**Reply** **form**

Consultation Paper on a draft RTS on the conditions for extensions of authorisation and the list of documents for applications for initial authorisations and extensions of authorisation under EMIR (Articles 14(6), 15(3), 17a(5) and 15a(2) of EMIR)

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 **7 April 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\_EXTE\_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\_EXTE\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_EXTE\_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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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 | LSEG |
| Activity | Central Counterparty |
| Are you representing an association? |  |
| Country/Region | UK |

# Questions

1. Do you agree with the parameters to consider in relation to condition (a)? Are there any other parameters regarding condition (a) that should be considered?

<ESMA\_QUESTION\_EXTE\_1>

We do not agree with the parameter to consider in relation to condition (a). We find that the definition of condition (a) is too wide leaving considerable room for interpretation when it comes to the ‘contracts with the same risk characteristics’.

Furthermore, with regards to condition (b) we find that this condition should only apply when risk is increasing. We do not believe that moving from open offer to novation or from non-prefunded to pre-funded should fall into this category.

<ESMA\_QUESTION\_EXTE\_1>

1. Do you agree with the parameters to consider in relation to condition (b)? Are there any other parameters regarding condition (b) that should be considered?

<ESMA\_QUESTION\_EXTE\_2>

We believe the ‘and’ between points a. and b. of condition (b) should more appropriately be replaced with ‘or’.

<ESMA\_QUESTION\_EXTE\_2>

1. Do you agree with the parameters to consider in relation to condition (c)? Are there any other parameters regarding condition (c) that should be considered?

<ESMA\_QUESTION\_EXTE\_3>

We welcome the clear and straightforward proposal made by ESMA regarding condition (c). However, while the distinction between OTC and exchange traded has been made clear, we are concerned about the lack of clarity and potentially too narrow interpretation of the term ‘contracts’. In case ‘contracts’ was to be interpreted more narrowly than suggested above, this could potentially capture large set of product introductions into the scope of Art.17 and either slow down or deter the CCP from introducing them. We would welcome further clarity here and urge caution against setting the basis too narrowly.

The above is particularly concerning in the context of point (b), and would recommend replacing the reference ‘to existing contracts’ with ‘to types of derivatives already cleared by the CCP’.

In regard to point (c), we believe this could be formulated more clearly and propose the current wording is replaced with “The CCP does not intend to clear contracts that require the introduction of new liquidity or payment arrangements”.

We would also welcome additional clarity from ESMA with regards to subsections (i) and (ii) on point (a). Current drafting is confusing particularly the references in subsections (ii) with regards to bilateral vs multi-lateral.

<ESMA\_QUESTION\_EXTE\_3>

1. Do you agree with the parameters to consider in relation to condition (d)? Are there any other parameters regarding condition (d) that should be considered?

<ESMA\_QUESTION\_EXTE\_4>

Broadly speaking we find that the Condition (d) (Article 17a(1)(d)) should aim to cover material new risks or significant increase to CCP’s risk profile. As such, it should only be focused on areas deemed risk increasing.

In relation to point (a), we believe the current wording could be made clearer and further should only refer to where the risk is increasing, therefore should be replaced with:

- “a. the CCP does not intend to clear contracts that reference underlyings issued by corporate issuers, where it currently does not clear any contract referencing underlyings issued by corporate issuers”,

We do not believe the instance of clearing sovereigns when already clearing corporates should be included in this criteria.

Regarding point (c), we believe that in the spirit of proportionality the introduction of a new risk factor should not be a material contract change and rather subject to an accelerated procedure.

Regarding point (e), and in the context of new risks for the CCP, we find that if a CCP which is currently using a credit institution as a liquidity resource switches to a Central Bank should not fall under this category. Similarly, if a CCP uses uncommitted facilities and move to using committed. Would urge ESMA to reconsider to ensure the focus is placed on risk increasing changes.

<ESMA\_QUESTION\_EXTE\_4>

1. Do you agree with the parameters to consider in relation to condition (e)? Are there any other parameters regarding condition (e) that should be considered?

<ESMA\_QUESTION\_EXTE\_5>

We do not agree with the parameters to consider in relation to condition (e).In particular, we believe that for parameter (a) and the wording of the current condition, the establishment of a new CSD would mean that extending to a new CSD with the same risk characteristics as an existing CSD used by the CCP would require a full approval process even though the new CSD has the same risk characteristics as the existing one. We believe if this condition is kept then it should refer to a new settlement system or settlement process, as opposed to new individual CSDs.

