



European Securities and  
Markets Authority

## Reply form for the Discussion Paper on the review of the clearing thresholds under EMIR



17 November 2021

Internal

## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Discussion Paper on the review of the clearing thresholds published on the ESMA website.

### *Instructions*

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA\_QUESTION\_DP\_EMIR\_CTs> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses 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.

### **Naming protocol**

In order to facilitate the handling of stakeholders’ responses please save your document using the following format:

ESMA\_DP\_EMIR\_CTs\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

e.g. if the respondent were ESMA, the name of the reply form would be:

ESMA\_DP\_EMIR\_CTs\_ESMA\_REPLYFORM

### **Deadline**

Responses must reach us by **19 January 2021**.

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 end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that 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 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 headings 'Legal notice' and 'Data protection'.



## General information about respondent

Name of the company / organisation	Deutsche Börse Group, incl. Eurex Clearing and ECC
Activity	Central Counterparty
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

## Introduction

**Please make your introductory comments below, if any:**

<ESMA\_COMMENT\_DP\_EMIR\_CTs>

Deutsche Börse Group (DBG), in particular its CCPs Eurex Clearing and European Commodity Clearing, appreciates the opportunity to provide feedback to ESMA's discussion paper on the review of the EMIR clearing thresholds.

Eurex Clearing is an EMIR authorized central counterparty (CCP) and provides clearing services for cash and derivatives markets in listed and over-the-counter (OTC) financial instruments. European Commodity Clearing AG (ECC) is an EMIR authorized CCP and provides clearing services for spot and derivative commodity contracts.

DBG would generally agree with the preliminary results of the ESMA assessment in the discussion paper. From a systemic risk point of view, clear incentives for central clearing are important. We believe that the EMIR clearing thresholds regime has proven useful to differentiate between different asset classes and counterparties, taking into account their different risk profiles. We consider this granular EMIR approach by asset class and counterparties more appropriate than having one threshold for all different types of asset classes and counterparties. Generally, the level of risk market participants bring to the market should be the main criterion for assessing the appropriateness of the clearing thresholds.

In this context, we would like to use the opportunity to bring an observation on the IRD threshold methodology to ESMA's attention that is not yet reflected in the first discussion paper and may be worth further exploring in ESMA's future work: Whilst fully supporting the proportional treatment of smaller market participants, it could be observed in the IRD space that even small turnover volumes can be associated with relatively significant risk. In our view, turnover volumes does not appear to be an appropriate metric to reflect risk. Consequently, a number of counterparties holding significant risk positions are currently not covered appropriately by the thresholds, especially where the methodology is exempting some Category 3 counterparties from the calculation at group level. We would therefore encourage a review of current methodology to calculate the IRD clearing thresholds and maybe also other asset class threshold methodologies where similar observations would apply.

Further, ESMA is alluding to the concerns expressed by market participants (and commodity traders in particular) on the impact of Brexit on the clearing thresholds. We would not see the need for any substantial changes to the level of the thresholds in relation to commodity derivatives at this stage. As mentioned above, we believe that the main criterion to be considered for reviewing a clearing threshold upwards or downwards should be the systemic risk market participants bring to the market. Today, we are facing a situation of high market volatility in the commodities business since the start of the Covid-19 pandemic, with considerable price movements within days or hours. This means that there is an increased need for energy traders to clear their transactions via a clearing house to avoid counterparty risk. While we believe that generally a higher clearing threshold in the long term also strengthens order book trading, the short-term consequence of an increased clearing threshold is likely to be more uncleared OTC trading, for which we are unsure the timing is suitable.



Please also refer to our comments to questions 6, 8 and 9 regarding our detailed view on the current EMIR regime and any changes in particular to the current methodology for commodity derivatives and OTC IRD.

Lastly, we would support ESMA's approach to supplement the first discussion paper with further data analysis and would welcome ESMA to keep periodically reviewing the appropriateness of the thresholds as foreseen in EMIR Refit.

We trust that our comments are a helpful contribution to ESMA's further work and remain at ESMA's disposal for further discussion.

<ESMA\_COMMENT\_DP\_EMIR\_CTs>

**Q1. Please explain if you see a need for further clarification on how to identify OTC contracts for the purpose of the calculation of the positions to be compared to the clearing thresholds.**

<ESMA\_QUESTION\_DP\_EMIR\_CTs\_1>

As per our introductory statement, we would generally agree with the preliminary results of the ESMA assessment in the discussion paper that the EMIR threshold regime has worked well so far and do not see the need for further clarification how to identify OTC contracts for the calculation.

