**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.

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# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Erste Group Bank AG |
| Activity | Banking sector |
| Are you representing an association? |[ ]
| Country/Region | Austria |

# Questions

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

<ESMA\_QUESTION\_AAR\_01>

**1 – Threshold Calculations**

In general, we would need the RTS to include exact specifications how the thresholds relevant for determining the obligations under the AAR should be calculated.

We would suggest a consistent approach for all respective thresholds in terms of calculation method and referenced trade base, else it would be in the responsibility of each counterparty to make the relevant assumptions.

It our understanding correct, that all thresholds are calculated based on the month-end average gross notional position for the previous 12 months?

If “outstanding cleared notional” is referenced, we understand this to mean gross notional cleared with any CCP (i.e. not only Tier 2 CCPs). Is our understanding correct?

It is unclear when the first 12 months look-back period starts for the purpose of threshold calculations – a) with EMIR 3 coming into force or b) with operative AAR requirements applying for in-scope counterparties? Please specify.

Specifically further clarification is necessary regarding the calculation method for the following thresholds:

* **EUR 100 bn threshold for determination of reference period (Art 7a(8)):**

We would suggest to apply the same calculation method as for the calculation of the EUR 6 bn threshold to determine application of the representativeness obligation Art 7a (4)

The phrase “notional clearing volume outstanding per year” from Level 1, which is also used in the RTS draft (Article 4-6), is ambiguous.

* **EUR 100 bn threshold for determination of the stress-testing frequency (Art 3 of the draft RTS):**

the reference date / frequency of review is unclear.

For clarification we would suggest that the threshold calculation methods in the RTS should be specified explicitly in terms of:

* notional values to be used
* start of look-back period
* trade base (outstanding vs newly concluded; all cleared vs cleared on Tier 2 CCP; all cleared trades in derivatives mentioned in Art 7a (6) vs cleared trades in a specific class / category / subcategory)
* averages (month-end vs annual)

**2- Entity vs group level:**

**Please specify The requirements for individual group members**:

* If the EUR 6 bn threshold is exceeded on group level, it is unclear if the representativeness obligation applies to group members individually below EUR 6 bn as well.
* If the EUR 100 bn thresholds are exceeded on group level, it is unclear if the shorter frequencies for stress-testing and determination of the reference period apply to group members individually below EUR 100 bn as well.

While the CP (paragraph 40) states that it is sufficient for one group member to fulfil the condition, there is no mention in this regard in the RTS draft.

We would appreciate if this interpretation of Level 1 is explicitly included in the RTS.

<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>

In line with the intention of the AAR to implement the infrastructure for clearing activities at an EU CCP, but not to test financial capacities, it should be sufficient to open collateral accounts to fulfil the operational conditions.

With regard to the type of account it can be either cash or securities, which should be reflected in the RTS as well (“cash and/or collateral” instead of “cash and collateral”)

Coverage of the account should only be relevant when actually clearing trades e.g. to fulfil the representativeness obligation.

This should be reflected also in the RTS (Article 1 (1c))

Also, it should be stated clearly that the cash or securities collateral accounts are not subject to any stresstesting (as could be understood based on the requirements from Article 7a (4)

<ESMA\_QUESTION\_AAR\_02>

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

<ESMA\_QUESTION\_AAR\_03>

s.Q4

<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>

The current RTS draft only contain requirements for the counterparties to request statements confirming sufficient capacity of the clearing accounts to handle a large influx of deals, but lack the requirements for the CCPs & Clearing Brokers to provide these.

Additionally, the exact obligations for counterparties with regard to stresstesting are unclear, as the assumption is that EU CCPs will operationally & technically conduct the tests .

The following obligations for CCPs & Clearing Brokers should be incorporated into the RTS:

* CCPs & Clearing Brokers should be required to provide a) timely confirmations b) free of charge c) in English upon counterparties’ request in order for counterparties to be able to fulfil their reporting obligations. Alternatively, CCPs could provide the confirmations directly to the respective NCA or ESMA.
* CCPs & Clearing Brokers need to provide operational and technical details on the stresstesting i.e. set & communicate the date, provide details on technical infrastructure (e.g.role of MTFs / trading venues? Availability of dedicated test environment?) and their requirements to counterparties (e.g. connection to a test environment? Format of providing test trades?)

The intention stated in paragraph 81 of the CP that the stress tests do not constitute a “fail or pass” requirement, are currently not included in the draft RTS.

Article 3 (1): point c should be point b.

<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>

s. comments regarding threshold calculation & group requirements in Q1

<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>

 Although we are aware that Level1 includes PLN into the Active Account Requirement, we would like to point out that we currently see a lack of liquidity with regard to cleared products in PLN via EUREX at the various MTFs or OTFs. LCH S.A. registered in France does not offer any PLN services presently.

Additionally, the question of suitable PPS banks offering PLN Clearing for EUREX needs to be taken into consideration.

PLN PPS bank offering services for EUREX usually see no demand for such services just for one currency at one CCP.

Additional costs of will incur for EU banks for usage of these services.

All banks currently offering PPS services for PLN Clearing for EUREX are domiciled in the UK, which we believe contradicts the general goal of EMIR 3 to reduce financial stability risks by decreasing EU banks’ dependency on UK banks.