<ESMA\_QUESTION\_EXTE\_5>

1. Do you agree with the proposed list of typical extensions that could be considered in principle to fall under the accelerated procedure under Article 17a of EMIR? Would you propose to add/remove/modify/further specify any?

<ESMA\_QUESTION\_EXTE\_6>

We do not agree with the proposed list of typical extensions that could be considered in principle to fall under the accelerated procedure under Article 17(a) of EMIR. We believe that the proposed list of extensions considered to fall under the accelerated procedure would capture the many changes which were previously exempted or considered BAU. In line with EACH’s response we find that:

* **Point (a) of Article 7** - Because the CCP would already be clearing the risk factors and liquidity arrangements of IRS and currency A, and all it would be doing is putting those together under the same instrument. In particular, clearing IRS in “currency A” when already clearing IRS in other currencies and already handling payments in “currency A” would represent an ordinary product launch where the CCP does not need to adapt its policies and procedures and would not even require an accelerated procedure; We also don’t believe an accelerated procedure is necessary for a new currency where the payment currency is not new. Therefore, we suggest deleting point (a).
* **Points (d) and (e) of Article 7** – The proposed extension of clearing equity futures (d) or options (e) in “Currency C” when already clearing equity futures (d) or options (e) in other currencies, and already handling payments in “currency C” is to us an extension that falls well into the existing frameworks of the CCP and does not introduce new risks or need for new liquidity arrangements which would qualify for an exempted change (i.e. BAU) and should therefore should not be within the scope of approval processes under accelerated procedure. We therefore suggest deleting points d) and e) of Article 7.
* **Point (g) and (h) of Article 7** – Regarding the possibility for clearing foreign exchange futures (g) or non-deliverable foreign exchange forwards (h) on a new currency pair without pegging/convertibility risks and not generating payments in a new currency, when already clearing foreign exchange futures (g) or non-deliverable foreign exchange forwards (h), we believe that adding a new currency pair with all the additional caveats included can only be an exempted extension (i.e. BAU) for a CCP which already clears foreign exchange futures or non-deliverable foreign exchange forwards. We therefore suggest deleting points g) and h) of Article 7.

We support the EACH proposal regarding typical extensions of services and activities that could be considered in principle to fall under the accelerated procedure, namely that the list of examples to fall under the accelerated procedure are:

* Article 2(a) of the draft RTS: the CCP intends to clear physically settled contracts where it only offers cash settlement for contracts
* Article 2(b) of the draft RTS: the CCP intends to clear contracts involving a change in the novation mechanisms from novation to open offer
* Article 4(1)(a) of the draft RTS: the CCP intends to clear contracts traded OTC where it only clears contracts that are not traded OTC, and vice versa
* [Article 4(1)(c) of the draft RTS: the CCP intends to clear contracts in a **new currency for the CCP** that requires the introduction of new liquidity or payment arrangements
* Article 5(1)(c) of the draft RTS: the CCP intends to clear contracts that reference a new risk factor type as primary underlying
* Article 6(a) of the draft RTS: the CCP establishes a link with a new securities settlement system or payment system which the CCP does not use; or changes from a direct to an indirect link, where the CCP does not already use an indirect link at all
* Article 6(b) of the draft RTS: the CCP introduces settlement or payment in commercial bank money where the CCP currently uses central bank settlement or payment
* CCP already clears European style options and intends to clear American style options
* CCP intends to clear **a new currency pair with de-pegging/convertibility risk** ~~financial~~ ~~instrument in a currency already handled~~ in the case of non-deliverable or deliverable FX forwards., ~~but the new currency pair has de-pegging/convertibility risk.~~

<ESMA\_QUESTION\_EXTE\_6>

1. Do you agree with the procedure for the consultation of ESMA and the college on whether an application for an extension of authorisation qualifies to be assessed under the accelerated procedure under Article 17a of EMIR?

<ESMA\_QUESTION\_EXTE\_7>

In line with EACH, we broadly agree with the procedure for the consultation of ESMA and the college on whether the application for an extension can be assessed under the accelerated procedure. We do however think that the procedure envisaged does little to address duplications in the supervisory approval process or regulatory burden. As such we would therefore urge ESMA to ensure that this process is an effective and efficient as possible.

<ESMA\_QUESTION\_EXTE\_7>

1. Do you agree with the list of conditions for the exemption from authorisation under Article 15a of EMIR? Should any other conditions be considered?

