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 | PROXIGAS |
| Activity | Other |
| Are you representing an association? |  |
| Country / Region | Italy |

# 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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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 provide an answer for the commodity asset class only, being it the most relevant considering members’ business model.

We believe that the current threshold for commodity asset class (€ 4 bln) should be maintained at least, for several reasons.

Firstly, the proposed value of €3 billion (essentially the same as that introduced in 2012 when EMIR came into force) no longer aligns with current market conditions due to inflation and price volatility, which have significantly impacted trading volumes for energy products in recent years.

Moreover, one has to consider that it is common practice for large industrial groups to manage their trading activity through a single legal entity in order to optimize costs and internal processes: entities acting under such an operational model might concentrate significant volumes and achieve a high level of notional, with limited benefit from moving the calculation from group to entity level for NFCs as per EMIR 3.0.

As a final point, narrowing the clearing threshold for commodities would put EU energy market participants at a competitive disadvantage compared to third-country players, particularly in the US, where energy firms can engage in yearly trading activities worth up to $8 billion under a 12-month rolling window.

<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>

Yes, we support ESMA proposal not to introduce separate thresholds for the various commodity derivatives sub-asset classes

<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 agree with ESMA proposal to have in the fifth bucket commodity and emission allowance derivatives. Indeed, having a unique monitoring process ensures operational simplicity and avoids duplicating compliance efforts. It is also aligned with what is stated in field 11, table 2 of Commission Implementing Regulation 2022/1860, which foresees commodities and emission allowances under a unique asset class “COMM”

<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>

Yes, we support ESMA 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>

Yes, we support ESMA proposal not to introduce more granular thresholds for commodity derivatives based on ESG factors at this stage

<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>

Yes, we support ESMA 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 suggest – in line with the view expressed by ESMA in the consultation draft – to clarify that Virtual Power Purchase Agreements (VPPAs) could be hedging activities under EMIR. In particular, we believe VPPAs should be considered part of companies’ activities to reduce their business risk.

This proposal is made in consideration of the crucial role that these contracts play within the energy transition: indeed many NFC- energy market participants act as “hedge providers” towards renewable energy producers, as the latter require hedging solutions for the development of their renewable projects. Anyway, the resulting transaction may or may not, depending on the case, be classified as risk-reducing according to the current definitions from the perspective of the buyer. Where not classifiable as risk reducing, the ability of energy traders to act as a counterparty can be impaired, due to the great impact that these contracts may have on their threshold calculation (in consideration of the high lifetime such contracts may have). In the light of this, we propose adding the following point in Article 10:

“(d) where none of the above definitions can be applied, it is entered into by an energy market participant with an entity engaged in the production of electricity from renewable energy sources, to reduce the risks directly linked to the energy production activity of such entity.”

More generally, another instance should be considered by ESMA and the EC in relation to the “risk reducing” concept: trading in derivatives in general may bepart of a trading entity’s commercial activity, and thus article 10 should recognize that any additional derivative contract aimed at mitigating the risk associated with such commercial activity (i.e. generated by derivatives concluded by the NFC-) should be recognized as risk reducing

<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 support the qualitative approach proposed by ESMA to determine whether the clearing threshold should be revised and believe that the proposed indicators are suitable for an effective monitoring. That said, it is important that, when monitoring the above indicators, ESMA takes into account that energy market participants often hold significant positions in long-term contracts that can hardly be reduced in a short time, or the reduction of which may entail significant costs

<ESMA\_QUESTION\_CPCT\_10>