**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’.

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# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | European Banking Federation |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | Europe |

# 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>

In EBF Members’ view, scope-related aspects of the active account requirement (AAR) that could benefit from further clarification to ensure consistent application by the affected entities include:

* Group-Level Application: Clarifications should address how AAR obligations interact with respect to groups subject to consolidated supervision under Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013. Specifically:
  + Confirming interpretation pursuant to art. 7a(2) EMIR, that when a counterparty subject to group consolidated supervision needs to determine whether it falls under the Active Account Requirement (AAR) and how to fulfill the representativeness parameters, it must account for all derivative contracts cleared by that counterparty and/or other entities within its group."
  + Based on information shared by ESMA at the open hearing that reporting requirement could also be fulfilled by one entity of the group. The EBF understands that single entity within a consolidated group can fulfill the operational and representativeness obligations, including reporting requirements, on behalf of the entire group. Otherwise, all EU entities (in scope of the AAR) within the group would need to determine their most relevant subcategories based on the group’s entire trading activities, creating significant compliance challenges for individual entities with representativity based on group activity..
* Exemptions and Status Changes. Additional guidance should address:
  + Clarifications, i.e., by means of Q&A, concerning the application of AAR-exemptions under Art. 7a (5) (85% of transactions in relevant categories already cleared via an EU-CCP) and Art. 7a (4) second sub-paragraph (notional clearing volume outstanding of less than EUR 6 billion ) including as regards the interrelation between these two thresholds and the coordination of the calculation methods.
  + Clarifications concerning the scope of the obligations under Art. 7 (3) (d) (representativeness requirement) of entities falling under the exemption under Art. 7 (5) (already clearing 85% or more via an EU CCP): Specifically, it should be considered to limit/simplify the requirements concerning the representativeness as much as possible to further incentivise the continuation and extension of clearing in the categories where the threshold has been met.
  + Clarifications concerning the calculation of ‘total trades’ under Art. 7a (4), fifth sub-paragraph: Specify whether this refers only to trades in classes subject to the AAR and confirm that the 12-month lookback period begins at the start of each AAR compliance period, allowing counterparties to steer transactions toward EU CCPs effectively.
  + Clarifications on the minimum transaction threshold for low-activity subcategories: Address how the AAR applies when fewer than five transactions occur per reference period in a subcategory, ensuring that counterparties are not required to execute additional trades solely to meet minimum thresholds, which may not align with their trading activity.
  + Clarifications on how to address subsequent changes to the AAR-status: The report does not address the issue of potential subsequent changes to the AAR-status, and, in particular, does not provide any indication on the necessary transition period following such change of status.
* The general issue of the lack of a consistent transition/implementation regime with adequate phasing-in and necessary synchronisation of the start of the application of new obligations (especially the requirements under Art. 7a (3).

However, the central issue to be reconsidered is the proposed establishment of a com-plex/highly detailed new AAR-specific reporting and information framework (AAR-reporting regime) in parallel to the already existing EMIR TR-reporting regime and the general banking/market supervisory reviews. A new, additional AAR reporting regime will not only be duplicative (with the risk of producing inconsistencies) but also extremely burdensome for all EU clearing market participants. It would therefore also effectively constitute a further competitive disadvantage for all EU market participants in the international financial markets.

We believe that the better, equally effective and simpler solution would be an approach based on the existing EMIR-TR-reporting regime, statements by the EU-CCPs and the regular/general supervisory reviews (including a regular report/statement by the institutions on their implementation of the AAR).

<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>

**Firstly** and most importantly, we consider that, in Article 1 (1)(c) of the ESMA’s draft RTS, the reference to “sufficient financial resources” (in addition to cash and collateral accounts) should be removed from the text, for the two following reasons: (i) this requirement is not included in the Level 1 text, and (ii) this provision contradicts the paragraph 67 of the ESMA’s consultation paper, which specifies that, under Article 37 of the Level 1 text, the “operational capacity” [of the clearing members] “should not include the financial resources of the clearing participant”.

**Secondly,** counterparties already have most of the requirements (stated above) in place, as part of their participation in CCPs and as providers of client clearing services. They should be able to use existing processes and not have to set up additional and specific processes and legal documentation for one (or potentially a few) CCPs and for a subset of clients in scope of the AAR. Support for this approach can be found in recital 3 (”counterparties should report to their NCA the documentation required by EU CCPs, directly or indirectly…”).

