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| Response Form to the Consultation Paper  |
| **Report on highly liquid financial instruments with regards to the investment policy of central counterparties (EMIR Article 85(3a(e)))**  |

**Responding to this paper**

ESMA invites comments on all matters in this consultation 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 **24 January 2022.**

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\_CCP investment policy\_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\_CCPinvestmentpolicy\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_CCPinvestmentpolicy\_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” à “Consultation on financial instruments eligible for investments by CCPs, including EU Money Market Funds”).

**Publication of responses**

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

**Data protection**

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

**Who should read this paper?**

All interested stakeholders are invited to respond to this consultation. In particular, this paper may be specifically of interest for EU central counterparties, clearing members and clients of clearing members.

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | European Association of Public Banks |
| Activity | Banking sector |
| Are you representing an association? |[x]
| Country/Region | Europe |

**Introduction**

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_CCP investment policy\_00>

TYPE YOUR TEXT HERE

<ESMA\_COMMENT\_ CCP investment policy\_00>

**Questions**

1. : Does the above section describe accurately the requirements on CCP investments outside the EU? Are there other jurisdictions that ESMA should consider to inform its analysis?

<ESMA\_QUESTION\_CCP investment policy\_01>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ CCP investment policy\_01>

1. : Does the above section provide an accurate description of CCP practices regarding their investment and collateral policies?

<ESMA\_QUESTION\_ CCP investment policy \_02>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ CCP investment policy\_02>

1. : Does the above section accurately describe the trade-offs faced by CCPs when developing their investments strategies? What other factors or trade-offs can influence CCP investment strategies?

<ESMA\_QUESTION\_ CCP investment policy\_03>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CCP investment policy\_03>

1. : Do you agree with ESMA’s premise that changes to the list of financial instruments for CCP investments should be in line with the PFMI?

<ESMA\_QUESTION\_ CCP investment policy\_04>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ CCP investment policy\_04>

1. : Do you agree with ESMA’s policy approach that benefits should outweigh risks to support a policy change?

<ESMA\_QUESTION\_ CCP investment policy\_05>

Yes, we agree with ESMA’s policy approach that benefits should outweigh risks to support a policy change.

<ESMA\_QUESTION\_ CCP investment policy\_05>

1. : Do you agree with ESMA’s approach to focus on the list of conditions to define highly liquid instruments bearing minimal credit and market risk? Do you believe it would be appropriate to align EMIR with other definitions of highly liquid instruments in the EU financial legislation, such as CRR?

<ESMA\_QUESTION\_ CCP investment policy\_06>

Yes, we agree with ESMA’s assessment, that Article 47 shall not be reviewed but only the definition of which instruments are to be considered as “highly liquid, bearing minimal credit and market risk”. Hence, the cumulative conditions for debt instruments set forth in Annex II of the Delegated Regulation 152/2013 (the **EMIR Delegated Regulation**) for instruments to be considered “highly liquid financial instruments, bearing minimal credit and market risk” should be analysed.

In addition, we also consider it appropriate to align EMIR with other definitions of highly liquid instruments in the EU financial legislation, in particular with the CRR. Experience has shown that the definition of highly liquid financial instruments for example for purposes of the LCR has proven fit for purpose and has ensured the stability of banks in times of crisis.

<ESMA\_QUESTION\_ CCP investment policy\_06>

1. : With regards to condition (a) on public entities outlined in Annex II:
2. Should the list of international organisations be expanded beyond the EFSF and the ESM to explicitly include the EU?
3. Should it include other international organisations (IMF? BIS? Others?)?
4. Do you agree with ESMA’s legal analysis that it is not necessary to explicitly include regional governments and local authorities as these should be covered by the generic term of government under condition (a)(i)? Should ESMA consider adding conditions similar to those outlined in Article 115 of the CRR?
5. Should ESMA consider limiting the list of governments and central banks in particular to those from third-countries deemed to have equivalent regulatory and supervisory arrangements?
6. Do you agree that the list of multilateral development bank listed under Article 177(2) of CRR is suitable?

