



European Securities and
Markets Authority

Consultation Paper

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



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

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

ESMA will consider all comments received by **30 September 2022**.

All contributions should be submitted online at 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 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 the derivative trading obligation as well as from CCPs and Trading Venues.

Table of Contents

1	Executive Summary	7
2	Introduction	9
2.1	Status of the benchmark reform	10
2.2	Status of the CO and DTO in other jurisdictions	15
2.3	Status of the CO and DTO RTSs affected by the benchmark reform.....	16
3	Analysis of the transition in OTC interest rate derivatives denominated in the G4 currencies.....	18
3.1	General	18
3.2	EUR	24
3.3	GBP	26
3.4	JPY	28
3.5	USD	30
4	General approach of this report	32
5	Clearing obligation.....	34
5.1	Legal framework.....	34
5.2	Assessment for the purpose of the clearing obligation.....	35
5.2.1	Criteria 1 and 3: Degree of standardisation and Availability of the pricing information	36
5.2.2	Criterion 2: Liquidity.....	37
5.2.2.1	Criteria 2(a) and 2(c): Proportionate margins and market dispersion	37
5.2.2.2	Criteria 2(b) and 2(d): Stability of the market size and depth and number and value of the transactions	38
5.3	Overview of proposals for amending the scope of the CO	39
5.4	Proposed implementation.....	40
6	Derivative trading obligation	42
6.1	Legal framework.....	42
6.2	Assessment for the purpose of the derivative trading obligation	43
6.2.1	TONA, SOFR, SONIA	43
6.2.2	€STR.....	43
6.2.2.1	The venue test.....	45
6.2.2.2	The liquidity test.....	46
6.3	Overview of proposals for amending the scope of the DTO.....	55
6.4	Proposed implementation.....	56



7	Way forward.....	57
8	Annexes	58
8.1	Annex I – Summary of questions.....	58
8.2	Annex II - Commission mandates to develop technical standards	60
8.2.1	Clearing obligation	60
8.2.2	Derivative trading obligation	60
8.3	Annex III – Draft technical standards	62
8.3.1	Clearing obligation	62
8.3.2	Derivative trading obligation	67
8.4	Annex IV - Cost-benefit analysis.....	72



Acronyms used

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



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

1 Executive Summary

Reasons for publication

This consultation paper (CP) presents draft regulatory technical standards (RTS) further amending the RTS on the clearing obligation (CO) and 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.

Those amendments follow the first set of amendments which have been developed in the context of the benchmark transition with the discontinuation of EONIA and LIBOR rates and the development of a new set of Risk-Free Rates (RFR). This implies on the side the impossibility for new derivative contracts to reference EONIA or LIBOR after their discontinuation and on the other side the need to reference the new RFRs such as €STR for EUR, SONIA for GBP, SOFR for USD or TONA for JPY in interest rate derivative contracts denominated in those currencies.

The first set of draft regulatory technical standards (RTS) were submitted by ESMA to the European Commission in November 2021. They were then adopted by the European Commission on 8 February 2022, published in the Official Journal (OJ) on 17 May 2022¹ and entered into force on the following day (18 May 2022).

The first set of RTS removed the EONIA and LIBOR classes, while it introduced OIS classes referencing €STR (EUR) and SOFR (USD) to the CO as well as expanded the maturities in scope for the OIS class referencing SONIA (GBP). The second set of RTS included in this CP complements the first set of RTS, more specifically, for the CO it proposes to introduce the OIS class referencing TONA (JPY), to expand the maturities in scope of the CO for the OIS class referencing SOFR (USD), and for the DTO to introduce certain classes of OIS referencing €STR (EUR).

Content

Section 2 presents the current status of the benchmark reform with a focus on the regulatory initiatives undertaken in other jurisdictions and the status of the CO and DTO in the EU.

Section 3 details the progress in the benchmark transition across the different currencies and Section 4 describes the general approach for the coordinated revision of the CO and DTO. Sections 5 and 6 include the analyses and the conclusions on the new proposed amendments to the scopes of the CO and DTO and Section 7 provides a short summary of the next steps after the publication of this CP.

The new draft RTS are included in Annex III of this CP. It is proposed to add single currency OIS contracts referencing TONA with maturities up to 30Y to the CO and to expand the obligation to centrally clear OIS classes referencing SOFR to additional maturities. For the DTO, it is suggested to add single currency OIS contracts referencing €STR with certain standard characteristics. Finally, Annex IV concludes the paper with the Cost-Benefit Analysis (CBA) of the proposed amendments.

Next Steps

The public consultation on the draft RTSs on the CO and the DTO runs until 30 September 2022. ESMA will then review all the responses to this consultation submitted by the deadline in order to finalise the draft RTS by the end of the year. The draft RTS will then be submitted to the European Commission for endorsement in the form of draft Commission Delegated Regulations.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:138:FULL&from=EN>

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. This reform led to the discontinuation of certain widely used benchmarks in a range of financial instruments and contracts and to the development in parallel of a few new ones. This benchmark transition is also occurring in the derivatives market, meaning that new benchmarks are now also being used as reference rates in the derivative markets, as further detailed in the following sections.
3. Consequently, this reform impacted the clearing obligation (CO) and the derivatives trading obligation (DTO) which required clearing and trading of certain classes of OTC derivatives referencing those benchmarks that ceased (or are due to cease, such as most settings of USD LIBOR) to be published.
4. In this context, ESMA published a Final Report (FR)² in November 2021, following the publication of a Consultation Paper (CP) in July 2021³, presenting a first set of draft regulatory technical standards (RTS) amending Commission Delegated Regulation (EU) 2015/2205 (CO RTS)⁴ and Commission Delegated Regulation 2017/2417 (DTO RTS)⁵. The amended RTSs on the CO (CDR 2022/750) and the DTO (CDR 2022/749) were adopted by the European Commission on 8 February 2022, published in the Official Journal (OJ) on 17 May 2022⁶ and entered into force on the following day (18 May 2022).
5. In its FR, ESMA committed to continue monitoring the benchmark transition and to reconsider the scopes of these obligations, where necessary. Since the publication of the FR, the transition has progressed further. Therefore, this new CP describes how the transition has evolved since the publication of the FR and based on this, proposes further amendments to the scopes of the CO and the DTO which are presented in the form of amending draft RTS in Section 8.3 - Annex III – Draft technical standards.

² https://www.esma.europa.eu/sites/default/files/library/esma70-156-4953_final_report_on_the_co_and_dto_re_benchmark_transition.pdf

³ https://www.esma.europa.eu/sites/default/files/library/consultation_paper_on_the_co_and_dto_for_swaps_referencing_rfrs.pdf

⁴ Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation, OJ L 314, 1.12.2015, p. 13–21.

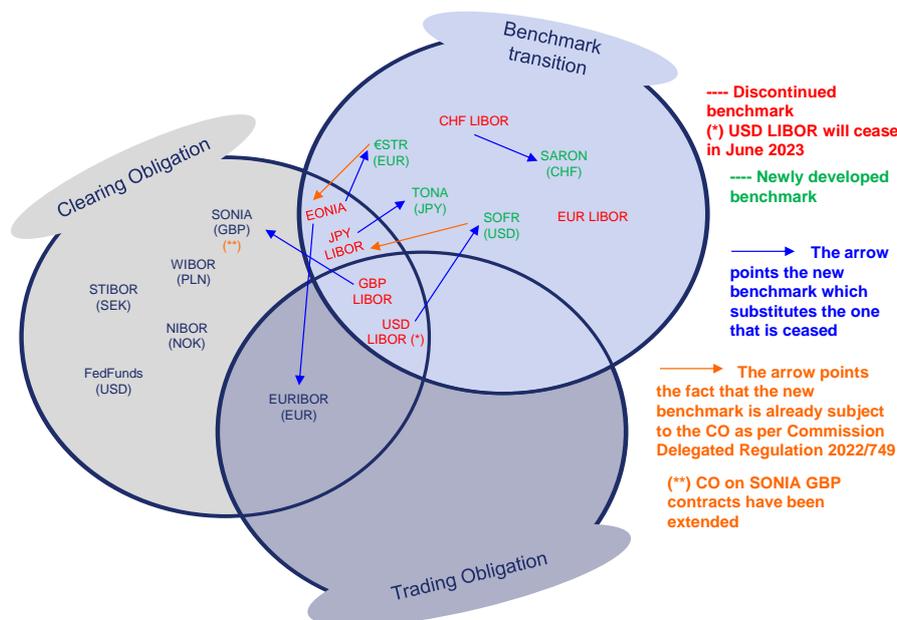
⁵ Commission Delegated Regulation (EU) 2017/2417 of 17 November 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the trading obligation for certain derivatives, OJ L 343, 22.12.2017, p. 48.

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:138:FULL&from=EN>

2.1 Status of the benchmark reform

6. The CO and the DTO mandate several classes of derivatives referencing a range of benchmarks to be cleared and traded on trading venues. Some of those referenced benchmarks have ceased or will cease soon in the context of the benchmark reform, such as GBP and JPY LIBOR which were discontinued at the end of 2021 and EONIA on 3 January 2022. At the same time, USD LIBOR will continue to be published until June 2023⁷. Therefore, the CO and the DTO were impacted by the benchmark transition with regard to the subset of classes referencing those four benchmarks. As mentioned in the introduction, new benchmarks, namely €STR, SOFR and TONA have also been developed and are already in use in the interest rate derivatives market. Therefore, they might be considered alternatives to those benchmarks that were or will be discontinued.
7. It is important to note that the benchmark reform affects other benchmarks which are not referenced by contracts subject to the CO and DTO, i.e. EUR LIBOR, CHF LIBOR. Therefore, those benchmarks are not the subject of this CP.
8. Last but not least, it should be noted that the CO and the DTO also include classes of interest rate derivatives referencing other benchmarks than those mentioned in paragraph 6. These are EURIBOR (EUR), NIBOR (NOK), STIBOR (SEK), WIBOR (PLN), SONIA (GBP) and FedFunds (USD) for the CO and EURIBOR (EUR) for the DTO. Since those interest rates are not discontinued, the related CO and the DTO were not removed.

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



⁷ Two USD LIBOR fixings (1-week and 2-month) were discontinued at the end of 2021 but the majority and the most commonly used USD LIBOR fixings (such as the 1-month, 3-month, 6-month and the 12-month USD LIBOR) in derivative contracts are currently scheduled to be published until June 2023.

9. The implementation of the benchmark reforms and the related efforts to transition to new benchmarks have been going on for several years now. However, the milestones of this process can be identified in the following steps:

- a. the introduction of fall-backs: they reflect written plans setting out the actions that counterparties would have to take if the benchmark used in these contracts materially changes or ceases to be provided. In this regard, the ESAs issued a statement⁸ on 5 December 2019. Such statement clarified that amendments to outstanding uncleared OTC derivative contracts for the sole purpose of introducing such fall-backs should have not created new obligations on these legacy contracts. In particular, margining requirements (and clearing requirements from ESMA's perspective) should have not applied to these legacy contracts where they were not subject to those requirements before the introduction of the fall-backs.

This statement echoed the statement⁹ made by the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) in March 2019 whereby it was clarified that these types of amendments, made for the purpose of the benchmark reforms, were not meant to be subject to the margining requirements;

- b. the voluntary expansion of the CCP clearing and trading offerings to include classes of OTC interest derivatives referencing RFRs: CCPs and trading venues started to make available for clearing and trading the new benchmarks. The list of CCPs clearing those instruments is shown in Table 1 below;
- c. the switch of the CCP discounting curves to RFRs: this is the switch in the use of the old interest rates to the new benchmarks by CCPs for the pricing and valuation of interest rate derivatives and its collateral (including the price alignment interest calculation for the collateral posted);
- d. the formalisation of market practices was launched in the US and in Japan to incentivise the prioritization of interdealer trading in SOFR and TONA compared to USD and JPY LIBOR respectively, these initiatives were called 'SOFR First' and 'TONA First';
- e. the CCP conversion of legacy contracts: these are the dates on which contracts referencing EONIA (EUR), GBP LIBOR or JPY LIBOR were converted to contracts referencing the corresponding new RFRs. Those dates were the weekend of 16 October 2021 for EONIA (EUR) to €STR, the weekend of 4 December 2021 for JPY LIBOR to TONA and the weekend of 18 December 2021 for GBP LIBOR to SONIA. It should also be noted that no date has been set for the conversion of USD LIBOR

⁸

[esas_2019_19_statement_on_the_introduction_of_fallbacks_in_otc_derivative_contracts_to_increase_contract_robustness.pdf \(europa.eu\)](#)

⁹ [Press release: BCBS/IOSCO statement on the final implementation phases of the Margin requirements for non-centrally cleared derivatives \(bis.org\)](#)

to SOFR so far. CCPs are preparing and have indicated they are considering April/May 2023 and possibly in two batches, depending on trade types.

- f. the discontinuation of the benchmark: as mentioned above, EONIA, GBP and JPY LIBOR have ceased at the end of 2021 while most of USD LIBOR settings will be published until June 2023.

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
EU-CCPs^{10,11}					
BMEC ¹²	Interest Rate	Basis	€STR	EUR	1D-30Y
BMEC	Interest Rate	OIS	€STR	EUR	6Y
Eurex	Interest Rate	Basis	€STR	EUR	1D-51Y
Eurex	Interest Rate	Basis	SOFR	USD	1D-51Y
Eurex	Interest Rate	Basis	SONIA	GBP	1D-51Y
Eurex	Interest Rate	Basis	TONA	JPY	1D-51Y
Eurex	Interest Rate	OIS	€STR	EUR	1D-51Y
Eurex	Interest Rate	OIS	SOFR	USD	1D-51Y
Eurex	Interest Rate	OIS	SONIA	GBP	1D-3Y
Eurex	Interest Rate	OIS	TONA	JPY	1D-51Y
KDPW_CCP	Interest Rate	OIS	€STR	EUR	1D-30Y
TC-CCPs¹³					
CME US ¹⁴	Interest Rate	Basis	SOFR vs FedFunds	USD	Up to 51Y
CME US	Interest Rate	Basis	SOFR vs USD LIBOR	USD	Up to 51Y

¹⁰ https://www.esma.europa.eu/sites/default/files/library/ccps_authorized_under_emir.pdf

¹¹ https://www.esma.europa.eu/sites/default/files/library/public_register_for_the_clearing_obligation_under_emir.pdf

¹² <https://www.bmecclearing.es/ing/Segments/Swaps/Swaps-Products>

¹³ https://www.esma.europa.eu/sites/default/files/library/third-country_ccps_recognised_under_emir.pdf

¹⁴ <https://www.cmegroup.com/trading/interest-rates/cleared-otc.html>

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 ¹⁵	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 ¹⁶	Interest Rate	OIS	TONA	JPY	NA
LCH Ltd ¹⁷	Interest Rate	Basis	EURIBOR vs €STR	EUR	Up to 51Y
LCH Ltd	Interest Rate	Basis	FedFunds vs SOFR	USD	Up to 51Y
LCH Ltd	Interest Rate	Basis	GBP LIBOR vs SONIA	GBP	Up to 51Y
LCH Ltd	Interest Rate	Basis	JPY LIBOR vs TONA	JPY	Up to 41Y
LCH Ltd	Interest Rate	Basis	USD LIBOR vs SOFR	USD	Up to 51Y
LCH Ltd	Interest Rate	OIS	€STR	EUR	Up to 51Y
LCH Ltd	Interest Rate	OIS	SOFR	USD	Up to 51Y
LCH Ltd	Interest Rate	OIS	SONIA	GBP	Up to 51Y
LCH Ltd	Interest Rate	OIS	TONA	JPY	Up to 41Y

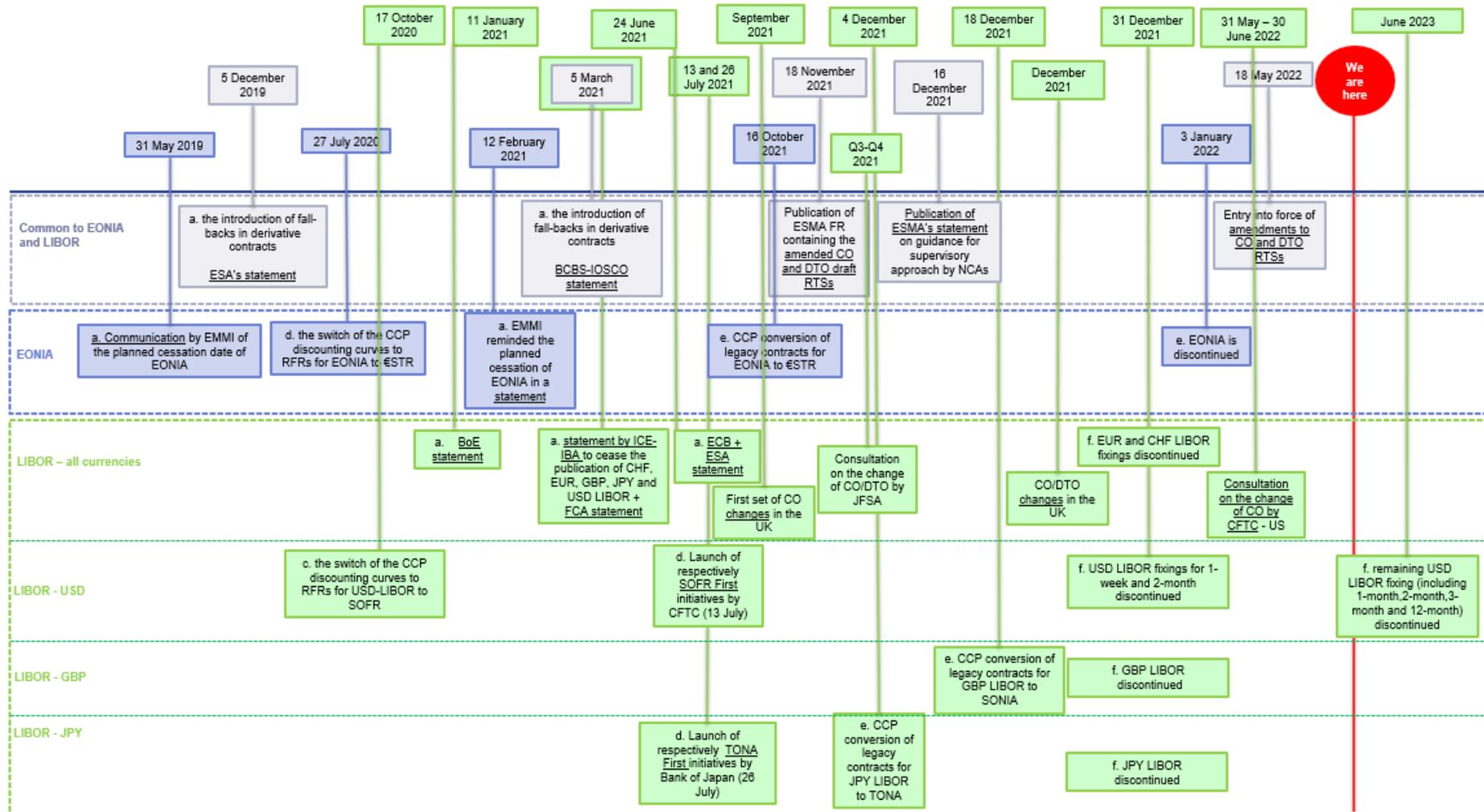
Sources: CCPs and ESMA public register for the CO

¹⁵ https://www.hkex.com.hk/Products/OTC-Derivatives/Interest-Rate-Swaps?sc_lang=en

¹⁶ <https://www.jpcc.co.jp/jcc/en/cash/irs/product.html>

¹⁷ <https://www.lch.com/services/swapclear/what-we-clear>

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



10. Figure 2 above provides for the detailed timeline of the transition for each affected benchmark from which it is evident that since the time of the publication of the ESMA's FR in November 2021, EONIA and GBP and JPY LIBOR have been discontinued and their legal conversion to €STR and TONA respectively by CCPs, also happened. These events, as will be further explained in Section 3, made €STR (even despite the continuation of EURIBOR) and TONA to significantly pick up as new market standards, while SONIA was already at a rather developed stage since the early phase of the transition, probably also due to the fact that SONIA was an existing benchmark instead of a newly developed one during the benchmark reform.
11. As far as SOFR is concerned, the situation is slightly different as most of USD LIBOR settings will be published until June 2023. However, as already mentioned in the previous reports, the SOFR First approach started to produce its effect from July 2021 and a sharper increase of trading in derivatives referencing SOFR is evident after the publication of the ESMA's FR, notwithstanding the continued relevance of USD LIBOR (See Figure 21).
12. A more detailed analysis of the market evolution for these four currencies, which represents an update of the analyses included in the previous ESMA reports, is presented in Section 3. The assessment of their impact on the CO and the DTO is then presented in Sections 5 and 6 respectively.

