

# The EMIR 3.0 Active Account Requirement

24 June 2025

ESMA Final Report and draft RTS



# Final Report on the Active Account Requirement

On 19 June 2025, the European Securities and Markets Authority ("**ESMA**") published its Final Report (the "**FR**") setting out a revised set of Regulatory Technical Standards ("**RTS**") specifying the conditions for the Active Account Requirement under EMIR 3.0.

The FR follows a Consultation Paper (the "**CP**") published by ESMA on 20 November 2024, which sought industry feedback until 27 January 2025. The FR sets out ESMA's views and responses to the feedback it received.

EMIR 3.0 mostly entered into force on 24 December 2024 and amended EMIR. Its primary objective is to mitigate financial stability risks arising from exposures of EU financial and non-financial counterparties to systemically important third-country central counterparties (so-called Tier 2 CCPs). Central to this objective is the introduction of the Active Account Requirement, which mandates a subset of counterparties that are subject to the clearing obligation to maintain operationally ready and active clearing accounts at EU-based CCPs and to use those active accounts to clear a representative proportion of specified types of derivatives.

The draft RTS set out the details of certain aspects of the Active Account Requirement.

This article outlines and summarises ESMA's proposals as set out in the CP, how it has responded to the industry feedback, and what has changed in its revised proposals as set out in the FR.

The key substantive changes made to the draft RTS are as follows:

- a. Requirement for cash and collateral accounts with sufficient resources has been removed from operational condition (a) and is now linked to the contractual arrangement operational requirement.
- b. Requirement for at least one staff member has been removed from operational condition (a) and replaced with a requirement to demonstrate necessary human resources.
- c. The certification requirement and metric to be used for operational condition (c) has been simplified and clarified.
- d. Stress testing to be conducted annually for all counterparties subject to the requirement and linked to the metrics in operational condition (c) rather than the 85% level previously proposed.
- e. Options have been removed from the scope of the EUR STIR "classes" of derivatives that are subject to the representativeness obligation.
- f. As part of the representativeness obligation, trades in PLN OTC IRD and EUR STIR are subject to a new requirement that the average trade size and maturity of those trades cleared at an EU CCP should reflect the average trade size and maturity of trades cleared at a Tier 2 CCP.
- g. The maturity ranges for EUR STIRs have been slightly modified (i.e., they are now 0-6M, 6M-12M, 12M-24M, and 25M+), although there appears to have been a drafting oversight and these new ranges are not reflected in the revised RTS.
- h. The reporting requirements for the reporting of activities and risk exposures have been simplified so that extraneous fields have been deleted, and counterparties only need to report average outstanding gross notional amounts in the relevant in-scope derivatives (albeit broken down by class of derivative and per CCP).
- i. The reporting requirements for the reporting of satisfaction of the operational conditions have been greatly simplified so that counterparties only need to provide a written statement that they comply with the operational conditions. Counterparties must, however, have the relevant documentation available to support this statement.
- j. The reporting requirements for the reporting of compliance with the representativeness obligation have been reduced to eliminate the requirement to report gross and net notional amounts for each subcategory of derivative. Only the number of trades in each subcategory is required. The requirement to provide UTIs has also been removed.

There are still points of uncertainty on some of the details of how the Active Accounts Requirement will operate. Some of these issues have been raised with ESMA, but have not been addressed either via the draft RTS or by ESMA's

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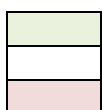
commentary in the FR. Some of these pertain to the Level 1 text as noted by ESMA in the FR. As such they will need to be the subject of clarification from the European Commission. In the absence of such clarification or any other Level 3 guidance, market participants will need to form their own views.

ESMA will submit the draft RTS to the European Commission, who has up to three months to decide whether to adopt the draft RTS. Once adopted, the RTS will be subject to non-objection by the European Parliament and the Council. If no objections are raised, the RTS will come into force 20 days after its publication in the Official Journal of the European Union. The precise timetable is not therefore known at this stage.

