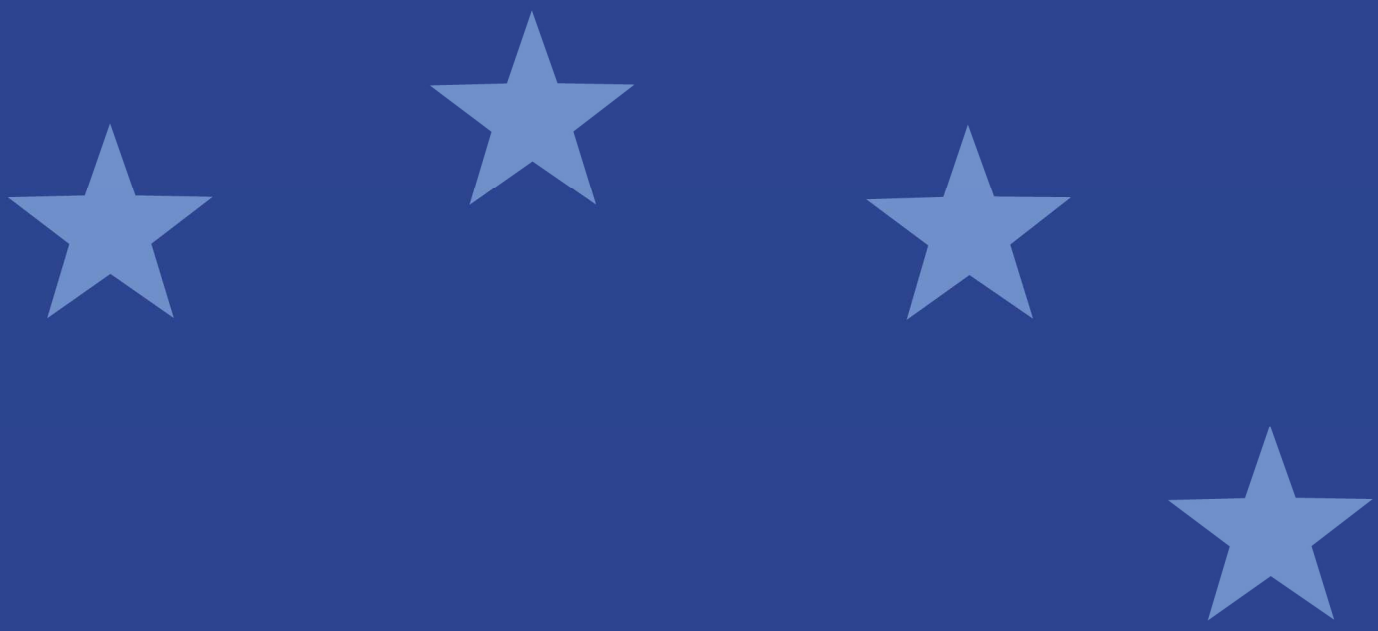
esma European Securities and Markets Authority

Final Report

Draft technical standards on the Clearing Obligation – Interest rate OTC Derivatives in additional currencies



10 November 2015 | ESMA/2015/1629

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1 Executive Summary

Reasons for publication

Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC Derivatives, CCPs and Trade Repositories (EMIR) requires ESMA to develop draft regulatory technical standards (RTS) in relation to the clearing obligation.

In this context ESMA consulted stakeholders with a discussion paper[1] and four consultation papers. The first consultation paper covered interest rate derivative denominated in EUR, GBP, JPY and USD (the G4 currencies)[2] , the second one covered credit default swap (CDS)[3] , the third one covered foreign exchange non-deliverable forward[4] (NDF) and the fourth one covered interest rate derivative classes denominated in Czech Koruna (CZK), Danish Krone (DKK), Hungarian Forint (HUF), Norwegian Krone (NOK), Polish Zloty (PLN) and Swedish Krona (SEK) (the EEA currencies)[5].

The first RTS on the clearing obligation for certain classes of OTC interest rate derivatives denominated in the G4 currencies were adopted by the European Commission on 06 August 2015[6].

This final report on the clearing obligation is covering certain classes of OTC interest rate derivatives denominated in the EEA currencies. It includes the final version of the draft RTS that are submitted to the European Commission for endorsement and proposes a clearing obligation for fixed-to-float interest rate swaps denominated in NOK, PLN and SEK and forward rate agreements denominated in NOK, PLN and SEK.

Contents

This final report incorporates the feedback received to the consultation and explains the reasons for reflecting or not the stakeholders proposals to the draft RTS. It follows the same structure as the consultation paper.

Section 3 provides explanations on the procedural aspects of the clearing obligation. Section 4 covers the structure of the classes of OTC interest rate derivatives that are proposed for the clearing obligation. Section 5 addresses considerations on systemic risk. Section 6 covers the determination of the OTC interest rate derivatives that should be subject to mandatory clearing. Section 7 presents the approach for the definition of the categories of counterparties, and the proposals related to the dates from which the clearing obligation should apply per category of counterparty. Section 8 provides explanations on the approach considered for frontloading and the definition of the minimum remaining maturities of the contracts subject to it.

Next Steps

This final report is submitted to the European Commission for endorsement of the draft RTS

[1] 2013/ESMA/925 Discussion Paper on the Clearing Obligation published on 12 July 2013
[2] 2014/ESMA/799 Consultation Paper, Clearing Obligation under EMIR no.1 published on 11 July 2014
[3] 2014/ESMA/800 Consultation Paper, Clearing Obligation under EMIR no.2 published on 11 July 2014
[4] 2014/ESMA/1185 Consultation Paper, Clearing Obligation under EMIR no.3 published on 1 October 2014
[5] 2015/ESMA/807 Consultation Paper, Clearing Obligation under EMIR no.4 published on 11 May 2015
[6] The publication of the adoption of the first RTS on the Clearing Obligation is available at: http://ec.europa.eu/finance/index_en.htm

presented in Annex III. From the date of submission the European Commission should take the decision whether to endorse the RTS within three months.

Acronyms used

AIF	Alternative Investment Fund
CCP	Central Counterparty
CDS	Credit Default Swap
EEA	European Economic Area
EMIR	European Market Infrastructures Regulation (Regulation (EU) 648/2012)
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
FC	Financial Counterparty
FRA	Forward Rate Agreement
FX	Foreign Exchange
G-Sib	Global Systemically Important Banks
IMF	International Monetary Fund
IRS	Interest Rate Swap
NDF	Non-Deliverable Forward
NFC	Non-Financial Counterparty
OIS	Overnight Index Swap
OJ	Official Journal
OTC	Over-the-counter
RTS	Regulatory Technical Standards
TR	Trade Repository

2 Introduction

1. With the overarching objective of reducing systemic risk, the European Market Infrastructure Regulation ("EMIR") introduces the obligation to clear certain classes of OTC derivatives in Central Counterparties (CCPs) that have been authorised (for European CCPs) or recognised (for third-country CCPs) under the EMIR framework. Ensuring that the clearing obligation reduces systemic risk requires a process of identification of classes of derivatives that should be subject to mandatory clearing.

2. The clearing obligation procedure shall begin when a CCP clearing OTC derivatives is authorised under EMIR, or when ESMA has accomplished a procedure for recognition of a third-country CCP set out in EMIR Article 25. It has therefore started in Q1 2014 following the first CCPs authorisations. The list of CCPs that have been authorised to clear OTC derivatives or recognised, and the classes for which they are authorised, are available in the public register[7].

3. In accordance with Article 5 of EMIR, ESMA shall develop and submit to the European Commission for endorsement draft technical standards specifying:

   (a) the class of OTC derivatives that should be subject to the clearing obligation referred to in Article 4;

   (b) the date or dates from which the clearing obligation takes effect, including any phase in and the categories of counterparties to which the obligation applies; and

   (c) the minimum remaining maturity of the OTC derivative contracts referred to in Article 4(1)(b)(ii).

4. The present final report follows the publication on 11 May 2015 of a consultation paper on the clearing obligation proposing some OTC interest rate derivative classes denominated in CZK, DKK, HUF, NOK, PLN and SEK (currencies of the European Economic Area or the "EEA currencies") to be subject to the clearing obligation. The consultation closed on 15 July 2015 and ESMA received 21 responses.

5. The present report is the third final report on the clearing obligation submitted by ESMA to the European Commission. It follows:

   (a) the publication on 01 October 2014 of a first final report[8] covering OTC interest rate derivative classes denominated in EUR, GBP, JPY, USD (the "G4 currencies") to be subject to the clearing obligation.

   The first final report should be read in conjunction with (1) the letter from the Commission to ESMA of 18 December 2014 indicating its intention to endorse with

[7] The Public Register for the Clearing Obligation under EMIR is available under the post-trading section of : http://www.esma.europa.eu/page/Registries-and-Databases

[8] 2014/ESMA/1184 Final Report, Clearing Obligation under EMIR no.1 published on 1 October 2014

amendments the draft RTS; (2) the related ESMA opinion of 29 January 2015[9]; and (3) the publication on 06 August 2015[10] of the adopted first draft RTS on the clearing obligation covering the interest rate OTC derivative classes denominated in the G4 currencies;

(b) the publication on 1 October 2015 of the second final report covering OTC credit derivative classes to be subject to the clearing obligation[11].

6. The present and third final report is thus building on (a) the documents and consultations related to the first draft RTS on OTC interest rate derivative classes denominated in the G4 currencies as well as on (b) the consultation on OTC interest rate derivative classes denominated in EEA currencies, including the review of the 21 responses.

7. It is to be noted that the first final report covering the OTC interest rate derivative classes in the G4 currencies already integrated and addressed the feedback from the 51 responses to the first consultation.

8. Therefore, this third final report does not repeat the analysis of the first one where the feedback is consistent. Instead, this final report addresses new feedback as well as feedback that is specific to the OTC interest rate derivative classes denominated in EEA currencies.

9. This final report develops further in the next sections the changes made to take into account the range of feedback and provides a number of clarifications as requested by stakeholders. The resulting draft RTS are included in Annex III.