<ESMA\_QUESTION\_EXTE\_8>

In line with EACH’s response, find the list of conditions to be extremely narrow. Specifically, we believe the sheer number of conditions to be fulfilled limits the possibility for an authorisation to be done under Article 15(a). As discussed in Q6, we find that the typical extension of services and activities that could be considered in principle to fall under the accelerated procedure to be examples of activities that should be exempted from authorisations. Furthermore, we would also note the following:

**Condition (b)** - whilst we believe it may be appropriate for approval to be required when a CCP is introducing for the first time either European, American or Bermudan option exercise style, the current wording narrows this further when referencing ‘to equivalent existing derivative contracts’. We are concerned this narrow definition will (a) be open to interpretation and (b) is arbitrary and not justified by risk concerns as the CCP evidently is by then able to handle the respective exercise style in its risk framework. We therefore suggest deleting such condition.

* **Condition (c)** - This point is significantly extending the scope of approval procedures and appears to consider not only binary distinction between secured and unsecured products but also extending the granularity where any variation in either seniority or collateralisation arrangements would require approval. We therefore suggest deleting such condition.
* **Condition d)** – We would respectfully like to highlight two concerns we have with the proposed condition d):
  + **Geographical zones**:
    - We consider that the reference to new geographical zones outside of the EU is unclear as it may refer amongst other to new geographical zones in terms of membership, risk factors on cleared products, venue location to give just some examples.

Regardless of its meaning, we consider that extending existing services to new geographical zones should be exempted (i.e. BAU) as long as such extension does not lead to a significant change in the CCP processes. Therefore, we would propose suggested wording to be “does not imply an extension of the clearing services to new geographical zones outside the EU so long as that extension does not lead to a significant change in the CCPs processes”.

* + **Clearing hours**:
    - We consider that an extension of clearing hours does not materially change the risk profile of a CCP. While the CCP would open its services longer to accommodate longer trading hours, the nature of margin models and other risk management calculation would remain the same. In particular, we consider that as long as batches are not impacted and collateral is collected at the usual time, there is no impact on the CCP risk model.
    - We therefore believe that the text of clearing hours wording in this condition should be edited to either remove the wording ‘nor an extension of the CCP’s clearing hours’ or amend it to capture only changes related to the extension of the CCP Clearing hours that would significantly impact the IT batches or the CCP’s collateral management schedule.
* **Condition f)** – We are concerned about the special reference to currency as an underlying and specifically that it should trigger an approval procedure. For CCPs clearing e.g. derivatives on interest rate or foreign exchange, clearing a new currency as an underlying should from our point of view be considered an exempted extension of existing policies and frameworks. In this case, the framework remains and is not adapted, the risk model is fed additional market data and there are no new complexities. Please note that this is different from introducing payments in a new currency which is already covered in point e). We would therefore suggest deleting condition (f) as the payment generation condition is already covered under point (e).
* **Condition g)** – While we agree with the fact that establishing an indirect link with a securities settlement system, CSD or payment system where the CCP currently only uses direct links with that securities settlement system, CSD or payment system increases risk and therefore should be subject to an accelerated procedure, we do not agree with the vice versa of the situation i.e., when the CCP uses indirect links and plans to establish a direct one. We also believe that this condition should only apply if the CCP does not already have indirect links with any securities settlement system, CSD or payment system (i.e. if the CCP has already has indirect links that are covered under its risk framework, the introduction of a new indirect link should not in itself be subject to an approval).

We therefore suggest that this condition should be reworded to “it does not involve establishing an indirect link with a securities settlement system, CSD or payment system where the CCP currently only uses direct links with securities settlement system, CSD or payment system”. Establishing direct links when the CCP has only indirect links, or extending to additional indirect links where the CCP already has indirect links covered under its risk framework) should be subject to the exempted procedure (i.e. BAU).

* **Condition h)** – While we agree with the fact that introducing commercial bank settlement or payment where the CCP currently only uses settlement or payment in central bank money increases risk and therefore should be subject to an accelerated procedure, we do not agree with the vice versa of the situation.

We therefore suggest that the introduction of central bank settlement or payment where the CCP currently only uses settlement or payment in commercial bank money decrease risk and should exempted from any procedure (i.e. BAU).

<ESMA\_QUESTION\_EXTE\_8>

1. Do you consider that any other extensions/situations should be captured under the exemption from authorisation under Article 15a of EMIR? If yes, could you please specify which exact extensions/situations?