It merits mention that Article 7a of EMIR, which establishes the Active Account Requirement, came into force on 24 December 2024 notwithstanding that the corresponding RTS are not yet in force. For counterparties that are subject to the requirement, an "active account" must be established within six months of becoming subject to the obligation (i.e., by 24 June 2025). In-scope counterparties should consider the types of information that they will need to collect and retain to enable them to comply with the Active Account Requirement's reporting and operational requirements on a going forward basis.

If you would like to discuss the implications of this article, please get in touch with your usual Fieldfisher contact or a member of the Financial Markets & Products team.

## Key for colour coding:



Position in the FR has improved versus the CP based on industry feedback

No substantive change between the proposals in the CP and in the FR

New substantive proposal in the FR that may require further industry feedback



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Position in the CP	Position in the FR	Commentary
<b>Operational Conditions – Condition (a)</b>		
<p>ESMA proposed that counterparties be required to establish:</p> <ul style="list-style-type: none"> <li>(a) a contractual arrangement with an EU CCP, either directly or via a clearing member</li> <li>(b) internal policies and procedures to access an EU CCP, either directly or via a clearing member</li> <li>(c) cash and collateral accounts, with sufficient financial resources to meet the obligations arising from participation in an EU CCP, either directly or indirectly</li> <li>(d) an IT system with connectivity to an EU CCP, either directly or via a clearing member</li> </ul>	<p>Counterparties required to demonstrate "the existence of" the required operational conditions, rather than "establish".</p> <p>Internal policies and procedures linked to the contractual arrangement operational condition rather than access to the EU CCP.</p> <p>Requirement for cash and collateral accounts with sufficient resources removed and now linked to the contractual arrangement operational condition.</p>	<p>ESMA notes that no major issues had been identified by respondents that could make the proposal inoperable.</p> <p>ESMA notes that on some occasions arrangements will already be in place and do not need to be newly "established" and clarifies the wording in this respect.</p> <p>ESMA considers that the reference to "sufficient financial resources" in the proposal is in line with the EMIR requirements but suggests not to single it out, changing the approach to make a general reference to the need to comply with obligations in relation to the cash and collateral accounts and further noting that it does not suggest that the financial resources be part of the stress-testing.</p> <p>ESMA does not agree that "policies and procedures" go beyond Level 1 and "internal processes".</p>
<b>Operational Conditions – Conditions (b) and (c)</b>		
<p>ESMA proposed that counterparties set up internal systems and arrangements to monitor and support a large flow of transactions from positions in a Tier 2 CCP under different scenarios assessing any potential legal and operational barriers.</p>	<p>Unchanged from the position in the CP.</p>	<p>ESMA notes some respondents concerns regarding the costs of compliance but considers that it is appropriate for counterparties at least to consider what could be the legal and operational barriers.</p>
<p>ESMA proposed that counterparties appoint at least one staff member with sufficient knowledge to</p>	<p>Counterparties required to demonstrate that they possess necessary human resources to support the</p>	<p>ESMA understands the term "resources" to refer not only to operational resources but also to human</p>