3 The clearing obligation procedure

Expansion of the scope of the clearing obligation (Question 1 of the consultation paper)

10. The consultation paper explained that there are several circumstances that can lead to an expansion of the scope of the clearing obligation, or, where the case may be, that can lead to a reduction of the scope with certain classes withdrawn (in the case the criteria defined in EMIR were analysed as no longer being met and the related amendments of the RTS were adopted). The majority of respondents were broadly in agreement with this section of the consultation paper but a few additional comments were made as detailed in the below paragraphs.

11. First of all, several respondents raised the need for a tool to suspend swiftly the clearing obligation for some classes, when the conditions require so. This issue has been raised consistently by respondents in all previous consultations too. Market participants, as well

[9] 2015/ESMA/223 Opinion on the draft regulatory technical standards published on 29 January 2015
[10] The publication of the adoption of the first RTS on the Clearing Obligation is available at: http://ec.europa.eu/finance/index_en.htm
[11] 2015/ESMA/1481 Final Report, Draft technical standards on the Clearing Obligation – Credit Derivatives published on 1 October 2015

as other authorities and ESMA, agree in general on such a need for an agile and supervisory type of mechanism. In line with all this consistent feedback, ESMA raised this issue in Report no.4 on the EMIR Review that ESMA submitted to the European Commission and published on 13 August 2015[12].

12. Secondly, some respondents commented on the legal approach to expand the scope, i.e. on whether different RTS would be submitted each time or whether amendments to existing RTS would be submitted instead. This has been addressed to some extent in the second final report on the clearing obligation for credit default swaps (CDS). The report explained that the choice of the legal vehicle, where applicable, is secondary to the technical choices for the related provisions. In particular, it was explained that consistency between different RTS can be achieved by replicating the text from prior RTS where applicable, and that a consolidated and central place of information for the list of classes subject to the clearing obligation did not have to be achieved via an RTS as it is already provided for by the public register. In addition, this approach allowed to decouple the approval process of separate RTS, as the proposal to amend an RTS that has not yet entered into force can raise some challenges.

13. As a result, for the proposal to subject CDS classes to the clearing obligation, a separate RTS has been submitted. In the CDS case, the RTS corresponded to the submission of classes from a different asset class to the asset class of the previous scope. However, the present report covers classes which belong to the same asset class as some classes already subject to the clearing obligation (interest rate classes denominated in the G4 currencies).

14. Still, the same principles apply in the case of the addition of OTC interest rate derivative classes denominated in EEA currencies, i.e. that the desired requirements can still be achieved with an independent and separate RTS while consistency can be achieved within the text.

15. ESMA is thus proposing a separate RTS for this new set of class. The list of classes subject to the clearing obligation will continue to be consolidated in one place, the Public Register available on the ESMA website.

4 Structure of the interest rate derivative classes

Question 2 of the consultation paper

16. A large majority of respondents to the consultation paper had no particular comments or communicated broad support with regards to the proposed structure of the OTC derivative classes to be subject to the clearing obligation. In particular, several

[12] ESMA-2015-1254 - EMIR Review Report no.4 on other issues published on 13 August 2015.

respondents commented on their support for keeping consistency with the structure used for the OTC interest rate derivative classes denominated in the G4 currencies.

5 Systemic risk

Question 3 of the consultation paper

17. A large majority of respondents to the consultation paper had no particular comments or communicated broad support with regards to how systemic risk was considered, i.e. that it is not only assessed at the EU level, but that risk can be posed at Member State level or counterparty level and that it can spread through interconnectedness of markets or market participants.

18. Notably, the consultation paper referred in particular to how systemic risk is defined in the European Systemic Risk Board (ESRB) Regulation, i.e. in Recital 27 of Regulation (EU) 1092/2010.

19. The ESRB response to this consultation and to the prior consultations was also in line with the approach. Indeed, in its response to the consultation paper, the ESRB confirms that, "in the context of the clearing obligation, systemic risk should be considered not only at the aggregated EU level, but also at national or even institutional level, whenever risks of disruption to financial services caused by a significant impairment of all or parts of the EU financial system have the potential to have serious negative consequences for the internal market and the real economy. There are multiple jurisdictions with systemically important financial sectors within the EU, also with local currencies other than the euro or pound sterling, which could transmit financial shocks across borders via, inter alia, capital relations between and within large European banking groups or active participation in the global financial markets and the derivatives market in particular."

20. This is also aligned with the proposal put forward by the ESRB in its response to the Commission's consultation in the context of the EMIR review[13], that the European Commission consider making it clear that the evaluation of systemic risk for mandatory clearing purposes should be conducted by ESMA both at the EU and national level. ESMA concurs with the ESRB's opinion that systemic risks should be evaluated taking into account the fact that some risks may seem small from an aggregated perspective, but can be concentrated in individual financial institutions that are systemically important at domestic or global level. National systemic risk may also be of broader concern to the extent that the financial sector in a given country is systemically important as defined by the IMF.

[13] "ESRB report on issues to be considered in the EMIR revision other than the efficiency of margining requirements" published on 27 July 2015 and available at:
https://www.esrb.europa.eu/pub/pdf/other/150729_report_other_issues.en.pdf?3c912b83f6cce307d99df604f96ae706

21. In fact, some respondents also referred to the systemically significant markets and Global Systemically Important Banks ("G-sib") entities as identified by the International Monetary Fund (IMF). With regard to the currencies proposed for the clearing obligation in this paper, they all correspond to markets flagged as systemically significant ones by the IMF, as detailed in paragraph 52 below. This is thus further input in considering these classes for the clearing obligation.

22. Finally, some respondents agreed with the approach discussed in this section of the consultation paper but at the same time suggested that alternative measures should be considered to address the related systemic risk. However, whereas there may be other incentives for counterparties to consider clearing trades, the clearing obligation is the approach defined in EMIR to ensure that the systemic risk associated to certain classes of derivatives is mitigated, when they meet certain criteria, as for the case of the OTC interest rate derivative classes presented in this final report.

6 Classes of OTC derivatives to be subject to the clearing obligation

Question 4 of the consultation paper

23. Following the analysis of the criteria as defined in EMIR, ESMA proposed in the consultation paper to subject certain OTC interest rate derivative classes to the clearing obligation. The classes were fixed-to-float interest rate swaps denominated in 6 EEA currencies (CZK, DKK, HUF, NOK, PLN and SEK) and forward rate agreements denominated in three of these currencies (NOK, PLN, SEK) as listed below in Table 1 and Table 2:

Table 1: Fixed-to-float interest rate swap classes proposed for the clearing obligation in the consultation paper

ID	Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
C.1.1	Fixed-to-Float	PRIBOR	CZK	28D-5Y	Single currency	No	Constant or Variable
C.1.2	Fixed-to-Float	CIBOR	DKK	28D-5Y	Single currency	No	Constant or Variable
C.1.3	Fixed-to-Float	BUBOR	HUF	28D-5Y	Single currency	No	Constant or Variable
C.1.4	Fixed-to-Float	NIBOR	NOK	28D-5Y	Single currency	No	Constant or Variable

C.1.5	Fixed-to-Float	WIBOR	PLN	28D-5Y	Single currency	No	Constant or Variable
C.1.6	Fixed-to-Float	STIBOR	SEK	28D-15Y	Single currency	No	Constant or Variable

Table 2: Forward rate agreement classes proposed for the clearing obligation in the consultation paper

ID	Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
C.2.1	FRA	NIBOR	NOK	3D-1Y	Single currency	No	Constant or Variable
C.2.2	FRA	WIBOR	PLN	3D-1Y	Single currency	No	Constant or Variable
C.2.3	FRA	STIBOR	SEK	3D-2Y	Single currency	No	Constant or Variable

24. There was no clear consensus emerging from the responses to the consultation as to which of those classes, if any, should be subject to the clearing obligation.

25. Indeed, the responses ranged from stakeholders who did not support the clearing obligation for any of the classes proposed, to others who believed they should all be included (and with even longer maturities and additional product types for these currencies, such as overnight index swaps (OIS) or basis swaps). Within that range of responses, several stakeholders supported the inclusion of only a limited set of currencies (citing alternatively NOK, SEK, PLN, DKK or any combination of those four currencies), while others focused on the specific set of currencies that should be excluded.

26. There was a strong geographical focus in the responses, i.e. stakeholders in a specific Member State generally commented in favour or against the inclusion of the currency of this Member State in the set of classes to be subject to the clearing obligation, while they remained silent on the other currencies.

27. In terms of justifications, the range of explanations provided by stakeholders who did not support the proposals were scattered. They mentioned: the lack of international consistency, the fact that the largest participants were already clearing on a voluntary basis (or will be sufficiently incentivised to do so once the provisions on bilateral

margining enter into force), the risk that it would lead smaller market participants to exit the market, the fact that there is an insufficient number of CCPs and clearing members available in those classes, the fact that volumes and liquidity are too small to meet the EMIR criteria and the lack of sufficiently robust data to support the liquidity analysis.

28. The group of stakeholders supporting the ESMA proposal considered, on the contrary, that the classes generally met the EMIR criteria in relation to the standardisation, liquidity and availability of pricing information, and that there was sufficient clearing capacity for a clearing obligation on these classes.

29. To address the concerns mentioned in paragraph 27 above, ESMA would like to make the following points.

International consistency:

30. First of all, ESMA supports the objective of international consistency, and coordination of the clearing mandates to the extent possible. But the fact that no jurisdiction has yet adopted a clearing mandate for a specific class does not mean that adopting such mandate departs from the objective of international consistency which the G20 jurisdictions are striving for. Indeed there can be at least one jurisdiction establishing a clearing mandate before others may follow in the spirit of reaching international consistency. It is important to bear in mind that the timing and the trigger for potential clearing obligations in different jurisdictions, as well as the determination process and the criteria to decide which classes to mandate and the associated schedule, depends on the local regulatory and legislative processes.

31. Secondly, as developed in paragraphs 84 to 99 of the consultation paper, the vast majority of the activity in the IRS classes denominated in the EEA currencies is conducted within the EEA, making the need for other jurisdictions to have their mandate synchronised less of a priority.

Volontary clearing and risk on smaller market participants

32. The clearing obligation under EMIR was specifically designed to address the fact that incentives towards voluntary clearing have been insufficient, as clearly spelled out in Recital (13) of EMIR. The legislators have thus decided to make the clearing of certain classes of OTC derivatives mandatory.

