



European Securities and
Markets Authority

Response Form to the Consultation Paper

RTS on the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources (Article 9(15) of CCPRRR)



Responding to this paper

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions summarised in Annex I. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **20 September 2021**.

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input - Consultations’.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_SITG_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA_SITG_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_SITG_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website (www.esma.europa.eu under the heading “Your input – Open consultations” → “Consultation on the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources”).

Publication of responses

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

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).

Who should read this paper?

All interested stakeholders are invited to respond to this consultation paper. In particular, responses are sought from central counterparties (CCPs) and their clearing members.

General information about respondent

Name of the company / organisation	European Commodity Clearing AG
Activity	Central Counterparty
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_SITG_00>

European Commodity Clearing AG is an EMIR-authorized central counterparty (CCP) and a subsidiary of the Deutsche Börse Group. European Commodity Clearing AG provides clearing services for commodity derivatives markets.

We appreciate the opportunity to provide feedback to ESMA's consultation regarding the calculation and maintenance of the Second Skin in the Game (SSITG).

<ESMA_COMMENT_SITG_00>

Questions

Q1 : Do you agree with the proposed approach to define the basic elements of the methodology for the calculation and maintenance of the additional amount of pre-funded dedicated own resources? If not, please explain why and how you would suggest changing the basic elements of the formula?

<ESMA_QUESTION_SITG_01>

ECC agrees in general with the basic elements for the calculation and maintenance of the additional amount of prefunded dedicated own resources, i.e. the "second skin in the game" (SSITG).

However, there are a few aspects of the proposed methodology that, in our opinion, require some clarifications:

1. The sum of all the maximum indicators values included in Table 1 "Summary of proposed parameters" amounts to 45% of the CCP's risk-based capital, i.e. much higher than the maximum of 25% of the CCP's risk-based capital foreseen in the CCP Recovery

and Resolution (CCP RR) Level 1 Regulation . This considerably increases the possibility that CCPs will have to dedicate 25% of their risk-based capital, while, to our understanding, the objective of the Level 1 Regulation is to allow for a more proportionate approach in line with ESMA's note under paragraph 22 of the consultation paper.

<ESMA_QUESTION_SITG_01>

Q2 : Do you agree with the schematic formula combining a set of parameters assessed by the CCP? If not, please explain why and how you would suggest changing the formula?

<ESMA_QUESTION_SITG_02>

ECC generally agrees with the schematic formula combining a set of parameters assessed by the CCP and we are convinced, that a fixed list of factors is leading to reliability and comparability, e.g. a level-playing field between CCPs. However, ECC is convinced that given the current structure of the formula also if parameters are adding up to an additional SSIG of 25% this does not necessarily indicate an inferior risk management standard as many factor are depending on the business specifics.

<ESMA_QUESTION_SITG_02>

Q3 : Do you agree with the list of parameters to describe the structure and the internal organisation of CCPs and the nature, scope and complexity of a CCP's business? If yes, are there additional parameters that should be added to the list? If not, please explain why and how you would suggest assessing the internal organisation of CCPs and the nature, scope and complexity of a CCP's business in the methodology?

<ESMA_QUESTION_SITG_03>

ECC would have a few observations to put forward regarding the list of parameters and **indicators** to describe the structure and the internal organisation of CCPs and the nature, scope and complexity of a CCP's business:

1. **Parameter A1 – “Nature and complexity of the asset classes cleared”**

- a. **Indicator “Does the CCP clear assets denominated in or offer settlement in more than 1 currency?”** – ECC believes that as long as the CCP has in place the adequate risk management procedures to manage more than one currency, it should not be penalized by requiring it to dedicate a higher amount of SSITG. This would weaken international CCPs being active in different EU and non-EU countries. ECC therefore suggest **removing this indicator**.
- b. **Indicator “Does the CCP clear assets denominated in or offer settlement in at least 1 non-EU currency?”** – ECC believes that as long as the CCP has in place the adequate risk management procedures

to manage more than one currency, it should not be penalized by requiring it to dedicate a higher amount of SSITG. This would weaken international CCPs being active in different EU and non-EU countries. In addition CCPs can have comprehensive measures in place to legally enforce (in a crisis situation) the settlement of non-EUR denominated assets in EU currency". ECC therefore suggest **removing or changing this indicator**.