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support the proper functioning of the clearing arrangements at all times.	proper functioning of the clearing arrangement at all times, including in situations where the account would have to support a large shift in positions from a Tier 2 CCP and new trades in the derivative contracts subject to the AAR.	<p>resources but proposes the modification to ensure the requirement is sufficiently flexible so that different internal set ups or preferences can be compliant.</p> <p>ESMA notes certain respondents' concerns with the use of the wording "at all times" but is mapping the wording from the Level 1 text and so suggests retaining it.</p> <p>ESMA notes several respondents highlighted the misunderstanding in relation to moving positions from a Tier 2 CCP to an EU CCP but refers such respondents back to the Level 1 text. ESMA nonetheless will refer instead to "positions" held in a Tier 2 CCP.</p>
ESMA proposed that counterparties obtain from the EU authorised CCP, directly or indirectly, a signed written statement confirming that the account of the counterparty has the operational capacity to clear up to three times the notional outstanding cleared for the previous twelve months.	<p>Simplification of certification process to two separate self-certifications that: (a) the EU CCP has the operational capacity to clear a threefold increase across all clearing members for the previous 12 months in the derivative contracts subject to the AAR and (b) the counterparty or its clearing service provider has the operational capacity to clear a threefold increase in the derivative contracts subject to the AAR'</p> <p>Clarification on the metric to be used for the threefold increase to the gross notional value in the derivative contracts subject to the AAR.</p> <p>In the context of the EU CCP operational capacity, this is either:</p>	ESMA has sympathy for respondents comments on the threefold increase, reliance on CCP certification and responsibility and the need for paper copies and proposes additional safeguards to address these concerns.

	<p>(a) three times the gross notional value in derivative contracts subject to the AAR cleared by the CCP across all clearing members for the previous 12 months; or</p> <p>(b) the sum of the total gross notional value in derivative contracts subject to the AAR cleared by the CCP and Tier 2 CCPs across all clearing members for the previous twelve months.</p> <p>In the context of the counterparty or clearing service provider operational capacity, this is either:</p> <p>(a) three times the gross notional value in derivative contracts subject to the AAR cleared in the account for the counterparty for the previous 12 months; or</p> <p>(b) the total gross notional value in derivative contracts subject to the AAR cleared by the counterparty for the previous twelve months.</p> <p>Clarification that written certifications may be provided electronically.</p> <p>Clarification in the FP but not in the RTS that the EU CCP certification may be made publicly or readily available to counterparties.</p>	
<b>Stress-testing of Operational Conditions</b>		
ESMA proposed that counterparties shall conduct technical and functional tests verifying the operational capacity and the functioning of the IT connectivity with the CCP, either directly or indirectly.	Unchanged from the position in the CP.	ESMA notes that the majority of respondents did not comment on the specific aspect of this stress testing other than to raise concerns in relation to the testing of financial resources which should now be alleviated

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		as a result of the changes made to operational condition (a).
ESMA proposed that the counterparties request from the EU CCP, either directly or indirectly, a signed written statement that the account has the capacity to withstand a substantial increase in outstanding and new clearing activity of up to 85% of the total outstanding clearing activity of the counterparties in derivative contracts subject to the AAR contracts with the increase taking place on both house and client accounts and within 5 business days for OTC derivatives and 2 business days for financial instruments other than OTC derivatives.	Changed such that operational tests are conducted to demonstrate that the account can withstand the threefold increase as certified for the operational condition (c).	ESMA notes that the 85% threshold may be duplicative of the three-fold increase required under operational condition (c) and, in order to reduce the burden on counterparties, require instead via a fire-drill/stress testing exercise on a yearly basis that the account is actually able to handle a three-fold increase as certified for the purposes of operational condition (c).
ESMA proposed that the CCP written statement be provided: (a) annually for counterparties with a notional clearing volume of less than EUR 100 billion; and (b) every six months for counterparties with a notional clearing volume of more than EUR 100 billion, in AAR contracts.	Changed to be annual for all counterparties.	ESMA notes respondents' concerns and wants to limit the burden for counterparties as well as for CCPs.
<b>Representativeness Obligation – Classes of derivatives</b>		
ESMA proposed the following three "classes" of EUR OTC IRD to be subject to the representativeness obligation:  (a) fixed-floating IRS  (b) FRAs	Unchanged from the position in the CP.	ESMA notes that most respondents to this proposal either agreed with the proposal or did not object.