33. Furthermore, the volumes of cleared vs non cleared trades in the EEA currencies (Table 17 of the consultation paper) show that, although a good amount of transactions are already cleared, the percentages are still well below those of e.g. CDS Index trades, and that there is significant room for improvement. It is also very unlikely in view of those numbers that all the largest market participants already clear (all) their trades. Even if they did, and hence if the clearing obligation did only affect the smaller counterparties, it should be born in mind that EMIR does not foresee any specific exemption for small market participants, but instead establishes different phase-in periods.

Number of CCPs and Clearing Members

34. As evidence in Table 9 of the consultation paper, each of the classes proposed for the clearing obligation have at least 2 CCPs to clear it, and even 3 CCPs for some classes. In the previous consultations on the clearing obligation, the general call from stakeholders was for a minimum of 2 CCPs available to clear a class subject to the clearing obligation, which is the case here and was also the case for the IRS classes denominated in the G4 currencies. The consultation paper also concluded that the number of clearing members was proportionate to the size of the respective markets and that the number of counterparties becoming members of these CCPs that are clearing OTC interest rate derivatives in the EEA currencies was growing (Tables 8 and 9 of the consultation paper).

Quality of data and volumes

35. Stakeholders expressed some skepticism and specifically towards the use of data coming from European Trade Repositories (TRs). One should remember that the obligation to report derivatives to TRs, which started in February 2014, constitutes a milestone for increased transparency in OTC derivatives markets. 18 months after the reporting obligation started, it is acknowledged that there is further room to improve the quality of reporting, a topic on which ESMA is actively working together with all the parties involved.

36. This being said, ESMA is confident that already today, it is possible to obtain robust analyses from TR data under prudent assumptions and consistency checks. Moreover, the consultation paper also used other sources of information (DTCC public data, BIS, CCP public data) and performed some consistency checks between the various sources.

37. In addition, in its response to the consultation, the ESRB welcomed the use by ESMA of additional data and metrics stemming from TRs[14]. The ESRB also performed its own analysis to compare the classes of OTC IRS denominated in the EEA currencies with those denominated in the G4 currencies, using different sets of metrics (e.g. largest net long and short positions, average daily trade volume and trade count, number of days without any trades concluded, large long and short positions' close-out periods, average number of active dealers, market concentration and the price impact of trading). They concluded that the OTC IRS classes denominated in the EEA currencies appear to meet the criteria listed in the RTS on OTC derivatives in a similar manner as some of the classes of OTC IRS classes denominated in G4 currencies.

[14] *"The analysis conducted by ESMA is far more comprehensive and substantive than in the previous consultation papers and, in the ESRB's view, sufficiently covers all of the criteria listed in Article 7 of the RTS on OTC derivatives. It has benefited from the use of additional data, including from the European trade repositories. This extended dataset has enabled ESMA to establish additional metrics, enhancing the breakdown of activity from a geographical perspective and allowing a more granular analysis. As a result, the adopted approach has produced, in the ESRB's opinion, a more thorough and EU-focused analysis."*

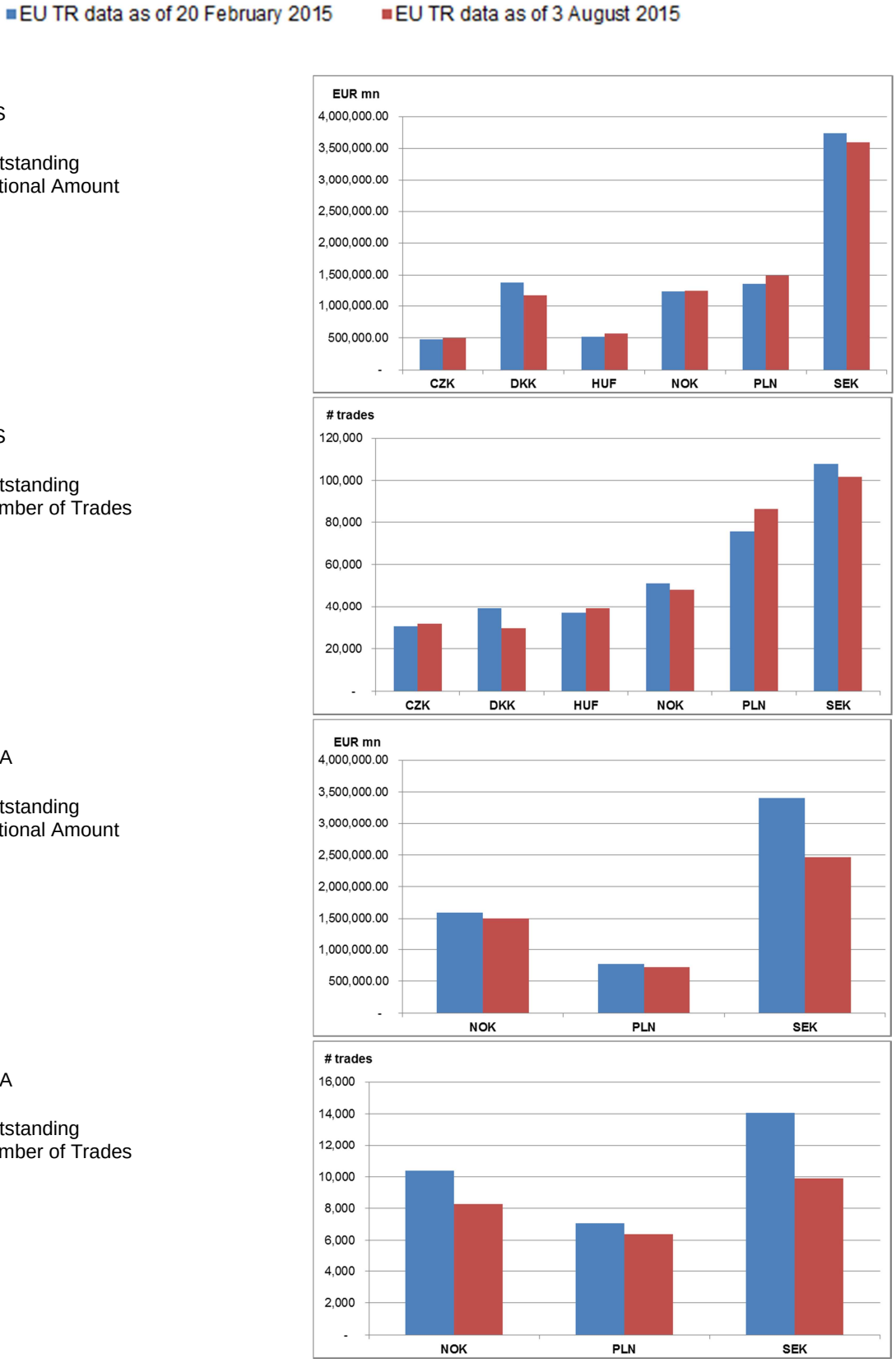
38. Nevertheless, to address stakeholders' concerns regarding the quality of data and the fact that the TR data used in the consultation paper dated from Q2 2014, ESMA has analysed different and more recent EU TR data. More specifically, we looked at data related to stock (outstanding notional amounts and outstanding number of trades) as of 20 February 2015 and 3 August 2015.

39. Figure 1 below shows the outstanding notional amounts and outstanding number of trades in IRS and forward rate agreement (FRA) in each of the 6 EEA currencies, with a comparision between the different dates.

40. The comparision of EU TR data as of 20 February 2015 and as of 3 August 2015 shows a mild contraction of the outstanding volumes of FRA, and of the outstanding volumes of IRS denominated in SEK and DKK between the two dates while the outstanding volumes of IRS denominated in the other currencies have been stable or have slightly increased. In terms of order of magnitude and ranking between the different currencies, the volumes are broadly consistent between the two dates.

41. Overall, this more recent set of data can serve as a confirmation of the various analysis which have been presented in the consultation paper.

Figure 1: Oustanding volumes in IRS and FRA proposed to be subject to the clearing obligation



Conclusions on the scope of currencies

42. Although there were split views from respondents on the classes proposed for the clearing obligation, the analysis of the liquidity as well as the selection of the classes to be included in the clearing mandate have been supported by several other respondents and in particular the ESRB in its response to the consultation. Notably, the ESRB pointed to a satisfactory level of consistency in the determination of the new classes compared to the determination of the classes denominated in the G4 currencies[15].

43. The arguments and the opinion developed by the ESRB and the additional set of data presented by ESMA above came in support to the analysis conducted in the consultation paper. They broadly confirmed the conclusions developed in the consultation paper, i.e. that the criteria which are relevant for the purpose of the clearing obligation are met for all the classes analysed in this consultation.

44. However as developed below, ESMA has modified in its final draft RTS the scope of classes proposed by focusing as a first step on the most relevant currencies from a systemic risk point of view. In doing so ESMA has sought to take into account the responses to the consultation while not compromising the overarching objective of the clearing obligation, which is the reduction of systemic risk.

45. More specifically, ESMA is proposing to include in this draft RTS the following IRS classes: (1) fixed-to-float interest rate swaps denominated in NOK, PLN and SEK; and (2) FRAs denominated in NOK, PLN and SEK, based on justifications developed in the following paragraphs.

46. SEK is one of the most traded currencies in Europe after the G4 currencies, and the volume of IRS traded within the EU is in fact higher than the volume of JPY, which is included in the first set of classes subject to the clearing obligation in Europe.

47. There is a clear difference in liquidity between SEK on one side, and the other 5 currencies included in the consultation paper on the other side: irrespective of the metrics and data source, over time, SEK has consistently been the most liquid one, and generally represents around 40-50% of the total IRS volume for the set of the 6 currencies at stake.

48. With regards to the other 5 currencies of interest (CZK, DKK, HUF, NOK and PLN), there appears to be a gradual decrease in liquidity, but depending on the metrics, data source and dates, the other 5 currencies are not always ranked in the same order. Therefore, in relative terms, the difference between the liquidity profiles of each of these currencies does not appear as clear cut as with SEK.

49. This being said, focusing on the data relating to volumes measured by notional amounts (as opposed to trade count), the IRS markets in CZK and HUF are generally smaller than those denominated in the other currencies analysed in this paper (see Table 12, 13 and 14 of the consultation paper and the first graph of Figure 1 above). This means that, although the liquidity of interest rate swaps denominated in CZK and HUF in terms of number of contracts traded is comparable to the others, the overall size of the market in EUR-equivalent appears more limited, which indicates in turn smaller systemic risks posed by those two markets relative to the others.

