specifications of fixed-to-float single currency interest rate swaps subject to the DTO.

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

148. Concerning the implementation of these changes, ESMA recommends following the same approach as suggested for the CO, i.e. entry into force on 3 January 2022 when these benchmarks can no longer be referenced. This would require a quicker adoption and non-objection process for the Delegated Regulation based on the draft RTS submitted by ESMA, a process which is not under ESMA's control.

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

**Question 7: Do you agree with the proposal to not include OIS referencing €STR, SONIA nor SOFR to the DTO at this point in time? In case you disagree with ESMA's proposal, please justify and support your assessment with qualitative and quantitative data.**

**Question 8: Do you consider that IRS referencing USD LIBOR should continue to be subject to the DTO? Please explain.**

## 7 Way forward

150. ESMA is launching today the consultation on the review of the CO and the DTO in view of the benchmark transition, which will run until 2 September 2021. ESMA will continue monitoring the progress made with the transition and in particular the level of activity in the classes of OTC interest rate derivatives denominated in the G4 currencies. ESMA will also further consult the ESRB in order to get their input.
151. This monitoring, the ESRB's input as well as the analysis of the responses from the consultation will then be taken into account in the finalisation of the draft RTS, which is targeted for this Autumn.

## 8 Annexes

### 8.1 Annex I - Commission mandates to develop technical standards

#### 8.1.1 Clearing obligation

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

##### **Clearing obligation procedure**

2. Within six months of receiving notification in accordance with paragraph 1 [of Article 5] or accomplishing a procedure for recognition set out in Article 25, ESMA shall, after conducting a public consultation and after consulting the ESRB and, where appropriate, the competent authorities of third countries, develop and submit to the Commission for endorsement draft regulatory technical standards specifying the following:
  - (a) the class of OTC derivatives that should be subject to the clearing obligation referred to in Article 4;
  - (b) the date or dates from which the clearing obligation takes effect, including any phase in and the categories of counterparties to which the obligation applies.

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

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

#### 8.1.2 Derivative trading obligation

*Article 32 of Regulation (EU) No 600/2014*

##### **Derivative trading obligation**

1. ESMA shall develop draft regulatory technical standards to specify the following:
  - (a) Which of the class of derivatives declared subject to the clearing obligation in accordance with Article 5(2) and (4) of Regulation (EU) No 648/2012 or a relevant subset thereof shall be traded on the venues referred to in Article 28(1) of this Regulation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 8.2 Annex II - Draft technical standards

### 8.2.1 Clearing obligation

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

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

of [ ]

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories <sup>(35)</sup>, and in particular Article 5(2) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2015/2205 <sup>(36)</sup> specifies, among others, the classes of over-the-counter (OTC) interest rate derivatives denominated in Euro (EUR), Pound Sterling (GBP), Japanese Yen (JPY) and US Dollar (USD) that are subject to the clearing obligation. These classes include one class denominated in EUR that references EONIA as well as several classes denominated in GBP, JPY or USD that reference LIBOR, whereas EONIA and LIBOR are two benchmarks that are due to cease
- (2) The European Money Markets Institute, the administrator for EONIA, communicated that the cessation of EONIA will take place at the end of 2021. Similarly, the ICE Benchmark Administrator, the administrator for LIBOR, communicated that the cessation of GBP LIBOR, JPY LIBOR and certain fixings of USD LIBOR will also take place at the end of 2021, whereas the publication of all remaining settings of USD LIBOR will cease in June 2023. On 5 March 2021, the Financial Conduct Authority from the United Kingdom confirmed that all LIBOR settings will indeed either cease to be provided by any administrator or no longer be representative.
- (3) From 3 January 2022, counterparties will hence no longer be able to enter into OTC interest rate derivatives referencing EONIA, GBP LIBOR or JPY LIBOR as these benchmarks will have ceased. On that date, this means that there will thus be no volume nor liquidity in these derivatives and that these trades will also not be cleared by central counterparties (CCPs). Therefore, the classes of derivatives currently in scope of the clearing obligation and that are referencing EONIA, GBP LIBOR or JPY LIBOR will no longer meet two of the conditions to be subject to the clearing obligation set out in Regulation (EU) No 648/2012, i.e. to have a sufficient level of liquidity and to be cleared by

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<sup>35</sup> OJ L 201, 27.7.2012, p. 1.