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(c) OIS		
<p>ESMA proposed the following two "classes" of PLN OTC IRD to be subject to the representativeness obligation:</p> <p>(a) fixed-floating IRS</p> <p>(b) FRAs,</p> <p>in each case, that are subject to the EMIR clearing obligation.</p>	Unchanged from the position in the CP.	ESMA notes that the vast majority of respondents supported ESMA's approach.
<p>ESMA proposed the following two "classes" of EUR STIR to be subject to the representativeness obligation:</p> <p>(a) cash-settled derivatives executed on an EU or non-EU exchange with an underlying of 3-month EURIBOR</p> <p>(b) cash-settled derivatives executed on an EU or non-EU exchange with an underlying of 3-month €STR</p> <p>Each class includes both futures and options contracts.</p>	ESMA removed options from the scope of the two classes.	ESMA notes that some respondents wanted EUR STIR options to be excluded as there are liquidity differences as well as differences in the contracts that can be cleared at ICE Clear Europe and Eurex Clearing. ESMA took this feedback on board and removed options from the scope, whilst noting that this may need to be amended if alternative clearing services for these options become available.
<b>Representativeness Obligation – Subcategories of derivatives</b>		
<p>ESMA proposed the following maturity ranges as subcategories of EUR OTC fixed-floating IRS:</p> <p>(a) 0 to 5Y</p>	Unchanged from the position in the CP.	ESMA notes that the majority of respondents either agreed with ESMA's proposals or did not object.



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<p>(b) 5Y to 10Y</p> <p>(c) 10Y to 15Y</p> <p>(d) 15Y+</p> <p>ESMA also proposed the following trade size ranges as subcategories of EUR OTC fixed-floating IRS:</p> <p>(a) 0 to 25M</p> <p>(b) 25 to 50M</p> <p>(c) 50M+</p>		
<p>ESMA proposed the following maturity ranges as subcategories of EUR OIS:</p> <p>(a) 0 to 1Y</p> <p>(b) 1Y to 2Y</p> <p>(c) 2Y to 5Y</p> <p>(d) 5Y+</p> <p>ESMA also proposed the following trade size ranges as subcategories of EUR OIS:</p> <p>(a) 0 to 25M</p> <p>(b) 25 to 100M</p> <p>(c) 100M+</p>	Unchanged from the position in the CP.	ESMA notes that the majority of respondents either agreed with ESMA's proposals or did not object.
<p>ESMA proposed the following maturity ranges as subcategories of EUR FRA:</p>	Unchanged from the position in the CP.	ESMA notes that the majority of respondents either agreed with ESMA's proposals or did not object.

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<p>(a) 0 to 6M</p> <p>(b) 6M to 12M</p> <p>(c) 12M to 18M</p> <p>(d) 18M+</p> <p>ESMA also proposed the following trade size ranges as subcategories of EUR FRA:</p> <p>(a) 0 to 75M</p> <p>(b) 75 to 200M</p> <p>(c) 200M+</p>		
<p>ESMA proposed a single subcategory for each of PLN fixed-floating IRS and PLN FRAs across all maturities and trade sizes.</p>	<p>The maturity and trade size ranges are unchanged from the position in the CP.</p> <p>However, ESMA added a new provision requiring the average trade size and maturity ranges in PLN OTC IRD products cleared in the EU should reflect the average trade size and maturity of those products cleared by the counterparty in the Tier 2 CCP.</p>	<p>ESMA note that the broad majority of respondents supported ESMA's approach.</p> <p>A CCP respondent proposed that ESMA clarify that the trades cleared on the EU CCP account should at least reflect the average trade size for the respective contracts cleared on the non-EU account. ESMA agrees that the spirit of the representativeness obligation should be respected and introduced a new provision to that effect.</p>
<p>ESMA proposed the following maturity ranges as subcategories of EUR STIR referencing each of EURIBOR and €STR across all trade sizes:</p> <p>(a) 0 to 6M</p> <p>(b) 6M to 12M</p> <p>(c) 12M to 18M</p>	<p>ESMA slightly modified the maturity ranges as follows:<sup>1</sup></p> <p>(a) 0 to 6M</p> <p>(b) 6M to 12M</p> <p>(c) 12M to 24M</p> <p>(d) 24M+</p>	<p>ESMA notes that all respondents supported its approach to trade sizes. Half of respondents supported its approach to the maturity ranges, whilst others wanted a reduction in the number of ranges to reflect the relative lack of liquidity.</p> <p>A CCP respondent proposed that ESMA clarify that the trades cleared on the EU CCP account should at</p>

<sup>1</sup> Note that this modification does not seem to have been reflected in the revised draft RTS.

