



European Securities and  
Markets Authority

# Response Form to the Consultation Paper

**ESMA fees for Third-Country CCPs under EMIR 2.2**



## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex III. 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 **29 July 2019**.

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

### Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_TCTC\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_TCTC\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_TCTC\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading "Your input – Open consultations" → "Consultation on Position limits and position management in commodities derivatives").

## **Publication of responses**

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

## **Data protection**

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

## **Who should read this paper**

This consultation is looking for feedback from third-country CCPs, market participants and authorities.

## General information about respondent

Name of the company / organisation	Eurex Clearing AG
Activity	Central Counterparty
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

## Introduction

*Please make your introductory comments below, if any*

<ESMA\_COMMENT\_TCTC\_1>

Eurex Clearing AG, as part of Deutsche Boerse Group, welcomes the opportunity to comment on the three consultations which ESMA has issued. This is one of three responses, which should be seen as a single and consistent approach across the related consultations.

We generally agree with ESMA's approach described in the consultative document.

We believe it is of particular importance to implement a transparent and fair fee structure. Accordingly we welcome and prefer suggested solutions avoiding unnecessary complexity.

It is further key to ensure that the fee structure does not influence in any way the results of the tiering assessments conducted by ESMA for third country CCPs. Against this background, we agree with ESMA's approach supporting a flat fee in order to ensure a fair conduct and improve the level playing field.

<ESMA\_COMMENT\_TCTC\_1>

## Questions

**Q1** : Do you agree with the proposed one-off fees for initial recognition for Tier 2 TC-TC CCPs? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_TCTC\_1>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_TCTC\_1>

**Q2** : Do you agree with the proposed one-off fees for initial recognition for Tier 1 TC-TC CCPs? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_TCTC\_2>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_TCTC\_2>

**Q3** : Do you agree with the payment by a Tier 1 TC-CCP that becomes Tier 2 TC-CCP of the difference between the two fees? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_TCTC\_3>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_TCTC\_3>

**Q4** : Do you agree with the approach for determining the fees in 2019 for recognised or applicant TC-CCPs? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_4>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_TCTC\_4>

**Q5** : Do you agree with the approach for determining the fees in 2020 and until end of transition period for recognised or applicant TC-CCPs? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_5>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_TCTC\_5>

**Q6** : Do you prefer Option A or Option B as an approach towards establishment of fees and discounts for comparable compliance? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_6>  
We opt for Option A as less ambiguity and complexity is more efficient and helps also ESMA to avoid disputes and additional workload when determining objective and non-discriminatory classification criteria for high and low comparable compliance.  
<ESMA\_QUESTION\_TCTC\_6>

**Q7** : Do you agree with the proposed approach to calculate first-year fees for TC-CCPs under EMIR 2.2? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_TCTC\_7>

Yes, we agree with this transparent approach.

<ESMA\_QUESTION\_TCTC\_7>

**Q8** : Do you agree with the proposed approach for the calculation of annual fees? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TCTC\_8>

**Q9** : Do you agree with the proposed amount of annual fees for Tier 1 TC-CCPs recognised under EMIR 2.2? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_TCTC\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TCTC\_9>

**Q10** : Do you agree in setting an equal flat fee for Tier 2 TC-CCPs instead of using the turnover represented by revenues generated by the Tier 2 TC-CCP for the purpose of calculating the Tier 2 TC-CCP fees? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_10>

Yes, we agree with the approach of a flat fee instead of a more complex and costly turnover-based approach. A turnover-based approach could also be seen as discriminatory since objective supervision of a company based on common standards shall be independent of the revenues such company generates.

<ESMA\_QUESTION\_TCTC\_10>

**Q11** : In case of considering use of revenues as more appropriate alternative, please detail whether you agree with the inclusion of (i) all revenues generated by the CCP, irrespective whether from clearing, treasury or membership linked to EU, such as those generated with regards to EU venues, EU counterparties, including their non-EU branches and non-EU subsidiaries, financial instruments, contracts and transactions cleared by the CCP where at least one of the currencies is ESCB currency or (ii) all revenues generated by the Tier 2 TC-CCP should be taken into account? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_11>

Not applicable as flat fee is preferred.

<ESMA\_QUESTION\_TCTC\_11>

**Q12** : Do you agree with the proposed fees for withdrawal of recognition of the TC-CCP? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_12>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_TCTC\_12>

**Q13** : Do you agree with the proposal for the payment conditions of the applicable initial recognition fee under EMIR 2.2.? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_TCTC\_13>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_TCTC\_13>

**Q14** : Do you agree with the proposal for the payment conditions of the additional fee for comparable compliance? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_TCTC\_14>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_TCTC\_14>

**Q15** : Do you agree with the proposal to not reimburse TC-CCPs in case they decide to withdraw their application for recognition before recognition is granted? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_15>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_TCTC\_15>

**Q16** : Do you agree with the proposal that TC-CCPs pay their annual fees by 31 December of the year preceding the one for which the fees are due? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_16>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_TCTC\_16>

**Q17** : Do you agree with the proposal that TC-CCPs pay the relevant withdrawal fee at the time of initiation of the process for the adoption of ESMA's decision on withdrawal? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_17>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_TCTC\_17>

**Q18** : Do you agree with the proposal for the timing of payment of the 2019 and 2020 fees? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_18>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_TCTC\_18>