<ESMA\_QUESTION\_ CCP investment policy\_07>

We generally support the idea to broaden the list of eligible instruments - with the above restriction that the benefits must exceed the risks and that the eligible instruments must be highly liquid, bearing minimal credit and market risk. The list of international organisations should therefore be expanded to include the EU. The more risk-diversified a CCP can invest its funds, the better.

With regards to the inclusion of regional governments and local authorities we generally concur with ESMA’s analysis in in number 85 that the wording should already be broad and general enough as to include financial instruments issued or guaranteed by these entities. In particular this is in line with the classification of such financial instruments as highly liquid under the LCR (see Art. 10 (1) (c) of the Delegated Regulation 2015/61; <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0061&from=EN>).

However, our experience has shown that the wording “governments” is not entirely clear in its scope. Some tend to restrict it to issuances or guarantees by central governments only.

We would, thus, propose to amend it to “central governments and regional governments”. Such differentiated wording corresponds, for example, to the wording used in Article 201 of the CRR.

In addition, it indeed might make sense to add conditions similar to those outlined in Article 115 of the CRR. Defining the requirements in the respective regulation itself is often clearer than including references to other regulations.

<ESMA\_QUESTION\_ CCP investment policy\_07>

1. : Should ESMA consider expanding condition (a) to certain debt instruments issued or backed by private entities? If so, to which type of corporate debt securities (Commercial Paper, Certificates of Deposits, covered bonds, etc.)? Under what conditions? How would the benefits outweigh the added risks?

<ESMA\_QUESTION\_ CCP investment policy\_08>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ CCP investment policy\_08>

1. : With regards to condition (b) on CCP internal assessments in Annex II:
2. What are, to your knowledge, the best practices used by CCPs to identify low credit and market risk?
3. What are the safeguards put in place to avoid overreliance on external opinions, notably CRAs?
4. In order to avoid supervisory divergence, do you deem necessary that ESMA issue further guidance on how NCAs should assess these provisions?

<ESMA\_QUESTION\_ CCP investment policy\_09>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ CCP investment policy\_09>

1. : With regards to condition (c) on the average time to maturity, do you believe that this time period is appropriate? Should its calculation be further specified in the RTS?.

<ESMA\_QUESTION\_ CCP investment policy\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ CCP investment policy\_10>

1. : With regards to conditions (d), (e), (f) and (g) under Annex II, should these be amended?

<ESMA\_QUESTION\_ CCP investment policy\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ CCP investment policy\_11>

1. : Do you agree with this conclusion? To what extent are MMFs currently used as collateral or CCP investments beyond the EU?

<ESMA\_QUESTION\_ CCP investment policy\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ CCP investment policy \_12>

1. : Do you agree with the premise that the assets held by eligible MMFs for CCP investment should at least meet the same criteria as for other financial instruments?

<ESMA\_QUESTION\_ CCP investment policy\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ CCP investment policy \_13>

1. : In your view, how could ESMA bridge the need for macroprudential tools for MMFs and the need for high quality and highly liquid collateral for CCPs?

<ESMA\_QUESTION\_ CCP investment policy\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ CCP investment policy\_14>

1. : Do you agree with ESMA that it is not appropriate at this stage to decide on the potential eligibility of MMFs for CCP investments before policy discussions on MMFs at the international and EU levels are finalized?

<ESMA\_QUESTION\_ CCP investment policy\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ CCP investment policy\_15>

1. : What would be the costs and benefits of extending the list of financial instruments considered highly liquid with minimal market and credit risk, in the context of EU CCPs’ investment policies?

<ESMA\_QUESTION\_ CCP investment policy\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ CCP investment policy\_16>

1. : What would be the costs and benefits of extending the list of financial instruments to money market funds authorised in accordance with MMFR?

<ESMA\_QUESTION\_ CCP investment policy\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ CCP investment policy\_17>