2.2 Status of the CO and DTO in other jurisdictions

13. Figure 2 presented above also includes the relevant steps undertaken by other jurisdictions in the context of the benchmark reform. Indeed, when looking at the potential amendments to the scope of the CO and the DTO, given the international dimension of the benchmark transition, ESMA discussed with a number of authorities from third countries that are responsible for the clearing or trading mandates in their jurisdictions, in order to facilitate international convergence.
14. In particular, ESMA monitored the developments in the US, the UK and Japan and will continue doing so for the Final Report following this CP.
15. Regarding the US, the CFTC published a request for information and comments on 17 November 2021¹⁸, inviting public feedback on the changes to the swap clearing requirement in order to address the LIBOR cessation and the adoption of alternative reference rates, such as SOFR. Based on that, on 9 May 2022, the CFTC published the proposed amendments to the CO rule¹⁹ where it consults until 30 June 2022 on the appropriateness of the removal from the scope of the CO of swaps referencing GBP LIBOR, JPY LIBOR and EONIA and on the inclusion of OIS referencing SOFR (maturities from 7 days to 50 years), €STR, TONA (3 days to 3 years) and SONIA (additional maturities up to 50 years). If approved, the changes are proposed to become

¹⁸ [CFTC Issues Request for Information and Comment on Swap Clearing Requirement to Address IBOR Transition | CFTC](#)

¹⁹ [CFTC Issues Proposed Rule to Modify Swap Clearing Requirement to Address Transition from LIBOR and Other Interbank Offered Rates to Alternative Reference Rates | CFTC.](#)

effective 30 days after publication of the final rule in the Federal Register. In the same amendment, the CFTC also proposes to remove swaps denominated in USD that reference LIBOR. However, if approved, the change on USD LIBOR is proposed to become effective as of 1 July 2023, instead of 30 days after publication of the final rule in the Federal Register, as proposed for the other amendments.²⁰ No actions have been taken with respect to the DTO yet.

16. With respect to the UK, the Bank of England (BoE) consulted in May²¹ and in September 2021²² and released its final policy decisions in September²³ and December 2021²⁴, respectively. The main changes consist in removing swaps referencing GBP LIBOR, JPY LIBOR and EONIA and to introduce obligations in OIS referencing SONIA (7 days to 50 years), €STR (7 days to 3 years) and TONA (7 days to 30 days) to the scope of the CO.
17. Concerning the DTO, the UK-FCA published a consultation paper in July 2021 (CP21/22)²⁵ and a policy statement in October 2021 (PS21/13)²⁶ removing derivatives referencing GBP LIBOR under the current DTO and replacing them with OIS referencing SONIA but applying to trade start types spot-starting and IMM (next 2 IMM dates) in the tenors of 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 15, 20, 25 and 30 years. Those changes entered into force on 20 December 2021.
18. Finally, also the Japanese Authorities have aligned their obligation by replacing JPY LIBOR with TONA in the scope of the CO²⁷. Similarly, TONA has also replaced JPY LIBOR in the Japanese DTO.

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

19. Before the benchmark transition, the CO RTS specified the classes of derivatives subject to the CO as well as the dates from which this takes effect. According to this RTS, basis swaps and fixed-to-float interest rate swaps denominated in EUR, GBP, USD and JPY and forward rate agreements (FRAs) as well as overnight index swaps (OIS) in EUR, GBP and USD in certain benchmark, as specified in the Annex, were subject to the CO. The CO RTS also included fixed-to-float interest rate swaps and

²⁰ It shall be noted that changes to the US Clearing Obligation rule also concerned CHF LIBOR, SARON and SORA but those are not considered for the purpose of this report.

²¹ <https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-modifications-to-reflect-interest-rate-benchmark-reform-amendments>

²² https://www.bankofengland.co.uk/paper/2021/-/link.aspx?_id=21CCC569D6C04000860ABEDB6E377444&_z=z

²³ <https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-modifications-to-reflect-interest-rate-benchmark-reform>

²⁴ <https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-introduction-of-contracts-referencing-tona-ps>

²⁵ [CP21/22: LIBOR transition and the derivatives \(fca.org.uk\)](https://www.fca.org.uk/CP21/22-LIBOR-transition-and-the-derivatives)

²⁶ [PS21/13: LIBOR transition and the derivatives trading obligations \(fca.org.uk\)](https://www.fca.org.uk/PS21/13-LIBOR-transition-and-the-derivatives-trading-obligations)

²⁷ a consultation paper by the Japanese Financial Services Agency (JFSA) on 8 September 2021 - <https://www.fsa.go.jp/news/r3/shouken/20210908/20210908.html#%EF%BC%91>

FRAs in NOK, PLN and SEK together with two classes of index credit default swaps (CDSs)²⁸.

20. Similarly, the DTO RTS specified the classes of derivatives subject to the DTO as well as the dates from which this takes effect. According to the DTO RTS, fixed-to-float interest rate swaps denominated in EUR, USD and GBP in certain benchmark as specified in the Annex, were subject to the DTO, as well as two classes of index CDSs.
21. As mentioned in the introductory section, in view of the market pivoting to one set of benchmarks to another, ESMA published on 18 November 2021 a FR submitting to the European Commission an amendment to both the CO and the DTO RTSs which were both adopted and entered into force already on 18 May 2022²⁹.
22. The amended RTS of the CO (i) removes all contracts referencing JPY, USD and GBP LIBOR as well as EONIA (EUR), (ii) extends the obligation to OIS on SONIA (GBP) to maturities beyond 3 years and up to 50 years, as well as to OIS referencing €STR (EUR) and SOFR (USD) up to 3 years. The DTO RTS removes all contracts referencing USD and GBP LIBOR. The table below provides the details of the amendments.

TABLE 2 – PROPOSED AMENDMENTS TO THE CO AND DTO RTS IN NOV-2021 ESMA’S FR

	Remove the following classes of derivatives from the obligation	Add the following classes of derivatives to the obligation
Clearing Obligation	<ul style="list-style-type: none"> - basis swaps (maturity 28D-50Y) referencing GBP LIBOR - basis swaps (maturity 28D-30Y) referencing JPY LIBOR - basis swaps (maturity 28D-50Y) referencing GBP LIBOR - fixed-to-float IRS (maturity 28D-50Y) referencing GBP LIBOR 	<ul style="list-style-type: none"> - OIS (7D-50Y) referencing SONIA - OIS (7D-3Y) referencing €STR - OIS (7D-3Y) referencing SOFR

²⁸ Fixed-to-Float and FRA in NOK, PLN and SEK as well as the two classes of index CDS are not interested by the benchmark transition and therefore not included in the analysis.

²⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:138:FULL&from=EN>

	<ul style="list-style-type: none"> - fixed-to-float IRS (maturity 28D-30Y) referencing JPY LIBOR - fixed-to-float IRS (maturity 28D-50Y) referencing USD LIBOR - FRA (maturity 3D-3Y) referencing GBP LIBOR - FRA (maturity 3D-3Y) referencing USD LIBOR - OIS (7D-3Y) referencing EONIA - OIS (7D-3Y) referencing SONIA 	
Derivatives Trading Obligation	<ul style="list-style-type: none"> - fixed-to-float IRS referencing GBP LIBOR - fixed-to-float IRS referencing USD LIBOR 	None

23. Finally, ESMA acknowledges that in the MiFIR Review proposed by the European Commission the DTO framework might be subject to some modifications. In particular, it is proposed to provide for the possibility to suspend the DTO for certain investment firms that would be subject to overlapping obligations when interacting with non-EU counterparties on non-EU platforms subject to meeting certain conditions. ESMA will continue monitoring the negotiations of co-legislators on the MiFIR review proposal.

Q1: Are there any general comments you would like to raise?

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

3.1 General

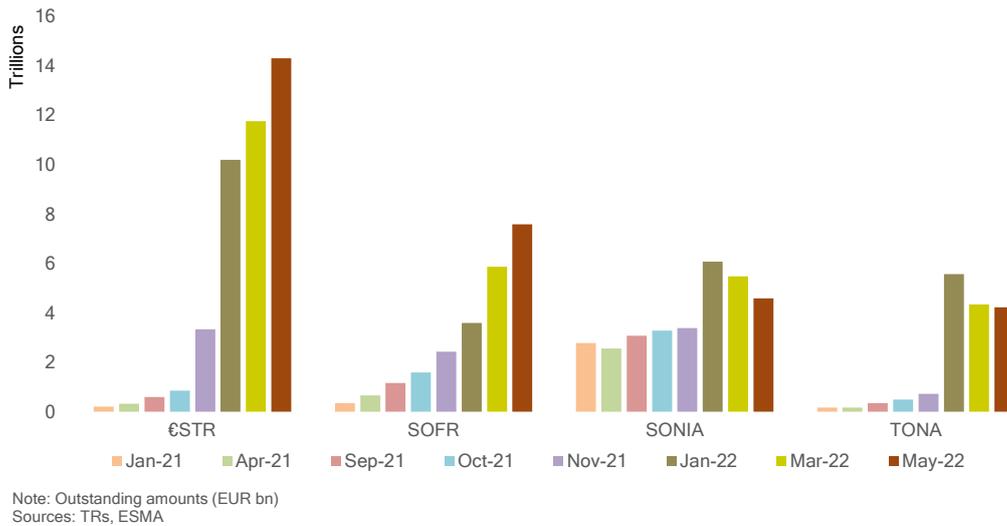
24. In view of the benchmark transition, ESMA has continued assessing how liquidity pivoted from derivatives referencing EONIA or LIBOR to IR derivatives referencing the

new RFRs in the related currencies. To that end, ESMA updated the previous analysis, with the inclusion of few new datapoints. All the statistics in this section (Section 3) refer to all IR derivatives referencing a certain benchmark irrespectively from the contract type (e.g. options, futures, swaps).

25. More specifically, on top of the previous data points of 15 January, 16 April, 10 September and 15 October 2021 presented in the FR, four new datapoints have been added: 26 November 2021, 14 January 2022, 25 March 2022 and 20 May 2022. The data was taken from trade-state reports of EMIR data which provide information about outstanding notional amount at the end of the day calculated by the respective Trade Repositories (TR)³⁰.
26. ESMA's data analysis looked at different indicators describing the development of liquidity of the different RFRs concerned. Figure 3 provides an overview of the notional outstanding per benchmark, where it can be seen that liquidity has picked up in all currencies.
27. As already mentioned in Section 2.1, the October and December 2021 CCP legal switches together with the discontinuation of EONIA and JPY LIBOR at the end of 2021, resulted in the respective RFRs, €STR and TONA, to become the new market standards.
28. Furthermore, while SONIA was the most advanced benchmark at the early phase of the transition, the picture is now different in the EU. Starting from November onwards, liquidity in SOFR, TONA, and, in particular, €STR has significantly increased. This is true despite the relatively small decrease in outstanding volumes observed for both SONIA and TONA between March and May 2022.

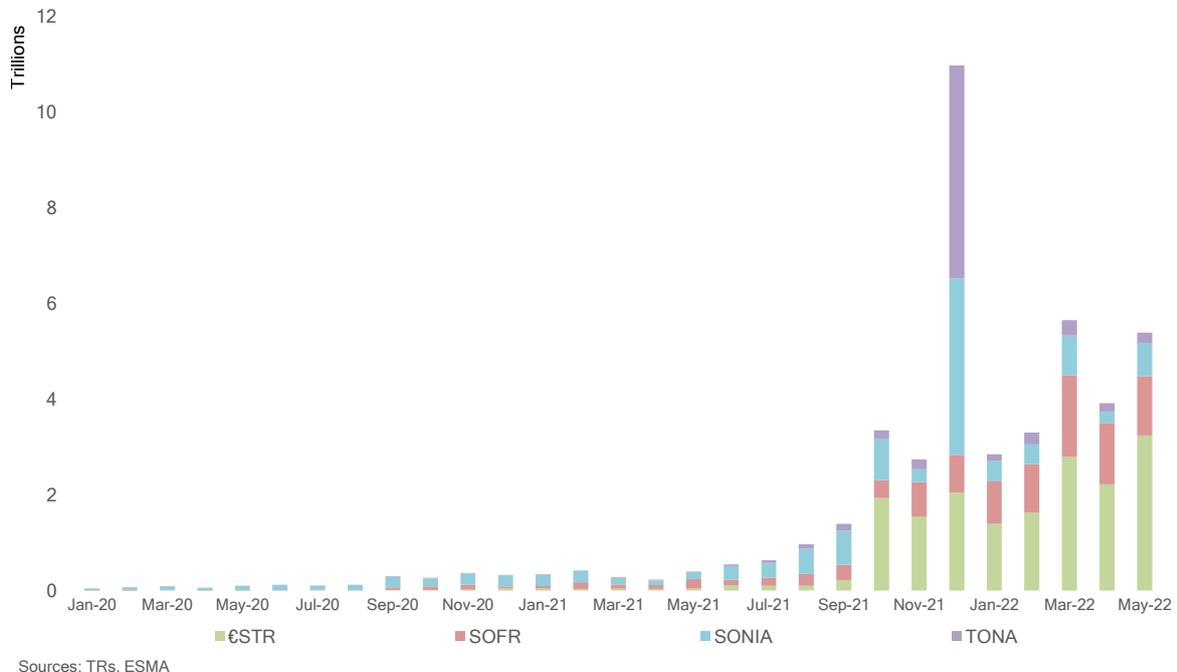
FIGURE 3 - NOTIONAL OUTSTANDING AT SPECIFIC DATAPPOINTS OVER JANUARY 2021 - MAY 2022 – PER RFR

³⁰ The trades have been reconciled to account for double reporting obligation and anomalous values in notional amount (converted in EUR using the exchange rates provided by the ECB) have been removed. The benchmarks and new risk-free rates have been identified using the reporting fields 55 and 58 "Floating rate of leg 1" and "Floating rate of leg 2" included in the Section 2f dedicated specifically to interest rates derivatives. These fields are populated with the name of the index: for the major indices, a standard code is reported in the Implementing Technical Standards to standardise the reporting. For the indices not included in the list (including the new RFRs) the format of the fields allows for (up to) 25 alphanumerical characters. For the identification of these fields, a string-matching technique has been used to identify the strings "SONIA", "TONA", "SOFR", "ESTR", "ESTER" in the reporting fields 55 and 58. Venues of trading have been identified using market identifier codes (MIC, ISO 10383) reported in the field venue of execution.



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

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

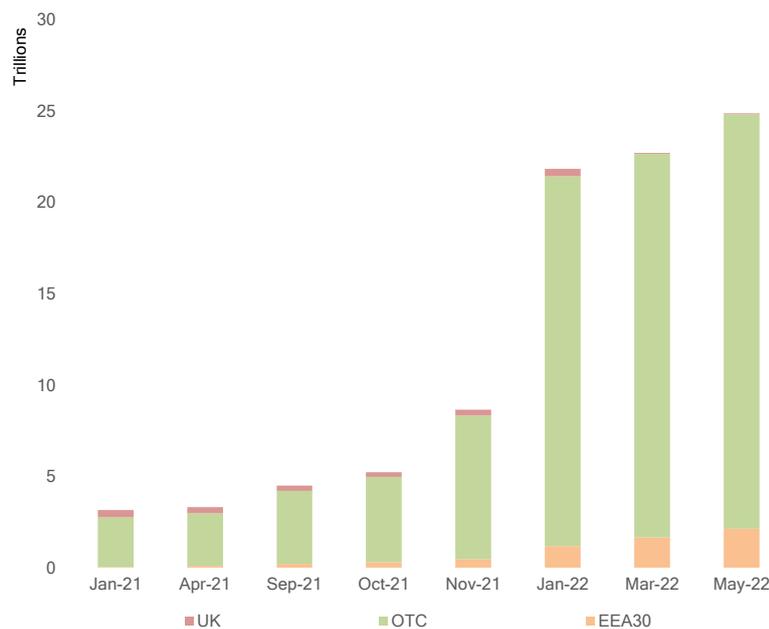


30. The analysis also focuses on the execution venues of trades referencing those benchmarks. However, an important remark before going into the details of this analysis

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

31. For these reasons, ESMA has looked at additional data sources to further analyse the venue of execution of the trades on the contracts referencing the four RFRs.
32. Despite the limitation in the use of EMIR data, when considering all RFRs, it can be noted that the amount of notional outstanding executed OTC and on EEA venues has kept increasing since January 2021, with a steep increase over the first quarter of 2022, as shown in Figure 5. This does not appear to be the case for UK venues, for which the notional outstanding has significantly dropped over the observation period.