Experiences with the replacement of WIBOR with a new risk free rate (WIRON) last year, showed that there is very limited liquidity in the PLN market to warrant adding a further CCP, as PLN market is not mature and resilient enough

<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>

 Recent market data show that nearly 75% of OIS and nearly half of fixed-to-float IRS are traded in the short tenors i.e. up to 1 year; while not even 10% of OIS / less than 20% of fixed to float IRS are traded longer than 5 year.

We therefore believe a fusion of the maturity-based subcategories > 5 ys for OIS and > 10 ys for fixed to float IRS to one subcategory each is warranted while still fulfilling the Level 1 requirement intended with the representativeness obligation.

Also the size-based subcategories above EUR 50 mn for fixed to float and EUR 100 mn for OIS could be merged into the respective lower ones. Requiring counterparties to clear trades in these sizes for the purpose of representativeness might result in unwanted increases of long-term risk positions.

Additionally, given the illiquidity of the EUR FRA market in general & the respective market on EU CCP in particular, a reduction of the subcategories for FRAs appears reasonable.

With regard of the representativeness obligation in general, the applicability of the option to clear 1 instead of 5 trades needs further clarification.

As per the definition of “resulting number of trades” as trades to be cleared per subcategory in the calendar year, we’d understand to compare the maximum number of trades to be possibly required to be cleared in the respective subcategory to the number of total trades cleared in the respective subcategory in the previous 12 months at a Tier2 CCP on a rolling basis.

Additionally, the trade base to be compared is unclear – to our understanding it could refer to a) trades in the same subcategory, b) trades in the same class of derivatives or c) all trades subject to the AAR as per Article 7a (6)

Thus the exact mechanism to calculate whether 1 or 5 trade(s) need to be cleared should be specified in the RTS.

Due to the parameters to consider in determining a) the reference period b) the number of representative trades under the obligation and c) the 5 most relevant subcategories for each product class, considerable operational & technical implementations are necessary.

Therefore, we would appreciate sufficient time for implementation following the publication of the final RTS on the representativeness obligation.

<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>

While we have no objections against the specific subcategories suggested for PLN, we see PLN liquidity at EU CCPs as a general obstacle – s. Q7

Regarding calculation of the number of representative trades, s. Q9

<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>

With reference to the limited liquidity in the EUR STIR market, we suggest to adapt to only 2 maturity buckets e.g. below / above 6 mths or below/above 1 year

Regarding calculation of the number of representative trades, s. Q9

<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>

For some classes of derivatives, we suggest to reduce the number of subcategories – s. Q9-11)

<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>

Further specification is needed in terms of calculation of the EUR 100 bn threshold relevant for determination of the respective reference periods – s. Q1

Additionally, it is unclear if the reference period refers to the current or previous period i.e. end-of-month perspective or start of month perspective.

As this has not been specified neither in Level 1 nor in the RTS, we would assume that the choice is with each counterparty individually.

<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>

s.Q13

<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>

s.Q13

<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>

We question the necessity of an additional reporting of trade and risk data, both in aggregated & individual form, as these are already part of regulatory reporting to EU trade repositories and thus available to NCAs.

In order to reduce unnecessary costs and efforts and avoid adding additional complexity in reporting (as is also the intention clearly stated in Recital 17), the proposed reporting requirements should be reviewed with regard to efficiency.

Additionally we do not see the connection between some of the required data and the assessment if a counterparty fulfils the AAR requirements. (e.g. VM/IM data). Level 1 explicitly mentions “relevant” data for monitoring the active account obligation.

If trade (including margin) data is not needed to assess if a counterparty fulfils its obligations under the respective thresholds (e.g. duration of reference period, frequency of stresstesting, representativeness obligation) we do not see any need to report it in connection with AAR.

<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, s. Q16.

<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, s. Q16

<ESMA\_QUESTION\_AAR\_18>

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

<ESMA\_QUESTION\_AAR\_19>

As outlined in Q4, requirements to CCPs & Clearing Brokers should be specified in terms of issuance of confirmations for capacity testing.

Additionally, if certain aspects of the operational conditions will be incorporated in less detail into the final RTS, we assume that the respective reporting requirements will be amended accordingly in the RTS.

<ESMA\_QUESTION\_AAR\_19>

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

<ESMA\_QUESTION\_AAR\_20>

As reporting is required every 6 months, we see a mismatch with reference periods > 6mths (e.g. for PLN). The expected scope and purpose of these reports is unclear.

As outlined in Q16 we do not see the connection between some of the data to be reported and the representativeness obligation.

<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>

We would expect the first reporting date due only after publication of the final RTS on reporting, with sufficient time to adapt to the additional requirements operationally & in terms of IT infrastructure.

Given the extent of the reporting including obtaining confirmations from CCPs & Clearing Brokers we would recommend a reporting period starting on the dates specified in the RTS rather than submitting all data by the specified semi-annual single reporting dates.(“reporting window”) During this period counterparties will submit the reports and documents to fulfil the reporting obligation.

Additionally, the operational details of the reporting e..g which file format is expected, should be specified.

<ESMA\_QUESTION\_AAR\_21>