<ESMA\_QUESTION\_DP\_EMIR\_CTs\_1>

**Q2. Please explain if you see a need for further clarification to identify OTC contracts that can be considered as reducing risks directly relating to commercial activity or treasury financing activity. And please mention any additional aspects to be further considered with regards to the hedging exemption.**

<ESMA\_QUESTION\_DP\_EMIR\_CTs\_2>

Please refer to our introductory comments and the previous question. We would not see the need for further clarifications.

<ESMA\_QUESTION\_DP\_EMIR\_CTs\_2>

**Q3. Please provide information and examples on how counterparties count fungible ETDs and OTC derivatives for the purpose of the calculation of the clearing thresholds?**

<ESMA\_QUESTION\_DP\_EMIR\_CTs\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_EMIR\_CTs\_3>

**Q4. Please provide data and arguments to illustrate the potential impact of the lack of an equivalence decision under Article 2a of EMIR and what could be done to alleviate your concerns (besides an equivalence decision)? Please specify the kind of transactions and activities that would be affected and the purpose of those, and whether there are alternatives.**

<ESMA\_QUESTION\_DP\_EMIR\_CTs\_4>

Please refer to our introductory comments.

<ESMA\_QUESTION\_DP\_EMIR\_CTs\_4>

**Q5. Please describe the scenarios when transactions do not qualify as hedging transactions.**

<ESMA\_QUESTION\_DP\_EMIR\_CTs\_5>

Please refer to our answer to question 2. From our perspective, it is important that the scope of hedging transactions remain to only cover true commercial hedging and treasury financing activities, with a view to not water down the exemption's purpose and impair the benefits of central clearing.

<ESMA\_QUESTION\_DP\_EMIR\_CTs\_5>

**Q6. Please describe your views on how the EMIR framework works (also compared to other regimes) for the purpose of the clearing thresholds and the requirements triggered by those? Please provide examples and supporting data.**

<ESMA\_QUESTION\_DP\_EMIR\_CT\_s\_6>

EMIR was introduced after the financial crisis of 2008 to better reflect market risks and include additional layers of security when surpassing the respective clearing thresholds in the different asset classes. The EMIR clearing thresholds are designed to address operational and credit risks of bilateral, non-centrally-cleared OTC derivatives trading, or trading on non-equivalent third country trading venues. From our point of view, the EMIR clearing thresholds regime has proven useful to differentiate between different asset classes and counterparties, taking into account the different players and their risk profiles. Having a look at other international regimes, we believe this more granular EMIR approach by asset class is more risk-sensitive than having one threshold for all different types of asset classes. Therefore, a comparison to other regimes with higher thresholds is falling short as more products are included in those thresholds. As per our introductory comments, we would like to reiterate that the level of risk market participants bring to the market should be the main criterion for assessing the appropriateness of the clearing thresholds. Please also refer to our detailed comments to questions 8 and 9 regarding the threshold methodology for OTC IRS and the level of clearing thresholds for commodity derivatives.

<ESMA\_QUESTION\_DP\_EMIR\_CT\_s\_6>

**Q7. Considering the current coverage provided by the clearing thresholds in relation to credit derivatives and the different type of counterparties (FCs and NFCs); is there any aspect or issue you consider ESMA should look into or pay attention to? Please, in your answer, provide as granular details and any relevant data to illustrate your response.**

<ESMA\_QUESTION\_DP\_EMIR\_CT\_s\_7>

Please refer to our introductory comments.

<ESMA\_QUESTION\_DP\_EMIR\_CT\_s\_7>

**Q8. Considering the current coverage provided by the clearing thresholds in relation to interest rate derivatives and the different type of counterparties (FCs and NFCs); is there any aspect or issue you consider ESMA should look into or pay attention to? Please, in your answer, provide as granular details and any relevant data to illustrate your response.**

<ESMA\_QUESTION\_DP\_EMIR\_CT\_s\_8>

Please also refer to our introductory comments in relation to the effectiveness and functioning of the current threshold regime.