50. In addition, reference can be made to another criteria which is relevant to assess the systemic relevance of markets or institutions, namely interconnectedness: as enunciated in the ESRB Regulation[16], the key criteria helping to identify the systemic importance of markets and institutions are size (the volume of financial services provided by the individual component of the financial system), substitutability (the extent to which other components of the system can provide the same services in the event of failure) and interconnectedness (linkages with other components of the system).

51. In fact, Recital (17) of EMIR mentions interconnectedness as an additional consideration that is relevant in the context of the clearing obligation.

52. In this respect, as mentioned by several respondents to the consultation, it should be noted that Denmark, Norway, Poland and Sweden are all included in the IMF list of countries with systemically important financial sectors[17]. This list includes 29 countries as of January 2014.

53. Sweden was included in the original IMF list established in 2010 while Norway, Poland and Denmark were added more recently, in 2014, following a review of the methodology which now puts more emphasis on interconnectedness. More specifically, the IMF explains that four jurisdictions were added (Finland being the fourth one) to the original list because of their high level of interconnectedness with other financial sectors, and also because they are linked to each other. The previous IMF methodology placed a larger weight on size and therefore missed these important interconnections (and thus potential channels of shock transmission) of these relatively smaller financial sectors.

54. Although there is no perfect equivalence between the systemic relevance of a country and the systemic relevance of the currency of that country, the fact that the financial sectors of Czech Republic and Hungary have not been determined as systemically important by the IMF constitutes additional indication of the smaller systemic relevance of HUF and CZK, relative to the other currencies analysed in this paper.

[16] OJ L331, 15.12.2010, p.1.
[17] http://www.imf.org/external/np/pp/eng/2013/111513.pdf

55. For the reasons developed above, fixed-to-float interest rate swaps denominated in HUF and CZK have not been included in the scope of the clearing obligation as reflected in the draft RTS in Annex III.

56. With regards to individual member state risk, going back to the data presented in Table 11 of the consultation paper on EEA currencies, ESMA notes the particularity of DKK compared to the other currencies, in the sense that DKK represents a small part of the IRS activity of Danish counterparties (5%, compared to levels above 80% for the other currencies) and that at the same time, most of the DKK is traded by Danish counterparties (70%, compared to levels below 40% in the other currencies).

57. This indicates that the Danish market is less reliant on DKK IRS than the other local markets are on IRS in their respective local currencies. Danish counterparties are more active for example in EUR IRS (81% of their IRS activity in terms of daily turnover) and also in SEK IRS (7%) than in DKK IRS (5%), meaning that most of the systemic risk present in the Danish market is addressed by the clearing obligation on the G4 currencies and on SEK. In addition, since the activity in DKK is mainly done by Danish counterparties, the contagion risk to other European countries would be less than in the case of the other currencies, where most of the volume is done outside the local country. In other words, the activity in DKK IRS has less connection to other markets and only represents a small share of the IRS activity of Danish counterparties.

58. However, as developed in paragraphs 75 to 79 of the consultation paper, the IRS activity in DKK is relatively concentrated in few counterparties compared to other currencies analysed therein, hence the failure of one large market participant in the DKK IRS market could have significant consequences as the activity is not as diversified as is the case with other currencies.

59. On balance, although there is a higher concentration of activity in fewer but large participants, based on the fact that contagion risk to the rest of Europe is more contained, and that the systemic risk posed by counterparties established in Denmark will be to a large extent mitigated by the clearing obligation on IRS classes in other currencies, ESMA is proposing not to include DKK in the scope of the clearing obligation for the time being.

60. In summary, responses to the consultation with regard to the analysis of the IRS classes denominated in the 6 EEA currencies against the criteria of EMIR appear to confirm the conclusions of the consultation paper, but in view of the overarching objective of the reduction of systemic risk set in EMIR, some classes are not included in the proposed set of classes to become subject to the clearing obligation. In particular, as developed in paragraphs 49 to 55 for CZK and HUF and in paragraphs 56 to 59 for DKK, the smaller size or the limited domestic dependence and contagion risk to the rest of Europe of some of these classes are the reasons why their markets are considered less systemically relevant for the clearing obligation and the classes are not included.

61. Taking all of the above into consideration, ESMA is proposing to include in the scope of the clearing obligation OTC fixed-to-float interest rate swaps denominated in NOK, PLN and SEK as well as FRAs denominated in NOK, PLN and SEK.

Extension of the maturity scope

62. Most of the stakeholders who supported the clearing obligation for IRS denominated in the EEA currencies commented on the need to expand the scope of maturities. In addition, some stakeholders who were against the inclusion of these classes indicated that, if the classes were to be included anyway, they would support expanding the scope of maturitities. The proposals to extend the maturities were either to include all the maturities of the clearable contracts, or at least to include contracts until the 10Y maturity for fixed-to-float IRS. Indeed, they consider that the drop in liquidity is only observed for maturities beyond the ones chosen in the consultation paper, and that doing otherwise could fragment liquidity and create dislocations in the rate curve.

63. In addition, extending the scope of maturities has the advantage of mitigating the risk of having counterparties entering into contracts with slightly longer maturities than those falling within the proposed scope of the clearing obligation, to avoid the clearing obligation (a risk mentioned by the the ESRB in its response to the consultation).

64. ESMA concurs with those arguments and has adjusted the maturity range for the classes to be subject to the clearing obligation as follows:

— Fixed-to-float IRS denominated in NOK and PLN: extension of the maturity from 5 years to 10 years;

— Fixed-to-float IRS denominated in SEK: no change, 15 years. Indeed, based on Figure 4 of the consultation paper, there appears to be a clear drop in liquidity after 15 years. This is also confirmed by the number of days without trades which rises sharply for SEK after 15 years (Table 18 of the consultation paper);

— FRA denominated in NOK and PLN: extension of the maturity from 1 year to 2 years

— FRA denominated in SEK: extension of the maturity from 2 years to 3 years

65. Taking into account those new maturity buckets, most of the fixed-to-float classes are cleared by 3 CCPs; the FRA classes are cleared by 2 CCPs with the exception of FRAs in SEK for maturities above 2 years (1 CCP).

7 Categories of counterparties and dates of application

7.1 Categories of counterparties

Question 5 of the consultation paper

66. In relation to the categories of counterparties and the phase-in attached to each of them, ESMA proposed to leverage the work done and feedback gathered in this respect in the previous consultations and publications on the clearing obligation. Therefore, ESMA used as a basis for the consultation paper the categories of counterparties and phase-in included in the Opinion submitted by ESMA to the European Commission on 29 January 2015. These categories of counterparties have been maintained as such in the version of the first RTS on the clearing obligation for OTC IRS denominated in the G4 currencies adopted by the European Commission on 06 August 2015.

67. In this consultation paper, the four categories of counterparties were defined as follows:

— Category 1: clearing members of one of the IRS classes subject to the clearing obligation as per the specific RTS (i.e. only the IRS classes denominated in the EEA currencies);

— Category 2: financial counterparties, and alternative investment funds (AIFs) that are non-financial counterparties (NFC), not included in Category 1, and which belong to a group whose aggregate month-end average of outstanding gross notional amount of non-centrally cleared derivatives for *[three months after the publication of the RTS in the Official Journal excluding the month of publication]* is above EUR 8 billion;

— Category 3: financial counterparties, and AIFs that are NFC, not included in Category 1 nor in Category 2;

— Category 4: NFC not included in Category 1, Category 2 nor Category 3.

68. A few specificities linked to each category of counterparties were presented in the consultation paper and the feedback received is summarised below.

7.1.1 Category 1 (Clearing members)

Classification for clearing members: cumulative, per RTS, per asset class

69. The way in which the category of clearing members is structured had already been discussed in previous consultatons (on CDS and NDF). The choice is between a “cumulative approach”, whereby a counterparty which belongs to Category 1 for the first RTS on the clearing obligation also belongs to Category 1 for the next ones; and an approach per RTS, whereby a counterparty belongs to Category 1 in respect of one RTS only when it is a clearing member of the classes covered by this RTS.

70. The second approach reflects accurately the fact that the clearing membership generally covers only certain asset classes, but it makes its implementation more complex in the sense that the same counterparty may belong to different categories with respect to different RTS.

71. In the case of the clearing obligation for CDS or NDF classes, stakeholders generally supported the second approach (non-cumulative), for the reason that there is not necessarily a large overlap between clearing members of different asset classes.

72. In the present case of the clearing obligation for IRS denominated in other currencies, stakeholders had a different view and generally indicated a preference for a cumulative approach, i.e. clearing members in Category 1 for the RTS on the G4 currencies should also be in Category 1 for the RTS on the EEA currencies, even if they are not a clearing member for any of the new set of classes.

73. This opinion is supported by the fact that the two RTS cover the same asset class (interest rate swaps): the establishement of clearing arrangements for contracts denominated in other currencies is perceived as less costly than the establishement of clearing arrangements for contracts in a different asset class. Hence those stakeholders generally consider that the complexity of the non-cumulative approach should be avoided in this case.

74. ESMA concurs with the arguments put forward above and has modified the draft RTS accordingly.

75. As a result, a clearing members which belongs to Category 1 in respect of the first RTS on the clearing obligation for IRS denominated in the G4 currencies also belongs to Category 1 in respect of the second RTS on the clearing obligation for IRS denominated in the EEA currencies.

76. Some stakeholders have reiterated their support for ESMA's intention to facilitate the identification of the counterparties in Category 1, e.g. in a public register. ESMA can confirm it continues to work in this direction together with the relevant CCPs and their competent authorities, although the practicalities are not yet finalised.

7.1.2 Categories 2 and 3

77. Counterparties belong to Category 2 if they belong to a group whose aggregate month-end average notional amount of non-centrally cleared derivatives for the three months following the date of publication of the RTS in the Official Journal (excluding the month of publication) is above EUR 8 billion.

78. To avoid introducing unnecessary compliance costs, ESMA proposed that the dates for the assessment of the positions against the threshold are the same in the draft RTS for IRS denominated in the G4 and the EEA currencies. This means that counterparties

should perform the calculation only once to determine whether they belong to Category 2 or to Category 3 in respect of the two RTS on IRS.