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

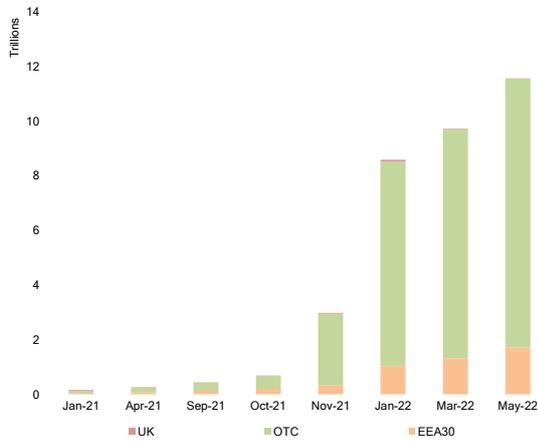


Sources: TRs, ESMA

33. The same analysis presented in Figure 5 above is replicated individually for each of the four benchmarks in Figures 6-9 below. What appears evident is that, according to EMIR TR data, the greatest majority of these trades was executed OTC although the share of €STR and SOFR trading executed on EU venues has kept increasing constantly from November 2021 (see Figure 6 and Figure 7).

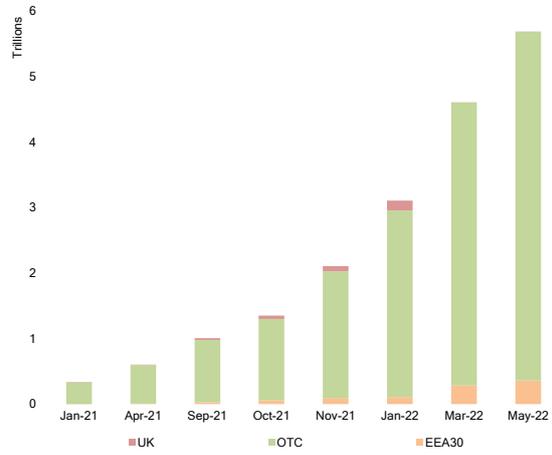


FIGURE 6 - NOTIONAL OUTSTANDING IN €STR AT SPECIFIC DATAPPOINTS OVER JANUARY 2021-MAY 2022 – PER EXECUTION VENUE



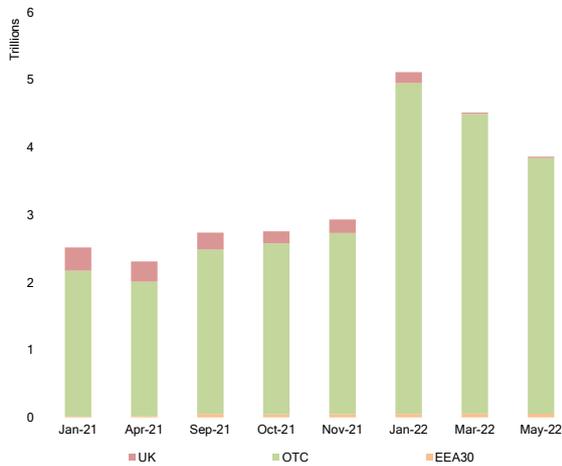
Sources: TRs, ESMA

FIGURE 7 - NOTIONAL OUTSTANDING IN SOFR AT SPECIFIC DATAPPOINTS OVER JANUARY 2021-MAY 2022 – PER EXECUTION VENUE



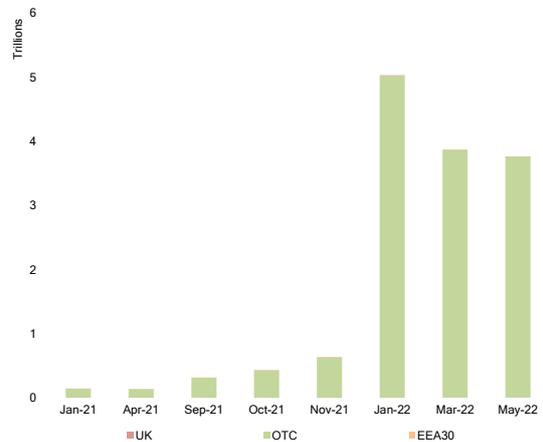
Sources: TRs, ESMA

FIGURE 8 - NOTIONAL OUTSTANDING IN SONIA AT SPECIFIC DATAPPOINTS OVER JANUARY 2021-MAY 2022 – PER EXECUTION VENUE



Sources: TRs, ESMA

FIGURE 9 - NOTIONAL OUTSTANDING IN TONA AT SPECIFIC DATAPPOINTS OVER JANUARY 2021-MAY 2022 – PER EXECUTION VENUE



Sources: TRs, ESMA

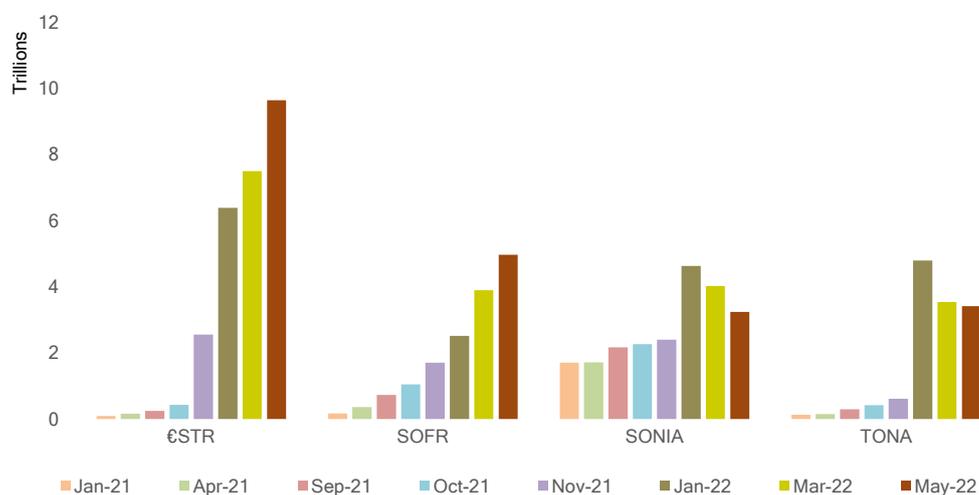
34. However, given the potential issue related to classification of trading venues in EMIR TR data, ESMA decided to complement the data with additional data sources to provide a more accurate overview on the trading venue geographical market share for all EUR,

GBP and USD swaps. In this respect, ESMA looked at one of the most recent reports published by OSTTRA market review³¹.

35. From this report, it appears that for EUR swaps (referencing both €STR and EURIBOR), about 45% of volumes were executed OTC, while the remaining 55% was split in the following manner: 26% US SEFs, 21% EU MTFs/OTFs and 8% UK MTFs/OTFs. On the GBP side, OTC volumes represent 42% of the total, followed by UK MTFs/OTFs (33%), US SEFs (23%) and EU MTFs/OTFs (2%). Finally, with respect to USD, volumes traded on SEFs and OTC represent the great majority of volumes traded in USD swaps (49% and 40% respectively) while UK venues and EU venues represent a residual portion (7% and 4%, respectively). As highlighted in the previous paragraph these figures cannot be directly compared to the EMIR TR data since they cover different counterparties, different execution venues (including the definition of such venues) as well as a different scope of instruments.

36. Separately, again from EMIR TR data, ESMA also analysed the cleared volumes which, in line with the evolution of the outstanding notional, have risen for all RFRs. As it can be noted in Figure 10 below, the increase is particularly evident for €STR, which from November onwards appears as the RFR with the highest share of cleared volume.

FIGURE 10 – CLEARED VOLUME AT SPECIFIC DATAPPOINTS OVER JANUARY 2021-MAY 2022 – PER RFR



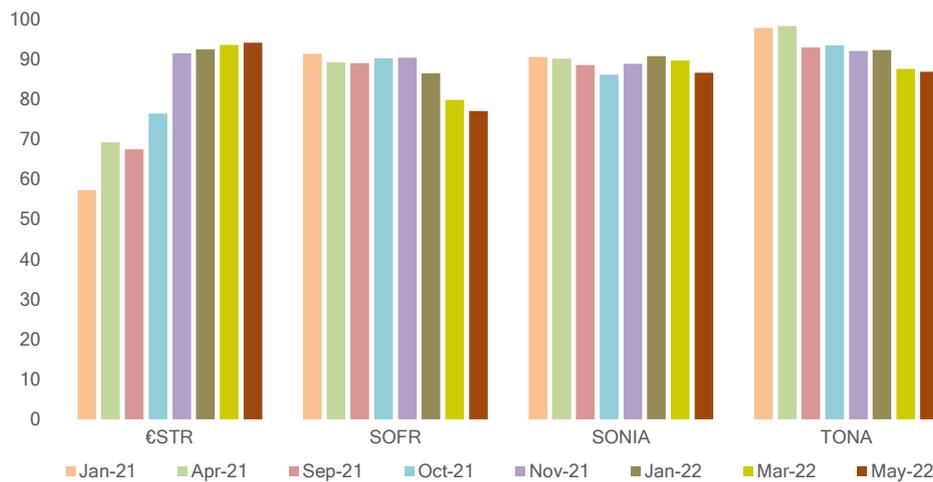
Sources: TRs, ESMA

37. With respect to the clearing rates (i.e. the percentages of cleared traded volume over the total notional traded), the latest datapoints suggest that the trend is rather heterogeneous among the different currencies. On the EUR side, more than 90% of the volume in €STR is currently cleared, and this represents a relevant increase compared to the September/October 2021 figures where the percentage ranged between 67% and

³¹ <https://osttra.com/articles/brexit-impact-on-trading-location-global-otc-irs-markets-q1-2022-review/>

77%. In parallel, the share of cleared volumes for SOFR has slightly decreased (less than 80% in May 2022 from roughly 90% in September/October 2021) while it has remained relatively stable for TONA and SOFR, where in both case the percentage of volume cleared is still around 90% (see Figure 11).

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



Sources: TRs, ESMA

3.2 EUR

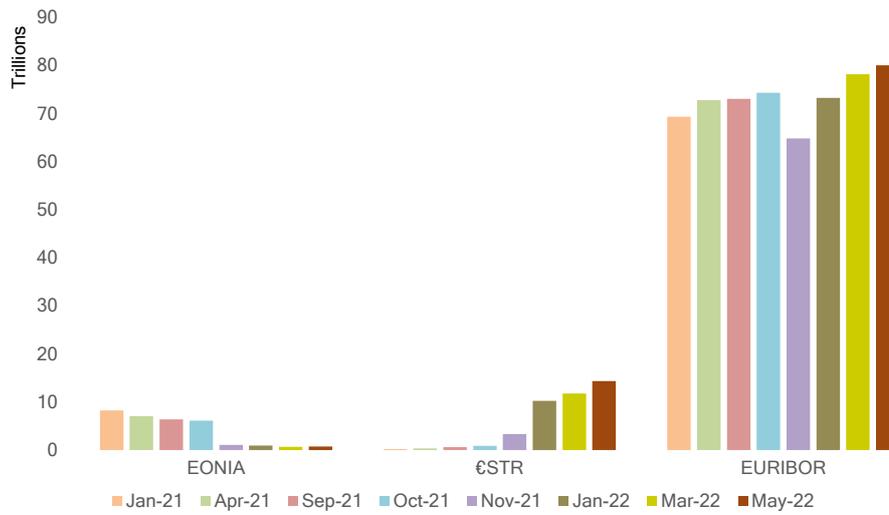
38. After having presented some of the general trends, it is worth focussing on the different currencies individually. As it can be clearly inferred from the figures previously presented, €STR has replaced EONIA, and has become the reference rate for interest rate swaps denominated in EUR. Indeed, the weight of €STR in terms of notional outstanding in the market has reached 15% of the total EUR denominated benchmarks in May 2022, exceeding the highest EONIA's level over the observation period, i.e. 11%, reached in January 2021 (see

39. Figure 12 below).

40. Most of liquidity in the EUR interest rate derivatives market remains absorbed by EURIBOR which will not be discontinued. A more detailed overview is provided in

41. Figure 12 and Figure 13.

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



Sources: TRs, ESMA

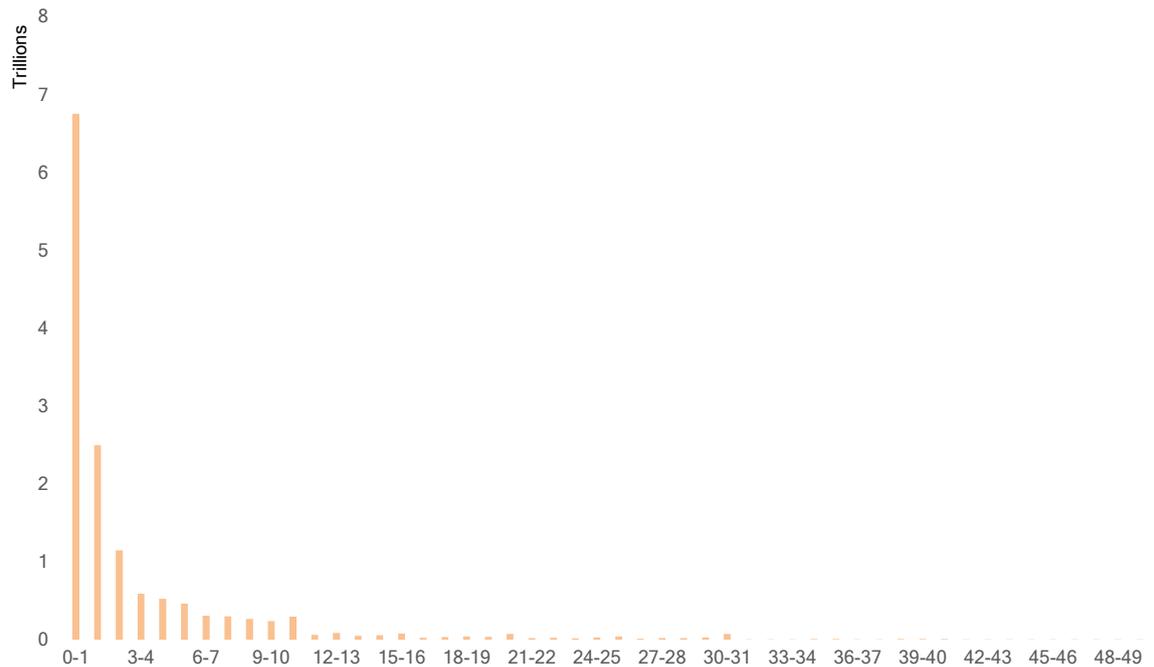
FIGURE 13 – PERCENTAGE OF NOTIONAL AMOUNT OUTSTANDING IN CONTRACTS REFERENCING EONIA VS €STR VS EURIBOR OVER JANUARY 2021-MAY 2022



Sources: TRs, ESMA

42. Finally, ESMA also looked at the distribution per bucket of tenors. According to EMIR TR data and in line with ESMA’s previous analysis, there appears to be a strong predominance of shorter maturities (0-3 years) over the longer ones. At the same time, Figure 14 also shows that liquidity is spread across the entire curve, up until 50 years.

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



Sources: TRs, ESMA

43. With a view of having a broader picture of how the benchmark transition has progressed for EUR swaps, ESMA has also looked at additional data sources. In particular, one of the recent OSTTRA publications³² shows that globally over 20% of EUR swaps executed in Q1 2022 referenced €STR. While most of these trades came from EONIA’s cessation, it should also be noted that according to the analysis the volume in EURIBOR swaps has fallen from 90% to below 80% of EUR swaps executed over the past 6 months.
44. In Q1 2022, another OSTTRA publication³³ indicated that, when considering only on-venue volumes, most of these €STR swaps were executed on US SEFs (46%), followed by EU venues (32%) and UK venues (22%).

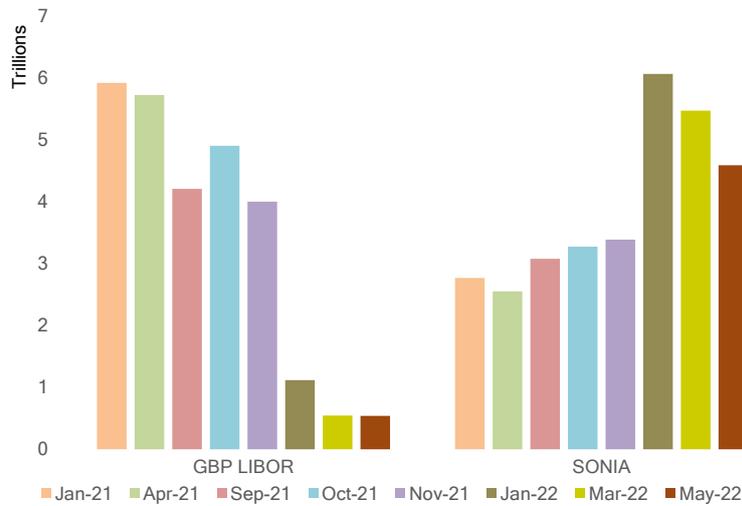
3.3 GBP

45. As already mentioned, the transition from GBP LIBOR to SONIA started at an early phase of the whole benchmark transition. The relevance of SONIA has been further amplified by the CCP legal switch and the discontinuation of GBP LIBOR and, as shown by EMIR TR data, the notional outstanding in derivatives referencing SONIA has almost doubled from November 2021 to January 2022, despite a slight decrease is observed later in March and May 2022 (see Figure 15 and Figure 16).