Where parties clear the relevant types of transactions/products on a regular basis with an EU-CCP, the requisite functionality of clearing account, including IT-connectivity and collateral arrangements etc.) is thus already objectively and comprehensively demonstrated by this fact. The existence of the account and its use can be verified (and constantly reviewed) via EMIR TR-reports (for counterparties already clearing) and also the CCP-certificates proposed in Section 4.2 item 68 of the Report/ Art. 2 (1) (c) and 3 (1) (b) of the Draft RTS.

**Furthermore**, EMIR 3.0 only requires counterparties to have processes in place. Therefore, the draft RTS proposal to set up internal policies and procedures seems to go beyond level 1.

<ESMA\_QUESTION\_AAR\_02>

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

<ESMA\_QUESTION\_AAR\_03>

As in the case of the conditions a), while the report identifies many relevant elements, the EBF again emphasizes a need for reducing unnecessary/burdensome requirements:

**a) Systems and resources/dedicated staff - item 62 and 66 of the Report/ Art. 2 (1) (b) of the Draft RTS):**

The requirement to dedicate adequate resources and personnel should not be subject to formalistic/rigid demands, especially not in the form of specific minimum numbers of dedicated staff: The internal operational set-up will necessarily very much depend on the specifics of the institutions and its general operational set-up and business model. The operational set-up of an institution is already subject to regular supervisory review and therefore does not require additional/separate rules and information/reporting requirements. A general obligation to allocate sufficient resources would provide both the necessary flexibility for institutions and a solid basis for supervisory oversight.

Furthermore, the requirement for staff training must account for its highly technical and customized nature, tailored to the specific EU CCP involved. This entails significant costs and limits opportunities for economies of scale, as training for one EU CCP cannot typically be leveraged for another. Moreover, successful implementation relies heavily on EU CCPs providing sufficient support, such as adequate access to testing environments, which is currently limited. These challenges are exacerbated by the short six-month timeframe for establishing and managing an AA, particularly as the time required to train staff effectively may extend well beyond this period. Lastly, clarification is needed on whether trained staff must be available across all time zones where the institution conducts clearing activities.

**b) Operational capacity/demonstration of capability to address large flows and increase of volume: threefold /85% increase - item 67 and 82 of the Report) Art 2 (1) (c) and Art. 3 (1) (c) of the Draft RTS):**

In this respect, the EBF advances the following considerations:

* The CCP’s written certification does not appear to constitute a regulatory requirement directly tied to a Level 1 provision. As a result, an EU CCP might interpret this as not being obligated to provide such a certification. Alternatively, it could opt to charge EU market participants a fee for issuing said notification. Furthermore, despite ESMA’s position, the CCP might determine that operational challenges—such as evaluating an account’s capacity to handle a threefold increase in clearing activity—render it impractical or infeasible to meet this requirement.
* ESMA does not clarify the consequences of a CCP failing to provide such a certification, unlike the stress-testing requirements, where it is explicitly stated that the test is not a pass/fail assessment. Would the absence of certification automatically indicate that counterparties do not meet condition (b)? If so, this could lead to significant and unjustified adverse effects on EU actors subject to the active account requirement.
* The reference to a threefold increase, as explained by ESMA in the consultation, is arbitrarily determined. In fact, the proposed requirements regarding the operational capacities of the active account appears to be partly based on the assumption that, should the need arise, the positions held by the addressees of the AAR at non-EU-CCPs would somehow be transferred to an EU-CCP as whole or at least substantially. However, **if EU counterparties were no longer able to clear via a non-EU CCP and maintain their already existing position at such CCP, these positions would not be transferred. Rather, they would be terminated by way of a close-out (including collateral) and only a subset of these would then be re-stablished in the form of new transactions (partially mirroring the former positions held at the non-EU CCP) with an EU-CCP**. This subset of mirror-positions would be limited to the portion of positions/transactions where a re-establishment is commercially reasonable and practically feasible. The subset of “transferred” positions will therefore constitute only a small portion of the positions previously held with the non-EU CCP. The increase of the volume following such an event will therefore in all likelihood not be as high as assumed. Consequently, the assumption of a threefold increase (item 70 of the report/art. 2 (1) 8 (c) of the Draft RTS) should be reconsidered.

Therefore, the assumption of an 85% increase of the new clearing activity for stress-testing the purposes (item 82 of the Report and Art. 3 (1) (c) of the Draft RTS should also be reconsidered (see also response to Q4).