79. This proposal was generally supported by respondends to the consultation and hence was kept unchanged in the draft RTS included in Annex III of this report.

80. Some CCPs suggested a modification of the quantitative threshold applied for Category 2 to take into consideration the size of the relevant currency area. However, it should be noted that all the positions of non-centrally cleared derivatives should be counted towards the 8 billion threshold, not only the positions in the classes covered by the RTS. Therefore ESMA does not consider that any adjustement to the 8 billion threshold is necessary.

7.1.3 Category 4

81. There was no specific comment on the definition of Category 4, but rather a question related to the differences between NFC included in Category 2/3 and those included in Category 4.

82. Responding to this question, it can be clarified that:

— NFC should be included in Category 2 or 3 (depending on whether they are above or below the threshold) only if (1) they are not included in Category 1; and (2) they are an Alternative Investment Fund as defined in Article 4(1)(a) of Directive 2011/61/EU;

— NFC should be included in Category 4 if they do not belong to Category 1, 2 or 3.

7.2 Dates of application of the clearing obligation

Question 6 of the consultation paper

83. With regards to the implementation schedule for the clearing obligation, as with question 5, a large part of the feedback received to the consultation on IRS in the EEA currencies was consistent with the one received to the consultation on IRS in the G4 currencies. This part of the feedback has already been analysed and taken into account as explained in detail in the final report on the clearing obligation for IRS.

84. As a result, the implementation schedule proposed in the consultation paper was identical to the one proposed for the other asset classes i.e. 6 months for Category 1, 12 months for Category 2, 18 months for Category 3 and 3 years for Category 4. The responses to the consultation were either supportive or neutral therefore ESMA is not proposing modifications to the phase-in periods.

85. The only element that was new and specific to the consultation on the EEA currencies was a proposal to introduce a minimum three month buffer between the set of dates of application of the first and the second RTS on the clearing obligation. This proposal was

made to smoothen the implementation and avoid a situation in which counterparties would face various compliance deadlines within a short period of time.

86. There was no clear consensus for or against this proposal. For the sake of simplicity, **ESMA is proposing to adopt the option perceived as less complex, i.e. to remove the 3 month minimum buffer** between the dates of application of the two RTS on the clearing obligation (G4 and EEA). The draft RTS was modified accordingly.

Dates of application of the clearing obligation for non-EU intragroup transactions

87. On 18 December 2014, the Commission sent a letter to ESMA indicating its intention to endorse with amendments the draft RTS establishing a clearing obligation for certain classes of OTC interest rate derivatives denominated in the G4 currencies.

88. One of the concerns raised by the Commission in relation to the original draft RTS submitted by ESMA on 1 October 2014 was the treatment on intragroup transactions concluded with non-EU counterparties.

89. More specifically, the Commission indicated its intention to provide some relief from the clearing obligation to EU counterparties entering into intragroup transactions with entities established outside the Union. Indeed, in the absence of equivalence decisions pursuant to Article 13 of EMIR, those transactions would not qualify as “intragroup transactions” as defined in Article 3 of EMIR and therefore, could not be exempted from the clearing obligation.

90. The Commission and ESMA have further worked together to come up with a solution to tackle this issue, which led to a proposal that in now included in the RTS on the clearing obligation for OTC interest rate derivatives denominated in the G4 currencies endorsed by the European Commission on 6 August 2015.

91. The same approach is replicated in the draft RTS presented in Annex III of this paper. Article 3(2) of this draft RTS provides a deferred date of application under certain conditions for OTC derivative contracts concluded between two entities of the same group, one being established in the EU and the other one in a third-country without an equivalence decision.

92. Those non-EU intragroup transactions are also exempted from frontloading (see the sentence “and for transactions referred to in Article 3(2) of this Regulation concluded between financial counterparties” in Article 4(3) of the endorsed RTS, and replicated in the draft RTS presented in Annex III of this paper). Indeed, in the absence of such exemption, a transaction could theoretically become subject to the clearing obligation long after it was entered into, an outcome which has been described in several other papers on frontloading as undesirable mainly for reasons of pricing uncertainty.

8 Remaining maturity of the contracts subject to frontloading

Question 7 of the consultation paper

93. The approach regarding frontloading was detailed in the first consultation papers on the clearing obligation, covering interest rate derivatives and credit derivatives. It was then modified following the first consultation on IRS as presented in the final report on the clearing obligation for IRS, and also modified after the delivery of the final report (see the 18 December 2014 letter from the Commission and the subsequent ESMA Opinion of 29 January 2015).

94. As a result, the proposal presented in the consultation paper was the following: for counterparties in Categories 1 and 2, the minimum remaining maturity applicable to contracts concluded between (1) the date of entry into force of the RTS + [2/5 months] and; (2) the date of application of the clearing obligation for those counterparties, is 6 months. For the other contracts and counterparties, frontloading is dis-applied by setting the minimum remaining maturities at a high level (i.e. equal to the maximum maturity of the contracts subject to the clearing obligation).

95. The 2/5 month buffer for counterparties in Category 1 and 2 respectively is designed to:

    (a) provide counterparties with an appropriate period of time to determine the category to which they belong before they potentially become subject to the frontloading obligation; and

    (b) provide counterparties in Category 1 with an appropriate period of time to apply for the intragroup exemption before they become subject to the frontloading obligation.

96. This addition was proposed by the European Commission in its letter to ESMA from 18 December 2014 and incorporated in the ESMA opinion of 29 January 2015 on draft RTS on the clearing obligation for IRS denominated in the G4 currencies. It was generally supported by respondends to the consultation. This approach is now reflected in the first RTS on the clearing obligation for OTC interest rate derivatives denominated in the G4 currencies that was adopted by the European Commission on 06 August 2015.

97. Regarding the current RTS on IRS denominated in the EEA currencies, it is proposed that the classification of counterparties between Category 2 and Category 3 is made on the same dates as the dates proposed in the first RTS, on IRS denominated in the G4 currencies, as explained in section 7.1.2 above.

98. As a result, counterparties will not necessarily need additional time after the date of entry into force of the RTS on EEA currencies to determine the category of counterparties to which they belong, since this classification will already have been done (or at least, it will be possible to make this determination) during the three months following the entry into force of the first RTS on the G4 currencies. In other words, the reason (a) above to

justify the need for additional time before frontloading starts to apply was valid for the first RTS but is no longer valid for the subsequent RTS, including the present RTS on IRS denominated in the EEA currencies.

99. To take this into account, in the current RTS, frontloading starts to apply on the date of entry into force + 2 months both for counterparties in Category 1 and for counterparties in 2 (as opposed to 2 months for counterparties in Category 1, and 5 months for counterparties in Category 2, in the first RTS on IRS denominated in the G4 currencies), the 2 months corresponding to the time counterparties need to apply for the intragroup exemption before they become subject to the frontloading obligation.

100. In case the two sets of RTS (on G4 currencies and on EEA currencies) enter into force shortly one after the other, which cannot be anticipated at this stage, Article 4(2) is adjusted to ensure that the frontloading start date of the second RTS (on EEA currencies) is not before the frontloading start date of the first RTS (on G4 currencies). This is reflected in the following drafting of Article 4(2) of the draft RTS in Annex III: *"OP please insert date: the later of: two months after the date of entry into force of this Regulation; five months after the date of entry into force of Regulation (EU) …/… establishing the clearing obligation for interest rate swaps denominated in EUR, GBP, JPY and USD".*

101. Although recognising the joint efforts of the European Commission and ESMA to mitigate the uncertainties and risks associated with the implementation of the frontloading obligation, some stakeholders called for further limitation of the provision, by providing an exemption either to counterparties in Category 2 or to all counterparties (hence limiting frontloading to the first RTS on the clearing obligation for IRS denominated in the G4 currencies).

102. It should be born in mind that the provision on frontloading stems from the Level 1 text of EMIR, and that significant adjustments have already been provided towards the limitation of this provision. As a result, ESMA is not proposing to revisit the proposals related to frontloading and the draft RTS does not foresee further general exemption for counterparties in Category 1 or Category 2.

103. Reference can be made to the EMIR Review Report no.4[18], Section 4.2, for further information and proposals on frontloading made by ESMA to the European Commission in the context of the review of EMIR.

[18] ESMA-2015-1254 - EMIR Review Report no.4 on other issues published on 13 August 2015.

9 Other aspects related to the draft RTS not covered in the other sections

Question 9 of the consultation paper

104. A majority of respondents did not comment on additional possible amendments to the draft RTS, but some respondents did provide feedback on a few other topics related to the RTS. Yet, there was no new issue not covered in the previous sections of this final report or in the first final report. These comments have thus been taken into consideration with the changes mentioned earlier in the document or when ESMA is mirroring the language of the first draft RTS.

10 Annexes

10.1 Annex I - Legislative mandate to develop technical standards

Article 5 of Regulation (EU) No 648/2012

Clearing obligation procedure

2. Within six months of receiving notification in accordance with paragraph 1 [of Article 5] or accomplishing a procedure for recognition set out in Article 25, ESMA shall, after conducting a public consultation and after consulting the ESRB and, where appropriate, the competent authorities of third countries, develop and submit to the Commission for endorsement draft regulatory technical standards specifying the following:

(a) the class of OTC derivatives that should be subject to the clearing obligation referred to in Article 4;

(b) the date or dates from which the clearing obligation takes effect, including any phase in and the categories of counterparties to which the obligation applies; and

(c) the minimum remaining maturity of the OTC derivative contracts referred to in Article 4(1)(b)(ii).

Power is delegated to the Commission to adopt regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

10.2 Annex II - Cost-benefit analysis

10.2.1 Introduction

105. This impact assessment was conducted by ESMA while developing the regulatory technical standards (“RTS”) on the clearing obligation.

106. It should be noted that this impact assessment only covers the technical options under the specific mandate of ESMA in respect of the clearing obligation, given that an impact assessment covering the general aspects of the clearing obligation has already been performed by the European Commission as part of the impact assessment of EMIR.

107. This paper being the third final report related to the clearing obligation, many technical options have already been proposed, discussed in the responses to the various consultations and modified accordingly. In addition, on 6 August 2015, the European Commission endorsed the first RTS on the clearing obligation covering interest rate swaps denominated in the G4 currencies. To ensure consistency between the various sets of RTS on the clearing obligation, ESMA sought to align the requirements to the extent possible.