<sup>36</sup> 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).

an authorised or recognised CCP. It follows that these classes need to be removed from the scope of the clearing obligation from that date onwards.

- (4) Regulators and market participants have been working on replacement rates for these currencies, and in particular on the development of new risk-free rates, which are now being used as benchmarks in financial instruments and financial contracts. Notably, the €STR, SOFR, SONIA and TONA risk-free rates are produced for EUR, USD, GBP and JPY respectively. More specifically with respect to the OTC derivative market, it now means that OTC interest rate derivative contracts referencing €STR, SOFR, SONIA and TONA are being traded by counterparties and are being cleared at certain CCPs.
- (5) The European Securities and Markets Authority (ESMA) has been notified of the classes of OTC interest rate derivatives referencing €STR, SOFR, SONIA or TONA that certain CCPs have been authorised to clear. For each of those classes ESMA has assessed the criteria that are essential for subjecting them to the clearing obligation, including the level of standardisation, the volume and liquidity, and the availability of pricing information. With the overarching objective of reducing systemic risk, ESMA has determined the classes of OTC interest rate derivatives referencing some of these risk-free rates that should be subject to the clearing obligation in accordance with the procedure set out in Regulation (EU) No 648/2012.
- (6) In general, different counterparties need different periods of time for putting in place the necessary arrangements to start clearing their OTC interest rate derivatives subject to the clearing obligation. However, in this case, counterparties have had to prepare for the benchmark transition and for the planned cessation of EONIA, EUR LIBOR, GBP LIBOR or JPY LIBOR taking place at the end of 2021, including with respect to their clearing arrangements. Indeed, for counterparties already subject to the clearing obligation and clearing OTC interest rate derivatives denominated in EUR, GBP or USD, clearing the classes referencing the new risk-free rates in these currencies does not require significant changes, if any at all, to their clearing contracts or processes. Indeed, when counterparties have clearing arrangements in place to clear OTC interest rate derivatives denominated in EUR, GBP or USD, then clearing OTC interest rate derivatives referencing the risk-free rates in these currencies does not require establishing and implementing brand new clearing arrangements as was the case when they first started clearing OTC interest rate derivatives. Because clearing derivatives referencing the new risk-free rates is part of a bigger implementation preparation to transition away from EONIA and LIBOR and on to new benchmarks, there is no need to introduce an additional phase-in in order to ensure an orderly and timely implementation of that obligation. The changes made to introduce the new classes of OTC interest rate derivatives referencing the risk-free rates and denominated in EUR, GBP and USD should enter into application on the day of entry into force of this Regulation. Delegated Regulation (EU) 2015/2205 should be amended accordingly.
- (7) The planned cessation of EONIA, GBP LIBOR and JPY LIBOR is scheduled for the end of 2021 such that it will not be possible to trade or clear OTC interest rate derivatives referencing these benchmarks from 3 January 2022 onwards. Instead, from 3 January 2022, counterparties will trade or clear other OTC interest rate derivatives, in particular OTC interest rate derivatives referencing the risk-free rates. This Regulation should thus enter into force on 3 January 2022 or soon after.
- (8) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (9) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits, requested the opinion of the Security and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010, 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(4) is added:

’4. By way of derogation from paragraph 1, and where the conditions under paragraph 2 have not been met, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex in rows D.4.1, D.4.2 and D.4.3 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 following:

*ANNEX*

**Interest rate OTC derivatives classes subject to the clearing obligation**

*Table 1*

**Basis swaps classes**

<b>id</b>	<b>Type</b>	<b>Reference Index</b>	<b>Settlement Currency</b>	<b>Maturity</b>	<b>Settlement Currency Type</b>	<b>Optionality</b>	<b>Notional Type</b>
A.1.1	Basis	Euribor	EUR	28D-50Y	Single currency	No	Constant or variable
A.1.4	Basis	LIBOR	USD	28D-50Y	Single currency	No	Constant or variable

*Table 2*

**Fixed-to-float interest rate swaps classes**

<b>id</b>	<b>Type</b>	<b>Reference Index</b>	<b>Settlement Currency</b>	<b>Maturity</b>	<b>Settlement Currency Type</b>	<b>Optionality</b>	<b>Notional Type</b>
A.2.1	Fixed-to-float	Euribor	EUR	28D-50Y	Single currency	No	Constant or variable
A.2.4	Fixed-to-float	LIBOR	USD	28D-50Y	Single currency	No	Constant or variable

**Table 3**
**Forward rate agreement classes**

<b>id</b>	<b>Type</b>	<b>Reference Index</b>	<b>Settlement Currency</b>	<b>Maturity</b>	<b>Settlement Currency Type</b>	<b>Optionality</b>	<b>Notional Type</b>
A.3.1	FRA	Euribor	EUR	3D-3Y	Single currency	No	Constant or variable
A.3.3	FRA	LIBOR	USD	3D-3Y	Single currency	No	Constant or variable

**Table 4**
**Overnight index swaps classes**

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

**Article 4**
**Entry into force**

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

- a) 3 January 2022;



- b) the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels,

*For the Commission  
The President*

*[For the Commission  
On behalf of the President*

*[Position]*

## 8.2.2 Derivative trading obligation

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

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

of [ ]

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Commission Delegated Regulation (EU) 2017/2417<sup>(2)</sup> specifies, among others, the classes of over-the-counter (OTC) derivatives denominated in EURO (EUR), the Pound Sterling (GBP) and US dollar (USD) that are subject to the derivative trading obligation. The classes denominated in GBP and USD reference the LIBOR benchmarks.
- (2) the European Money Markets Institute, the administrator for EONIA, communicated that the cessation of EONIA will take place at the end of 2021. Similarly, the ICE Benchmark Administrator, the administrator for LIBOR, communicated that the cessation of GBP and JPY LIBOR settings will also take place at the end of 2021, whereas the publication of certain settings of USD LIBOR will cease in June 2023. On 5 March 2021, the Financial Conduct Authority from the United Kingdom confirmed that all LIBOR settings will indeed either cease to be provided by any administrator or no longer be representative
- (3) From 3 January 2022, counterparties will hence no longer be able to enter into OTC interest rate derivatives referencing GBP LIBOR as this benchmark will have ceased. This means that there will be no volume or liquidity in these derivatives. No trades in those derivatives will therefore be cleared by central counterparties (CCPs) or traded on trading venues. As a consequence, the classes of derivatives currently in scope of the derivative trading obligation that reference GBP LIBOR will no longer meet the criteria of the derivative trading obligation procedure set out in Regulation (EU) No 600/2014 as of 3 January 2022. It follows that these classes need to be removed from the scope of the derivative trading obligation as of the above-mentioned date. Delegated Regulation (EU) 2015/2205 should be amended accordingly.
- (4) The planned cessation of GBP LIBOR is scheduled for the end of 2021 such that it will not be possible to trade or clear OTC interest rate derivatives referencing this benchmark from 3 January 2022 onwards. Instead, from 3 January 2022, counterparties will trade or clear other OTC interest rate

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<sup>1</sup> OJ...

<sup>2</sup> Commission Delegated Regulation (EU) 2017/2417...

derivatives, in particular OTC interest rate derivatives referencing the risk-free rate for GBP. This Regulation should thus enter into force on 3 January 2022 or soon after.