**c) Confirmation by CCP: Formal requirements (signed/written) and corresponding obligation for CCPs – Section 4.2 item 69 and 76 of the Report / Art. 2 (1) (c) and Art 3 (1) (c), (4) and (5) of the Draft RTS:**

The requirements regarding the format of the confirmation to be provided by the CCP (“signed”/”written”) should be deleted as this may imply the need for paper/original documents or even handwritten signatures and exclude other suitable formats (e.g. machine readable/electronic formats). The format of the confirmation should be irrelevant as long as it contains the necessary information and the origins/authenticity of the documents/instruments containing the information can sourced to the relevant CCP. The supervisory authorities will, in any event, be able verify the authenticity of a certificate directly by contacting the relevant CCP.

In addition, in order to ensure that clearing members and/or clients are able fulfil their obligations to obtain certificates from CCPs in accordance with Art. 2 (1) (c) and Art 3 (1) (c), (4) and (5) of the Draft RTS, their obligations need to be complemented by corresponding obligations of the CCPs to issue such certificates to them upon their demand and for free, with the required set of information and in the required format. Also, the CCP certification could be provided directly by the CCP supervisors.

<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 EBF recognizes that the proposal reflects the requirements under Art. 7a (4) fourth sub-para calling for annual stress-testing. However, we believe that the proposal in its current form is overly burdensome; several aspects of thee proposed annual stress-testing raise concerns regarding feasibility, proportionality, and potential disruptions, and should be reconsidered.

Below, we outline key issues and proposed refinements for a more balanced and effective implementation:

1. **Scenario assumptions on clearing activity:**

* **85% Increase Assumption**:
  + Firstly, the EBF would welcome a clarification by ESMA concerning the methodology of the measurement of the clearing activity.
  + Secondly, the EBF is of the view that the assumption of an 85% increase in clearing activity for stress-testing purposes appears unreflective of realistic market activities and therefore disproportionate. This exponential growth is unlikely in practice. In fact, based on the type of derivative products referred to, the proposed stress-testing framework seems to suggests a scenario in which EU actors lose access to Tier 2 CCPs entirely, effectively requiring the relocation of 100% of transaction flows to the EU, thereby rendering the reference to an 85% increase or a three-fold clearing activity increase less relevant in this context.
* **Market and liquidity considerations:** 
  + While the EBF understands the aim of the proposed stress-testing scenario to be that of testing the feasibility of a fallback option being offered by EU CCPs in case of a risk of default by a Tier 2 CCP, we emphasize that the first recourse of EU actors accessing such Tier 2 CCP would not be that of closing out and relocating outstanding individual transactions in the EU, but rather initiating global set-off transactions to cover their own global risk towards this Tier 2 CCP.
  + Moreover, it is unlikely that EU markets would be able to absorb such huge trading volumes within the short time-period. As liquidity is scarce, finding counterparties willing to trade positions at such a monumental scale would come at a prohibitive cost. Moreover, the transactions would still be referencing a non-EU CCP, generating a basis that would incur additional costs at an unprecedented scale. It is important to remember that as of today, a large majority of the liquidity on the related EUR derivatives is generated by non-EU counterparties.
* **Differentiation between flows and stocks:**
  + ESMA’ s consultation paper and draft RTS should avoid any confusion between (a) the flow of new transactions and (b) the stock of existing transactions, which may be induced using the term “clearing activity”. Consequently, we propose that both texts clearly specify that the term of “clearing activity” refers exclusively to the flow of new transactions, and not to the stock (which is referred to by the term “outstanding position”).

1. **Practical Challenges with CCP Reliance**

* **Written Certification from CCPs**:
  + Obtaining written statements from CCPs confirming the capacity of accounts to handle stress scenarios presents the following challenges:
    - CCPs may interpret the Level 1 text as not requiring to issue such certification.
    - Fees could be imposed on counterparties for these statements, adding significant costs.
    - Operational limitations at CCPs (e.g., restricted testing environments) may hinder compliance.
* **Testing Environment Availability:**
  + EU CCPs may lack sufficient infrastructure to support regular stress-testing requirements for all counterparties. For example, limited testing schedules (e.g., once or twice a week) would impede timely and efficient training and testing.