108. Therefore, this impact assessment only covers the technical options that are specific to the current set of classes, or for which a different approach is considered.

109. The determination of the classes of OTC derivatives that should be subject to the clearing obligation has been presented both in quantitative and qualitative terms in the explanatory part of the consultation paper and this final report, and is therefore not repeated in the impact assessment.

10.2.2 Definition of the dates of application and categories of counterparties

Policy Objective	**Determine the categories of counterparties to which different phase-in would apply**
Option 1	The categories of counterparties for the OTC interest rate derivative classes denominated in the EEA currencies are defined in the same way as the categories of counterparties for the OTC interest rate derivative classes denominated in the G4 currencies.
Option 2	The categories of counterparties for the OTC interest rate derivative classes denominated in the EEA currencies are defined in a different way as the categories of counterparties for the OTC interest rate derivative classes denominated in the G4 currencies.
Preferred Option	**Option 1**

Option 1	**The categories of counterparties for the OTC interest rate derivative classes denominated in the EEA currencies are defined in the same way as the categories of counterparties for the OTC interest rate derivative classes denominated in the G4 currencies.**
	Qualitative description
Benefits	The way in which the categories of counterparties are defined for the OTC interest rate derivative classes denominated in the G4 currencies introduces some compliance costs related to the classification of counterparties. The approach of keeping the definition of the categories of counterparties in the RTS unchanged is the simplest one, as most counterparties will not need to re-assess the category of counterparty to which they belong (under some conditions as developed further in the next tables). Counterparties will be able to leverage on the classification work already accomplished in relation with the first clearing obligation determination, for the interest rate derivative classes denominated in the G4 currencies.
Costs to regulator One-off[19]	This is the baseline scenario and it is not expected to add specific costs to regulators or counterparties.
Compliance costs One-off	

[19] On-going costs are irrelevant with respect to phase-in.

Option 2	**The categories of counterparties for the OTC interest rate derivative classes denominated in the EEA currencies are defined <u>in a different way</u> as the categories of counterparties for the OTC interest rate derivative classes denominated in the G4 currencies.**
	Qualitative description
Benefits	This option, which is more complex, adds the flexibility to better take into account the nature of the counterparties that are specifically active in the classes of OTC derivatives included in the new RTS.
Costs to regulator One-off[20]	The costs would depend on the way such a new classification would be framed. In any case, this option would necessitate another round of counterparty classification on top of the one already performed in connection with the clearing obligation for the first set of OTC interest rate derivative classes. This would necessarily add costs to regulators and counterparties.
Compliance costs One-off	

10.2.2.1 Category 1: Clearing Members

Policy Objective	**Determine the clearing members that are included in Category 1**
Option 1	Category 1 includes only the clearing members (in IRS) of the CCP authorised to clear at least one of the new classes (EEA currencies)
Option 2	Category 1 includes the clearing members (in IRS) of the CCP authorised to clear at least one of the new classes (EEA currencies) or one of the classes denominated in the G4 currencies included in the first RTS on the clearing obligation.
Preferred Option	**Option 2**

Option 1	**Category 1 includes only the clearing members (in IRS) of the CCP authorised to clear at least one of the new classes (EEA currencies)**
	Qualitative description
Benefits	The difference between the two approaches is relevant for clearing members of the first set of classes that are not clearing members of the second set of classes. At the time of publication, this includes clearing members of Eurex Clearing AG, provided that those counterparties are not also clearing members of one of

[20] On-going costs are irrelevant with respect to phase-in.

	the CCPs clearing the new set of classes (EEA currencies). Indeed, this CCP clears some classes of the first RTS but does not clear the classes of the second RTS. According to the information published by CCP on their clearing members, this population includes 14 clearing members established in 6 different jurisdictions. Under Option 1, those clearing members are not included in Category 1 for the second set of IRS classes (EEA currencies). This option creates a logical mapping between the clearing member definition and the set of classes in the scope of the clearing obligation. Therefore the approach is more granular and it takes better account of the fact that some clearing members do not have pre-existing clearing arrangements for some of the currencies in the scope of the second RTS.
Costs to regulator One-off[21]	There is no fundamental difference in terms of costs to regulator between the two options.
Compliance costs One-off	Under Option 1, the clearing members described above have 6 more months to prepare compliance with the clearing obligation in respect of the second set of classes (EEA currencies).

Option 2	**Category 1 includes the clearing members (in IRS) of the CCP authorised to clear at least one of the new classes (EEA currencies) or one of the classes denominated in the G4 currencies included in the first RTS on the clearing obligation.**
	Qualitative description
Benefits	Under Option 2 the clearing member category is composed of more counterparties than under Option 1. Since the clearing members are generally the most active counterparties, Option 2 results in swifter progress towards the clearing obligation compared to Option 1. In addition, Option 2 is simpler: a counterparty that belongs to Category 1 in respect of the RTS on IRS denominated in the G4 currencies also belongs to Category 1 in respect of the RTS on IRS denominated in the EEA currencies. Since the two sets of RTS both cover interest rate swaps (although in different currencies) the overlap between the clearing members in both sets is expected to be important.
Costs to regulator One-off[22]	There is no fundamental difference in terms of costs to regulator between the two options.

[21] On-going costs are irrelevant with respect to phase-in.

Compliance costs One-off	Under Option 2, the clearing members described above belong to Category 1 for the second set of classes therefore they have less time than under Option 1 to prepare compliance with the clearing obligation in respect of the second set of classes (EEA currencies).

10.2.2.2 Category 2/3: Non-clearing Members

Policy Objective	**Determine the relevant time period for the assessment of the position to be compared to the EUR 8bn threshold, to determine whether counterparties are in Category 2 or in Category 3**
Option 1	Use the same time period as in the first RTS on the clearing obligation for IRS (G4 currencies)
Option 2	Use a time period that is different than the one included in the first RTS on the clearing obligation for IRS (G4 currencies)
Preferred Option	**Option 1**

Option 1	**Use the same time period as in the first RTS on the clearing obligation for IRS (G4 currencies)**
	Qualitative description
Benefits	In terms of outcome, there is no fundamental difference between the two options, in particular if the two RTS on the clearing obligation for IRS (G4 and EEA currencies) are adopted shortly one after the other.
Costs to regulator One-off[23]	Option 1 may be considered slightly less costly since a classification deemed compliant under the first RTS would automatically also comply with the second RTS.
Compliance costs One-off	To determine whether they belong to Category 2 or 3, some counterparties need to calculate their positions in non-cleared OTC derivatives and compare them to the threshold defined in the RTS. This calculation is a month-end calculation covering three months. If the same three months are used in the two RTS on the clearing obligation for IRS, then counterparties will only need to perform the calculation once, which means reduced compliance costs compared to Option 2.

[22] On-going costs are irrelevant with respect to phase-in.
[23] On-going costs are irrelevant with respect to phase-in.

Option 2	**Use a time period that is different than the one included in the first RTS on the clearing obligation for IRS (G4 currencies)**
	Qualitative description
Benefits	In case a long period of time elapses between the adoption of two RTS on the clearing obligation for IRS (G4 and EEA currencies), Option 2 ensures that the calculation of the positions to be compared to the threshold are more up-to-date and that the resulting classification represents more accurately the status of the counterparties.
Costs to regulator One-off[24]	Option 2 may be considered slightly more costly than Option 1 because the classification in Category 2 or 3 would have to be demonstrated in respect of both RTS independently.
Compliance costs One-off	As explained above, the compliance costs are higher in this case because the counterparties will need to calculate twice their positions in non-cleared OTC derivatives to be compared to the threshold, once for the RTS on IRS denominated in the G4 currencies and once for the RTS on IRS denominated in the EEA currencies.

10.2.2.3 Dates on which the clearing obligation starts to apply

Policy Objective	**Define the dates on which the clearing obligation start to apply for the second RTS on the clearing obligation for IRS**
Option 1	Define the dates in respect of the second RTS (EEA currencies) in the same manner as in respect of the first RTS (G4 currencies) i.e. 6/12/18/36 months after the date of entry into force of the RTS for categories 1/2/3/4.
Option 2	Define the dates in respect of the second RTS (EEA currencies) in a similar manner as in respect of the first RTS (G4 currencies) i.e. 6/12/18/36 months after the date of entry into force of the RTS for categories 1/2/3/4 and in addition, include a minimum period of 3 months between the dates of application for the two RTS.
Preferred Option	**Option 1**

Option 1	**Define the dates in respect of the second RTS (EEA currencies) in the same manner as in respect of the first RTS (G4 currencies) i.e. 6/12/18/36 months after the date of entry into force of the RTS for categories 1/2/3/4.**

[24] On-going costs are irrelevant with respect to phase-in.

	Qualitative description
Benefits	This option ensures perfect consistency between the two sets of RTS. Counterparties are provided with exactly the same time to prepare for the clearing obligation in IRS denominated in G4 and in EEA currencies. This option is the simplest one.
Costs to regulator One-off[25]	There is no difference in terms of costs to regulator under the two options. The dates of application are simply different in one case or the other.
Compliance costs One-off	In terms of compliance, counterparties could be confronted with a challenging compliance calendar if the two RTS on the clearing obligation for IRS are adopted shortly one after the other, because they would face two compliance deadlines close to one another, one for the IRS denominated in the G4 currencies and one for the IRS denominated in the EEA currencies.

Option 2	**Define the dates in respect of the second RTS (EEA currencies) in a similar manner as in respect of the first RTS (G4 currencies) i.e. 6/12/18/36 months after the date of entry into force of the RTS for categories 1/2/3/4 and in addition, include a minimum period of 3 months between the dates of application for the two RTS**
	Qualitative description
Benefits	This option ensures that the time provided to counterparties to prepare for the second clearing obligation (IRS denominated in EEA currencies) is at least as much as the time to prepare for the first clearing obligation (IRS denominated in G4 currencies) i.e. 6/12/18/36 months after the date of entry into force of the RTS for categories 1/2/3/4. In addition, under this option, there is a minimum "buffer" of three months between the dates of application applicable to the same category of counterparties in respect of the two RTS. This would make the global compliance schedule less challenging for counterparties.
Costs to regulator One-off[26]	There is no difference in terms of costs to regulator under the two options. The dates of application are simply different in one case or the other.
Compliance	In terms of compliance, counterparties would be provided with a minimum time period of three months between the two dates of application for the clearing

[25] On-going costs are irrelevant with respect to phase-in.
[26] On-going costs are irrelevant with respect to phase-in.

costs One-off	obligation for IRS denominated in the G4 currencies first, and then in the EEA currencies.

