Reply Form

**to the Consultation Paper on Draft technical standards amending Regulation (EU) 149/2013 to further detail the new EMIR clearing thresholds regime**

Responding to this Consultation Paper

ESMA invites comments on all matters in this Consultation Paper and in particular on the specific questions summarised in Annex 1. 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 **16 June 2025.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

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\_CPCT\_0>. 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\_CP1\_ CPCT\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP1\_ CPCT\_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* under the heading *‘Your input - Consultations’.*

**Publication of responses**

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

**Data protection**

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

**Who should read this paper?**

All interested stakeholders are invited to respond to this consultation paper. In particular, responses are sought from financial and non-financial counterparties entering into OTC derivative transactions, as well as from central counterparties (CCPs).

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Oesterreichs Energie - Association of Austrian Electricity Companies |
| Activity | Other |
| Are you representing an association? |  |
| Country / Region | Austria |

# Questions

1. Do you agree that the aggregate thresholds should only be set for those asset classes subject to the CO i.e. IRDs and credit derivatives? If not, please elaborate.

<ESMA\_QUESTION\_CPCT\_1>

Yes, we agree that aggregate thresholds should only apply to IRDs and credit derivatives, as the existing thresholds for financial counterparties are well-established and functioning.

Additionally, we urge ESMA to clarify that market participants can immediately apply the EMIR 3.0 changes to the calculation methodology upon the publication of the RTS, ensuring legal certainty and avoiding unnecessary delays.

<ESMA\_QUESTION\_CPCT\_1>

1. Do you agree with ESMA’s proposal to maintain the aggregate thresholds at the current level i.e. 3 billion EUR for IRDs and 1 billion EUR for credit derivatives? If not, please elaborate.

<ESMA\_QUESTION\_CPCT\_2>

Yes, we support ESMA’s proposal.

<ESMA\_QUESTION\_CPCT\_2>

1. Do you agree with the proposed uncleared thresholds? If not, please elaborate, explain for which asset class(es) and, where possible, provide supporting data and elements.

<ESMA\_QUESTION\_CPCT\_3>

We do not support the proposed reduction in uncleared thresholds for OTC derivatives. Given rising costs and inflation, the current thresholds should not only be maintained but increased to reflect market realities. Inflation has significantly increased the notional value of transactions, making the existing EUR 4 billion threshold for commodity derivatives insufficient. Since 2013, energy prices have more than doubled. To ensure regulatory stability and support Europe’s energy transition, the commodity derivatives threshold should be increased rather than reduced.

<ESMA\_QUESTION\_CPCT\_3>

1. Do you agree with ESMA’s proposal not to introduce in the RTS separate thresholds for the various commodity derivatives sub-asset classes at this stage? If not, please elaborate.

<ESMA\_QUESTION\_CPCT\_4>

We support ESMA’s proposal to maintain a single, aggregated threshold for commodity derivatives. Introducing separate thresholds would unnecessarily complicate risk management, increase compliance burdens, and reduce market liquidity.

Energy market participants manage risk across multiple commodity sub-classes, such as power and gas, using portfolio-based strategies. Fragmenting the threshold would disrupt these practices and reduce hedging efficiency. It would also require ongoing recalibration, adding operational complexity while discouraging trading in certain commodities.

There is no clear systemic risk justification for this change, as the existing aggregated threshold effectively captures overall exposure. Maintaining a unified approach ensures stability and aligns with market realities.

<ESMA\_QUESTION\_CPCT\_4>

1. Do you agree with ESMA’s proposal to have in the fifth bucket only commodity and emission allowance derivatives? Or do you consider that commodity derivatives should be singled out as a stand-alone category and another category for emission allowance derivatives introduced? Please elaborate.

<ESMA\_QUESTION\_CPCT\_5>

We support ESMA’s proposal to keep commodity and emission allowance derivatives in a single bucket rather than creating separate categories. A more granular approach would add unnecessary complexity and compliance burdens.

Since energy firms often trade both types as part of their risk management strategies, separating them would disrupt established market practices. Keeping a combined bucket ensures consistency and aligns with existing trading structures.

Maintaining this approach, along with an increase in the commodity derivatives clearing threshold, is the most practical and proportionate solution.