1. **Complexity of Concurrent Stress Tests**
   * Conducting stress tests simultaneously for all counterparties subject to the active account requirement is overly complex and burdensome for both counterparties and CCPs.
   * Existing CCP stress-testing practices already include detailed evaluations ("fire drills"), making additional requirements duplicative and disruptive to regular business operations.
2. **Timeframe Concerns**
   * The six-month implementation period for active accounts is insufficient for counterparties to meet the training and operational requirements, particularly given:
     + The need for customized, CCP-specific training.
     + Limited availability of testing environments provided by CCPs.
3. **Clarification on Thresholds**
   * The methodology for calculating the EUR 100bn threshold is unclear. The EBF would appreciate confirmation that it aligns with the methodology used for the EUR 6bn threshold outlined in paragraphs 48–52 of the consultation paper.

**Recommendations for Improvement**

To enhance feasibility and reduce the regulatory burden while maintaining robust oversight, we propose the following:

* Scope Limitation
  + Restrict the stress tests to focus exclusively on the functionality of active accounts.
* Consolidation
  + Integrate AAR-related stress tests with existing CCP stress-testing cycles into a single, harmonized framework.
* Testing Frequency:
  + Threshold based stress-tests every year would be entirely sufficient to provide the required insight into the operational functionality while significantly reducing the considerable burdens associated with such stress-test.
* Dependency on CCP Actions:
  + Clarify how counterparties can meet their obligations when reliant on CCP actions, including:
    - CCP failure to issue necessary statements.
    - Insufficient CCP testing environments or capacity.

<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>

As already indicated in our response to Q4, the EBF believes that an annual stress-testing cycle (let-alone a six-month cycle) is already very challenging, and that AAR-stress testing should be limited to one single test per year. In addition, stress-testing should be clearly limited to the stated purpose of testing the functionality of the active clearing account.

<ESMA\_QUESTION\_AAR\_05>

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

<ESMA\_QUESTION\_AAR\_06>

The EBF reiterates the general principle that the active account requirement should not result in financial institutions being forced to execute additional and/or unnecessary transactions. This is particular relevant in case where the financial institution would normally execute five (or less) transactions for each subcategory and where the 85% exemption (article 7a (5) of EMIR) and the more than 50% number of trades exemption (article 7a (4) are not applicable

While the EBF recalls its interpretation of the EMIR 3.0 text identifying three classes per clearing service in total, thereby indicating the number of three classes per derivative category mentioned in the Level 1 text as only a cap not to be automatically retained by ESMA, **the EBF finds that the proposed classes of derivatives for EUR OTC IRD reflect objective criteria**, such as market size, liquidity, and growth trends.

Further clarification would be welcomed with respect to the following:

* **Reference period**

A clarification by ESMA would be welcome concerning what time horizon should be considered i.e. the “previous” or “the current” reference period should be used to determine the relevant subcategories that need to be cleared to satisfy the representativeness requirement.

A clarification by ESMA would be welcome about how to compute annual averages.

* **Trade size**

A clarification by ESMA would be welcome about the ways to measure the trade size as part of the representativeness obligation. Our assumption is that the trade size shall be measured in terms of “gross notional amount”, in line with the indications provided by ESMA throughout the consultation paper.

<ESMA\_QUESTION\_AAR\_06>

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

<ESMA\_QUESTION\_AAR\_07>

The EBF finds that the proposed classes of derivatives for PLN OTC IRD appropriately reflect market conditions, including liquidity.

<ESMA\_QUESTION\_AAR\_07>

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

<ESMA\_QUESTION\_AAR\_08>

ESMA proposes to select two classes of derivatives (i.e., a 3-month interest rate referenced in EURIBOR, a 3-month interest rate referenced in ESTR). ESMA bases its proposal on the same criteria as those above mentioned for EUR OTC IRD and for PLN OTC IRD.

The EBF finds that the the proposed classes of EUR STIR derivatives are generally suitable and consider the limited liquidity of this market.

<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>

The EBF finds that the proposed maturity and trade size ranges for EUR OTC IRD are appropriate and reflect objective criteria.

<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>

The EBF finds that the proposed ranges for PLN OTC IRD appropriately reflect the market’s limited activity and liquidity.

<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>

The EBF agrees with and supports ESMA’s analysis and position on the number of trade size ranges, which appropriately reflects the unique characteristics of the EUR STIR market.