A)

- c. **Indicator “Does the CCP offer physical settlement of derivatives contracts?”** – ECC is of the opinion that those CCPs that are authorized to perform the physical settlement of derivatives contracts should not be penalized for doing so as long as they are duly authorized to do so by their competent authorities and supervised accordingly. ECC therefore suggests **removing this indicator**.

2. **Parameter A2 – “Scope and complexity of the CCP’s activities”**

- a. **Indicator “Do the top 5 clearing members of the CCP represent more than 40% of the CCP’s prefunded resources (aggregated across all services and default funds)?** – ECC thinks that this a relatively high burden, especially for smaller CCPs or CCPs being active in more niche markets where there is only a limited number of CM being active. If there is a rather equal distribution CMs with 8-10% of the pre-funded resources would add to additional SSIG. ECC thinks that a focus should be set to only 2 or 3 CMs representing a majority of more than 50% of the pre-funded resources, which would be in line with the general cover-2 approach of other risk management elements in EMIR and CCPRRR.

B)

- b. **Indicator “Do clearing members established outside the EU represent more than 20% of the CCP’s clearing membership (by collateral)?”** – ECC could agree with this indicator provided that the clearing members established outside the EU are established in a jurisdiction that is **not declared as equivalent**, as we understand that equivalent jurisdictions pose no additional risk compared to EU jurisdictions

3. **Parameter A3 – “Internal organisation of the CCP”**

- a. **Indicator “Did the Board take more than 3 decisions over the last 3 years where the recommendation or advised position of the Risk Committee was not followed?”** – ECC is of the opinion that the addition of 2% linked to a positive feedback on this parameter should be **brought down to 1%**, as long as the decision by the Board not to follow a recommendation/advised position of the Risk Committee is backed by valid reasons. In this regard, rather than the *number* of decisions the RTS should rather look at the **reasons and the importance of the topic and** why the Board agreed not to follow a recommendation/advised position of the Risk Committee. If the justification is missing or invalid according to the views of authorities, then the additional 1% could be justified. However, in general a more qualitative assessment is needed as a pure quantity-based parameter might be arbitrary with respect to the risk management. Also, the dynamics of the interaction between CCP and Risk Committee would change by such an add-on and subject

to more strategic interaction: Which topics are brought to the Risk Committee in which detail at which point in time. The Risk Committee is designed as an independent risk advisory committee, bringing representatives of the most relevant stakeholders together and allowing an independent and open discussion. There is already the obligation to inform the NRA in case the Management Board would not follow the RCs recommendation, allowing timely and enforceable action where necessary. We therefore think this parameter should be re-assessed.

- b. **Indicator “Percentage of staff in second line of defence risk functions (expressed as a % of total Full Time Equivalent (FTEs), including outsourced functions)”** – ECC thinks that a pure percentage of staff in second line of defence risk functions is arbitrary. CCPs are belonging in most cases to bigger exchange groups and have therefore outsourcing arrangements in place. However, it is difficult to assess those agreements with dedicated FTE numbers and therefore the ratio is difficult to assess, hence this factor is ambiguous. We believe that this factor would lead to an incorrect assessment of the CCP’s capabilities. In addition it needs to be clarified what a definition of ‘second line of defence risk functions’ - not done in EMIR - looks like and which functions like model validation, risk model development etc. would be included. This would lead to a situation where the outsourced functions and the comparison basis of internal functions are unclear. Therefore we think this parameter should be re-assessed.

4. **Parameter A5 – “Weaknesses identified by the NCA”**

- a. On both parameters: ECC is of the opinion that weaknesses identified by the CCP’s competent authority are sanctioned under general prudential supervision anyway. ECC understands the SSIG not as a tool for supervisory powers or sanctions, as a result there is no need for double sanctions by adding a factor on the SSIG.