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

³² <https://osttra.com/articles/ibor-reform-libor-deadlines-where-we-are-now-global-outlook-q1-2022-review/>

³³ <https://osttra.com/articles/brexit-impact-on-trading-location-global-otc-irs-markets-q1-2022-review/>



Sources: TRs, ESMA

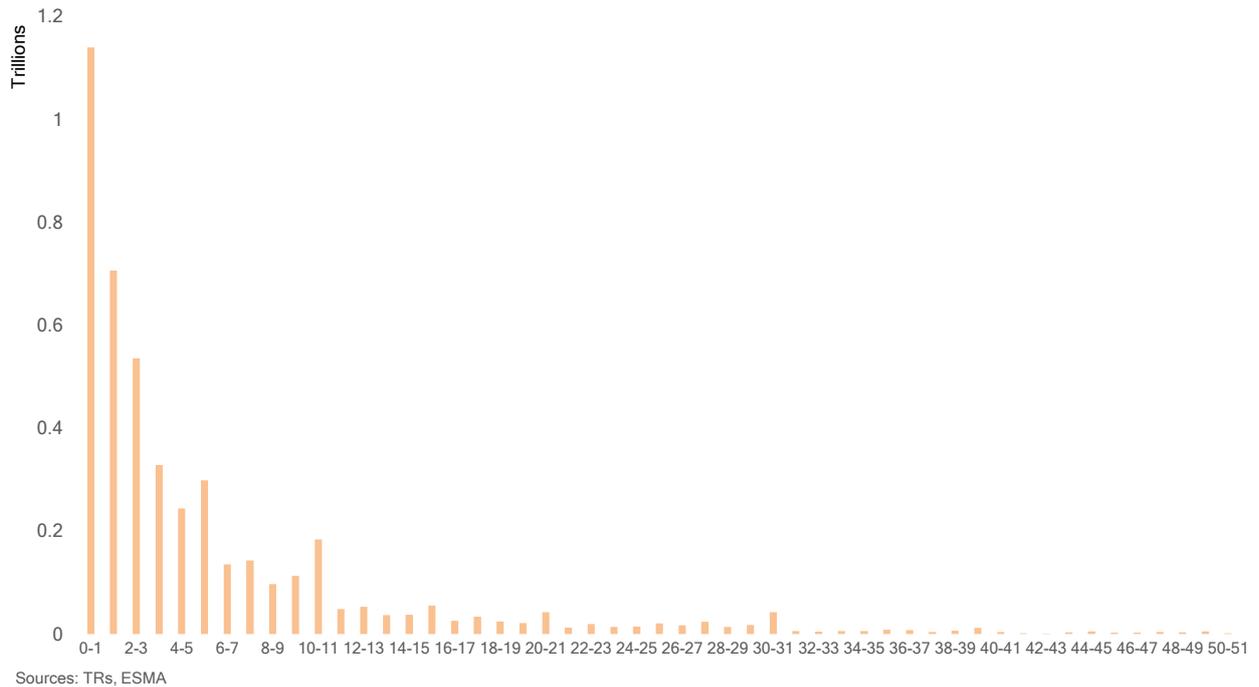
FIGURE 16 - PERCENTAGE OF NOTIONAL AMOUNT OUTSTANDING IN CONTRACTS REFERENCING GBP LIBOR VS OVER JANUARY 2021 – MAY 2022



Sources: TRs, ESMA

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

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



3.4 JPY

47. Together with EUR, JPY is the currency that has progressed the most since November 2021. EMIR TR data clearly indicates that TONA has become the reference rate for the JPY market, similarly to SONIA following the CCPs legal switch and the JPY LIBOR discontinuation.

48. Activity in TONA skyrocketed between November 2021 and January 2022, increasing by more than 700%. A historical comparison between TONA and JPY LIBOR covering the January 2021-May 2022 period is presented in Figure 18 and Figure 19 below, while Figure 20 shows the distribution per bucket of tenors where it emerges that liquidity is concentrated in contracts until 41 years.

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

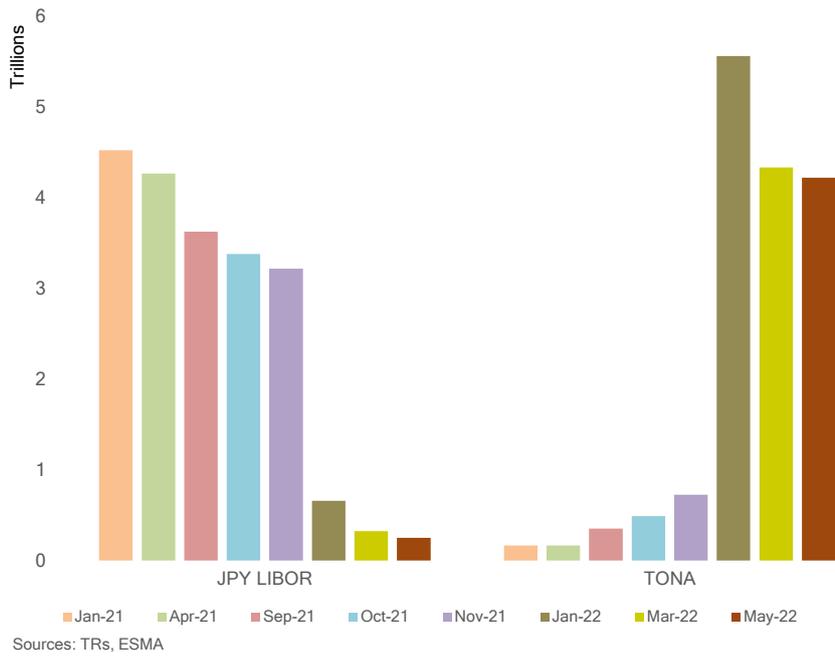


FIGURE 19 - PERCENTAGE OF NOTIONAL AMOUNT OUTSTANDING IN CONTRACTS REFERENCING JPY LIBOR VS TONA OVER JANUARY 2021 – MAY 2022

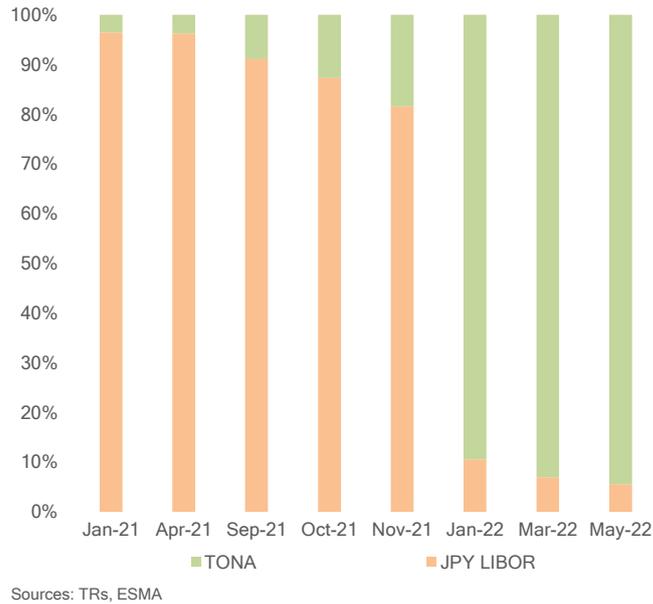
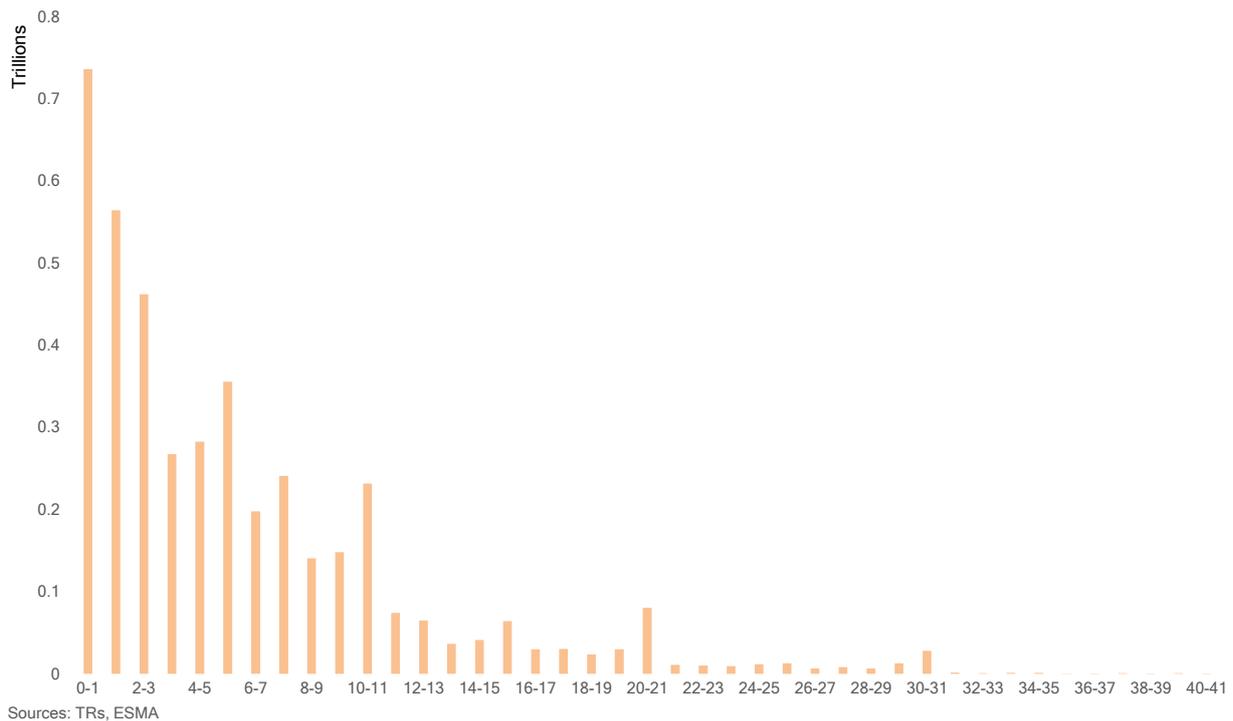


FIGURE 20 - TONA, DISTRIBUTION OF NOTIONAL OUTSTANDING PER BUCKET OF TENORS



3.5 USD

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

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

51. However, when looking at the data provided by OSTTRA in one their recent market reviews³⁴, the evolution in SOFR trading appears even more evident. Indeed, in Q1 2022 SOFR has continued its progression and more than 60% of new USD swaps executed in this period reference SOFR.

³⁴ <https://osttra.com/articles/ibor-reform-libor-deadlines-where-we-are-now-global-outlook-q1-2022-review/>

52. Therefore, it can be concluded that the market is adapting to SOFR and that the transition is very much in progress.

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

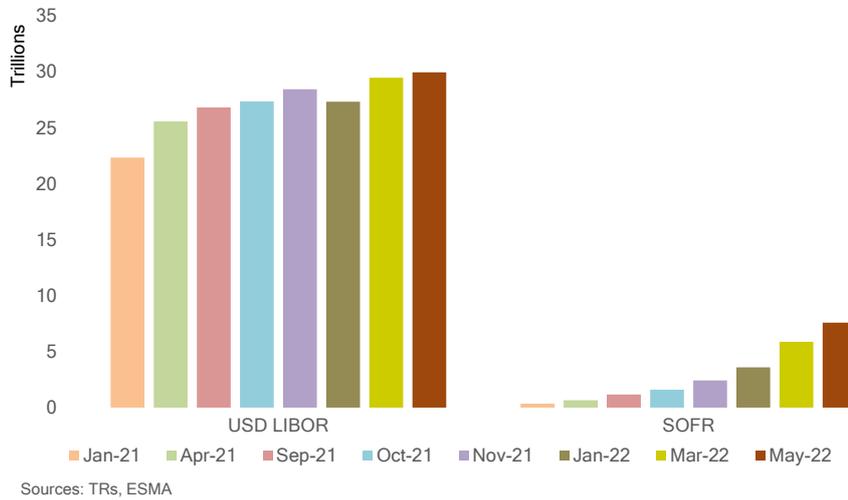
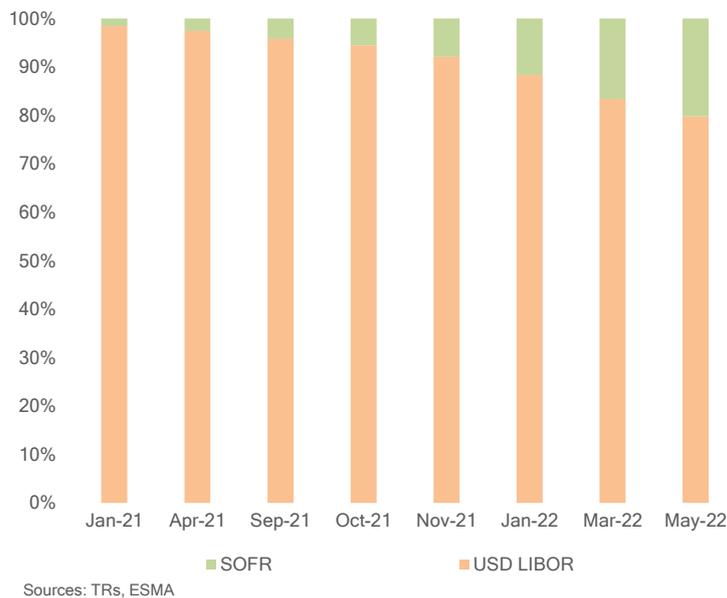
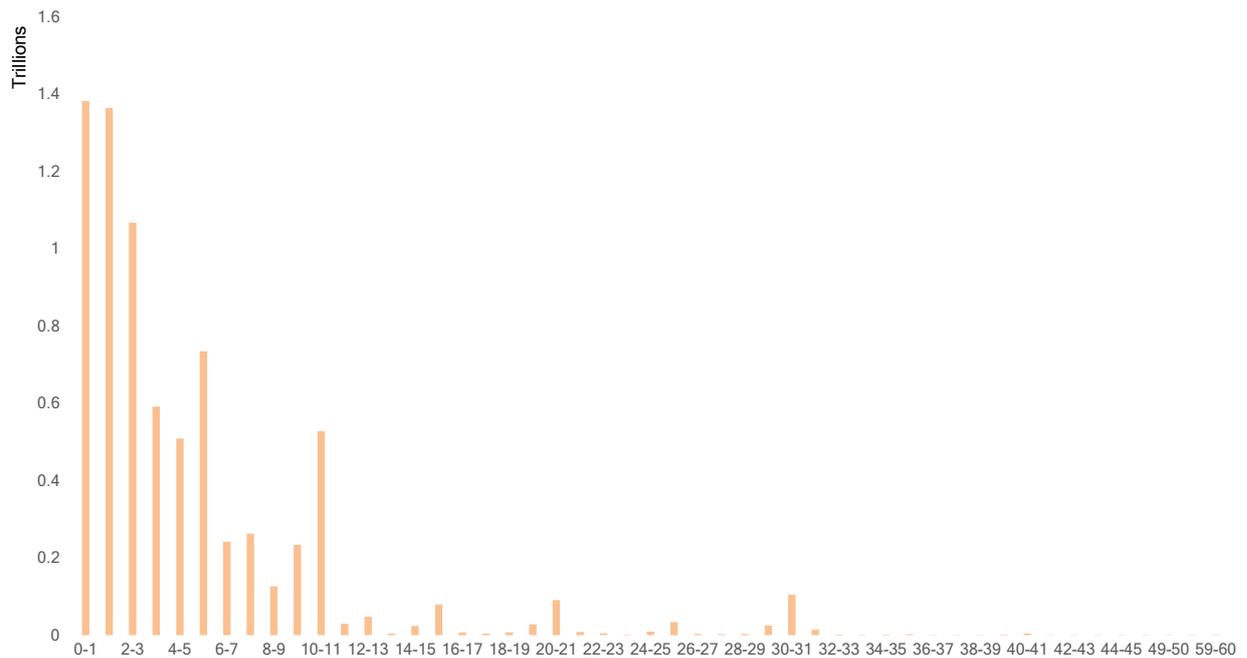


FIGURE 22 - PERCENTAGE OF NOTIONAL AMOUNT OUTSTANDING IN CONTRACTS REFERENCING USD LIBOR VS SOFR OVER JANUARY 2021 – MAY 2022



53. Finally, when looking at the different buckets of tenors in Figure 23, liquidity is spread across the entire curve, including contracts with maturities up to 50 years, although with larger trading activity in the shorter end of the curve.

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



Sources: TRs, ESMA

Q2: 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 of this report

54. As detailed in the previous sections, the benchmark transition has driven and will further drive a number of changes in the trading and clearing of interest rate derivatives. While the end of 2021 has been an important milestone in the transition to RFRs with the discontinuation of EONIA and LIBOR, the transition has continued and will continue in the future months.

55. In the previous reports (CP and FR), ESMA considered various elements for the purpose of assessing potential amendments to the scope of the CO and DTO. First of all, this was a data-driven exercise as ESMA looked at EMIR TR data, and where relevant, at other data sources in order to have a broad overview of the state of play of the transition. The data analysis conducted by ESMA was broadly supported by stakeholders and ESMA has thus decided to conduct a similar exercise, as seen in Section 3 above.

56. However, for the purpose of this CP in order to determine the classes of IR derivatives referencing to €STR subject to the DTO, ESMA also looked at additional data sources, extending its data analysis of EMIR TR data to trade flow reports and requesting ad-hoc data for certain instruments and in certain currencies from EU trading venues (see Section 6).
57. In addition, ESMA considered the various elements that influenced this reform, including the different communications from regulators, initiatives from market participants including CCPs and TVs. As explained in Section 2.2, coordination with third-country authorities has also been crucial to allow for international convergence.
58. In the previous CP and FR, ESMA decided to consider both the CO and the DTO at the same time. ESMA was of the view that this approach would benefit stakeholders as the market change was driven by the benchmark transition rather than the usual market developments that can lead to new products. The OTC interest rate derivative market has indeed changed significantly since the beginning of the transition and it thus appeared reasonable to consider the changes to two of its key components at the same time, the clearing and trading aspects, and the corresponding obligations. ESMA also notes that, at the time of the previous CP, most respondents expressed support for this approach.
59. Considering the above, ESMA suggests following the same approach for this new CP, as also in this case, the review of the CO and the DTO is not the standard case of analysing whether a new product is fit for the obligations, but this is about accompanying a transition where the products are broadly similar but with different benchmarks. ESMA remains of the view that this approach would benefit stakeholders and market participants.
60. Finally, 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 European Commission towards the end of this year. However, depending on the market evolution reflected in ESMA's analysis and taking into account the feedback from the consultation, ESMA may consider proceeding with two RTSs distinctly for CO and DTO and, with different timing of entry into force, should this be necessary.