<ESMA\_QUESTION\_CPCT\_5>

1. Do you agree with ESMA’s proposal not to introduce a sixth bucket for other derivatives at this stage? If not, please elaborate.

<ESMA\_QUESTION\_CPCT\_6>

We agree with ESMA’s proposal not to introduce a sixth bucket for other derivatives at this stage.

<ESMA\_QUESTION\_CPCT\_6>

1. Do you agree with ESMA’s proposal not to introduce more granular thresholds for commodity derivatives based on ESG factors at this stage? If not, please elaborate.

<ESMA\_QUESTION\_CPCT\_7>

We agree with ESMA’s proposal not to introduce more granular thresholds for commodity derivatives based on ESG factors at this stage. These products are still in an early phase of development, and introducing specific thresholds now would add complexity without clear benefits. A pragmatic approach that maintains the existing framework while allowing for future refinements as the market evolves is preferable.

<ESMA\_QUESTION\_CPCT\_7>

1. Do you agree with ESMA’s proposal not to introduce more granular thresholds for commodity derivatives based on crypto-related features at this stage? If not, please elaborate.

<ESMA\_QUESTION\_CPCT\_8>

We fully agree with ESMA’s proposal not to introduce more granular thresholds for commodity derivatives based on crypto-related features at this stage.

<ESMA\_QUESTION\_CPCT\_8>

1. Do you consider clarifications should be included in Article 10 of Commission Delegated Regulation (EU) No 149/2013? If yes, please specify and if possible, provide arguments and drafting suggestions.

<ESMA\_QUESTION\_CPCT\_9>

Yes, we recommend clarifying Article 10 of Commission Delegated Regulation (EU) No 149/2013 to explicitly confirm that the hedging exemption for non-financial counterparties (NFCs) applies at the **group level**, not just the entity level. EMIR 3 introduced entity-level threshold calculation while reinforcing the principle of **centralized risk management** within corporate groups. To ensure consistent implementation, Article 10 should state that OTC derivatives used by a **central treasury on behalf of affiliated entities** qualify as risk-reducing (hedging) transactions. This clarification would align regulatory practice with established corporate hedging strategies, ensuring that NFCs are not penalized for consolidating their risk management in a single entity.

Additionally, ESMA should confirm that **intragroup OTC derivative transactions -** already exempt from clearing under EMIR Article 4(2) - should **not** count toward NFC clearing threshold calculations. These transactions remain entirely within the corporate group and do not introduce systemic risk. Excluding them would provide legal clarity, **simplify compliance**, and support **efficient internal risk transfers**.

Furthermore, the criteria for defining risk-reducing derivatives should be refined to **better reflect market realities**, particularly regarding **cash-settled Power Purchase Agreements (PPAs).** PPAs play a crucial role in **financing renewable energy projects**, yet the current framework limits their classification as risk-reducing transactions. A more precise definition would support investment certainty while maintaining prudent risk management practices.

Together, these adjustments would align Article 10 with EMIR 3, facilitating **effective risk management** while preventing unnecessary regulatory burdens on NFCs.

<ESMA\_QUESTION\_CPCT\_9>

1. Do you consider other indicators should be monitored and assessed? If yes, please specify and if possible provide drafting suggestion.

<ESMA\_QUESTION\_CPCT\_10>

We agree with ESMA’s proposal to monitor macroeconomic and market-based indicators for future threshold reviews but emphasize that **thresholds should not be reduced**, as this could create significant uncertainty for non-financial counterparties (NFCs). Given the long-term nature of many commodity derivatives, sudden threshold reductions could push NFCs into NFC+ status mid-contract, leading to early contract terminations and liquidity disruptions.

While ESMA’s qualitative approach provides flexibility, incorporating **quantitative indicators -** such as commodity price volatility, liquidity metrics, and counterparty risk exposure - could enhance transparency and predictability. However, defining precise quantitative triggers is challenging due to market fluctuations and evolving trading conditions. Nevertheless, these factors should be systematically assessed within the qualitative framework to ensure a well-balanced approach.

A measured review process that considers both **qualitative and quantitative insights** is essential for maintaining market stability, avoiding unintended disruptions, and ensuring effective risk management.

<ESMA\_QUESTION\_CPCT\_10>