**Reply** **form**

Conditions of the Active Account Requirement

Responding to this paper

ESMA invites comments on all matters in the Consultation Paper and in particular on the specific questions in this reply form. 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 **27 January 2025.**

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:

* Insert your responses to the questions in the Consultation Paper in this reply form.
* Please do not remove tags of the type <ESMA\_QUESTION\_AAR\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* 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.
* When you have drafted your responses, save the reply form according to the following convention: ESMA\_AAR\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_AAR\_ABCD.

* Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

Publication of responses

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

Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings ‘Legal notice’ and heading ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’..

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Związek Banków Polskich/Polish Bank Association |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | Poland |

# Questions

1. Are there any aspects of the AAR scope on which ESMA has based its quantitative analysis and its policy choices that ESMA should consider detailing further*?*

<ESMA\_QUESTION\_AAR\_01>

Could you please confirm that if a daughter company is a part of a group subject to consolidated supervision in the Union, the Union parent undertaking of that group shall be solely responsible for monitoring and calculation of the **85% threshold** defined in Article 7a, (5) of EMIR?

Additionally could you please confirm that the Union parent undertaking of that group shall be solely responsible for identification and monitoring of AAR for a daughter company.

Finally could you please clarify that both the **AAR obligation and Representatives obligation is calculated at group level** (for each and every daughter company within the EU group)?

<ESMA\_QUESTION\_AAR\_01>

1. Do you agree with the above approach for condition (a)? Are there other requirements that ESMA should consider for meeting condition (a)?

<ESMA\_QUESTION\_AAR\_02>

Could you please describe in more detail the role and responsibilities of a Clearing Agent as it is a the Union parent undertaking of the group? Who should be able to demonstrate to the NCA Condition (a))?

Should it be a daughter company or Clearing Agent/parent undertaking of that group?

It is noted that clearing members providing client clearing services should pass-on the certification of the client account to their clients or clients providing client clearing services (and so on).

<ESMA\_QUESTION\_AAR\_02>

1. Do you agree with the above approach for conditions (b) and (c)?

<ESMA\_QUESTION\_AAR\_03>

Could you please describe in more detail the role and responsibilities of Clearing Agent as it is a the Union parent undertaking of the group?

Who should be able to demonstrate to the NCA Condition (b) and (c)? Daughter company or Clearing Agent/parent undertaking of that group?

It is noted that clearing members providing client clearing services should pass-on the certification of the client account to their clients or clients providing client clearing services (and so on).

The requirement to obtain confirmation from the CCP of the possibility of tripling activity seems excessive in relation to the EU CCP, where the entity clears more than ¼ of its volumes (average 26% adopted by ESMA); if we count the average volumes of the last 12 months, confirmation of the ability to clear multiples should refer to the same period, i.e. 12 months (and not - 1 month), if the assumption is to confirm the ability to accept all / most of the new transactions; shortening the period of acceptance to 1 month implies a situation well beyond the normal growth of transactions.

<ESMA\_QUESTION\_AAR\_03>

1. Do you agree with the proposed approach for the annual stress-testing conditions (a), (b) and (c)?

<ESMA\_QUESTION\_AAR\_04>

Are clearing members providing client clearing services solely responsible for passing-on the certification of the client account to their clients or clients providing client clearing services in regards with annual/semi-annual stress-testing on conditions (a), (b) and (c) (and so on)?

Additionally, could you please clarify if the 100 billion EUR threshold should be calculated at counterparty or group level?

It is not clear what the 85% figure should be and who should calculate it; if it were to be 85% of a given participant's total activity in cleared transactions in all categories in all chambers, it would amount to disclosure of business secrets, especially when using clearing brokers. In addition, when using in several chambers and several clearing brokers , such an inquiry could lead to an unjustified multiplication of volumes.

<ESMA\_QUESTION\_AAR\_04>

1. Do you agree with the differentiated frequency for the stress-testing depending on the counterparties’ clearing activities? Would you suggest any other way to take into account the proportionality principle?