Whilst fully supporting the proportional treatment of smaller market participants in the new threshold methodology introduced with EMIR Refit, we would like to bring to ESMA's attention an observation on the IRD threshold methodology that is not yet reflected in ESMA's first discussion paper. In the IRD space, it could be observed that even small turnover volumes can be associated with relatively significant risk. Typical buy-and-hold clients like asset managers are characterized by small turnover, however, building significant, long-dated risk positions over time. Subsequently, it appears that a number of counterparties holding significant risk positions may currently not be covered appropriately by the thresholds. This may be especially relevant where the methodology is exempting some Category 3 counterparties from the calculation at group level, as low turnover volume may still translate into significant risk exposure. As mentioned above, we believe that the level of risk market participants bring to the market should be the main criterion for assessing the appropriateness of the clearing thresholds. Should ESMA come to the



conclusion to revisit the threshold methodology as a result of its overall assessment, we would therefore encourage ESMA to re-consider if turnover volumes is the optimal metric to appropriately reflect risk in order to calculate the IRD clearing thresholds. Risk related metrics (such as for example initial margin) may be more appropriate metrics.

Further, there might be merit in considering aligning the clearing thresholds closer to the margin thresholds defined under the bilateral margin obligations. Such an approach would simplify the methodology, ensure consistency as bilateral margin and clearing obligations would follow the same metrics, and lead to increased transparency.

<ESMA\_QUESTION\_DP\_EMIR\_CTs\_8>

**Q9. Considering the current coverage provided by the clearing thresholds in relation to commodity derivatives and the different type of counterparties (FCs and NFCs); is there any aspect or issue you consider ESMA should look into or pay attention to? Please, in your answer, provide as granular details and any relevant data to illustrate your response.**

<ESMA\_QUESTION\_DP\_EMIR\_CTs\_9>

Please refer once again to our introductory comments and in particular to question 6.

We understand that ESMA already picks up the concerns expressed by market participants (and commodity traders in particular) on the impact of Brexit on the clearing thresholds. From a systemic risk point of view, clear incentives for central clearing are important. We reiterate that we support the principal objective of EMIR, i.e. reducing systemic risk by mandatory clearing and believe that the clearing thresholds have worked well so far. Notwithstanding our comment above on the risk metrics considered for the calculation methodology, we would not see the need for any substantial changes to the level of the thresholds in relation to commodity derivatives at this stage. We believe that the main criterion to be considered for reviewing a clearing threshold upwards or downwards should be the systemic risk market participants bring to the market. Today, we are facing a situation of high market volatility in the commodities business since the start of the Covid-19 pandemic, with considerable price movements within days or hours. This means that there is an in-creased need for energy traders to clear their transactions via a clearing house to avoid counterparty risk. While we believe that generally a higher clearing threshold in the long term also strengthens order book trading, the short-term consequence of an increased clearing threshold is likely to be more uncleared OTC trading, for which we are unsure the timing is suitable.

<ESMA\_QUESTION\_DP\_EMIR\_CTs\_9>

**Q10. Considering the current coverage provided by the clearing thresholds in relation to equity derivatives and the different type of counterparties (FCs and NFCs); is there any aspect or issue you consider ESMA should look into or pay attention to? Please, in your answer, provide as granular details and any relevant data to illustrate your response.**

<ESMA\_QUESTION\_DP\_EMIR\_CTs\_10>

Please refer to our introductory comments.

<ESMA\_QUESTION\_DP\_EMIR\_CTs\_10>

**Q11. Considering the current coverage provided by the clearing thresholds in relation to currency derivatives and the different type of counterparties (FCs and NFCs); is there any aspect or issue you consider ESMA should look into or pay attention to? Please, in your answer, provide as granular details and any relevant data to illustrate your response.**



<ESMA\_QUESTION\_DP\_EMIR\_CTs\_11>  
Please refer to our introductory comments.  
<ESMA\_QUESTION\_DP\_EMIR\_CTs\_11>

**Q12. Beyond the different treatments between FCs and NFCs in the calculation, are there differences between the different types of counterparties that might justify a different calibration of the actual clearing thresholds? In addition, please consider if a different calibration of the current clearing thresholds by type of counterparty should apply in the same manner to all asset classes. Please provide any supporting data that might help illustrate your response.**

<ESMA\_QUESTION\_DP\_EMIR\_CTs\_12>  
Please refer to our introductory comments and in particular to our response to questions 8 and 9. Further, we support ESMA's approach to supplement the initial discussion paper with the 2021 data analysis and would welcome ESMA to keep periodically reviewing the appropriateness of the thresholds as foreseen in EMIR Refit.  
<ESMA\_QUESTION\_DP\_EMIR\_CTs\_12>

**Q13. Looking at the simulations presented in the paper and at the impact they would have, do you have any views on the sensitivities of the thresholds?**

<ESMA\_QUESTION\_DP\_EMIR\_CTs\_13>  
Please refer to our introductory comments.  
<ESMA\_QUESTION\_DP\_EMIR\_CTs\_13>