

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	KDPW_CCP SA
Activity	Central Counterparty
Are you representing an association?	☐
Country/Region	Poland

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_SITG_00>

TYPE YOUR TEXT HERE

<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>

We do not agree with the proposed frequency of the revision of the amount of the additional prefunded resources if it requires revision “each time one of the parameters of the calculation formula is modified” (page 13 of the Consultation Paper, point 17, second bullet) – this could potentially mean many revisions in a year, posing a burdensome obligation on CCPs. We agree with the approach that the revision should take place “every time the CCP’s capital requirements are revised, (...) and at least on a yearly basis”. This would be consistent with the approach towards calculation of the first SITG and much more reasonable.

Our doubts are also raised by the provision that the SSITG resources assigned to a given default fund may be used only in the event of default under this fund. This solution does not take into account the situation of participation in several funds operated by a given CCP. In such and similar situations, it should be possible to use resources dedicated to a given default fund in a more flexible way. Moreover, such a solution means that in the case of non-default the CCP has the full amount at its disposal, and in the case of default, only the part assigned to a given default fund. Regardless of this, in our opinion, such a restriction is contrary to Art. 9(14) CCP RRR, as the provision mentions the use of SSTIG before the use of the arrangements and measures referred to in this Regulation.

<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>

We do not agree with the assumption made in point 21 which links lower SSITG with risk management above the requirements of EMIR. EMIR requirements are already very strict and ambitious and have been set as a very good standard for authorised and recognised CCPs. In the light of the assumption made in the Consultation Paper, they seem to be barely a minimum and only applying higher standards deems very good management of risks. In other words, full compliance with EMIR is no longer enough and gets penalised by higher SSITG which should not be the case.

<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>

Indicator “Does the CCP have more than 5 interdependencies with trading venues, payment systems and settlement systems?”

In our opinion, the fact that CCPs have at least 5 interdependencies with trading venues, payment systems and settlement systems should not be an indicator of increasing SSITG. Having a larger number of the above-mentioned counterparties diversifies the risk and thus reduces it. Therefore, this indicator should not be considered.

The indicator “The lowest common reporting line of the model validation team if internal with model development is at Board level” (A3 section) is not entirely clear, especially the notion of “the lowest common reporting line” and the part “if internal with model development” seem to require some clarification.

The indicator “Percentage of staff in second line of defence risk functions” (A3 section) would need a clarification of the notion “second line of defence risk functions”. It also seems not to take into account that outsourcing agreements are not always formulated in such a granular way to define how much staff from the company providing outsourcing services is actually engaged in fulfilling the tasks entrusted with it by the CCP. This makes it difficult if not impossible to correctly take into account the outsourced functions while calculating the requested percentage.

Regarding the parameter A4 “The robustness of the CCP's risk management framework”, there does not seem to be a strong enough indication for such type of a parameter in the level 1 text (especially Art. 15 (9) lit. a) CCP RRR).

The indicator “Percentage of the number of clearing services for which margin back-tests performance is below the CCP's target” seems to reward these entities which have set lower targets which is rather counterintuitive. Also, the indicators should allow for objective assessments of CCPs and such an indicator which is based on internal policies and targets does not allow for objective assessment and comparison.

The indicator “Number of days the CCP has been unable to process new trades for 1 hour or more” does not follow the 2-hour-recovery rule which is embedded in international standards and EMIR.

The concepts 'payment incident' and 'the sole responsibility of clearing members' appearing in the indicator “Number of days the CCP has experienced at least one payment incident over the last 12 months, excluding incidents which are the sole

responsibility of clearing members” of should be defined because they are not sufficiently clear. Lack of explanation of these concepts may result in significant divergences in their understanding by supervisors and unequal treatment of individual CCPs.

The last indicator of section A5 referring to pending material remedial actions on other matters specifies that it concerns cases in which the CCP “exceeded the delay set by the NCA” which seems rather unclear. Perhaps what is meant here is the deadline set by the NCA?

<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>

The first indicator of section B2 referring to the “Average percentage of the CCP’s senior management total variable remuneration subject to claw backs” specifies that it applies in the case of losses in excess of margins in a default event. It remains unclear though in which cases of non-default losses it would apply where margins would typically not be used.

The latter two indicators of section B2 are very similar to the first indicator but, as opposed to the first one, distinguish between default and non-default losses. This would mean a double penalisation of the same type of event which seems excessive.

A similar issue occurs in the last two indicators of section B3 – if the answer to the question regarding incentives for CMs and clients to participate in the DMP is negative, then automatically the answer to the question relating to financial incentives or penalties would be same which would lead to a double penalisation of the same type of event which seems excessive.

Also, the last element of the formula for parameter B3 does not have the same name as in the description below it.

<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>

Yes, we agree with this proposal.

<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>

See our response to question 7.

<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>

We agree with the proposed list of additional investments however due to the fact that it only applies to the amount of SSITG held in excess of the 10% EMIR notification buffer, which means technically to 0%-15% of a CCP's capital requirement value, it provides for a very insignificant change in the overall scheme of CCP's investments. As ESMA very rightfully notices in point 70, "the criteria of Annex II of RTS 153/2013 on the debt instruments that can be eligible for investment are particularly strict, especially regarding the requested low average time-to-maturity (2 years)." The observation is especially apt with regard to the time-to-maturity and even more so in times of very low interest rates which we are facing now which altogether makes the investment options very limited for CCPs. We would like to point out that T-bonds with longer maturities are not necessarily less liquid or safe and actually the opposite is often the case. Whereas we agree with the application of the collateral acceptance criteria to CCPs' investments, we would like to emphasise a need for the removal of the restriction of the 2-year-time-to-maturity (or significant extension thereof, e.g. up to 10 years) with reference to all investments of the CCP, not just of the resources that constitute the 0%-15% value of the minimum capital requirements.

<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<ESMA_QUESTION_SITG_13>