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| Response Form to the Consultation Paper on the clearing and derivative trading obligations in view of the 2022 status of the benchmark transition |
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**Responding to this paper**

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions. 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.**

**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. Use this form and send your responses in Word format (**pdf documents will not be considered except for annexes**);
3. Please do not remove tags of the type <ESMA\_QUESTION \_RFRR\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
4. 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.
5. When you have drafted your response, name your response form according to the following convention: ESMA\_RFRR\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_RFRS\_ABCD\_RESPONSEFORM.
6. Upload the form containing your responses, **in Word format**, to ESMA’s website (www.esma.europa.eu under the heading “Your input – Open Consultations” -> Consultation Paper on the clearing and derivative trading obligations in view of the benchmark transition”).

**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](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

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

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**General information about respondent**

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| Name of the company / organisation | BNP Paribas |
| Activity | Banking sector |
| Are you representing an association? |[ ]
| Country/Region | Europe |

**Questions**

**Introduction**

1. Are there any general comments you would like to raise?

<ESMA\_QUESTION\_RFRR\_1>

Generally speaking BNP Paribas (BNPP) is supportive of ESMA’s past and current efforts on adapting the EU EMIR derivatives Clearing Obligation (CO) and the EU MIFIR Derivatives Trading Obligation (DTO) in the context of the on-going interest rate benchmark reform.

While BNPP does not necessarly object with the proposed adjustments of the CO knowing this is an effort to align with other major jurisdictions, BNPP does NOT agree with the current proposal to add any €STR OIS IRS into the EU DTO at this stage. As mentioned by ESMA in the consultation, there is an on-going MiFIR review which is currently proposing a new EU DTO suspension mechanism for EU banks when trading with non-EU clients under certain conditions in order to fix a competitiveness issue for EU banks to access liquidity on UK Trading Venue post-Brexit. Despite the full MiFID review proposal is still under negotiations, especially topics such as the introduction of Consolidated Tapes or Payment For Order Flow, there seems likely to be a political consensus around the introduction of this DTO suspension mechanism. It would be very damageable for EU banks and also inconsistent for ESMA to add new Risk Free Rates (RFR) in the EU DTO, meaning literally increasing an existing competiveness issue for EU banks, while the EC and EU authorities are working on trying to fix this critical issue. We are strongly against adding any new RFR, including €STR, until the permanent solution proposed by the EC has been fully implemented to ensure the current competitive problem still experienced by EU banks (Euribor, ITRAXX) is not unnecessarly amplified.

In this context we agree that CO and DTO RTS must be decorelated and that ESMA must consider proceeding with two RTSs distinctly for CO and DTO. The RTS for DTO must be considered at a later stage only when the new EU DTO suspension mechanism is fully enforced.’

Similarly to ISDA we also believe that transactions stemming from Post Trade Risk Reduction (PTRR) exercises should be exempt from the CO, to enable market participants to manage the risk in their uncleared portfolios.

<ESMA\_QUESTION\_RFRR\_1>

**General analysis**

1. 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.

<ESMA\_QUESTION\_RFRR\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RFRR\_2>

**Clearing obligation**

1. 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.

<ESMA\_QUESTION\_RFRR\_3>

BNPP broadly agrees with ESMA assessment and do not generally speaking object to the potential addition of TONA JPY OIS (7D to 30Y) and the extension of SOFR USD OIS to 50Y (instead of 3Y as previously implemented). Overall, the impact should be fairly limited knowing these new asset classes, replacing old LIBOR, are already largely volontarly cleared. BNPP notes that such changes are aligning the EU with other major jurisdictions such as the US and the UK. BNPP would welcome an implementation date after the enforcement date in other main jurisdiction, especially the US, to avoid regulatory arbitrage and competitive disadvantage.

<ESMA\_QUESTION\_RFRR\_3>

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

<ESMA\_QUESTION\_RFRR\_4>

* BNPP broadly agrees with ESMA proposed implementation but would like to remind that sufficient notice must be given to market participants ahead of the final implementation date in order to ensure:
* All internal systems are adjusted accordingly to ensure compliance with the rules and relevant controls
* Internal communication and training
* External client communication

Also, as explained above, BNPP would welcome an implementation date after the enforcement date in other main jurisdiction, especially the US, to avoid regulatory arbitrage and competitive disadvantage

<ESMA\_QUESTION\_RFRR\_4>

**Trading Obligation**

1. 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.

<ESMA\_QUESTION\_RFRR\_5>

* Yes, BNPP fully agrees with ESMA to **NOT** add TONA, SONIA or SOFR into the DTO. More broadly BNPP does not support the addition of **any new RFR** into the DTO until the new EU DTO suspension mechanism proposed by the EC has been fully enforced to avoid increasing the current competitive disadvantage experienced by EU banks post Brexit.

<ESMA\_QUESTION\_RFRR\_5>

1. 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?

<ESMA\_QUESTION\_RFRR\_6>

**No**, BNPP disagrees as explained in Q1

BNPP does NOT agree with the current proposal to add any €STR OIS IRS into the EU DTO at this stage. As mentioned by ESMA in the consultation, there is an on-going MiFIR review which is currently proposing a new EU DTO suspension mechanism for EU banks when trading with non-EU clients under certain conditions in order to fix a competitiveness issue for EU banks to access liquidity on UK Trading Venue post-Brexit. Despite the full MiFID review proposal is still under negotiations, especially topics such as the introduction of Consolidated Tapes or Payment For Order Flow, there seems likely to be a political consensus around the introduction of this DTO suspension mechanism. It would be very damageable for EU banks and also inconsistent for ESMA to add new Risk Free Rates (RFR) in the EU DTO, meaning literally increasing an existing competiveness issue for EU banks, while the EC and EU authorities are working on trying to fix this critical issue. We are strongly against adding any new RFR, including €STR, until the permanent solution proposed by the EC has been fully implemented to ensure the current competitive problem still experienced by EU banks (Euribor, ITRAXX) is not unnecessarly amplified.

<ESMA\_QUESTION\_RFRR\_6>

1. 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?

<ESMA\_QUESTION\_RFRR\_7>

**No**, BNPP disagrees as explained in Q6

<ESMA\_QUESTION\_RFRR\_7>

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

<ESMA\_QUESTION\_RFRR\_8>

**No**, BNPP disagrees as explained in Q6

<ESMA\_QUESTION\_RFRR\_8>

1. 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.

<ESMA\_QUESTION\_RFRR\_9>

**No**, BNPP disagrees as explained in Q6

Generally speaking, as explained in Q5, BNPP would like to remind that sufficient notice must be given to market participants ahead of the final implementation date in order to ensure:

* All internal systems are adjusted accordingly to ensure compliance with the rules and relevant controls
* Internal communication and training
* External client communication

<ESMA\_QUESTION\_RFRR\_9>

**Cost-benefit analysis**

1. 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

<ESMA\_QUESTION\_RFRR\_10>

Again, BNPP would like to stress that the Cost-Benefit analysis is failing to take into account that adding €STR in the DTO will be detrimental for EU banks still not able to access some non-EU clients liquidity on UK trading venues since Brexit. The addition of any €STR IRS would only increase an existing problem when in parallel the EC, fully aware of the negative impacts on EU banks competitiveness, made a proposal for a solution. The impact will only be negative for EU banks loosing more market share especially knowing that, generally speaking, €STR IRS are already broadly traded electronically as per market practice. The introduction of €STR in the DTO at this stage will have only detrimental impacts without any clear benefits.

<ESMA\_QUESTION\_RFRR\_10>