<ESMA_QUESTION_SITG_03>

Q4 : Do you agree with the list of parameters to describe the structure of incentives of a CCP’s shareholders, management, clearing members and clients? If yes, are there additional parameters that should be added to the list? If not, please explain why and how you would suggest assessing the incentives in the methodology?

<ESMA_QUESTION_SITG_04>

1. **Parameter B1 – “The CCP’s ownership and capital structure”**

- C) Parameter B1 refers to the CCP’s ownership and capital structure. This parameter is supposed to reflect the mandated under Article 9(15)(b) that refers to the ‘*structure of incentives of the shareholders, management and clearing members of CCPs and of the clients of those clearing members*’.

Contrary to the rest of the parameters in this section, we believe that this parameter B1 is not aligned with the mandate in level 1 while the rest of the parameters under this section are. We therefore suggest deleting parameter B1 and its two related indicators.

B1.1 Does the CCP have a majority shareholder unrated or rated below investment grade (excluding publicly owned (directly/indirectly) companies)? – ECC sees a need for clarification on this matter as there might be especially smaller CCPs with an unrated shareholder or a rating of a smaller agency being not one of the 3 big ones (S&P, Moody's, Fitch). As CCPs are belonging most of the time to bigger exchange groups it also might be a question if only the ultimate owner should be assessed instead of the direct shareholder.

<ESMA_QUESTION_SITG_04>

Q5 : Do you agree with the proposal that all EU CCPs may rely on alternative investments for the purpose of maintaining the SSITG?

<ESMA_QUESTION_SITG_05>

ECC does not think that the respective list should be extended to assets other than those referred to under Article 47(1) of EMIR, i.e. cash or highly liquid instruments with minimal market and credit risk. This could be seen as a blueprint and door opener for accepting other investments than those according to EMIR.

<ESMA_QUESTION_SITG_05>

Q6 : Do you agree that this list of alternative investments shall be specified in the draft RTS?

<ESMA_QUESTION_SITG_06>

If there is a decision for a list of alternative investments, ECC sees the need to have a specified and rather short list, which should also aligned with other regulations like the FCD.

<ESMA_QUESTION_SITG_06>

Q7 : Do you agree with the proposed list of additional investments for the purpose of maintaining the additional amount of pre-funded dedicated own resources under Article 9(14)? If not, please explain why? If yes, is there any type of asset that you would like to add to or remove from the list?

<ESMA_QUESTION_SITG_07>

ECC agrees with the proposal by ESMA to allow CCPs to consider instruments already accepted as collateral from its clearing member, as set out in the CCP's

internal collateral policy, with the exception of bank guarantees, derivatives and equities.

<ESMA_QUESTION_SITG_07>

Q8 : Do you agree with the proposed procedure for triggering specified recovery measures where all or part of the CCP's pre-funded dedicated own resources allocated to cover SSITG are not readily available for CCPs? If not, please explain why?

<ESMA_QUESTION_SITG_08>

ECC agrees with the proposed procedure for triggering specified recovery measures where all or part of the CCP's pre-funded dedicated own resources allocated to cover the SSITG are not readily available for CCPs, however, we aim for stricter list of alternative investments where unavailability of resources to cover the SSIG should not occur.

<ESMA_QUESTION_SITG_08>

Q9 : Do you agree with ESMA's proposed procedure for the compensation of non-defaulting clearing members? If not, please explain why?

<ESMA_QUESTION_SITG_09>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SITG_09>

Q10 : Do you have access to different data and analysis that would contradict ESMA's conclusion that no further adjustment of the SSITG level based on competitiveness consideration is needed?

<ESMA_QUESTION_SITG_10>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SITG_10>

Q11 : Do you have any additional data that you may share in order to assess the impact of this requirement on the EU CCPs' competitiveness?

<ESMA_QUESTION_SITG_11>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SITG_11>

Q12 : Do you identify other benefits and costs not mentioned above associated to the proposed approach under each specified aspect of the methodology?

<ESMA_QUESTION_SITG_12>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SITG_12>

Q13 : If you advocated for a different approach, how would it impact this section on the impact assessment? Please provide details.

<ESMA_QUESTION_SITG_13>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SITG_13>