10.3 Annex III - Draft Regulatory Technical Standards

COMMISSION DELEGATED REGULATION (EU) …/...

of XXX

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories[27], and in particular Article 5(2) thereof,

Whereas:

(1) The European Securities and Markets Authority (ESMA) has been notified of the classes of interest rate over the counter (OTC) derivatives that certain central counterparties (CCPs) have been authorised to clear. For each of those classes ESMA has assessed the criteria that are essential for subjecting them to the clearing obligation, including the level of standardisation, the volume and liquidity, and the availability of pricing information. With the overarching objective of reducing systemic risk, ESMA has determined the classes of interest rate OTC derivatives that should be subject to the clearing obligation in accordance with the procedure set out in Regulation (EU) No 648/2012.

(2) Interest rate OTC derivative contracts can have a constant notional amount, a variable notional amount or a conditional notional amount. Contracts with a constant notional amount have a notional amount which does not vary over the life of the contract. Contracts with a variable notional amount have a notional amount that varies over the life of the contract in a predictable way. Contracts with a conditional notional amount have a notional amount which varies over the life of the contract in an unpredictable way. Conditional notional amounts add complexity to the pricing and risk management associated with interest rate OTC derivative contracts and thus to the ability of CCPs to clear them. This feature should be taken into account when defining the classes of interest rate OTC derivatives to be subject to the clearing obligation.

(3) In determining which classes of OTC derivative contracts should be subject to the clearing obligation, the specific nature of OTC derivative contracts which are concluded with covered bond issuers or with cover pools for covered bonds should be taken into account. In this respect, the classes of interest rate OTC derivatives subject to the clearing obligation under

[27] OJ L 201, 27.7.2012, p. 1.

this Regulation should not encompass contracts concluded with covered bond issuers or cover pools for covered bonds, provided they meet certain conditions.

(4) Different counterparties need different periods of time for putting in place the necessary arrangements to clear the interest rate OTC derivatives subject to the clearing obligation. In order to ensure an orderly and timely implementation of that obligation, counterparties should be classified into categories in which sufficiently similar counterparties become subject to the clearing obligation from the same date.

(5) A first category should include both financial and non-financial counterparties which, on the date of entry into force of this Regulation, are clearing members of at least one of the relevant CCPs and for at least one of the classes of interest rate OTC derivatives subject to the clearing obligation, as those counterparties already have experience with voluntary clearing and have already established the connections with those CCPs to clear at least one of those classes. Non-financial counterparties that are clearing members should also be included in this first category as their experience and preparation towards central clearing is comparable with that of financial counterparties included in it.

(6) A second and third category should comprise financial counterparties not included in the first category, grouped according to their levels of legal and operational capacity regarding OTC derivatives. The level of activity in OTC derivatives should serve as a basis to differentiate the degree of legal and operational capacity of financial counterparties, and a quantitative threshold should therefore be defined for division between the second and third categories on the basis of the aggregate month-end average notional amount of non-centrally cleared derivatives. That threshold should be set out at an appropriate level to differentiate smaller market participants, while still capturing a significant level of risk under the second category. The threshold should also be aligned with the threshold agreed at international level related to margin requirements for non-centrally cleared derivatives in order to enhance regulatory convergence and limit the compliance costs for counterparties. As in those international standards, whereas the threshold applies generally at group level given the potential shared risks within the group, for investment funds the threshold should be applied separately to each fund since the liabilities of a fund are not usually affected by the liabilities of other funds or their investment manager. Thus, the threshold should be applied separately to each fund as long as, in the event of fund insolvency or bankruptcy, each investment fund constitutes a completely segregated and ring-fenced pool of assets that is not collateralised, guaranteed or supported by other investment funds or the investment manager itself.

(7) Certain alternative investment funds (“AIFs”) are not captured by the definition of financial counterparties under Regulation (EU) No 648/2012 although they have a degree of operational capacity regarding OTC derivative contracts similar to that of AIFs captured by that definition. Therefore AIFs classified as non-financial counterparties should be included in the same categories of counterparties as AIFs classified as financial counterparties.

(8) A fourth category should include non-financial counterparties not included in the other categories, given their more limited experience and operational capacity with OTC derivatives and central clearing than the other categories of counterparties.

(9) The date on which the clearing obligation takes effect for counterparties in the first category should take into account the fact that they may not have the necessary pre-existing connections with CCPs for all the classes subject to the clearing obligation. In addition, counterparties in this category constitute the access point to clearing for counterparties that are not clearing members, client clearing and indirect client clearing being expected to increase substantially as a consequence of the entry into force of the clearing obligation. Finally, this first category of counterparties account for a significant portion of the volume of interest rate OTC derivatives already cleared, and the volume of transactions to be cleared will significantly increase after

the date on which the clearing obligation set out in this Regulation will take effect. Therefore, a reasonable timeframe for counterparties in the first category to prepare for clearing additional classes, to deal with the increase of client clearing and indirect client clearing and to adapt to increasing volumes of transactions to be cleared should be set at six months.

(10) The date on which the clearing obligation takes effect for counterparties in the second and third categories should take into account the fact that most of them will get access to a CCP by becoming a client or an indirect client of a clearing member. This process may require between 12 and 18 months depending on the legal and operational capacity of counterparties and their level of preparation regarding the establishment of the arrangements with clearing members that are necessary for clearing the contracts.

(11) The date on which the clearing obligation takes effect for counterparties in the fourth category should take into account their legal and operational capacity, and their more limited experience with OTC derivatives and central clearing than other categories of counterparties.

(12) For OTC derivative contracts concluded between a counterparty established in a third country and another counterparty established in the Union belonging to the same group and which are included in the same consolidation on a full basis and are subject to an appropriate centralised risk evaluation, measurement and control procedures, a deferred date of application of the clearing obligation should be provided. The deferred application should ensure that those contracts are not subject to the clearing obligation for a limited period of time in the absence of implementing acts pursuant to Article 13(2) of Regulation (EU) No 648/2012 covering the OTC derivative contracts set out in Annex I to this Regulation and regarding the jurisdiction where the non-Union counterparty is established. Competent authorities should be able to verify in advance that the counterparties concluding those contracts belong to the same group and fulfil the other conditions of intragroup transactions pursuant to Regulation (EU) No 648/2012.

(13) Unlike OTC derivatives whose counterparties are non-financial counterparties, where counterparties to OTC derivative contracts are financial counterparties, Regulation (EU) No 648/2012 requires the application of the clearing obligation to contracts concluded after the notification to ESMA that follows the authorisation of a CCP to clear a certain class of OTC derivatives, but before the date on which the clearing obligation takes effect, provided the remaining maturity of such contracts at the date on which the obligation takes effect justifies it. The application of the clearing obligation to those contracts should pursue the objective of ensuring the uniform and coherent application of Regulation (EU) No 648/2012. It should serve to seek financial stability and the reduction of systemic risk, as well as ensuring a level playing field for market participants when a class of OTC derivative contracts is declared subject to the clearing obligation. The minimum remaining maturity should therefore be set at a level that ensures the achievement of those objectives.

(14) Before regulatory technical standards adopted pursuant to Article 5(2) of Regulation (EU) No 648/2012 enter into force, counterparties cannot foresee whether the OTC derivative contracts they conclude would be subject to the clearing obligation on the date that obligation takes effect. This uncertainty has a significant impact on the capacity of market participants to accurately price the OTC derivative contracts they enter into since centrally cleared contracts are subject to a different collateral regime than non-centrally cleared contracts. Imposing forward-clearing to OTC derivative contracts concluded before the entry into force of this Regulation, irrespective of their remaining maturity on the date on which the clearing obligation takes effect, could limit counterparties' ability to hedge their market risks adequately and either impact the functioning of the market and financial stability, or prevent them from exercising their usual activities by hedging them by other appropriate means.

(15) Moreover, OTC derivative contracts concluded after this Regulation enters into force and before the clearing obligation takes effect should not be subject to the clearing obligation until counterparties to those contracts can determine the category they are comprised in, whether they are subject to the clearing obligation for a particular contract, including their intragroup transactions, and before they can implement the necessary arrangements to conclude those contracts taking into account the clearing obligation. Therefore, in order to preserve the orderly functioning and the stability of the market, as well as a level playing field between counterparties, it is appropriate to consider that those contracts should not be subject to the clearing obligation, irrespective of their remaining maturities.

(16) OTC derivative contracts concluded after the notification to ESMA that follows the authorisation of a CCP to clear a certain class of OTC derivatives, but before the date on which the clearing obligation takes effect should not be subject to the clearing obligation when they are not significantly relevant for systemic risk, or when subjecting those contracts to the clearing obligation could otherwise jeopardise the uniform and coherent application of Regulation (EU) No 648/2012. Counterparty credit risk associated to interest rate OTC derivative contracts with longer maturities remains in the market for a longer period than that associated to interest rate OTC derivatives with low remaining maturities. Imposing the clearing obligation on contracts with short remaining maturities would imply a burden on counterparties disproportionate to the level of risk mitigated. In addition, interest rate OTC derivatives with low remaining maturities represent a relatively small portion of the total market and thus a relatively small portion of the total systemic risk associated to this market. The minimum remaining maturities should therefore be set at a level ensuring that contracts with remaining maturities of no more than a few months are not subject to the clearing obligation.

(17) Counterparties in the third category bear a relatively limited share of overall systemic risk and have a lower degree of legal and operational capacity regarding OTC derivatives than counterparties in the first and second categories. Essential elements of the OTC derivative contracts, including the pricing of interest rate OTC derivatives subject to the clearing obligation and concluded before that obligation takes effect, will have to be adapted within short timeframes in order to incorporate the clearing that will only take place several months after the contract is concluded. This process of forward-clearing involves important adaptations to the pricing model and amendments to the documentation of those OTC derivatives contracts. Counterparties in the third category have a very limited ability to incorporate forward-clearing in their OTC derivative contracts. Thus, imposing the clearing of OTC derivative contracts concluded before the clearing obligation takes effect for those counterparties could limit their ability to hedge their risks adequately and either impact the functioning and the stability of the market or prevent them from exercising their usual activities if they cannot continue to hedge. Therefore, OTC derivative contracts concluded by counterparties in the third category before the date on which the clearing obligation takes effect should not be subject to the clearing obligation.