However, the EBF expresses reservations regarding ESMA’s approach to the number of maturity ranges. Setting a cap of four maturity ranges, as is done for EUR OTC IRD, suggests a degree of similarity between the EUR STIR and EUR OTC IRD markets in terms of size and liquidity within the EU. This assumption is not aligned with the EBF’s analysis.

Considering the relatively lower activity of EU financial actors in the EUR STIR market and its smaller size and liquidity compared to the EUR OTC IRD market, the EBF recommends limiting the number of maturity ranges to two (0 to 1Y and above 1Y) or three at most.

For instance, complexity could be further reduced by limiting the number of maturity-ranges for Euribor-STIR and €STR-STIR in each case from currently four down to two.

<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>

We broadly agree with this approach and see no need for additional granularity.

Furthermore, the introduction of the Active Account Requirement (AAR) is likely to influence market behaviour and may alter the current distribution of liquidity across subcategories over time – (Liquidity in the Euribor-STIR markets is already comparatively low.)

Nevertheless, in line with Q11, for EUR STIR, the number of subcategories should be reduced, as suggested, and maturity ranges reduced, ensuring practical implementation without unintended consequences.

<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>

The EBF finds that the proposal reflects (for both types of counterparties) the minimum time-period referred to by the Level 1 text.

However, it should be considered that counterparties active in EUR OTD IRD, may have a different levels of activity in each of the classes (IRS, FRA, OIS). The current generic reference to “100 billion euro in derivative contracts” does not cater for this. A counterparty that on the lowest level of granularity is above “100 billion euro in derivative contracts”, may have limited activity in a specific class, e.g. EUR OIS. Where all classes are subject to the same (1 month) reference period, this counterparty may not be able or at least have severe difficulties to comply with the AAR in a – from the perspective of the counterparty – less relevant class. This would put a disproportionate burden on the activities in that specific class which on a counterparty level does not seem aligned with the objective of shifting the substantially significant activities to EU CCPs.

The option of counterparties determining separate reference periods per such class based on their activity in that class could also be considered.

<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>

The EBF finds that the appropriately reflects the market’s limited activity and liquidity.

<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>

The EBF agrees with the ESMA’s proposed reference period for the EUR STIR referencing ESTR.

Conversely, the EBF holds reservations about ESMA’s proposed reference period for the EUR STIR referencing EURIBOR, knowing, as acknowledged by ESMA, that EUR STIR market is a smaller market than the EUR OTC IRD one (based on publicly available data, around 18%[[1]](#footnote-2) of the EUR IRS market). It should be taken into consideration that EU-Euribor market at EUREX is less liquid than the €STR-market.

Consequently, the EBF would favour the reference period for EUR STIR referencing EURIBOR be set to 6 months similarly to ESTR (for counterparties with a notional clearing volume outstanding of more than 100 billion euro) and limiting the number of maturity ranges (see our response to Q12).

It would also align the reference period between EUR STIR referencing EURIBOR and ESTR to ease the operational implementation while differentiating from the reference period applicable to the larger and more liquid EUR OTC IRD market (especially if the number of maturity buckets for EUR STIRS cannot be reduced as suggested)*.*

<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>

As already indicated in our response to Q1 and 2, the EBF strongly believes that reporting requirements under Art. 7 to 10 of the draft RTS establishing a completely new detailed and complex reporting regime in parallel to the already existing EMIR-reporting regime should be reviewed reconsidered.

**Key Concerns:**

1. **Complexity and redundancy:**

* The proposed reporting requirements introduce an entirely new, detailed, and complex reporting framework that duplicates information already available through Trade Repositories (TRs) and other supervisory mechanisms under EMIR.
* Counterparties would need to create additional systems to aggregate and report data in formats distinct from those used for EMIR reporting, leading to unnecessary fragmentation, duplication, and significant operational costs.
* This duplication runs counter to the EU’s broader regulatory objectives of simplification and proportionality, as highlighted by the European Commission.

1. **Operational and implementation challenges:**

* The six-month timeframe proposed for counterparties to implement the new reporting systems is unrealistic given the scope of the changes required.
* For context, during the EMIR Refit implementation, counterparties were provided with more than a year to prepare for reporting changes, supported by the timely issuance of both Level 2 RTS and Level 3 guidance.
* The high level of granularity required, including the aggregation of data not currently reported (e.g., "activities and risk exposures"), will impose considerable burdens, particularly for smaller entities without significant resources to build bespoke systems.

