**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

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# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Insurance & Pension Denmark |
| Activity | Insurance and Pension |
| Are you representing an association? |[x]
| Country/Region | Denmark |

# 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>

TYPE YOUR TEXT HERE

<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>

Noo. While we do agree that FC’s should be operationally well prepared to clear relevant derivatives at EU CCPs in relevant amounts, we do not agree with the approach for condition a.

Insurance & Pension Denmark would like to stress that all efforts must be taken by ESMA and other relevant authorities in order to minimize the administrative burdens put on FCs as a consequence of Regulation EU 2024/2987 and subsequent RTS’s. In fact, recital 17 of EU 2024/2987 and art. 7d, 2. of the regulation emphasizes this. It is our clear impression that when drafting the RTS, ESMA has not taken this into consideration, and we we believe ESMA could do more to limit the administrative burdens and reporting requirements following from the regulation.

As mentioned in paragraph 60 of the consultation document, CCPs and clearing members require counterparts to have the necessary operational setup in place. This is, as mentioned part of the onboarding activities directed against new clients. Clearing brokers and/or CCP’s require documentation for this and, further, national supervisors also require this type of documentation as part of their ongoing supervision of entities. Specifically, in the case of insurers and pension funds, national supervisors are, by provisions in Solvency II and similar regulation, allowed access to all entity-level information they deem necessary in order to carry out their supervisory tasks. We believe this is the case for other FCs as well.

For this reason we 1) believe that provisions in the RTS requiring FC’s to demonstrate to ESMA that they have the required technical and legal documentation in place would be unnecessary, 2) such provisions in the RTS, besides being redundant, could lead to confusion and misunderstanding regarding the specifics of documentation required and regarding which supervisory entity (ESMA or national authorities) has the power to declare documentation “sufficient”. ESMA should recognize that the technical, legal etc. framework under which FCs and clearing brokers operate vary from country to country. We believe that such differences, as long as they persist, imply that the way in which FCs demonstrate their operational setup is different from one country to the next. One set of specific requirements covering all countries, we fear, will fit any one country very badly.

We therefore suggest that the task of ensuring that an FC has the necessary operational setup in place should remain with the national supervisor who has knowledge of the technical, legal etc. setup under which an FC operates in the individual country, and who is able to develop guidance for FCs to follow when documenting the operational setup.

Regarding the frequency with which FCs should report on operational readiness, please see the answer to Q19

<ESMA\_QUESTION\_AAR\_02>

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

<ESMA\_QUESTION\_AAR\_03>

Insurance & Pension Denmark does not agree with approach b and c.

While we agree that FC’s must have an obligation to ensure operational resilience, and that FC’s must be able to demonstrate this to NCAs – upon request – there is in our view several items in the ESMA proposal that will be hard to make work in real life.

1. In the case of Danish insurers and pensions funds, they run quite complex operations, typically with large middle and back office staffs, with highly specialised investment departments, risk management functions, liquidity management functions etc., all of which are under strict regulation and supervision. Any FC should have the operational capability to clear the necessary amount of derivatives. This includes monitoring positions, ensuring access to sufficient liquidity to meet margin calls, even in stressed situations etc. In light hereof, it does not make much sense to appoint one staff member as the pivotal expert on clearing arrangements. This, in our view, is simply not the right way to ensure operational readiness. Rather, policies and workflows must reflect the ambitions of the FC with regards to clearing.
2. We don’t see the point in requiring a CCP to issue a certification or written statement that the (active) account can withstand any (large) increase in volume. Insurers and pension funds’ ability to trade derivatives rests on them having access to clearing brokers, liquidity facilities etc. A certificate issued by a CPP that an account can withstand an increase does not change this. As pointed out in paragraph 68, the CCP may not know the clearing clients identity, so the value of a certificate seems questionable. In the event a CCP is not able to clear, then clearing should be done with another CCP, and thus, a certificate as mentioned seems, at best, superfluous. In fact, this requirement, in our, view merely adds extra, unnecessary administrative burdens to the setup.

We suggest to leave it to NCA’s to carry out inspections regarding FC’s operational preparedness for clearing at an active account possibly based on guidance the individual NCA’s work out based on particularities of the individual markets.

<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>

Insurance & Pension Denmark does not agree with the overall proposed approach. In the case of insurers and pension funds, we believe there are already sufficient requirements regarding operational readiness in existing regulation. In the case of insurers and pension funds, such requirements are aimed at entities’ management, risk managent in conjunction with investment functions (in this case). Thus we do not see a need for specific stress testing or other activities to ensure that operational conditions relating to the ARR are adedquate. Rather this adds further administrative layers to an already quite encompassing regulation. We believe that ESMA could do more to reduce the administrative burdens of the AAR by taking into consideration legislation that already covers FC’s operational readiness, risk management etc.