(18) In addition, OTC derivative contracts concluded between counterparties belonging to the same group can be exempted from clearing, provided certain conditions are met, in order to avoid limiting the efficiency of intragroup-risk management processes and therefore, undermine the achievement of the overarching goal of regulation (EU) No 648/2012. Therefore, intragroup transactions which fulfil certain conditions and which are concluded before the date on which the clearing obligation takes effect for those transactions should not be subject to the clearing obligation.

(19) This Regulation is based on draft regulatory technical standards submitted by ESMA to the Commission.

(20) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits, requested the opinion of the Security and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[28], and consulted the European Systemic Risk Board.

HAS ADOPTED THIS REGULATION:

Article 1 - Classes of OTC derivatives subject to the clearing obligation

1. The classes of over the counter (OTC) derivatives set out in Annex I shall be subject to the clearing obligation.

2. The classes of OTC derivatives set out in Annex I shall not include contracts concluded with covered bond issuers or with cover pools for covered bonds, provided those contracts satisfy all of the following conditions:

   (a) They are used only to hedge the interest rate or currency mismatches of the cover pool in relation with the covered bond;

   (b) They are registered or recorded in the cover pool of the covered bond in accordance with national covered bond legislation;

   (c) They are not terminated in case of resolution or insolvency of the covered bond issuer or the cover pool;

   (d) The counterparty to the OTC derivative concluded with covered bond issuers or with cover pools for covered bonds ranks at least pari-passu with the covered bond holders except where the counterparty to the OTC derivative concluded with covered bond issuers or with cover pools for covered bonds is the defaulting or the affected party, or waives the pari-passu rank;

   (e) The covered bond meets the requirements of Article 129 of Regulation (EU) No 575/2013 and is subject to a regulatory collateralisation requirement of at least 102%.

Article 2 – Categories of counterparties

1. For the purposes of Articles 3 and 4, the counterparties subject to the clearing obligation shall be divided in the following categories:

   (a) Category 1, comprising counterparties which, on the date of entry into force of this Regulation, are clearing members, within the meaning of Article 2(14) of Regulation (EU) No 648/2012, for at least one of the classes of OTC derivatives set out in Annex I of this Regulation or in Annex I of [Regulation (EU) …/… *Please insert the reference of the Delegated Regulation establishing the clearing obligation for interest*

[28] Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p.84).

rate swaps denominated in EUR, GBP, JPY and USD], of at least one of the CCPs authorised or recognised before that date to clear at least one of those classes;

(b) Category 2, comprising counterparties not belonging to Category 1 which belong to a group whose aggregate month-end average of outstanding gross notional amount of non-centrally cleared derivatives for *[OP Please insert months; each of the three months which are included in Article 2(1)(b) of Regulation (EU) …/… establishing the clearing obligation for interest rate swaps denominated in EUR, GBP, JPY and USD]* is above EUR 8 billion and which are any of the following:

(i) Financial counterparties;

(ii) Alternative investment funds as defined in Article 4(1)(a) of Directive 2011/61/EU that are non-financial counterparties;

(c) Category 3, comprising counterparties not belonging to Category 1 or Category 2 which are any of the following:

(i) Financial counterparties;

(ii) Alternative investment funds as defined in Article 4(1)(a) of Directive 2011/61/EU that are non-financial counterparties;

(d) Category 4, comprising non-financial counterparties that do not belong to Category 1, Category 2 or Category 3.

2. For the purposes of calculating the group aggregate month-end average of outstanding gross notional amount referred to in point (b) of paragraph 1, all of the group's non-centrally cleared derivatives, including foreign exchange forwards, swaps and currency swaps, shall be included.

3. Where counterparties are alternative investment funds as defined in Article 4(1)(a) of Directive 2011/61/EU or undertakings for collective investment in transferable securities as defined in Article 1(2) of Directive 2009/65/EC, the EUR 8 billion threshold referred to in point (b) of paragraph 1 of this Article shall apply individually at fund level.

Article 3 – Dates from which the clearing obligation takes effect

1. In respect of contracts pertaining to a class of OTC derivatives set out in Annex I, the clearing obligation shall take effect on:

(a) [*OP please insert date:* 6 months after the date of entry into force of this Regulation] for counterparties in Category 1;

(b) [*OP please insert date*: 12 months after the date of entry into force of this Regulation] for counterparties in Category 2;

(c) [*OP please insert date:* 18 months after the date of entry into force of this Regulation] for counterparties in Category 3;

(d) [*OP please insert date:* 3 years after the date of entry into force of this Regulation] for counterparties in Category 4.

Where a contract is concluded between two counterparties included in different categories of counterparties, the date from which the clearing obligation takes effect for that contract shall be the later date.

2. By way of derogation from points (a), (b) and (c) of paragraph 1, in respect of contracts pertaining to a class of OTC derivatives set out in Annex I and concluded between counterparties other than counterparties in Category 4 which are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the Union, the clearing obligation shall take effect on:

(a) [*OP please insert date:* 3 years after the date of entry into force of this Regulation] in case no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in Annex I of this Regulation in respect of the relevant third country; or

(b) The later of the following dates in case an equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in Annex I of this Regulation in respect of the relevant third country:

(i) 60 days after the date of entry into force of the decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in Annex I of this Regulation in respect of the relevant third country;

(ii) The date when the clearing obligation takes effect pursuant to paragraph 1.

This derogation shall only apply where the counterparties fulfil the following conditions:

(a) The counterparty established in a third country is either a financial counterparty or a non-financial counterparty;

(b) The counterparty established in the Union is:

(i) A financial counterparty, a non-financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements and the counterparty referred to in point (a) is a financial counterparty; or

(ii) Either a financial counterparty or a non-financial counterparty and the counterparty referred to in point (a) is a non-financial counterparty;

(c) Both counterparties are included in the same consolidation on a full basis in accordance to Article 3(3) of Regulation (EU) No 648/2012;

(d) Both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;

(e) The counterparty established in the Union has notified its competent authority in writing that the conditions laid down in points (a), (b), (c) and (d) are met and, within 30 calendar days after receipt of the notification, the competent authority has confirmed that those conditions are met.

Article 4 – Minimum remaining maturity

1. For financial counterparties in Category 1, the minimum remaining maturity referred to in point (ii) of Article 4(1)(b) of Regulation (EU) No 648/2012, at the date the clearing obligation takes effect, shall be:

   (a) 15 years for contracts entered into or novated before [*OP please insert date*: two months after the date of entry into force of this Regulation] that belong to the classes in Table 1 set out in Annex I;

   (b) 3 years for contracts entered into or novated before [*OP please insert date:* two months after the date of entry into force of this Regulation] that belong to the classes in Table 2 set out in Annex I;

   (c) 6 months for contracts entered into or novated on or after [*OP please insert date:* two months after the date of entry into force of this Regulation] that belong to the classes in Table 1 or Table 2 set out in Annex I.

2. For financial counterparties in Category 2, the minimum remaining maturity referred to in point (ii) of Article 4(1)(b) of Regulation (EU) No 648/2012, at the date the clearing obligation takes effect, shall be:

   (a) 15 years for contracts entered into or novated before [*OP please insert date: the later of: two months after the date of entry into force of this Regulation; five months after the date of entry into force of Regulation (EU) …/… establishing the clearing obligation for interest rate swaps denominated in EUR, GBP, JPY and USD*] that belong to the classes in Table 1 set out in Annex I;

   (b) 3 years for contracts entered into or novated before [*OP please insert date: the later of: two months after the date of entry into force of this Regulation; five months after the date of entry into force of Regulation (EU) …/… establishing the clearing obligation for interest rate swaps denominated in EUR, GBP, JPY and USD*] that belong to the classes in Table 2 set out in Annex I;

   (c) 6 months for contracts entered into or novated on or after [*OP please insert date: the later of: two months after the date of entry into force of this Regulation; five months after the date of entry into force of Regulation (EU) …/… establishing the clearing obligation for interest rate swaps denominated in EUR, GBP, JPY and USD*] that belong to the classes in Table 1 or Table 2 set out in Annex I.

3. For financial counterparties in Category 3 and for transactions referred to in Article 3(2) of this Regulation concluded between financial counterparties, the minimum remaining maturity referred to in point (ii) of Article 4(1)(b) of Regulation (EU) No 648/2012, at the date the clearing obligation takes effect, shall be:

   (a) 15 years for contracts that belong to the classes in Table 1 set out in Annex I;

   (b) 3 years for contracts that belong to the classes in Table 2 set out in Annex I.

4. Where a contract is concluded between two financial counterparties belonging to different categories or between two financial counterparties involved in transactions referred to in Article 3(2), the minimum remaining maturity to be taken into account for the purposes of this Article shall be the longer remaining maturity applicable.

Article 5 – Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
Jean-Claude Juncker

ANNEX

to the

Commission Delegated Regulation

supplementing Regulation (EU) N° 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation

Interest Rate OTC derivatives classes subject to the clearing obligation

TABLE 1: FIXED-TO-FLOAT INTEREST RATE SWAPS CLASSES

id	Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
C.1.1	Fixed- to-Float	NIBOR	NOK	28D-10Y	Single currency	No	Constant or Variable
C.1.2	Fixed- to-Float	WIBOR	PLN	28D-10Y	Single currency	No	Constant or Variable
C.1.3	Fixed- to-Float	STIBOR	SEK	28D-15Y	Single currency	No	Constant or Variable

TABLE 2: FORWARD RATE AGREEMENT CLASSES

id	Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
C.2.1	FRA	NIBOR	NOK	3D-2Y	Single currency	No	Constant or Variable
C.2.2	FRA	WIBOR	PLN	3D-2Y	Single currency	No	Constant or Variable
C.2.3	FRA	STIBOR	SEK	3D-3Y	Single currency	No	Constant or Variable