Clifford Chance

EMIR 3.0: calculating the EU active account thresholds

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Contents

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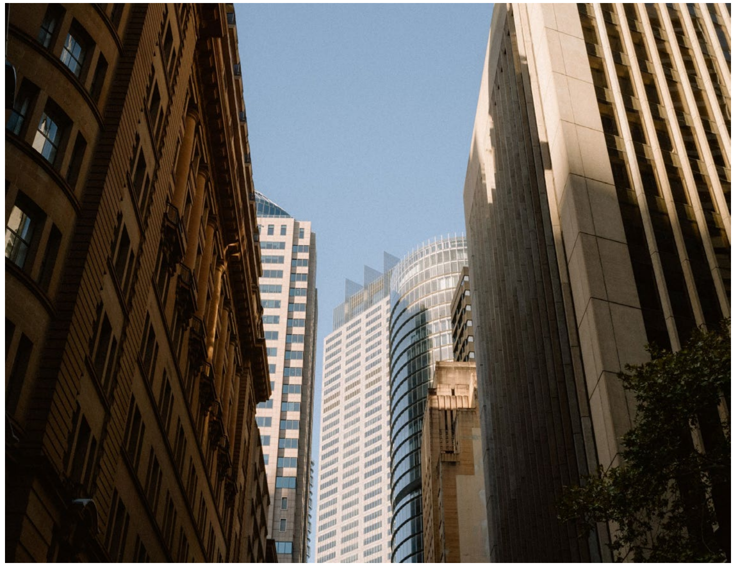
EMIR 3.0 is changing the clearing thresholds under EMIR, which will also change the scope of application of the active account requirement.



The active account requirement (AAR)

The AAR applies to counterparties that:

- are subject to the clearing obligation under EMIR because they exceed the clearing threshold; and
- clear a threshold volume of relevant interest rate derivatives (IRDs) at EU or non-EU central counterparties (CCPs).

The AAR comprises:

- an obligation to maintain an 'active account' at an EU CCP (and related operational and stress-testing requirements); and
- a 'representativeness requirement' to clear in the active account trades in IRDs which are representative of the trades in relevant IRDs cleared by the counterparty at 'Tier 2' (systemically important) non-EU CCPs.

In addition, counterparties subject to the AAR must comply with reporting obligations, including on the aggregate thresholds relevant for assessing compliance with the AAR.

EMIR 3.0 changes to clearing thresholds

EMIR 3.0 is changing the bases of calculation and the values of the thresholds determining when non-financial counterparties (NFCs) and financial counterparties (FCs) are subject to the clearing obligation.

The European Commission has now adopted the regulatory technical standards (RTS) amending the values of the clearing thresholds.

The amending RTS are subject to scrutiny by the European Parliament and Council. The changes to the clearing thresholds will take effect 20 days after the publication of the amending RTS in the Official Journal of the EU.

When the changes take effect, they will also change the scope of application of the AAR.

Summary tables

The following tables provide an overview of:

- the planned changes to the clearing thresholds to be made by EMIR 3.0 and the amending RTS;
- the bases for calculating the thresholds relevant for determining when and how the AAR applies and for the calculation of the related reporting obligation, after the planned changes enter into force;
- ESMA's Q&As on the AAR.

Notes

In this document, references to Articles are references to Articles of EMIR as amended by EMIR 3.0, unless otherwise indicated. The following tables assume that the amending RTS enter into force in the form adopted by the Commission.

For more information on the AAR and the changes to the clearing thresholds, see Clifford Chance, EMIR 3.0: New rules for trading and clearing derivatives in the EU (December 2024).

ESMA is also consulting on the reporting framework under Art 7d EMIR for clearing activity at recognised non-EU CCPs (August 2026).