5 Clearing obligation

5.1 Legal framework

61. 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.
62. 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.
63. 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. Another register published on ESMA references the TC-CCPs that have been recognised, along with the categories of financial instruments covered, including whether they clear OTC interest rate derivatives.
64. As explained in the CP, in the context of the benchmark transition, ESMA followed the bottom-up approach already once last year to identify the new classes referencing risk-free rates to be added to the scope of the clearing obligation. This work led to the draft RTS submitted by ESMA in November 2021, amending the scope of classes subject to the clearing obligation, and which change of scope has since entered into force following the publication of the Commission Delegated Regulation based on ESMA’s RTS.
65. ESMA continued to monitor the transition and in particular the volume of derivatives referencing the new risk-free rates. In view of the evolution in these volumes and based on the classes notified by CCPs, this CP is based once again on the bottom-up approach, i.e. on what the CCPs are authorised to clear.

66. With the bottom-up approach, in accordance with the clearing obligation procedure and the Commission mandate shown in Annex I, ESMA is empowered to 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.
67. 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.
68. 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

69. In 2021, ESMA already assessed for the purpose of the clearing obligation the classes of OTC interest rate derivatives impacted by the benchmark transition and denominated in EUR, GBP, JPY and USD. This led to the removal of classes referencing EONIA or LIBOR, and to the addition of classes referencing some of the risk-free rates.
70. Building on last year's analysis, there is thus no class denominated in any of these four currencies and referencing the old EONIA and LIBOR benchmarks that is left in the scope of the clearing obligation. Therefore, there is no additional class that would no longer meet the criteria set in EMIR that would need to be removed from the scope of the clearing obligation.
71. However, in view of the increase in liquidity of classes referencing risk-free rates since the time of the draft RTS developed in 2021, the CP considers whether there are additional classes that should be added to the scope.
72. More specifically, all the classes denominated in EUR, GBP, JPY and USD, referencing the related risk-free rates and offered for clearing by CCPs have been considered last year. This CP is thus not looking at new classes but is considering again some of the same classes of last year's CP which did not yet meet the criteria in EMIR at the time.

73. As a result, the CP focuses on the two currencies out of the four analysed last year, for which the RTS developed in 2021 led to a scope of the clearing obligation which does not contain classes in that currency or does contain a class but only with a partial coverage of maturities, JPY and USD respectively.

74. In this section, the CP thus looks at possible new classes of OTC interest rate derivatives denominated in JPY or USD referencing RFRs and offered for clearing by CCPs as per Table 1 in Section 2, namely:

- SOFR OIS, and
- TONA OIS.

75. For these classes, ESMA has looked at the EMIR criteria in more detail, but for several of these criteria, it can build on last year' assessment. This means that it is mainly the second criterion (liquidity) that is driving the determination process for these new or extended classes.

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

76. 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 processes. In this CP, ESMA is considering introducing a new OIS class, i.e. OIS referencing TONA, or to extend the maturity of an OIS class already in scope of the clearing obligation, i.e. OIS referencing SOFR.

77. These OIS classes do benefit from a high level of standardisation, both from a contractual terms perspective as well as from an operational process perspective. Indeed, standard master agreements are widely used for these contracts and the processes are widely automated enabling straight through processing. This high level of standardisation is one key aspect that enables these OISs to be cleared and to be routed electronically. It also allows trading an important number of these trades on venue.

78. 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.

79. These OIS classes do benefit from a high level of access to fair, reliable and generally accepted pricing data, much like the other OIS classes referencing risk-free rates already in scope of the clearing obligation.

80. In fact, for TONA OIS and SOFR OIS classes, the analysis of these two criteria conducted last year is still valid and stakeholders broadly agreed with ESMA's analysis in their responses to the public consultation conducted in 2021. The rationale on whether to include or not these classes in the scope of the clearing obligation was based primarily on the second criterion, liquidity, rather than these two criteria.
81. 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 SOFR or TONA) demonstrate an appropriate level of standardisation to be considered for the clearing obligation. Likewise, ESMA considers also that the OTC IRS classes in scope in this CP benefit from an appropriate availability of fair, reliable and generally accepted pricing information, as already established in 2021.

5.2.2 Criterion 2: Liquidity

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

82. First of all, point (a) of Article 7(2) 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.
83. Secondly, point (c) of Article 7(2) 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.
84. 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 JPY LIBOR or USD LIBOR to OIS classes referencing TONA or SOFR respectively. Indeed, the market has been pivoting 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.
85. 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, ESMA assessed for these classes in 2021 that it is reasonable to expect that the margins or financial requirements of CCPs would remain proportionate to the risk that the clearing obligation intends to mitigate, and that the likelihood that market dispersion would be sufficient would remain the same in the event of the default of a clearing member.

86. This analysis still stands today and stakeholders broadly agreed with ESMA's analysis in their responses to the public consultation conducted in 2021.

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

87. Point (b) of Article 7(2) 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.

88. Point (d) of Article 7(2) 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.

89. For this section, ESMA is cross-referring to the analysis conducted in Section 3, where the levels of activity in the 2 OIS classes considered in the CP have been presented.

90. Starting with JPY, Figures 19, 20 and 21 indicate that TONA has now become the reference benchmark for OTC interest rate derivatives denominated in JPY. In the Final report published in November, the trend towards the current situation was becoming clearer and clearer. In addition, the CCP legal switch in December 2021 when cleared contracts referencing JPY LIBOR were converted to reference TONA instead and the actual cessation of JPY LIBOR at the end of 2021 completed the move of the JPY interest rate derivative market to TONA.

91. The figures for TONA OIS also show that there is a relatively important level of activity across the maturity curve included around the 30-year tenor. ESMA thus considers that the TONA OIS class with maturities up to 30 years benefit from an appropriate level of liquidity to be considered for the clearing obligation. Last but not least, it should also be mentioned that other jurisdictions have since added TONA OIS to the scope of their respective clearing obligations or have been consulting on the proposal to do so. This is in particular the case with Japan who has included TONA OIS classes up to 40 years, and as well the case in other jurisdictions such as Australia, the United Kingdom and the United States of America where they have included or have proposed to include TONA OIS classes up to 30 years.

92. Moving to USD, it should first be recalled that the current CO already applies to SOFR OIS up to 3 years (with a 3-month phase-in), therefore the question looked into in this CP is whether the CO can cover a longer maturity range. Figures 22, 23 and 24 in Section 3 evidence that SOFR continues to gradually increase in volume in the OTC interest rate derivatives denominated in USD. In addition, it seems that more than 60% of new USD swaps now reference SOFR, as explained more in detail in Section 3. The various initiatives such as SOFR First, as well as the communications from authorities not expecting counterparties to reference USD LIBOR any longer, have all contributed to SOFR's increasing role. However, the USD market being a very large market to transition, the fact that most settings have not ceased yet, that discussions are still

ongoing for the organisation of the CCP legal switch to convert cleared contracts referencing USD LIBOR to contracts referencing SOFR are some of the aspects explaining that SOFR volume still has room to grow further over the coming year.

93. In addition, the figures for SOFR OIS show that there is a certain level of activity across the entire maturity curve and up to the 50-year tenor included, although with larger volume in shorter maturities. ESMA thus considers that the SOFR OIS class with maturities up to 50 years would benefit from an appropriate level of liquidity to be considered for the clearing obligation. In addition, it should be mentioned that the CFTC launched a consultation in May 2022 on mandatory clearing in the United States of America, where the CFTC also proposes to include the SOFR OIS class up to the 50-year tenor in the US mandatory clearing scope.
94. Last but not least, these classes are already voluntarily cleared³⁵ in their large majority as explained in Section 3 in Figure 11, which is a further indication that 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.

5.3 Overview of proposals for amending the scope of the CO

95. In conclusion, in view of this renewed assessment of the OIS classes denominated in JPY and USD against the EMIR criteria, in terms of scope of the CO, ESMA would introduce the class of interest rate derivatives referencing TONA, i.e. TONA OIS classes up to 30 years, and extend the class of interest rate derivatives referencing SOFR, i.e. SOFR OIS classes up to 50 years.
96. The proposed changes are summarised in Table 3 below.

TABLE 3: OVERNIGHT INDEX SWAP CLASSES

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

³⁵ OIS classes referencing TONA are not subject to the CO. With respect to OIS referencing SOFR, while it is true that contracts with maturities up to 3 years are already in scope of the CO, clearing remains voluntary in light of the three-months phase-in period introduced in order to ensure an orderly timely implementation of the obligation.

OIS	SOFR	USD	7D-3Y	Single current	No	Constant or Variable
OIS	SOFR	USD	7D-50Y	Single current	No	Constant or Variable
OIS	TONA	JPY	7D-30Y	Single current	No	Constant or Variable

Q3: Do you agree with the assessment of the EMIR criteria and with the proposed classes? Do you also agree that the maturities for SOFR OIS could be extended, including up to 50 years? If not, please detail how the assessment could differ and please also provide data and information to justify a different assessment.

5.4 Proposed implementation

97. Following the assessment and the proposal of which classes of OTC interest rate derivatives would be fit for the clearing obligation and thus should be added to the scope, there is also the question of how and when to implement this change in the scope of the clearing obligation.
98. First of all, as these changes are a continuation of the first set of changes developed in 2021 (which consisted in an amendment of Commission Delegated Regulation (EU) 2015/2205 on the clearing obligation for OTC interest derivative classes denominated in EUR, GBP, JPY and USD), ESMA intends to follow the same approach, i.e. submitting a draft RTS also amending Commission Delegated Regulation (EU) 2015/2205 on the clearing obligation. 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 first Commission Delegated Regulation (EU) 2015/2205 on the clearing obligation where the classes are listed.
99. Secondly, there is also a question of timing. The timetable of when classes become subject to the clearing obligation is the second aspect that ESMA is mandated to clarify in the draft RTS.
100. Unlike when the clearing obligation was first rolled out, the RTS developed in 2021 did not include a phase-in per category of counterparties. As a reminder, the initial Commission Delegated Regulations (EU) 2015/2205 on the clearing obligation contained a phase-in, as in general, different counterparties need different periods of time for putting in place the necessary arrangements to start clearing their OTC interest rate derivatives subject to the clearing obligation. However, in this case, counterparties who were already subject to the clearing obligation and clearing other classes of OTC interest rate derivatives denominated in EUR, GBP, JPY and TONA, had had time to prepare for the benchmark transition, including with respect to their clearing arrangements.

101. Responses to the public consultation conducted in 2021 raised two sets of feedback, with some in support of applying the changes quickly and align them as much as possible to what was being done in other jurisdictions and others asking for an implementation period. Taking all this into account, ESMA did not include a phase-in (except for SOFR, with a three-month phase-in) as this RFR was in a slightly different situation than the other three currencies considered then). Following the entry into force of the Commission Delegated Regulation on the clearing obligation relating to the benchmark transition and based on the ESMA RTS (Commission Delegated Regulation (EU) 2022/750), no particular issue was raised to ESMA regarding its implementation.
102. This time around, in ESMA's view, the situation is clearer on whether a phase-in would be necessary or not. Regarding TONA OIS, since the CCP legal switch that took place in December 2021 and the cessation of JPY LIBOR at the end of 2021, counterparties active in OTC interest rate derivatives denominated in JPY are already clearing their TONA OIS contracts as evidenced by the voluntary clearing figures, have had to clear these classes in certain other jurisdictions and will have had more time to prepare for clearing becoming mandatory for this class.
103. Regarding SOFR OIS, this class is already in scope of the clearing obligation (with a three-month phase-in, which will be over by the time the RTS is submitted to the Commission and even more so by the time the RTS would enter into force), and there should not be major efforts to prepare for mandatory clearing of longer maturities. In fact, counterparties active in OTC interest rate derivatives denominated in USD are already clearing their OIS contracts, which is evidenced by the voluntary clearing figures. Lastly, being mindful of the time the approval process for an RTS can take, it is likely that SOFR OIS will already be mandated in other jurisdictions by the time of entry into force of the draft RTS being developed by ESMA.
104. ESMA is thus of the view that there is no need to introduce an additional phase-in in order to ensure an orderly and timely implementation of the changes to the scope of the clearing obligation proposed in the CP. As a result, ESMA expects the changes to start applying as of the entry into force of the Delegated Regulation based on the draft RTS that would be submitted by ESMA.
105. The draft RTS in Annex II reflect these proposed amendments to the initial Commission Delegated Regulation (EU) 2015/2205 on the clearing obligation for interest rate derivatives.

Q4: 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

106. 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 2016³⁶ (RTS 4).
107. More specifically, Article 32(1) of MiFIR defines that 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.
108. 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:
109. The venue test: the class of derivatives must be admitted to trading or traded on at least one trading venue referred to in Article 28(1) of MiFIR; and
110. 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. 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. Furthermore, as mandated under Article 32(6) of MiFIR, RTS 4³⁷ 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.
111. Finally, Commission Delegated Regulation (EU) 2017/2417 (DTO RTS)³⁸ specifies the classes of derivatives subject to the DTO as well as the dates from which the DTO takes effect.

³⁶ 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.

³⁷

³⁸ 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.

6.2 Assessment for the purpose of the derivative trading obligation

6.2.1 TONA, SOFR, SONIA

112. As it is evident from Figure 3, the level of trading activity of €STR is now way above that of TONA, SOFR and SONIA. Concerning SONIA, ESMA considers that the situation has not significantly changed compared to the analysis of last year, where trading activity in the EU was still limited overall. Therefore, ESMA does not consider SONIA as a candidate for the DTO.
113. Concerning TONA, as indicated in the introductory section, ESMA notes that contracts referencing TONA have replaced contracts referencing JPY LIBOR in the scope of the DTO in Japan. However, trading activity in the EU is very limited, as it was the case for JPY LIBOR. Therefore, also in this case ESMA does not consider TONA as a candidate for the DTO.
114. Finally, ESMA notes a gradual increase in the trading activity in SOFR. At the same time, the transition for SOFR is still on-going and the CFTC has to date not included contracts referencing SOFR neither under the clearing nor the trading mandate. Therefore, ESMA considers it premature to consider SOFR for the DTO but will continue closely monitoring the developments in this market.
115. However, given, the significant liquidity of contracts referencing €STR, ESMA is of the view that €STR is a good candidate to be included in the DTO and further analyses the liquidity in those contracts in the subsequent section.

Q5: Do you agree with this assessment and therefore, not to introduce DTO for contracts referencing TONA, SONIA and for the time being SOFR? If not, please explain.

6.2.2 €STR

116. While in the FR published in November 2021 ESMA considered that the overall level of liquidity for OIS referencing €STR was still too low to introduce the DTO on these contracts, the trading activity in OIS referencing €STR significantly grew over the last months (see the updated analysis based on TR trade-state data in Section 3). A more in-depth analysis and the required assessments to declare certain classes of derivatives referencing €STR subject to the DTO are provided in the following sections.
117. Indeed, it does appear that €STR is not only replacing EONIA, but it is also being more relevant compared to its predecessor in the EUR benchmarks market (Table 4 and Table 5).

TABLE 4 – NOTIONAL AMOUNT TRADED ON €STR OIS vs. EONIA OIS vs. EURIBOR FIXED-TO-FLOAT SWAPS OVER THE PERIOD JUNE 2021 – APRIL 2022

Notional amount traded											
	2021						2022				
	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
<i>EONIA</i>	805,430,534,138	630,378,015,354	537,251,541,740	804,723,238,494	259,073,393,572	201,000,000	3,620,177,996	2,478,000,000	7,079,000,000	11,889,100,000	2,299,000,000
<i>ESTR</i>	204,284,023,688	163,076,473,179	188,035,461,681	397,575,832,658	5,112,627,157,939	1,378,100,038,224	1,084,325,195,782	1,204,197,862,083	1,600,346,894,115	1,624,883,558,713	1,577,970,386,522
<i>EURIBOR</i>	2,121,428,995,396	1,761,880,963,358	1,857,146,747,061	2,329,692,933,343	2,106,965,938,116	2,140,494,741,140	2,021,387,570,891	1,966,538,771,364	2,070,413,929,670	2,570,195,830,876	1,946,080,230,450
<i>LIBOR EUR</i>	465,306,564	195,690,000	817,336,080	98,937,060	3,702,786,828	1,030,443,333	22,281,861,104	15,250,000	19,876,000	92,541,000	4,555,994
<i>EONIA</i>	25.72%	24.67%	20.80%	22.78%	3.46%	0.01%	0.12%	0.08%	0.19%	0.28%	0.07%
<i>ESTR</i>	6.52%	6.38%	7.28%	11.26%	68.33%	39.15%	34.63%	37.95%	43.51%	38.62%	44.75%
<i>EURIBOR</i>	67.74%	68.94%	71.89%	65.96%	28.16%	60.81%	64.55%	61.97%	56.29%	61.09%	55.19%
<i>LIBOR EUR</i>	0.01%	0.01%	0.03%	0.00%	0.05%	0.03%	0.71%	0.00%	0.00%	0.00%	0.00%

Source: ESMA - TRs (trade flow reports)

TABLE 5 – NUMBER OF TRADES ON €STR OIS vs. EONIA OIS vs. EURIBOR FIXED-TO-FLOAT SWAPS OVER THE PERIOD JUNE 2021 – APRIL 2022

Number of trades											
	2021						2022				
	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
<i>EONIA</i>	2,435	1,749	1,567	2,470	892	4	20	11	17	38	12
<i>ESTR</i>	956	1,015	771	1,968	27,774	4,032	5,028	4,145	4,698	6,249	4,553
<i>EURIBOR</i>	30,971	24,685	19,777	28,107	28,153	30,726	29,672	27,983	30,675	43,641	35,531
<i>LIBOR EUR</i>	20	12	16	22	32	35	389	5	5	8	5
<i>EONIA</i>	7.08%	6.37%	7.08%	7.58%	1.57%	0.01%	0.06%	0.03%	0.05%	0.08%	0.03%
<i>ESTR</i>	2.78%	3.70%	3.48%	6.04%	48.85%	11.59%	14.32%	12.90%	13.27%	12.51%	11.35%
<i>EURIBOR</i>	90.08%	89.89%	89.36%	86.31%	49.52%	88.30%	84.51%	87.06%	86.66%	87.39%	88.60%
<i>LIBOR EUR</i>	0.06%	0.04%	0.07%	0.07%	0.06%	0.10%	1.11%	0.02%	0.01%	0.02%	0.01%

Source: ESMA - TRs (trade flow reports)

6.2.2.1 The venue test

118. As mentioned above, to declare a class of derivatives subject to the DTO, Article 32(2)(a) of MiFIR requires that such class must be admitted to trading or traded on at least one trading venue as referred to in Article 28(1) of MiFIR, i.e. an RM, 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. At the time, no equivalence decisions on eligible third country trading venues had been made by the Commission. Since EU market participants can now also meet the DTO by trading on third-country trading venues and, the Commission has declared US³⁹ and Singapore⁴⁰ venues equivalent, this assessment should therefore also consider equivalent third-country trading venues.