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(d) 18M+	ESMA added a new provision requiring the average trade size and maturity ranges in EUR STIR products cleared in the EU should reflect the average trade size and maturity of those products cleared by the counterparty in the Tier 2 CCP.	least reflect the average trade size for the respective contracts cleared on the non-EU account. ESMA agrees that the spirit of the representativeness obligation should be respected and introduced a new provision to that effect.
<b>Representativeness Obligation – Number of most relevant subcategories of derivatives</b>		
<p>ESMA proposed the following number of "most relevant" subcategories:</p> <ul style="list-style-type: none"> <li>(a) five for each of the three classes of EUR OTC IRD</li> <li>(b) one for each of the two classes of PLN IRD</li> <li>(c) four for each of the two classes of EUR STIR</li> </ul>	Unchanged from the position in the CP.	ESMA notes that its feedback was largely supportive of its proposals, or the respondents did not express a view.
<b>Representativeness Obligation – Reference periods</b>		
<p>ESMA proposed a reference period for EUR OTC IRD of:</p> <ul style="list-style-type: none"> <li>(a) one month for counterparties with a notional clearing volume outstanding of EUR 100 billion or more</li> <li>(b) six months otherwise</li> </ul>	Unchanged from the position in the CP.	ESMA notes that it received broad support for its proposal, and that it does not agree with feedback that shorter reference periods could create unnecessary trading activity purely to comply with the representativeness obligation.
ESMA proposed a reference period for PLN OTC IRD of 12 months.	Unchanged from the position in the CP.	ESMA notes that it received broad support for its proposal.

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<p>ESMA proposed a reference period for EUR STIR referencing EURIBOR of:</p> <p>(a) one month for counterparties with a notional clearing volume outstanding of EUR 100 billion or more</p> <p>(b) six months otherwise</p>	<p>Unchanged from the position in the CP.</p>	<p>ESMA notes that it received majority support for its proposal. Some respondents suggested lengthening the reference period to match EUR STIR referencing €STR, but ESMA considers that the market for EUR STIR referencing EURIBOR is an active market, and it is appropriate to require a shorter reference period.</p>
<p>ESMA proposed a reference period for EUR STIR referencing €STR of:</p> <p>(a) six months for counterparties with a notional clearing volume outstanding of EUR 100 billion or more</p> <p>(b) 12 months otherwise</p>	<p>Unchanged from the position in the CP.</p>	<p>ESMA notes that it received majority support for its proposal.</p>
<b>Reporting Requirements – Reporting of activities and risk exposures</b>		
<p>ESMA proposed specific data points that counterparties must report in connection with their activities and risk exposures. These included:</p> <p>(a) general counterparty information</p> <p>(b) activity and risk exposure metrics using gross and net notional amounts</p> <p>(c) trade counts</p> <p>(d) margin data</p> <p>(e) aggregation of certain metrics using EMIR REFIT Guidelines</p> <p>Exempted trades (e.g., intragroup trades should be excluded).</p>	<p>ESMA has made changes to greatly simplify the reporting requirements, whilst ensuring that NCAs have enough information.</p> <p>In particular, the information should be sufficient to allow NCAs to assess whether the counterparty is subject to the following requirements:</p> <p>(a) EUR 3bn (cleared and uncleared) – operational conditions and reporting requirements</p> <p>(b) EUR 6bn (cleared) – representativeness obligation</p> <p>(c) EUR 100bn (cleared) – applicable reference period</p>	<p>ESMA notes that its proposals received a lot of attention, and a majority expressed strong concerns with respect to the additional operational burden, duplication of existing transaction reporting requirements, and inclusion of unnecessary data (e.g. margin information and data on uncleared trades).</p> <p>There was a broad consensus that the reporting requirements should be streamlined, with only two respondents fully supporting ESMA's proposals.</p>