- (5) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (6) 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 opinion of the Security and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

*Article 1*

**Amendment to Delegated Regulation (EU) 2017/2417**

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

- (1) Table 3 in the Annex is deleted.

*Article 2*

**Entry into force**

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

- a) 3 January 2022;
- b) the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels,

*For the Commission*  
*The President*

*[For the Commission*  
*On behalf of the President*

*[Position]*

### 8.3 Annex III – Data methodology

152. The source of the data used to produce the figures included in sections 3 and 6 of this CP is EMIR data. In particular, Article 9 of EMIR mandates the reporting of all derivatives traded by EEA counterparties to Trade Repositories (TRs). TRs centrally collect and maintain the records of all derivative contracts. EMIR data are provided at different levels of granularity to the authorities, with the highest level of granularity being trade activity (also referred to as flow data). TRs also provide a further level of data aggregation, trade-state data which provide information about only outstanding transactions at the time of aggregation by the respective TR at the end of a day.
153. The data used for this CP are taken from a trade state report for 16 April 2021, except for the figures where notional volumes are displayed. There, weekly trade state reports from November 2020 to end-February 2021 were used. Venues of trading have been identified using market identifier codes (MIC, ISO 10383) reported in the field venue of execution. The trades have been reconciled to account for double reporting obligation and anomalous values in notional amount (converted in EUR using the exchange rates provided by the ECB) have been removed. The benchmarks and new risk-free rates have been identified using the reporting fields 55 and 58 “Floating rate of leg 1” and “Floating rate of leg 2” included in the Section 2f dedicated specifically to interest rates derivatives. These fields are populated with the name of the index: for the major indices, a standard code is reported in the Implementing Technical Standards to standardise the reporting. For the indices not included in the list (including the new RFRs) the format of the fields allows for (up to) 25 alphanumeric characters<sup>38</sup>. 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.
154. With respect to the identification of the cleared trades, only transaction with one CCP as a counterparty are considered. The calculation of the clearing rates is performed according to the methodology developed by ESMA in its Annual Statistical Reports<sup>39</sup>, adjusting for the non-reporting of UK counterparties (and CCPs) after the UK withdrawal from the EU.

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<sup>38</sup> COMMISSION IMPLEMENTING REGULATION (EU) 2017/105 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0105&from=EN>)

<sup>39</sup> For a detail description of the methodology, see the section “Measuring central clearing in OTC markets” in 2018 ESMA EU Derivatives Markets Annual Statistical Report ([https://www.esma.europa.eu/sites/default/files/library/esma50-165-639\\_esma-rae\\_asr-derivatives\\_2018.pdf](https://www.esma.europa.eu/sites/default/files/library/esma50-165-639_esma-rae_asr-derivatives_2018.pdf))

## 8.4 Annex IV - Cost-benefit analysis

155. This impact assessment 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, the regulations where the CO and DTO regimes are set.
156. Furthermore, this impact assessment and this CP more broadly, follow numerous previous publications from ESMA with respect to regulatory technical standards on the CO or on the DTO. As a result, many technical options have already been discussed, proposed by ESMA, commented on by stakeholders, and finalised taking this feedback into account, which process led to how the obligations have been designed and adopted eventually, and how they have applied since the respective entries into force of these regulatory technical standards.
157. The proposed amendments in this CP are thus a proportionate adaptation of the existing rules to reflect the ongoing transition away from EONIA and LIBOR and on to new rates, in particular risk-free rates.
158. This proportionate adaptation of the existing rules, as well as the review of the classes of OTC derivatives that should be subject to the CO and/or the DTO, has been presented both in quantitative and qualitative terms in the explanatory part of the CP and is therefore not repeated in this section. In other words, this section cross refers to sections 3 to 6 of the CP as the impact assessment.

**Question 9: Are there other elements that should be taken into account and that would impact the outcome of the cost-benefit analysis? Please provide quantitative and qualitative details.**