120. In section 6.2 of the CP published⁴¹ in July 2021 ESMA already performed the venue test for the new benchmarks including €STR. More specifically, the reference data submitted by EU trading venues to ESMA's Financial Instruments Reference Data System (FIRDS) was analysed. From that analysis, the following trading venues were offering IRS on €STR:

- Aurel – OTF (FR)
- Bloomberg (NL)
- CIMD S.V. S.A. – OTF (ES)
- TP ICAP – MTF (FR)
- TSAF OTF (FR)
- Tradeweb (NL)

121. Moreover, based on a more recent ad-doc data collection launched at the beginning of 2022, directed to EU trading venues and covering the observation period 1 June 2021 – 14 January 2022, more trading venues are offering IRS on €STR and the following two trading venues can be added to the list:

- CAPI OTF (ES)

³⁹ Commission Implementing Decision (EU) 2017/2238 of 5 December 2017 on the equivalence of the legal and supervisory framework applicable to designated contract markets and swap execution facilities in the United States of America in accordance with Regulation (EU) No 600/2014 of the European Parliament and of the Council, OJ L 320, 6.12.2017, p. 11–17.

⁴⁰ Commission Implementing Decision (EU) 2019/541 of 1 April 2019 on the equivalence of the legal and supervisory framework applicable to approved exchanges and recognised market operators in Singapore in accordance with Regulation (EU) No 600/2014 of the European Parliament and of the Council, OJ L 93, 2.4.2019, p. 18–24.

⁴¹ [consultation paper on the co and dto for swaps referencing rfrs.pdf](#)

- Trad-X Europe -MTF (FR)

122. Concerning the availability of derivatives referencing RFRs on equivalent third country trading venues, ESMA notes that, based on the data provided by Clarus FT on its SEFView platform, there has been trading activity on US Swap Execution Facilities (SEFs) covering OIS referencing €STR over a broad range of maturities. In general, trading activity is concentrated on Tradeweb, TP ICAP, Bloomberg, Tradition and BGC. ESMA notes that this trading venues are also the most relevant ones in the EU. However, ESMA does not have any information on the trading activity of derivatives referencing RFRs on Singapore trading venues.

123. In conclusion, ESMA considers that the venue test for interest rate swaps on €STR derivatives is met.

6.2.2.2 The liquidity test

124. Article 9 of EMIR mandates the reporting of all derivatives traded by counterparties to TRs, which centrally collect and maintain the records of all derivative contracts. This data is provided at two different levels of granularity to the authorities: (i) aggregation reflecting the outstanding open position, which is provided in the above-mentioned trade-state data (ii) trade by trade data, (also referred to as trade flow data) showing the highest level of granularity.

125. While the former provides a valuable snapshot of the outstanding risk in the market at a certain point in time, ESMA considered that a more in-depth analysis using trade flow data should be conducted for the purpose of the DTO assessment.

126. Therefore, ESMA processed the trade flow data reports from TRs reported over the period 1 June 2021 – 30 April 2022 to assess the liquidity of the derivatives contracts referencing €STR.

127. The starting point of the analysis is the identification of the contracts currently subject to the CO, which are single currency OIS swaps on €STR settled in EUR, with no optionality, with either constant or variable notional and with a maturity ranging from 7 days to 3 years.

128. The following tables provide the notional amount traded and number of trades executed over the observation period for those contracts. Table 6 and Table 7 refer to single currency OIS swaps on €STR settled in EUR, with no optionality, with a maturity ranging from 7 days to 3 years and with constant notional while Table 8 and Table 9 refer to the same contracts but with variable notional.

129. In those tables the tenors with high liquidity are highlighted in light blue. Those are identified on the basis of two conditions, both met: (i) the class has recorded trading activity in each month of the observation period; and (ii) the class recorded a minimum level of liquidity of EUR 200 million of daily average notional amount and an average of 5 trades per day.

130. On this basis, ESMA considers that contracts with variable notional are not sufficiently liquid for the DTO and should hence be not further assessed. Contracts with constant notional and with tenors of 3 months, 1 year, 2 years and 3 years appear more liquid and ESMA has hence carried out further analysis for those contracts.
131. Since the contracts subject to the DTO should be the most standardised ones, further characteristics need to be considered to specify the contracts that should be subject to the DTO: (i) the trade start type, (ii) the day count convention of the fixed leg, (iii) the payment frequency of the fixed leg, (iv) the reset frequency of the floating leg and the day count convention of the floating leg.
132. Table 10 and Table 11 provide for a liquidity assessment of the different trade start types of the four tenors identified to be sufficiently liquid. While it is clear that liquidity is concentrated across all the four tenors on contracts with trade start dates spot t+2 and the first IMM date dates following execution, in the case of contracts with 3 months, 1 year and 2 years tenor also the second IMM date dates following execution is liquid and in the case of contracts with 1 year, 2 years and 3 years tenor also the spot t+0 start date is liquid.



TABLE 6 – NOTIONAL AMOUNT TRADED ON €STR OIS SWAPS OVER THE PERIOD JUNE 2021 – APRIL 2022 – CONSTANT NOTIONAL

Notional amount traded															
Benchmark rate	Tenor	Notional type	2021							2022				Total	Daily average
			Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr		
ESTR	T_7D	Constant	50,000,000	-	-	-	30,000,000	15,000,000,000	-	-	50,000,000	726,044,927	51,014,472	15,907,059,399	48,203,210
ESTR	T_28D	Constant	-	-	-	-	-	100,000,000	9,000,000,000	7,750,019,841	59,233,739,671	99,700,000	-	76,183,459,512	230,858,968
ESTR	T_1M	Constant	26,800,000,000	13,500,000,000	25,600,000,000	53,900,000,000	31,761,876,704	100,740,000,000	83,380,013,055	66,975,174,563	5,500,034,456	68,632,125,218	13,865,005,814	490,654,229,810	1,486,830,999.43
ESTR	T_2M	Constant	1,000,000,000	-	5,150,000,000	12,600,000,000	13,375,614,789	37,250,000,000	1,730,000,000	4,620,149,465	12,799,999,956	14,650,067,822	6,241,589,582	109,417,421,614	331,567,944
ESTR	T_3M	Constant	2,000,000,000	120,000,000	11,382,000,000	89,722,917,890	476,305,219,790	288,789,146,564	175,162,061,581	294,724,764,507	316,554,201,387	196,317,573,940	211,457,626,221	2,062,535,511,880	6,250,107,612
ESTR	T_4M	Constant	-	-	-	-	686,160,000	9,975,000,000	5,900,000,000	10,400,000,000	13,403,836,078	350,000,000	9,640,304,239	50,355,300,317	152,591,819
ESTR	T_5M	Constant	-	-	-	2,700,000,000	4,103,000,000	8,975,000,000	6,349,999,998	7,916,800,000	8,376,734,639	1,000,000,000	50,600,000	39,472,134,637	119,612,529
ESTR	T_6M	Constant	15,000,000	200,000,000	4,735,000,000	17,359,217,452	20,411,824,725	14,694,652,442	20,989,467,945	28,377,413,320	35,983,090,956	848,084,250	1,042,964,917	144,656,716,006	438,353,684.87
ESTR	T_7M	Constant	-	-	150,000,000	-	-	1,000,000,000	-	-	-	2,750,000,000	-	3,900,000,000	11,818,182
ESTR	T_8M	Constant	-	-	-	-	-	-	135,000,000	-	-	300,000,000	-	435,000,000	1,318,182
ESTR	T_9M	Constant	-	-	30,000,000	-	9,000,000	-	-	-	-	81,000,000	-	120,000,000	363,636
ESTR	T_10M	Constant	-	-	-	-	-	88,872,150	-	-	-	-	270,000,000	358,872,150	1,087,491
ESTR	T_11M	Constant	4,015,781	-	-	-	381,900,000	-	-	-	-	-	-	385,915,781	1,169,442
ESTR	T_1Y	Constant	9,087,144,000	4,575,874,711	14,238,508,902	25,060,016,821	425,731,519,878	60,932,680,290	63,094,841,995	51,534,567,634	70,094,915,914	80,200,559,196	66,304,963,297	870,855,592,637	2,638,956,341
ESTR	T_2Y	Constant	325,000,000	3,758,777,182	4,066,335,377	10,093,870,604	276,733,385,142	61,836,604,821	40,709,783,942	39,942,823,556	57,160,507,809	55,097,347,870	53,460,740,701	603,185,177,005	1,827,833,870
ESTR	T_3Y	Constant	360,000,000	1,240,807,351	1,908,954,739	5,897,493,984	134,811,978,216	19,640,694,995	21,920,593,153	22,434,754,873	23,436,016,300	18,703,181,974	8,757,017,001	259,111,492,587	785,186,341

Source: ESMA - TRs (trade flow reports)

TABLE 7 – NUMBER OF TRADES ON €STR OIS SWAPS OVER THE PERIOD JUNE 2021 – APRIL 2022 – CONSTANT NOTIONAL

Number of trades															
Benchmark rate	Tenor	Notional type	2021							2022				Total	Daily average
			Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr		
ESTR	T_7D	Constant	5	-	-	-	3	5	-	-	1	7	3	24	0.07
ESTR	T_28D	Constant	-	-	-	-	-	1	3	7	42	2	-	55	0.17
ESTR	T_1M	Constant	13	8	15	27	27	69	62	33	7	51	18	330	1.00
ESTR	T_2M	Constant	1	-	9	15	16	25	3	11	18	20	24	142	0.43
ESTR	T_3M	Constant	1	1	14	108	354	216	225	244	275	153	211	1,802	5.46
ESTR	T_4M	Constant	-	-	-	-	2	18	10	12	25	5	5	77	0.23
ESTR	T_5M	Constant	-	-	-	4	9	25	14	14	29	1	1	97	0.29
ESTR	T_6M	Constant	2	2	6	40	26	57	46	88	131	5	5	408	1.24
ESTR	T_7M	Constant	-	-	2	-	-	4	-	-	-	4	-	10	0.03
ESTR	T_8M	Constant	-	-	-	-	-	-	3	-	-	3	-	6	0.02
ESTR	T_9M	Constant	-	-	1	-	1	-	-	-	-	6	-	8	0.02
ESTR	T_10M	Constant	-	-	-	-	-	3	-	-	-	-	3	6	0.02
ESTR	T_11M	Constant	2	-	-	-	4	-	-	-	-	-	-	6	0.02
ESTR	T_1Y	Constant	47	45	63	219	2,125	302	252	255	331	418	266	4,323	13.10
ESTR	T_2Y	Constant	7	23	42	90	1,672	344	284	232	381	457	318	3,850	11.67
ESTR	T_3Y	Constant	5	27	14	71	1,184	189	201	211	238	211	114	2,465	7.47

Source: ESMA - TRs (trade flow reports)



TABLE 8 – NOTIONAL AMOUNT TRADED ON €STR OIS SWAPS OVER THE PERIOD JUNE 2021 – APRIL 2022 – VARIABLE NOTIONAL

Notional amount traded															
Benchmark rate	Tenor	Notional type	2021							2022				Total	Daily average
			Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr		
ESTR	T_7D	Not_constant	-	10,000,000,000	-	-	-	-	6,000,000,000	-	-	-	-	16,000,000,000	48,484,848
ESTR	T_28D	Not_constant	-	-	-	-	-	-	-	-	-	-	-	600,000,000	1,818,182
ESTR	T_1M	Not_constant	11,000,000,000	-	600,000,000	2,000,000,000	2,000,000,000	6,000,000,000	14,725,000,000	-	2,000,000,000	3,400,000,000	1,400,000,000	43,125,000,000	130,681,818
ESTR	T_2M	Not_constant	-	-	-	400,000,000	200,000,000	5,650,000,000	-	2,100,000,000	3,400,000,000	4,050,000,000	-	15,800,000,000	47,878,788
ESTR	T_3M	Not_constant	-	-	3,000,000,000	-	19,107,744,126	9,334,000,000	25,480,200,000	42,160,890,897	18,080,597,000	9,000,000,000	9,785,000,000	135,948,432,023	411,964,946
ESTR	T_4M	Not_constant	-	-	-	-	-	1,200,000,000	-	1,000,000,000	-	-	-	2,200,000,000	6,666,667
ESTR	T_5M	Not_constant	-	-	-	-	-	2,000,000,000	1,000,000,000	-	-	-	-	3,000,000,000	9,090,909
ESTR	T_6M	Not_constant	-	-	-	1,650,000,000	-	1,120,000,000	469,547,417	230,000,000	931,400,000	-	-	4,400,947,417	13,336,204
ESTR	T_7M	Not_constant	-	-	-	-	-	-	-	-	-	-	-	-	-
ESTR	T_8M	Not_constant	-	-	-	-	90,000,000	-	-	-	-	-	-	90,000,000	272,727
ESTR	T_9M	Not_constant	-	-	-	-	-	-	-	-	-	-	-	-	-
ESTR	T_10M	Not_constant	-	-	-	-	-	-	-	-	-	-	-	-	-
ESTR	T_11M	Not_constant	-	-	-	-	-	-	-	-	-	-	-	-	-
ESTR	T_1Y	Not_constant	4,085,853,984	4,739,426,033	1,000,000,000	3,593,603,668	49,083,102,261	3,478,351,326	3,576,114,798	11,195,220,083	8,198,781,417	10,644,206,770	9,419,619,579	109,014,279,918	330,346,302.78
ESTR	T_2Y	Not_constant	460,000,000	3,344,671,551	156,584,128	559,169,451	80,699,120,932	6,112,906,316	978,514,324	2,490,000,000	4,560,415,887	9,251,433,383	5,090,176,494	113,702,992,466	344,554,522.62
ESTR	T_3Y	Not_constant	337,222,419	171,088,749	38,541,290	295,810,549	97,091,018,334	3,755,481,908	370,000,000	2,651,539,000	1,859,260,185	2,728,127,733	2,219,263,542	111,517,353,709	337,931,374.88

Source: ESMA - TRs (trade flow reports)

TABLE 9 – NUMBER OF TRADES ON €STR OIS SWAPS OVER THE PERIOD JUNE 2021 – APRIL 2022 – VARIABLE NOTIONAL

Number of trades															
Benchmark rate	Tenor	Notional type	2021							2022				Total	Daily average
			Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr		
ESTR	T_7D	Not_constant	-	2	-	-	-	-	2	-	-	-	-	4	0.01
ESTR	T_28D	Not_constant	-	-	-	-	-	-	-	-	-	-	-	2	0.01
ESTR	T_1M	Not_constant	8	-	2	2	2	4	11	-	2	3	4	38	0.12
ESTR	T_2M	Not_constant	-	-	-	2	1	6	-	3	3	3	-	18	0.05
ESTR	T_3M	Not_constant	-	-	1	-	13	14	33	32	29	8	15	145	0.44
ESTR	T_4M	Not_constant	-	-	-	-	-	3	-	1	-	-	-	4	0.01
ESTR	T_5M	Not_constant	-	-	-	-	-	2	1	-	-	-	-	3	0.01
ESTR	T_6M	Not_constant	-	-	-	1	-	8	4	6	5	-	-	24	0.07
ESTR	T_7M	Not_constant	-	-	-	-	-	-	-	-	-	-	-	-	-
ESTR	T_8M	Not_constant	-	-	-	-	2	-	-	-	-	-	-	2	0.01
ESTR	T_9M	Not_constant	-	-	-	-	-	-	-	-	-	-	-	-	-
ESTR	T_10M	Not_constant	-	-	-	-	-	-	-	-	-	-	-	-	-
ESTR	T_11M	Not_constant	-	-	-	-	-	-	-	-	-	-	-	-	-
ESTR	T_1Y	Not_constant	16	22	2	17	262	27	27	35	43	61	40	552	1.67
ESTR	T_2Y	Not_constant	5	29	4	18	422	51	19	22	48	77	63	758	2.30
ESTR	T_3Y	Not_constant	6	5	5	9	489	27	3	24	27	35	21	651	1.97

Source: ESMA - TRs (trade flow reports)



TABLE 10 – NOTIONAL AMOUNT TRADED ON €STR OIS SWAPS OVER THE PERIOD JUNE 2021 – APRIL 2022 – CONSTANT NOTIONAL – PER DIFFERENT TRADE START DATES