<ESMA\_QUESTION\_EXTE\_9>

In line with EACH’s response, we consider that other extensions/situations should be captured under the exemption from authorisation under Article 15a of EMIR. We include several below:

1. **Combination of characteristics of contracts already cleared** - If the CCP is proposing to extend clearing for a new contract that simply combines characteristics of other contracts already cleared, including the underlying reference asset/index of the contract. For instance:
   1. Adding a new product where the underlying security is already known to the CCP, but not in conjunction with a product it is already authorised to clear (e.g. CCP clears securities and futures, so clearing futures on the underlying security should be exempted).
   2. Adding a new product where the underlying is an IRS or FX rate where the CCP already clears IRS or FX products in general and the product is not introducing a new settlement or payment currency for the CCP (e.g. both nominal and quote currency in case of physically settled instruments).
   3. Clearing of a new ISIN with the same characteristics of existing ISINs. For example, in the equities and bonds space, this should also allow new issuers to be accepted as BAU as long as they meet the same risk characteristics as existing issuers.
2. **New tenor**
   1. The change proposed by the CCP adds more granularity or extends the maximum tenor to a class of financial instruments already covered by the CCP’s authorisation. In order to appropriately respond to clients’ demand, either as new hedging needs for emerging risks or investment opportunities, there is an expectation by market participants that CCPs act promptly, commonly over a few days only and, depending on market conditions, overnight. The prompt response is more pronounced when a product is traded bilaterally and cleared in a CCP. The risk management procedure expectation would therefore not be to wait for the timing foreseen by the accelerated procedure. If the introduction of the new tenor requires a change to the risk model, then the determining factor is the risk model change.
3. **Type of settlement** - The change proposed by the CCP alters settlement from physical delivery to cash settlement, and the currency to be paid in is already cleared by the CCP.

<ESMA\_QUESTION\_EXTE\_9>

1. Question for CCPs: Based on the proposals presented in this Consultation Paper, could you provide an estimate of the number of extensions of authorisation, implemented/applied for by your CCP over the past three years, that would have qualified for i) the standard procedure under Article 17 of EMIR, ii) the accelerated procedure under Article 17a of EMIR, iii) the exemption from authorisation (‘BaU’ changes) under Article 15a of EMIR?

<ESMA\_QUESTION\_EXTE\_10>

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<ESMA\_QUESTION\_EXTE\_10>

1. Do you agree with the proposed frequency for the reporting of the exemption from authorisation under Article 15a of EMIR?

<ESMA\_QUESTION\_EXTE\_11>

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<ESMA\_QUESTION\_EXTE\_11>

1. Are the general provisions in Chapter I (of Title III of the draft RTS) (language, certification, fees) appropriate and clear?

<ESMA\_QUESTION\_EXTE\_12>

Although we find the general provisions to be clear, we respectfully disagree with the requirement for the CCP’s board to certify the accuracy and veracity of all the documents submitted in any application for the validation of model changes.

The CCPs’ Board typically focuses its role on the most material or significant changes, to ensure its focus on key risk management aspects and avoid clogging the board with the day-to-day risk managements improvements. Having an approval by the Board would be unnecessarily cumbersome and disproportionate to the other matters where a Board level approval is required.

The CCP’s Board involvement in the approval of changes would be problematic and contradict its core missions: This proposal conflicts with the Board’s role and purpose of providing oversight and challenge of the Executive, particularly for the Independent Director (including the definition of an independent director) if it is then being asked to validate the completion of reporting at this level of detail.

Understanding ESMA’s objective to ensure adequate governance and responsibility for the extensions proposed CCPs, we would suggest as an alternative replacing the reference to the Board under Article 12 paragraph 4 of the draft RTS with a reference to the relevant internal governance arrangements of the CCP, such as the framework and governance under Article 29 of the EMIR RTS 153/2013, which are approved as part of their initial authorisation and are subject to annual and ongoing oversight.

<ESMA\_QUESTION\_EXTE\_12>

1. Is the requirement to submit an index and a correspondence table appropriate and clear?

<ESMA\_QUESTION\_EXTE\_13>

We find the requirement to submit an index and a correspondence table appropriate and clear.

<ESMA\_QUESTION\_EXTE\_13>

1. Are the documents and information required in relation to the identification of the applicant CCP clear? Would those be enough for competent authorities and ESMA to gain sufficient understanding about the applicant CCP as a company?