<ESMA\_QUESTION\_AAR\_05>

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<ESMA\_QUESTION\_AAR\_05>

1. Do you agree with the proposed classes of derivatives for EUR OTC IRD?

<ESMA\_QUESTION\_AAR\_06>

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<ESMA\_QUESTION\_AAR\_06>

1. Do you agree with the proposed classes of derivatives for PLN OTC IRD?

<ESMA\_QUESTION\_AAR\_07>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_AAR\_07>

1. Do you agree with the proposed classes of derivatives for EUR STIR?

<ESMA\_QUESTION\_AAR\_08>

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<ESMA\_QUESTION\_AAR\_08>

1. Do you agree with the proposed maturity and trade size ranges for each class of derivatives in EUR OTC IRD?

<ESMA\_QUESTION\_AAR\_09>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_AAR\_09>

1. Do you agree with the proposed maturity and trade size ranges for each class of derivatives in PLN OTC IRD?

<ESMA\_QUESTION\_AAR\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_AAR\_10>

1. Do you agree with the proposed maturity and trade size ranges for each class of derivatives in EUR STIR?

<ESMA\_QUESTION\_AAR\_11>

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<ESMA\_QUESTION\_AAR\_11>

1. Do you agree with the proposed number of most relevant subcategories for each clearing service of substantial systemic relevance? Do you think this should be set at a more granular level (i.e. per class of derivatives)?

<ESMA\_QUESTION\_AAR\_12>

Could you please clarify if number of most relevant subcategories should be calculated for CCP Tier 1 and CCP Tier 2 separately?

Or if the number of most relevant subcategories should be calculated by summing up trades cleared via CCP Tier 1 and CCP Tier 2?

Additionally, could you please clarify if the number of most relevant categories should be calculated at counterparty or group level?

<ESMA\_QUESTION\_AAR\_12>

1. Do you agree with the proposed reference periods for EUR OTC IRD? Do you think the reference periods should be set at a more granular level (i.e. class of derivatives)?

<ESMA\_QUESTION\_AAR\_13>

Could you please clarify if 100 billion EUR threshold should be calculated at counterparty or group level?

<ESMA\_QUESTION\_AAR\_13>

1. Do you agree with the proposed reference period for PLN OTC IRD? Do you think that the reference periods should be set at a more granular level (i.e. class of derivatives)?

<ESMA\_QUESTION\_AAR\_14>

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<ESMA\_QUESTION\_AAR\_14>

1. Do you agree with the proposed reference periods for EUR STIR referenced in Euribor? Do you agree with the proposed reference periods for EUR STIR referenced in €STR?

<ESMA\_QUESTION\_AAR\_15>

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<ESMA\_QUESTION\_AAR\_15>

1. Do you agree with the proposed approach for the reporting of the activity and risk exposures of the counterparty subject to the active account requirement?

<ESMA\_QUESTION\_AAR\_16>

1.) Regarding Activities Reporting under 2024/2987, Article 7b

Should it be done separately, split per each and every CCP (Tier 1 and Tier 2)?

2.) Regarding Risk Exposure Reporting under 2024/2987, Article 7b

Should it be done separately, split per each and every CCP (Tier 1 and Tier 2)?

3.) Could you please clarify if Table 1 (Annex II of the Draft Regulatory Technical Standards) should be prepared only at counterparty level including Entities within the Group provided by the Union parent undertaking of that group?

<ESMA\_QUESTION\_AAR\_16>

1. Do you consider that including information on margin activity in the AAR reporting requirement would provide valuable information on the activities and risk exposures of the counterparty?

<ESMA\_QUESTION\_AAR\_17>

NCAs have daily access to all essential data so it seems that there is no need to include information on margin activity in the AAR reporting requirement.

<ESMA\_QUESTION\_AAR\_17>

1. Do you consider that including reporting on Unique Trade Identifiers (UTIs) would provide valuable information from a supervisory perspective?

<ESMA\_QUESTION\_AAR\_18>

NCAs have daily access to all essential data so it seems that there is no need to include reporting on UTIs (with UTI granulation)

<ESMA\_QUESTION\_AAR\_18>

1. Do you agree with the proposed approach for the reporting of the operational conditions?

<ESMA\_QUESTION\_AAR\_19>

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<ESMA\_QUESTION\_AAR\_19>

1. Do you agree with the proposed approach for the reporting of the representativeness obligation?

<ESMA\_QUESTION\_AAR\_20>

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<ESMA\_QUESTION\_AAR\_20>

1. Do you agree with the proposed approach to standardise the reporting arrangements under the active account requirement?

<ESMA\_QUESTION\_AAR\_21>

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<ESMA\_QUESTION\_AAR\_21>