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Supervised groups should report at both entity and subsidiary levels.  Unique Trade Identifiers should also be provided.	ESMA has therefore proposed that counterparties only report, at the aggregate level, the gross notional amount outstanding of the aggregate month-end average positions in in-scope derivatives for the previous 12 months. This data must be broken down per class of in-scope derivative and per CCP.	
<b>Reporting Requirements – Reporting of the operational conditions</b>		
ESMA proposed that counterparties should provide extensive documentation and information to their NCAs.  This included:  (a) statements confirming that contractual arrangements have been signed for the provision of clearing services  (b) descriptions of material changes to internal policies and procedures concerning the clearing of derivatives  (c) information on the relevant accounts, including the aggregate amount of financial resources provisioned  (d) statements confirming relevant IT connectivity is operational  (e) descriptions of material changes to internal systems to monitor exposures and governance arrangements to support a large flow of transactions from a Tier 2 CCP	ESMA has greatly reduced the reporting burden and has proposed that counterparties simply provide a written statement confirming their compliance with the operational conditions in the RTS.  However, counterparties must have the relevant documentation available to prove their compliance should it be required by their NCAs.	ESMA notes that respondents generally expressed concerns about the burden and practicality of its proposals, although ESMA is constrained by the Level 1 in terms of the extent to which it can alleviate some of the burden.



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<p>(f) information on the required dedicated staff member</p> <p>(g) copies of the statements confirming that the account has the requisite operational capacity to support a large increase in clearing activity</p> <p>(h) statements confirming that the counterparty has conducted technical and functional tests to verify the capacity and functionality of the relevant IT connectivity</p> <p>(i) copies of the statements confirming that the account has been stress tested</p>		
<b>Reporting Requirements – Reporting of the representativeness obligation</b>		
<p>ESMA proposed that counterparties report to their NCAs the subcategories of in-scope derivatives that are the "most relevant" per class of derivative cleared at a Tier 2 CCP to allow the NCA to assess that these have been replicated in their active accounts.</p> <p>ESMA proposed that this information include the gross and net notional amounts and the number of trades cleared for each subcategory at both Tier 2 CCPs and EU CCPs.</p>	<p>ESMA removed the requirement to report gross and net notional amounts for each subcategory. ESMA created a new Annex III that sets out tables that should be used to report the number of trades in each of the "most relevant" subcategories.</p> <p>ESMA also removed the requirement to report Unique Trade Identifiers.</p> <p>ESMA clarified that the reference period used should be:</p> <ul style="list-style-type: none"> <li>(a) for EU CCPs, the reference period preceding the reporting date</li> <li>(b) for Tier 2 CCPs, the reference period preceding the reference period for EU CCPs</li> </ul>	<p>ESMA notes that respondents were particularly concerned with the requirement to report both gross and net notional amounts cleared at both Tier 2 CCPs and EU CCPs.</p>

	ESMA also clarified that this reporting obligation should only apply to counterparties that meet the threshold for the representativeness obligation.	
<b>Reporting Requirements – Reporting arrangements and methodology</b>		
ESMA proposed that set dates are established in the draft RTS for reporting to ensure a harmonised level of reporting.	The timing is unchanged from the position in the CP.  ESMA has clarified that the templates set out in Annexes II and III should be used to comply with the reporting obligations.	ESMA notes that the majority of response welcomed ESMA's efforts to standardise and harmonise the reporting requirements.  However, some concerns were raised around implementation timeframes and respondents called for additional time and Level 3 guidance. ESMA considers that these concerns have been addressed by alleviating the reporting burden.



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