1. **Relevance and utility for supervisory purposes:**

* A substantial portion of the information requested under Articles 7 to 10 is already available to National Competent Authorities (NCAs) and ESMA through existing TR reports. For example, trade-level data already enables supervisors to monitor clearing activity effectively.
* Requiring counterparties to report additional aggregated data may not provide incremental value for supervisors. Instead, liaising directly with EU and third-country CCPs could ensure access to more consistent and relevant aggregated data.

1. **Lack of Alignment with Supervisory Objectives:**

* The EBF observers how: (i) the reporting is requested every 6 months while the ESMA’s assessment will take place at the latest 18 months upon EMIR 3.0 entry into force (i.e. on June 25, 2026), insofar, if ESMA decides to accelerate this assessment, it will not be able to base its assessment on the actual trend of gradual increase of EU clearing activitites by EU actors; (ii) the data provided by all EU actors could not be aggregated as, by definition, all EU actors will not provide the same types of data every 6 months (as they will each have their own “most representative sub-categories” and therefore, the data provided by all EU actors will evolve every 6 months); and (iii) in order to allow ESMA to assess the efficiency of the EU actors’ active account requirement, each EU actor would have to provide ESMA every 6 months with a reporting on all sub-categories for each category referred to in the text (and not only a reporting pertaining to the sub-categories for which each such EU actor has been the most active), which would be operationally unmanageable for both EU actors and ESMA itself.
* To address these issues and ensure ESMA’s ability to obtain an efficient reporting, the EBF suggests liaising directly with EU and third-country CCPs to ensure access to more consistent and relevant aggregated data.

1. **Legal and interpretative open questions**

* The requirement on EU actors subject to a consolidated supervision in the EU to report the transactions “of any subsidiaries, both within and outside the EU”, should be clarified, as these entities are not subject to EMIR provisions.
* Key terms such as “material changes,” “number of accounts,” and “aggregate amount of financial resources provisioned” lack clear definitions. This risks inconsistent interpretation and non-uniform application across market participants.

1. **Potential Market Impacts**

* By increasing reporting burdens and compliance costs, the proposals risk undermining the attractiveness of EU derivatives market.
* The additional operational complexity and uncertainty will further reduce the competitiveness of EU-based financial institutions compared to their global peers.

**Recommendations**

A simpler yet equally effective approach would be a system based the following elements:

1. A regular (annual) statement/report by each addressee of the AAR obligations on its status and implementation of the AAR
2. Statements/certificates of the CCPs on the functionality of the accounts held with the CCP (as envisaged in Art. 2 (1) (c) and Art. 3 (1) (c) of the draft RTS)
3. The EMIR TR-reports (allowing competent supervisory authorities to verify/review the clearing activities of the market participants at any time)
4. Regular reviews of the competent supervisory authorities of the implementation of the AAR (as a part of the general supervisory reviews)
5. Provide at least 12 months from the adoption of Level 2 RTS and Level 3 guidance to allow counterparties sufficient time to implement systems and processes.
6. Supplement reporting requirements with detailed guidance to ensure uniform implementation. Clearly define terms such as "material changes" and provide a timeline for the issuance of Level 3 guidance to support counterparties’ preparations.

Should a new separate reporting framework be established despite the concerns raised against such new parallel reporting framework, it should at the least be simplified as much as possible. This should include the following:

* Limit reporting to data unavailable from TRs or CCPs.
* Avoid reporting on margin activity or collateral (see our response to Q17)
* Extend reporting intervals and minimize the level of detail required.

<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>

The EBF does not consider the inclusion of information on margin activity (both initial and variation) within the required reporting scope to be necessary for supervisory purposes, particularly on a continuous basis, for the following reasons:

* ESMA already proposes that activities and risk exposures be calculated using metrics such as gross and net notional amounts and the number of trades. These elements are inherently sufficient to provide supervisors with an adequate overview of the activities and risk exposures of EU actors in the derivative categories specified in the Level 1 text.
* Adding margin activity metrics does not strike an appropriate balance between effective supervision and minimizing unnecessary burdens on EU market participants. The additional reporting requirements could impose significant operational challenges without offering commensurate supervisory benefits.
* The inclusion of margin activity data does not appear to align with the objectives or scope of supervision regarding compliance with the AAR. The relevance of this information to supervisory goals is not evident.

In light of these considerations, the EBF strongly recommends excluding margin activity data from the reporting requirements to ensure a more balanced and efficient supervisory framework.