<ESMA\_QUESTION\_EXTE\_14>

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<ESMA\_QUESTION\_EXTE\_14>

1. Should applicant CCPs provide other documents under the general information requirements?

<ESMA\_QUESTION\_EXTE\_15>

In line with EACH, while we very much agree with the intention of Article 19 about ‘Detection and prevention of money laundering and terrorist financing’, we kindly request removing the refence to the Directive (EU) 2015/849 as CCPs are in the scope of this the legislation and replacing it with a more general one about anti-money laundering.

<ESMA\_QUESTION\_EXTE\_15>

1. Are documents and information required to assess organisational requirements sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA\_QUESTION\_EXTE\_16>

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<ESMA\_QUESTION\_EXTE\_16>

1. Are documents and information required to assess conduct of business requirements sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA\_QUESTION\_EXTE\_17>

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<ESMA\_QUESTION\_EXTE\_17>

1. Are documents and information required to assess prudential requirements sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA\_QUESTION\_EXTE\_18>

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<ESMA\_QUESTION\_EXTE\_18>

1. Are documents and information required to assess an extension of authorisation, under Article 17 of EMIR, sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA\_QUESTION\_EXTE\_19>

We believe that the proposal in the draft RTS is extremely broad in its scope and excessive in its documentation requirements. It could therefore mean that an extension of authorisation has almost equivalent application requirements to the initial authorization request as per EMIR Art. 14.

Further, given the broad scope definition for material extensions, a larger number of extensions would be classified as material, as one of the narrow conditions will be met in most cases. Moreover, many extensions that we would view as BAU extensions would be classified as non-material extensions and would consequently also be subject to the Art. 17a process. Further, the excessive assessment requirements for all classifications of extensions would lead to a significantly increased burden for extensions that would affect CCPs, NCAs as well as ESMA. Overall, we believe the proposed approach would lead to an impact contrary to its intended aim to accelerate the approval procedures and increased global competitiveness of EU CCPs.

We are supportive of the alternative suggestion provided by EACH in terms of required information of Art 45, namely:

* Point b) - to provide only a description of the contracts and classes of (non-)financial instruments covered by the proposed extension removing the requirements for providing a business plan, market size and growth forecast.
* Point c) - to provide only high-level milestones of the extension implementation at the point of submission, and to provide updates as required when key milestones materialise.

Point d) - to assess only the relevant aspects of the regulation that are affected by the extension at the point of the extension application, with the remaining aspects being covered as part of the annual regulatory reviews.

* Point e) - we recommend removing requirement (e) as this would not be required if the focus is only on the list of documents affected by the extension (in line with (d)).

<ESMA\_QUESTION\_EXTE\_19>

1. Are documents and information required to assess an extension of authorisation through the “accelerated procedure”, under Article 17a of EMIR, sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA\_QUESTION\_EXTE\_20>

We find the scope of the required documentation through the changes that are submitted under the accelerated and material procedure far exceeds the requirements for material extensions subject to the Art. 15 procedures prior to the review of EMIR 3. As a result, we would expect a significantly increased burden for extensions through the accelerated and material procedures, which would affect CCPs, NCAs as well as ESMA.

Moreover, extensions that we would view as BAU extensions would mostly be classified as non-material extensions and would consequently also be subject to the Art. 17a process. Further, the excessive assessment requirements for all classifications of extensions would lead to a significantly increased burden for extensions that would affect CCPs, NCAs as well as ESMA. Overall, the proposed approach would lead to an impact contrary to its intended aim to accelerate the approval procedures and increased global competitiveness of EU CCPs.

We are supportive of the alternative suggestion provided by EACH, namely:

* Point b) - Consistent with points (b) and (c) of our response in Q19, the provided information should be limited only to a description of the contracts and classes of non-financial instruments covered by the proposed extension (point b.) and to high-level milestones of the extension implementation only (point c.). This is particularly crucial for changes that are proposed under the accelerated procedure, as in these cases the requirements would be unnecessarily burdensome.
* Point c) - o provide only high-level milestones of the extension implementation at the point of submission, and to provide updates as required when key milestones materialise.

Point d) - to assess only the relevant aspects of the regulation that are affected by the extension at the point of the extension application, with the remaining aspects being covered as part of the annual regulatory reviews

* Point e) - we recommend removing requirement (e) as this would not be required if the focus is only on the list of documents affected by the extension (in line with (d)).

Finally, we do not agree with the requirement for including references to policies and procedures that do not change, the focus should be on those that are changing, and thus such requirement create unnecessary burden.

<ESMA\_QUESTION\_EXTE\_20>