Notional amount traded																
Benchmark rate	Tenor	Notional type	Trade start date													
			BACK	Spot-T0	Spot-T1	Spot-T2	NEXT IMM1	NEXT IMM2	NEXT IMM3	NEXT IMM4	NEXT IMM5	NEXT IMM6	NEXT IMM7	NEXT IMM8	NEXT IMM9	NEXT IMM10
ESTR	T_7D	Constant	-	255,016,819	155,014,146	15,497,028,434	-	-	-	-	-	-	-	-	-	
ESTR	T_28D	Constant	1,500,000,000	0	50,019,841	74,633,439,671	-	-	-	-	-	-	-	-	-	
ESTR	T_1M	Constant	7,256,876,704	10,440,173,546	373,140,028	454,854,039,532	2,830,000,000	-	-	14,400,000,000	500,000,000	-	-	-	-	
ESTR	T_2M	Constant	8,110,608,429	-	2,480,337,770	94,826,475,415	4,000,000,000	-	-	-	-	-	-	-	-	
ESTR	T_3M	Constant	248,777,067,299	1,091,500,000	-	476,668,762,839	224,022,158,305	368,883,497,390	164,937,862,707	205,102,762,067	75,430,800,000	57,086,272,387	56,893,312,766	93,087,110,632	44,131,901,988	11,290,000,000
ESTR	T_4M	Constant	21,102,372,317	-	-	29,252,928,000	-	-	-	-	-	-	-	-	-	
ESTR	T_5M	Constant	4,626,799,994	-	-	34,445,334,643	400,000,000	-	-	-	-	-	-	-	-	
ESTR	T_6M	Constant	28,694,963,736	100,000,000	180,353,258	113,911,181,561	785,217,452	-	985,000,000	-	-	-	-	-	-	
ESTR	T_7M	Constant	-	-	-	3,900,000,000	-	-	-	-	-	-	-	-	-	
ESTR	T_8M	Constant	435,000,000	-	-	-	-	-	-	-	-	-	-	-	-	
ESTR	T_9M	Constant	-	9,000,000	30,000,000	81,000,000	-	-	-	-	-	-	-	-	-	
ESTR	T_10M	Constant	-	-	-	358,872,150	-	-	-	-	-	-	-	-	-	
ESTR	T_11M	Constant	381,900,000	-	-	4,015,781	-	-	-	-	-	-	-	-	-	
ESTR	T_1Y	Constant	432,539,605,549	10,071,440,000	1,187,542,531	217,440,814,868	23,057,064,628	6,827,400,000	24,443,756,063	32,754,016,000	28,985,029,864	4,459,902,053	18,026,011,908	13,409,228,725	4,188,305,249	6,184,300,000
ESTR	T_2Y	Constant	350,320,714,670	1,104,299,000	1,915,100,000	142,880,039,300	46,079,835,398	7,888,900,906	1,223,349,000	17,272,463,187	2,472,862,095	-	3,235,262,776	1,784,855,416	2,230,372,000	2,136,228,094
ESTR	T_3Y	Constant	161,849,873,181	1,902,553,000	934,272,000	72,372,608,836	12,957,917,040	1,120,201,000	986,000,000	2,216,699,596	44,999,787	43,500,000	593,949,000	-	-	236,299,000

Source: ESMA - TRs (trade flow reports)

TABLE 11 – NUMBER OF TRADES ON €STR OIS SWAPS OVER THE PERIOD JUNE 2021 – APRIL 2022 – CONSTANT NOTIONAL – PER DIFFERENT TRADE START DATES

Number of trades																
Benchmark rate	Tenor	Notional type	Trade start date													
			BACK	Spot-T0	Spot-T1	Spot-T2	NEXT IMM1	NEXT IMM2	NEXT IMM3	NEXT IMM4	NEXT IMM5	NEXT IMM6	NEXT IMM7	NEXT IMM8	NEXT IMM9	NEXT IMM10
ESTR	T_7D	Constant	-	3	3	18	-	-	-	-	-	-	-	-	-	
ESTR	T_28D	Constant	1	1	1	52	-	-	-	-	-	-	-	-	-	
ESTR	T_1M	Constant	12	11	9	289	6	-	-	2	1	-	-	-	-	
ESTR	T_2M	Constant	16	-	8	114	-	4	-	-	-	-	-	-	-	
ESTR	T_3M	Constant	211	4	-	638	162	257	113	156	66	47	43	59	23	6
ESTR	T_4M	Constant	17	-	-	60	-	-	-	-	-	-	-	-	-	
ESTR	T_5M	Constant	17	-	-	78	2	-	-	-	-	-	-	-	-	
ESTR	T_6M	Constant	63	2	10	321	9	-	3	-	-	-	-	-	-	
ESTR	T_7M	Constant	-	-	-	10	-	-	-	-	-	-	-	-	-	
ESTR	T_8M	Constant	6	-	-	-	-	-	-	-	-	-	-	-	-	
ESTR	T_9M	Constant	-	1	1	6	-	-	-	-	-	-	-	-	-	
ESTR	T_10M	Constant	-	-	-	6	-	-	-	-	-	-	-	-	-	
ESTR	T_11M	Constant	4	-	-	2	-	-	-	-	-	-	-	-	-	
ESTR	T_1Y	Constant	2,231	43	30	1,274	94	29	50	137	175	14	52	36	10	27
ESTR	T_2Y	Constant	2,086	14	24	1,190	251	41	9	47	10	-	12	12	10	48
ESTR	T_3Y	Constant	1,538	24	5	625	177	6	2	17	3	1	8	-	-	13

Source: ESMA - TRs (trade flow reports)

Q6: Do you agree with this assessment? Do you consider that also contracts with constant notional and 3 months tenor and trade start date Spot (t+0) should be subject to the DTO? If so, please specify also the other relevant standardised parameters used with those contracts. Do you consider that also contracts with constant notional and 3 years tenor and trade start date second next IMM date shall be subject to the DTO? If so, please specify also the other relevant standardised parameters used with those contracts. Should other tenors be considered for the DTO?

133. In Table 12 the payment frequency of the fixed leg is analysed, and it appears that liquidity is concentrated in the annual frequency for any type of class analysed. However, in the case of contracts with 3 months tenor and start date spot (t+2), also the quarterly fixed leg payment frequency shows a certain level of liquidity.

TABLE 12 – NOTIONAL AMOUNT TRADED AND NUMBER OF TRADES ON €STR OIS SWAPS OVER THE PERIOD JUNE 2021 – APRIL 2022 – PER DIFFERENT FIXED LEG PAYMENT FREQUENCY

Fixed leg payment frequency	Notional amount traded			Number of trades		
	ESTR		T_3M	Constant		
	Spot-T2	NEXT IMM1	NEXT IMM2	Spot-T2	NEXT IMM1	NEXT IMM2
D1.0	1,500,000,000	-	-	4	-	-
D89.0	1,196,200,000	-	-	6	-	-
M13.0	-	-	-	-	-	-
M3.0	60,383,668,856	2,000,000,000	314,050,111	105	3	1
W13.0	11,992,048,797	8,500,000,000	2,000,000,000	24	6	3
Y1.0	401,596,845,186	213,522,158,305	366,569,447,279	499	153	253

Source: ESMA - TRs (trade flow reports)

Fixed leg payment frequency	Notional amount traded				Number of trades			
	ESTR		T_1Y		Constant			
	Spot-T0	Spot-T2	NEXT IMM1	NEXT IMM2	Spot-T0	Spot-T2	NEXT IMM1	NEXT IMM2
D1.0	-	95,000,000	-	-	-	1	-	-
D89.0	-	-	-	-	-	-	-	-
M13.0	-	-	-	50,000,000	-	-	-	1
M3.0	-	-	-	-	-	-	-	-
W13.0	-	-	-	-	-	-	-	-
Y1.0	10,071,440,000	217,345,814,868	23,057,064,628	6,777,400,000	43	1,273	94	28

Source: ESMA - TRs (trade flow reports)

Fixed leg payment frequency	Notional amount traded				Number of trades			
	ESTR		T_2Y		Constant			
	Spot-T0	Spot-T2	NEXT IMM1	NEXT IMM2	Spot-T0	Spot-T2	NEXT IMM1	NEXT IMM2
D1.0	-	-	-	-	-	-	-	-
D89.0	-	-	-	-	-	-	-	-
M13.0	-	-	-	-	-	-	-	-
M3.0	-	-	-	-	-	-	-	-
W13.0	-	-	-	-	-	-	-	-
Y1.0	1,104,299,000	142,880,039,300	46,079,835,398	7,888,900,906	14	1,190	251	41

Source: ESMA - TRs (trade flow reports)

Fixed leg payment frequency	Notional amount traded			Number of trades		
	ESTR			T_3Y		Constant
	Spot-T0	Spot-T2	NEXT IMM1	Spot-T0	Spot-T2	NEXT IMM1
D1.0	-	-	-	-	-	-
D89.0	-	-	-	-	-	-
M13.0	-	-	-	-	-	-
M3.0	-	-	-	-	-	-
W13.0	-	-	-	-	-	-
Y1.0	1,902,553,000	72,372,608,836	12,957,917,040	24	625	177

Source: ESMA - TRs (trade flow reports)

134. The parameter analysed in Table 13 is the fixed leg day count convention and, it is evident that for all classes the Actual/360 convention is the most used. However, for contracts with trade start type spot t+0 and with 1 year tenor, liquidity is also present in contracts with the 366/360 convention.

TABLE 13 – NOTIONAL AMOUNT TRADED AND NUMBER OF TRADES ON €STR OIS SWAPS OVER THE PERIOD JUNE 2021 – APRIL 2022 – PER DIFFERENT FIXED LEG DAY COUNT CONVENTION

Fixed leg payment frequency	Fixed Leg Day Count Convention	Notional amount traded			Number of trades		
		ESTR		T_3M	Constant		
		Spot-T2	NEXT IMM1	NEXT IMM2	Spot-T2	NEXT IMM1	NEXT IMM2
Annual	30/360	-	-	-	-	-	-
Annual	Actual/360	104,379,942,915	56,951,389,563	105,893,358,234	126	47	76
Annual	Actual/Actual	-	-	-	-	-	-
Annual	Actual/365	-	-	-	-	-	-
Annual	366/365	-	-	-	-	-	-
Annual	360/360	-	-	-	-	-	-
Annual	366/360	-	-	-	-	-	-
Annual	366/366	-	-	-	-	-	-
Annual	365/360	-	-	-	-	-	-

Source: ESMA - TRs (trade flow reports)

Fixed leg payment frequency	Fixed Leg Day Count Convention	Notional amount traded			Number of trades		
		ESTR		T_3M	Constant		
		Spot-T2	NEXT IMM1	NEXT IMM2	Spot-T2	NEXT IMM1	NEXT IMM2
Quarterly	30/360	-	-	-	-	-	-
Quarterly	Actual/360	56,163,668,856	-	-	97	-	-
Quarterly	Actual/Actual	-	-	-	-	-	-
Quarterly	Actual/365	-	-	-	-	-	-
Quarterly	366/365	-	-	-	-	-	-
Quarterly	360/360	-	-	-	-	-	-
Quarterly	366/360	-	-	-	-	-	-
Quarterly	366/366	-	-	-	-	-	-
Quarterly	365/360	-	-	-	-	-	-

Source: ESMA - TRs (trade flow reports)

Fixed leg payment frequency	Fixed Leg Day Count Convention	Notional amount traded				Number of trades			
		ESTR		T_1Y		Constant			
		Spot-T0	Spot-T2	NEXT IMM1	NEXT IMM2	Spot-T0	Spot-T2	NEXT IMM1	NEXT IMM2
Annual	30/360	-	1,000,000	-	-	-	1	-	-
Annual	Actual/360	2,693,750,000	202,935,458,270	18,496,964,628	3,056,000,000	14	1,133	72	11
Annual	Actual/Actual	-	-	-	-	-	-	-	-
Annual	Actual/365	-	-	-	-	-	-	-	-
Annual	366/365	-	-	-	-	-	-	-	-
Annual	360/360	-	-	-	-	-	-	-	-
Annual	366/360	7,250,000,000	-	100,000,000	-	28	-	1	-
Annual	366/366	-	-	-	-	-	-	-	-
Annual	365/360	-	-	-	-	-	-	-	-

Source: ESMA - TRs (trade flow reports)

Fixed leg payment frequency	Fixed Leg Day Count Convention	Notional amount traded				Number of trades			
		ESTR		T_2Y		Constant			
		Spot-T0	Spot-T2	NEXT IMM1	NEXT IMM2	Spot-T0	Spot-T2	NEXT IMM1	NEXT IMM2
Annual	30/360	-	102,060,000	-	-	-	1	-	-
Annual	Actual/360	985,299,000	138,227,034,300	44,006,310,398	7,888,900,906	11	1,104	226	41
Annual	Actual/Actual	-	-	-	-	-	-	-	-
Annual	Actual/365	-	-	-	-	-	-	-	-
Annual	366/365	-	-	-	-	-	-	-	-
Annual	360/360	-	-	-	-	-	-	-	-
Annual	366/360	-	-	-	-	-	-	-	-
Annual	366/366	-	-	-	-	-	-	-	-
Annual	365/360	-	-	-	-	-	-	-	-

Source: ESMA - TRs (trade flow reports)

Fixed leg payment frequency	Fixed Leg Day Count Convention	Notional amount traded			Number of trades		
		ESTR			T_3Y		Constant
		Spot-T0	Spot-T2	NEXT IMM1	Spot-T0	Spot-T2	NEXT IMM1
Annual	30/360	-	-	-	-	-	-
Annual	Actual/360	1,486,553,000	70,970,008,836	12,831,298,764	20	595	165
Annual	Actual/Actual	-	-	-	-	-	-
Annual	Actual/365	-	-	-	-	-	-
Annual	366/365	-	-	-	-	-	-
Annual	360/360	-	-	-	-	-	-
Annual	366/360	300,000,000	-	-	2	-	-
Annual	366/366	-	-	-	-	-	-
Annual	365/360	-	-	-	-	-	-

Source: ESMA - TRs (trade flow reports)

135. Finally, Table 14 analyses the floating leg reset frequency. In this case it emerges that the annual frequency is the most used floating leg reset frequency but, also a daily frequency seems to be rather frequently used. Considering that also the ad-hoc data collection from trading venues (Table 15) presents as most frequently used the annual frequency it is proposed to use this parameter in the final proposal except for contracts with a quarterly fixed leg payment frequency which instead shall have a quarterly floating leg reset frequency.

TABLE 14 – NOTIONAL AMOUNT TRADED AND NUMBER OF TRADES ON €STR OIS SWAPS OVER THE PERIOD JUNE 2021 – APRIL 2022 – PER DIFFERENT FLOATING LEG RESET FREQUENCY

Fixed leg payment frequency	Fixed Leg Day Count Convention	Floating Leg Reset Frequency	Notional amount traded			Number of trades		
			ESTR			T_3M		Constant
			Spot-T2	NEXT IMM1	NEXT IMM2	Spot-T2	NEXT IMM1	NEXT IMM2
Annual	Actual/360	D0.0	-	-	-	-	-	-
Annual	Actual/360	D1.0	3,450,000,000	9,740,119,657	5,461,000,000	8	9	5
Annual	Actual/360	D364.0	-	-	-	-	-	-
Annual	Actual/360	M3.0	-	-	-	-	-	-
Annual	Actual/360	Y0.0	-	-	-	-	-	-
Annual	Actual/360	Y1.0	99,929,942,915	46,711,269,906	100,432,358,234	117	37	71

Source: ESMA - TRs (trade flow reports)

Fixed leg payment frequency	Fixed Leg Day Count Convention	Floating Leg Reset Frequency	Notional amount traded			Number of trades		
			ESTR			T_3M		Constant
			Spot-T2	NEXT IMM1	NEXT IMM2	Spot-T2	NEXT IMM1	NEXT IMM2
Quarterly	Actual/360	M3.0	56,163,668,856	-	-	97	-	-

Source: ESMA - TRs (trade flow reports)

Fixed leg payment frequency	Fixed Leg Day Count Convention	Floating Leg Reset Frequency	Notional amount traded				Number of trades			
			ESTR		T_1Y		Constant			
			Spot-T0	Spot-T2	NEXT IMM1	NEXT IMM2	Spot-T0	Spot-T2	NEXT IMM1	NEXT IMM2
Annual	Actual/360	D0.0	-	-	-	-	-	-	-	
Annual	Actual/360	D1.0	1,100,000,000	34,821,054,048	5,325,582,000	639,500,000	2	189	18	4
Annual	Actual/360	D364.0	-	-	-	-	-	-	-	
Annual	Actual/360	M3.0	-	-	-	-	-	-	-	
Annual	Actual/360	Y0.0	-	-	-	-	-	-	-	
Annual	Actual/360	Y1.0	1,593,750,000	168,114,404,221	13,171,382,628	2,416,500,000	12	944	54	7

Source: ESMA - TRs (trade flow reports)

Fixed leg payment frequency	Fixed Leg Day Count Convention	Floating Leg Reset Frequency	Notional amount traded				Number of trades				
			ESTR			T_2Y		Constant			
			Spot-T0	Spot-T2	NEXT IMM1	NEXT IMM2	Spot-T0	Spot-T2	NEXT IMM1	NEXT IMM2	
Annual	Actual/360	D0.0	-	-	-	-	-	-	-		
Annual	Actual/360	D1.0	539,600,000	57,126,308,300	9,714,367,498	4,402,797,974	8	380	64	18	
Annual	Actual/360	D364.0	-	-	-	-	-	-	-		
Annual	Actual/360	M3.0	-	-	-	-	-	-	-		
Annual	Actual/360	Y0.0	-	850,000,000	-	-	-	1	-	-	
Annual	Actual/360	Y1.0	445,699,000	80,250,726,000	34,291,942,900	3,486,102,932	3	723	162	23	

Source: ESMA - TRs (trade flow reports)

Fixed leg payment frequency	Fixed Leg Day Count Convention	Floating Leg Reset Frequency	Notional amount traded				Number of trades				
			ESTR			T_3Y		Constant			
			Spot-T0	Spot-T2	NEXT IMM1	NEXT IMM2	Spot-T0	Spot-T2	NEXT IMM1	NEXT IMM2	
Annual	Actual/360	D0.0	-	-	-	-	-	-	-		
Annual	Actual/360	D1.0	48,000,000	19,971,945,937	9,616,766,764	-	3	186	91		
Annual	Actual/360	D364.0	-	-	-	-	-	-	-		
Annual	Actual/360	M3.0	200,000,000	-	-	-	2	-	-		
Annual	Actual/360	Y0.0	-	383,000,000	-	-	-	3	-		
Annual	Actual/360	Y1.0	1,238,553,000	50,615,062,899	3,214,532,000	-	15	406	74		

Source: ESMA - TRs (trade flow reports)

TABLE 15 – NOTIONAL AMOUNT TRADED AND NUMBER OF TRADES ON €STR OIS SWAPS OVER THE PERIOD JUNE 2021 – APRIL 2022 – PER DIFFERENT FLOATING LEG RESET FREQUENCY (AD-HOC DATA COLLECTION FROM TVS)

Notional amount traded						
Trade start type		IMMD (first two IMM dates)				
Fixed leg payment frequency		AA (Annual)				
		Floating leg payment frequency				
Floating rate index	TENOR	AA	SA	QA	MO	OTHR
ESTR	T_3M	0%	0%	0%	0%	0%
ESTR	T_1Y	8%	0%	0%	0%	0%
ESTR	T_2Y	3%	0%	0%	0%	0%
ESTR	T_3Y	88%	0%	0%	0%	0%

Number of trades						
		Floating leg payment frequency				
Floating rate index	TENOR	AA	SA	QA	MO	OTHR
ESTR	T_3M	0%	0%	0%	0%	0%
ESTR	T_1Y	38%	0%	0%	0%	0%
ESTR	T_2Y	25%	0%	0%	0%	0%
ESTR	T_3Y	38%	0%	0%	0%	0%

Source: ESMA - TV ad-hoc data collection

Q7: Do you agree with this assessment? Do you consider that also the daily floating leg reset frequency is a standardised contract feature that could be considered for the DTO?