<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>

For the reasons stated under Q4 we do not agree with the differentiated frequency. <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>

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<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>

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<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>

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<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>

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<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>

TYPE YOUR TEXT HERE

<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>

Insurance & Pension Denmark would like to point to the fact that under existing EMIR regulation and under Solvency II regulations, Danish insurers and pension funds are required to submit large amounts of data.

Derivative trades are reported with detailed information – including choice of CCP - to trade repositories in line with existing EMIR regulation.

In line with existing Solvency II requirements, Danish insurers and pension funds report on derivate trades and positions with extremely detailed information. The specifics are detailed in EU Regulation 2015/2450, where in particular templates S.08.01.04, S.08.02.01 and S.08.02.04 (which require detailed information about derivatives) are of relevance.

We would like to stress that all efforts must be taken by ESMA and other relevant authorities in order to minimize the administrative burdens put on FCs as a consequence of Regulation EU 2024/2987 and subsequent RTS’s. In fact, recital 17 of EU 2024/2987 and art. 7d, 2. of the regulation emphasizes this. It is our clear impression that when drafting the RTS, ESMA has not taken a closer look at the Solvency II QRTs mentioned. We strongly suggest that ESMA does this before imposing yet further reporting requirements on businesses.

<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>

No, we believe that margin activity is something that is a consequence of clearing but holds very little information related to the choice of CCP (EU-based or non-EU based) and other issues relate to the Active Account Requirement. Consequently, we view the inclusion of margin activity information as an unnecessary add on to reporting requirements which is not warranted by the AAR.

<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>

No, While ESMA may gain further insight into derivate trades and markets if UTIs were supplied, we do not believe that UTIs are genuinely necessary in order to gain insight into whether FCs live up to the Active Account Requirement. Therefore, and in line with the obligation to limit administrative burdens to the extent possible, we believe that UTIs should not be reported.

<ESMA\_QUESTION\_AAR\_18>

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

<ESMA\_QUESTION\_AAR\_19>

Insurance & Pension Denmark does not agree with the proposed approach. In the case of insurers and pension funds, we believe that under existing regulation (in Denmark: Solvency II) NCAs have all the powers required to request information from insurers and pension funds regarding operational conditions and preparedness. Therefore, in the case of Danish insurers and pension funds, no separate reporting on operational conditions are, in our view, necessary.

In case it is, nevertheless, decided to proceed with requirements to report on operational readiness/conditions, we believe that due consideration should be taken to the above mentioned specifics of FC’s regulated by Solvency II.

Also, should it be decided to proceed with requirements to report frequently on operational readiness/conditions, we believe that the frequency of reporting could be lowered significantly without sacrificing the purpose of EU 2024/2987. In case an FC demonstrates that it is in fact to a satisfactory degree operationally ready to clear in line with AAR, then it makes little sense to require a semiannual report stating that this is the case. Where FCs are not able to document such readiness, it could make sense for NCAs to follow up on that FC within a relatively short time span.

An approach in line with the above mentioned would, in our view, reflect a risk based approach to supervising FCs with regard to AAR which is the intended approach for supervision of insurers and pension funds under Solvency II.

<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>

Reporting under EMIR is already extensive (as pointed out by ESMA in section 6.4 of the consultation paper) and the same goes for reporting requirements on – among other things – derivative trades under Solvency II (and other sectorial legislation) as mentioned in replies to other questions. Further to this, great effort is currently unfolding at high levels of the EU Commission to decrease the administrative burdens on businesses, including but not limited to burdens related to reporting.

Against this backdrop, Insurance & Pension Denmark strongly urges ESMA to review the proposal on AAR reporting with the aim to limit to the extent possible the burdens from this new EMIR regulation.

We acknowledge that moving clearing from tier 2-CCP’s and other non-EU based CCP’s may be prudent.

 However, in our view, the proposed requirements entail a very high price for FCs only with the purpose of making it easier for ESMA and NCAs to supervise on the AAR.

We would like to remind ESMA that the current EU-Commission has a very clearly stated intention to reduce administrative and reporting burdens across European businesses and to strengthen competitiveness. The proposed RTS which comes with yet extremely extensive reporting and control requirements run counter to this high level aim of the Commission..

<ESMA\_QUESTION\_AAR\_21>