Should margin activity be included within the scope of activities and risk exposures to be reported, this should be limited to the aggregate value of initial and variation margins, adjusted for any applicable haircuts and cumulated since the first reporting of posted margins for the relevant transactions.

<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>

The EBF strongly objects to including UTIs. Including UTI in the AAR framework is redundant as UTIs are already reported under EMIR. Reporting UTI again will not add supervisory value but instead will introduce duplication and additional operational complexity knowing EU market participant will have to report both aggregated and transactional data which will be extremely costly. We would instead suggest that data, where relevant, is provided only on an aggregated basis without any transactional data such as UTI already available in the TR.

<ESMA\_QUESTION\_AAR\_18>

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

<ESMA\_QUESTION\_AAR\_19>

As already addressed in responses to Q2, Q1 and Q16, the EBF does not see a need for reporting on the operational conditions , especially not with the proposed level of detail.

Some issues relate to the unclarified scope and potential implications of ESMA’s proposed approach (see responses to Questions 2 to 5), while others pertain to the substantial operational and administrative burdens these requirements would impose on EU actors.

Furthermore, the EBF questions the utility of such detailed reporting for supervisors and highlights potential adverse effects on the attractiveness and competitiveness of EU derivative markets (as noted in general comments under Question 16 regarding various reporting requirements for EU actors).

Specific concerns arise from the following reporting requirements:

* A written certification from the CCP confirming that the active account has the operational capacity to handle a significant increase in both outstanding and new clearing activity within a short timeframe.
* A written certification from the CCP confirming that the active account has undergone stress testing. At the very least, should an EU CCP consider that it has and is able to fulfil this certification requirement, it should be required to provide this certification without imposing further costs on EU market participants.
* A description of any material changes to internal systems used to monitor the counterparty’s exposures and governance arrangements to support large flows of transactions from positions held at a Tier 2 CCP.
* A written statement from the counterparty confirming that it has conducted technical and functional tests to verify IT connectivity with the CCP.
* In particular, the EBF questions the requirements to report information on margin activity and the collateralization set-up or any other information which can be gained from TR- reports/

The EBF further refers to comments in the response to Q2 concerning the fact that the functionality and activeness of a clearing account is sufficiently and conclusively demonstrated via the TR-reports and the CCP certificates.

<ESMA\_QUESTION\_AAR\_19>

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

<ESMA\_QUESTION\_AAR\_20>

The proposed approach for reporting the representativeness obligation should be simplified and aligned with practical considerations:

1. Ensure that any reporting requirements are limited in scope(does not include third country entities of EU group, remove margins and UTI), avoiding duplication of information already available via Trade Repositories.
2. Provide sufficient lead-time to establish and test the necessary technical framework, allowing market participants to adapt their systems and processes effectively.

<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>

See our response to Q 19. We further refer to our general concern regarding the granularity and level of detail and the need to reduce complexity. In addition, we would like to point out that the technical framework for submitting such reports to the relevant supervisory authorities need to be in place and have to be tested with sufficient lead-time for market-participants to implement the necessary changes to their technical systems.

ESMA should reconsider the first reporting date, offering much more than 6 months to the counterparties for setting their reporting systems and processes. Both level 2 (RTS) and level 3 (Guidance) are currently not definitive or available to the counterparties, meaning that no IT developments can be properly started by the counterparties. Taking into account the previous case in which new reporting requirements have been issued (i.e. EMIR Refit on 29th of April 2024), the Delegated Regulations have been issued in June 2022 and the ESMA EMIR Guidance in December 2022, much more than 6 months before the compliance date. ESMA should at least provide for no earlier that 12 months from entry into force of this Regulation.

While the EBF deems it positive to establish set dates for the reporting by counterparties to NCAs, we would welcome that the RTS specify calculation periods rather than a single date on which to report the data. A reasonable proposal could be specific six-months calculation periods with firms given a three-month window at the end of each calculation period in which to report the data.

The reason to provide for a submission window following each calculation period (rather than a specific date on when to report) is the following: it will be necessary for firms to have time to collate the data, conduct and validate the calculations.

<ESMA\_QUESTION\_AAR\_21>

1. In terms of notional, as of July 2024, EUR STIR on T2 CCP amounts to 27 trillion EUR and EUR IRS on T2 CCP amounts to 145 trillion EUR. [↑](#footnote-ref-2)