136. With regard to the day count convention of the floating leg, ESMA does not have information in TRs data. Therefore, it used the ad-hoc data collection from trading venues. In this case, it appears that the Actual/360 day count convention is the most used (Table 16).

TABLE 16 – NOTIONAL AMOUNT TRADED AND NUMBER OF TRADES ON €STR OIS SWAPS OVER THE PERIOD JUNE 2021 – APRIL 2022 – PER DIFFERENT DAY COUNT CONVENTION OF THE FLOATING LEG (AD-HOC DATA COLLECTION FROM TVS)

Notional amount traded							
Trade start type		IMMD (first two IMM dates)					
Fixed leg payment frequency		AA (Annual)					
Floating leg payment frequency		AA (Annual)					
		Floating leg day count convention					
Floating rate index	TENOR	Actual/360	30/360	Actual/Actual	ACT/360	30E/360	OTHR
ESTR	T_3M	0%	0%	0%	0%	0%	0%
ESTR	T_1Y	8%	0%	0%	0%	0%	0%
ESTR	T_2Y	3%	0%	0%	0%	0%	0%
ESTR	T_3Y	88%	0%	0%	0%	0%	0%

Number of trades							
		Floating leg day count convention					
Floating rate index	TENOR	Actual/360	30/360	Actual/Actual	ACT/360	30E/360	OTHR
ESTR	T_3M	0%	0%	0%	0%	0%	0%
ESTR	T_1Y	38%	0%	0%	0%	0%	0%
ESTR	T_2Y	25%	0%	0%	0%	0%	0%
ESTR	T_3Y	38%	0%	0%	0%	0%	0%

Source: ESMA - TV ad-hoc data collection

6.3 Overview of proposals for amending the scope of the DTO

137. From the above analysis it is proposed that the following derivatives contracts should be made subject to the DTO.

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



Q8: Do you agree with this proposal? If not, what amendments do you think are necessary?

6.4 Proposed implementation

138. An important aspect to consider is when the new DTO should start applying. Considering that the CO on those contracts entered into force in mid-May 2022 and that some time will pass until the entry into force of these new obligations, ESMA considers it not necessary to provide for an implementation period. Therefore, the amended DTO should enter into force date on the twentieth day following that of its publication in the OJ, as per common practice.

Q9: Do you agree with proposing to not provide for an implementation period for the entry into force of the amended DTO? If not, please explain.



7 Way forward

139. With this CP, ESMA is consulting on the additional proposed amendments to the draft RTSs on the CO and DTO to be submitted for endorsement to the European Commission in the form of Delegated Regulation.
140. ESMA expects to analyse the feedback received to this consultation and to publish a Final Report by the end of this year/beginning of next year.
141. At the same time ESMA will continue to monitor the benchmark transition in the OTC interest rate derivative market and may further review the scope of the CO and/or the DTO depending on how the liquidity evolves across the various rates referenced in OTC interest rate derivatives being traded and cleared. ESMA will also continue monitoring the negotiations on the MiFIR review proposal

8 Annexes

8.1 Annex I – Summary of questions

Introduction

Q1: Are there any general comments you would like to raise?

General analysis

Q2: 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.

Clearing Obligation

Q3: Do you agree with the assessment of the EMIR criteria and with the proposed classes? Do you also agree that the maturities for SOFR OIS could be extended, including up to 50 years? If not, please detail how the assessment could differ and please also provide data and information to justify a different assessment.

Q4: Do you agree with the proposed implementation of the changes? If not please provide details that could justify a different implementation.

Trading Obligation

Q5: Do you agree with this assessment and therefore, not to introduce DTO for contracts referencing TONA, SONIA and for the time being SOFR? If not, please explain.

Q6: Do you agree with this assessment? Do you consider that also contracts with constant notional and 3 months tenor and trade start date Spot (t+0) should be subject to the DTO? If so, please specify also the other relevant standardised parameters used with those contracts. Do you consider that also contracts with constant notional and 3 years tenor and trade start date second next IMM date shall be subject to the DTO? If so, please specify also the other relevant standardised parameters used with those contracts. Should other tenors be considered for the DTO?

Q7: Do you agree with this assessment? Do you consider that also the daily floating leg reset frequency is a standardised contract feature that could be considered for the DTO?

Q8: Do you agree with this proposal? If not, what amendments do you think are necessary?

Q9: Do you agree with proposing to not provide for an implementation period for the entry into force of the amended DTO? If not, please explain.

Cost-Benefit Analysis



Q10: 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.

8.2 Annex II - Commission mandates to develop technical standards

8.2.1 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.

8.2.2 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.

8.3 Annex III – Draft technical standards

8.3.1 Clearing obligation

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

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

of []

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories⁽⁴²⁾, and in particular Article 5(2) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2015/2205⁽⁴³⁾ specifies, among others, a set of classes of over-the-counter (OTC) interest rate derivatives that are subject to the clearing obligation. Commission Delegated Regulation (EU) 2015/2205 was amended by Commission Delegated Regulation (EU) 2022/750⁽⁴⁴⁾ with regards to the set of classes of over-the-counter (OTC) interest rate derivatives denominated in Euro (EUR), Pound Sterling (GBP), Japanese Yen (JPY) and US Dollar (USD) that are subject to the clearing obligation. This change in the scope of classes that are subject to the clearing obligation reflect the transition to new benchmarks referenced in OTC derivatives, moving away from referencing the EONIA and LIBOR benchmarks and referencing instead new risk-free rates, as some classes no longer met the criteria that are essential for subjecting them to the clearing obligation while new classes started to meet these criteria.
- (2) The ICE Benchmark Administrator, the administrator for LIBOR, had communicated that the cessation of JPY LIBOR and certain fixings of USD LIBOR was going to take place at the end of 2021, whereas the publication of all remaining settings of USD LIBOR will cease in June 2023. On 5 March 2021, the Financial Conduct Authority from the United Kingdom confirmed that all LIBOR settings would indeed either cease to be provided by any administrator or no longer be representative. In addition, the Commission, the European Central Bank in its banking supervisory capacity (ECB Banking Supervision), the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) issued a joint statement to strongly encourage counterparties to stop using any of the LIBOR settings, including USD LIBOR, as a reference rate in new contracts by 31 December 2021. Since 1 January 2022, counterparties are hence no longer able to enter into OTC interest rate derivatives referencing JPY LIBOR as this benchmark has ceased and counterparties are expected to no longer enter into OTC interest rate derivatives referencing USD LIBOR.

⁴² OJ L 201, 27.7.2012, p. 1.

⁴³ OJ L 314, 1.12.2015, p. 13

⁴⁴ OJ L 138, 17.5.2022, p. 6

- (3) Regulators and market participants have been working on replacement rates for those currencies, and in particular on the development of new risk-free rates, which are now being used as benchmarks in financial instruments and financial contracts. In particular, the Secured Overnight Financing Rate (SOFR) and the Tokyo Overnight Average Rate (TONA) risk-free rates are produced for USD and JPY respectively. More specifically with respect to the OTC derivative market, it now means that OTC interest rate derivative contracts referencing SOFR and TONA are being traded by counterparties and are being cleared at certain CCPs.
- (4) ESMA has been notified of the classes of OTC interest rate derivatives referencing SOFR or TONA that certain CCPs have been authorised to clear. For each of those classes ESMA has assessed again the criteria that are essential for subjecting them to the clearing obligation, including the level of standardisation, the volume and liquidity, and the availability of pricing information. With the overarching objective of reducing systemic risk, ESMA has determined that these classes of OTC interest rate derivatives referencing those risk-free rates should now become subject to the clearing obligation in accordance with the procedure set out in Regulation (EU) No 648/2012. Those classes should be therefore included in the scope of the clearing obligation.
- (5) In general, different counterparties need different periods of time for putting in place the necessary arrangements to start clearing their OTC interest rate derivatives subject to the clearing obligation. However, in this case, counterparties have had time to prepare for the benchmark transition, including the cessation of JPY LIBOR that took place at the end of 2021 or the planned cessation of most settings of USD LIBOR scheduled for June 2023, including with respect to their clearing arrangements. For counterparties already subject to the clearing obligation and clearing OTC interest rate derivatives denominated in JPY or in USD, clearing the new classes referencing the risk-free rates in JPY or USD does not require significant changes, if any at all, to their clearing contracts or processes. Indeed, counterparties who have had clearing arrangements in place to clear OTC interest rate derivatives denominated in JPY, then clearing OTC interest rate derivatives referencing the risk-free rate in this currency does not require establishing and implementing brand new clearing arrangements as was the case when they first started clearing OTC interest rate derivatives denominated in this currency. Furthermore, for counterparties who have had clearing arrangements in place to clear OTC interest rate derivatives referencing SOFR, as SOFR OIS classes of maturities up to 3 years are already in scope of the clearing obligation, then clearing OTC interest rate derivatives referencing SOFR for longer maturities does not require establishing and implementing brand new clearing arrangements. There is no need to introduce an additional phase-in in order to ensure an orderly and timely implementation of that obligation. The changes made to introduce the new classes of OTC interest rate derivatives referencing the risk-free rates and denominated in JPY and USD should start to apply on the date of entry into force of this Regulation.
- (6) Delegated Regulation (EU) 2015/2205 should therefore be amended accordingly.
- (7) This Regulation is based on the draft regulatory technical standards submitted to the Commission by ESMA.
- (8) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits, requested the advice of the Security and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council (3), and consulted the European Systemic Risk Board,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) 2015/2205

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

(1) Article 3 is amended as follows:

a. Paragraph 1c is added:

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

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

ANNEX

Interest rate OTC derivative classes subject to the clearing obligation

Table 1

Basis swaps classes

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

Table 2

Fixed-to-float interest rate swaps classes

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

Table 3

Forward rate agreement classes

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

Table 4

Overnight index swaps classes

Id	Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
A.4.2	OIS	FedFunds	USD	7D-3Y	Single currency	No	Constant or variable
D.4.1	OIS	€STR	EUR	7D-3Y	Single currency	No	Constant or variable
D.4.2	OIS	SONIA	GBP	7D-50Y	Single currency	No	Constant or variable
D.4.3	OIS	SOFR	USD	7D-3Y	Single currency	No	Constant or variable
E.4.1	OIS	SOFR	USD	7D-50Y	Single currency	No	Constant or variable
E.4.2	OIS	TONA	JPY	7D-30Y	Single currency	No	Constant or variable

Article 2

Entry into force

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

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

Done at Brussels,



*For the Commission
The President*

*[For the Commission
On behalf of the President*

[Position]



8.3.2 Derivative trading obligation

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

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

of []

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Commission Delegated Regulation (EU) 2017/2417⁽²⁾ specifies, among others, the classes of over-the-counter (OTC) derivatives denominated in EURO (EUR) that are subject to the derivative trading obligation.
- (2) In the context of the benchmark reform which provides for the cessation of the publication and use of certain interest rates and the parallel development of new market standards, in particular contracts referencing risk free rates developments in the OTC derivatives market have been monitored and, in particular, the trading activity in contracts referencing €STR.
- (3) Over the last 18 months a significant and constant increase in the trading activity in those contracts referencing €STR has been observed, with trading activity sharply increasing following the cessation of EONIA at the end of 2021. Moreover, trading activity in €STR has not only replaced trading activity in EONIA but, due to the wider global trend of migrating to risk free rates, has also started replacing contracts referencing EURIBOR. Therefore, it is appropriate to assess whether there is sufficient liquidity in contracts referencing €STR for the determination of the trading obligation for derivatives.
- (4) The analysis of trading activity in interest rate swaps referencing €STR based on data reported to data repositories and based on a data request to EU trading venues offering such contracts for trading, confirmed that there is significant liquidity in single currency fixed-to-float swaps contracts referencing €STR with short-term tenors of up to 3 years.
- (5) Based on a more detailed analysis it has been identified that trading activity is concentrated in interest rate swaps referencing €STR with further standardised characteristics for trade start type, notional

¹ OJ L 173, 12.6.2014, p. 84.

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



type, day count convention, and payment and reset frequencies. It follows that the classes that should be included in the scope of the trading obligation shall have a tenor of 3 months, 1 year, 2 years or 2 years as well as a notional only of constant type, the payment frequencies of the fixed and floating leg should be annual or for certain contracts quarterly. The day count convention of the floating legs should be Actual/360 and that of the fixed leg Actual/360 or for certain contracts 366/360.

- (6) Delegated Regulation (EU) 2017/2417 should be amended accordingly.
- (7) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (8) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Security and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) 2017/2417

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

- (1) Table 2 in the Annex to this Regulation is added in the Annex.

Article 2

Entry into force

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

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

ANNEX
Derivatives subject to the trading obligation

Table 2
Overnight interest rate swaps denominated in EUR

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



Floating leg

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



8.4 Annex IV - Cost-benefit analysis

142. Pursuant to Articles 10(1) the Regulation establishing ESMA⁴⁶, ESMA is empowered to develop draft RTS where the European Parliament and the Council delegate power to the Commission to adopt the RTS by means of delegated acts under Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts referred to in Article 1(2) of this Regulation, the Authority may develop draft regulatory technical standards.

143. The same Article requires ESMA to:

- a. conduct open public consultations on draft RTS and to analyse the related potential costs and benefits, unless such consultations and analyses are highly disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter;
- b. request the advice of the Securities and Markets Stakeholder Group referred to in Article 37.

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

Clearing obligation

Policy Objective	The policy objective of the CO is to ensure that certain classes of OTC derivative contracts are cleared through Central Counterparty Clearing (CCPs) in order to reduce counterparty risk and systemic risk. The proposed amendment goes in the same direction by ensuring that the scope of the obligation reflects the most recent market developments.
Technical Proposal	Under the draft RTS, certain classes of OIS referencing TONA are added to the scope of the CO. In addition, the obligation is extended to additional maturities of OIS classes referencing SOFR.

⁴⁶ [CL2010R1095EN0030010.0001.3bi_cp 1..1 \(europa.eu\)](https://eur-lex.europa.eu/eli/reg/2010/649/oj)

	See Annex 8.3.1 for more details on the draft RTS.
Benefits	<p>The benefits of the amendments proposed in the draft RTS consist in providing clarity, legal certainty and predictability in relation to the classes of derivatives which are subject to the CO in light of the benchmark transition, which led to the discontinuation of certain rates and the development of new ones.</p> <p>In addition, the proposed amendments play an important role in fostering international convergence as many third country authorities have already taken or are in the process of taking similar actions in their jurisdictions.</p>
Cost to regulators: - One-off - On-going	<p>CAs may incur relatively marginal one-off costs to adapt their supervisory activities to ensure that the new derivative contracts subject to the CO are cleared through CCPs. However, this cost is expected to be rather limited as contracts referencing the benchmark replaced by TONA (JPY LIBOR) were already in the scope of the CO and SOFR contracts are already included in the scope of the obligation, albeit with different maturities.</p> <p>No major additional on-going costs to regulators are foreseen compared to the activity before the benchmark transition.</p>
Compliance cost: - One-off - On-going	<p>CCPs already offering clearing in those additional derivatives are not expected to incur additional costs whilst some minor costs are expected to be sustained by CCPs which will decide to start offering clearing in those instruments. In more details, CCPs may incur one-off IT and organisational costs in order to adapt their systems. However, these costs would be counterbalanced by the opportunity to capture some of the clearing flow underpinned by this clearing obligation proposal.</p> <p>Market participants might also face some costs in order to adapt their systems, structures and business model in order to comply with the revised scope of the obligation. Yet, the adaptation needed should be minimal as classes of OTC interest rate derivatives denominated in JPY and USD were already in scope of the CO before the benchmark transition.</p>
Cost to other stakeholders	No additional costs are expected
Indirect costs	No additional indirect costs are expected.



Proportionality and sustainability	The changes proposed to the scope of the CO represent a natural replacement of the contracts that have been discontinued in the context of the benchmark transition. To that end, ESMA considers that the amendment proposed ensure proportionality and sustainability of the new obligation.
------------------------------------	---

Derivatives trading obligation

Policy Objective	Ensuring trading in derivatives that are sufficiently liquid takes place on venue for more efficient markets in the context of the benchmark transition.
Technical Proposal	Under the draft RTS, the most standardised single currency fixed-to-float OIS on €STR are declared subject to the DTO. See Annex 8.3.2 for more details on the draft RTS.
Benefits	The benefits of the DTO were already assessed in the impact assessments of MiFIR respectively where the DTO regime is set. The RTS provides clarity, legal certainty and predictability with respect to derivatives subject to the DTO and further contributes to supervisory convergence in the context of the benchmark transition. Furthermore, in the context of the market's transition to new benchmark rates across different jurisdictions ensures market integrity, transparency, liquidity, and competition.
Cost to regulator: - One-off - On-going	CAs may incur relatively marginal one-off costs to adapt their supervisory activities to ensure that the new derivative contracts subject to the DTO are traded on an EU trading venue or an equivalent third-country venue.
Compliance cost: - One-off - On-going	Trading venues already offering trading in those additional derivatives subject to the DTO are not expected to incur additional costs. Trading venues which will decide to start offering trading in those additional derivatives subject to the DTO might incur one-off IT and human costs to adapt their systems, manage membership requests and on-going costs to monitor this additional trading flow.
Cost to other stakeholders	A number of market participants deciding to start trading those derivatives may incur one-off staff costs, including staff training, legal costs and IT costs to connect to trading venues, or additional trading venues offering trading in those derivatives referencing €STR subject to the DTO. Those market participants will incur on-going staff costs to ensure compliance with trading venues' rules, as well as on-going IT maintenance costs, in addition to on-going membership fees. For firms that trade derivatives subject to the DTO infrequently, those additional costs may be more significant and may lead them to switch

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

Q10: 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.