Clearing thresholds: planned changes under EMIR 3.0

	NFCs (Art 10)		FCs (Art 4a)		
	Current	**Planned**	**Current**	**Planned**	
In-scope transactions	Cleared and uncleared OTC derivatives	OTC derivatives not cleared at EU CCPs or recognised non-EU CCPs	Cleared and uncleared OTC derivatives	OTC derivatives not cleared at EU CCPs or recognised non-EU CCPs	Cleared and uncleared OTC derivatives
Clearing thresholds					
• Credit derivatives	€1 bn	€0.8 bn	€1 bn	€0.8 bn	€1 bn
• Equity derivatives	€1 bn	€0.7 bn	€1 bn	€0.7 bn	-
• IRDs	€3 bn	€2.2 bn	€3 bn	€2.2 bn	€3 bn
• Foreign exchange derivatives	€3 bn	€3 bn	€3 bn	€3 bn	-
• Commodity and other derivatives	€4 bn	€4 bn (commodity and emission allowances only)	€4 bn	€4 bn (commodity and emission allowances only)	-
Group or entity level?	Group (NFEs only)	Entity	Group (entity level for funds)	Group (entity level for funds)	Group (entity level for funds)
Excl. intragroup transactions?	No	No	No	No	No
Excl. hedging transactions?	Yes	Yes	No	No	No
Excl. client cleared trades?	No	No	No	No	No
Application of clearing obligation if threshold exceeded?	• Asset-class by asset-class basis • All asset classes if calculation is not made	• Asset-class by asset-class basis • All asset classes if calculation is not made	• All asset classes • All asset classes if calculation is not made	• All asset classes • All asset classes if calculation is not made	• All asset classes • All asset classes if calculation is not made

Notes: Under EMIR 3.0, FCs will be subject to the clearing obligation if they exceed either any of the thresholds for uncleared OTC derivatives or any of the thresholds for cleared and uncleared OTC derivatives. All calculations of the clearing thresholds are annual, based on month-end average positions for the previous 12 months. ESMA has indicated that counterparties can wait until their next annual recalculation date before applying the new methodology and clearing thresholds.

AAR: bases for calculating thresholds and reporting obligation

Threshold/calculation	EMIR Art(s)	Cleared or uncleared?	Type of derivatives?	Group or entity level?	Excl. intragroup transactions?	Excl. hedging transactions?	Excl. client cleared trades?
Condition 1a (clearing threshold - NFCs)	7a(1) and 10	Uncleared	OTC derivatives	Entity	No	Yes	No
Condition 1b(i) (clearing threshold – FCs)	7a(1) and 4a	Uncleared	OTC derivatives	Group (entity level for funds)	No	No	No
Condition 1b(ii) (clearing threshold – FCs)	7a(1) and 4a	Cleared and uncleared	OTC derivatives	Group (entity level for funds)	No	No	No
Condition 2 (AAR threshold)	7a(1)	Cleared	Relevant derivatives (OTC derivatives only)	Group (prudential group)	Yes	No	No
€6 bn threshold	7a(4), 2nd subpara	Cleared	Relevant derivatives	Group (prudential group)	Yes	No	Yes (probably)
85% threshold	7a(5)	Cleared	Relevant derivatives	Group (prudential group)	Yes	No	No
€100 bn threshold	7a(8), 4th subpara	Cleared	Relevant derivatives	Group (prudential group)	Yes	No	Yes
Reporting obligation – aggregate thresholds	7b(1) (Art 7 AAR RTS)	Cleared	Relevant derivatives	Group (prudential group) (probably)	Yes (probably)	No	Yes (probably)

Notes: AAR thresholds and reporting obligation

Relevant derivatives
For the purposes of the AAR, the classes of relevant derivatives are:

- IRDs denominated in euro or Polish zloty that are OTC derivatives; and
- short-term interest rate derivatives (STIRs) denominated in euro whether or not they are OTC derivatives.

(See Art 7a(6) and recital 7 EMIR 3.0).

Conditions 1a and 1b (clearing thresholds – NFCs and FCs)
NFCs and FCs are only subject to the AAR if they are subject to the clearing obligation under EMIR because they exceed the clearing thresholds in accordance with Arts 4a and 10 (see Art 7a(1) and previous table).

Calculations are annual, based on month-end average positions for the previous 12 months.

ESMA has indicated that counterparties can wait until their next annual recalculation date before applying the new methodology and clearing thresholds. However, some counterparties may choose to recalculate the applicable clearing threshold(s) earlier if they consider that they may now fall below the clearing threshold when applying the new methodology and new threshold(s).

Condition 2 (AAR threshold)
Counterparties that satisfy condition 1a or 1b (clearing thresholds – NFCs or FCs) are only subject to the AAR if they also exceed the clearing threshold in any of the categories of relevant derivatives or in aggregate across all those categories (see Art 7a(1)).

The new clearing thresholds may mean that the AAR threshold is €2.2 bn for both NFCs and FCs, even though the €2.2 bn clearing threshold for FCs applies to uncleared derivatives when the AAR threshold applies to cleared derivatives (ESMA has yet to respond to a Q&A on this).

ESMA has indicated that counterparties should calculate the AAR threshold on a continuous basis. Thus, the new clearing thresholds may immediately affect some counterparties even if they choose to wait until their next annual recalculation date before recalculating condition 1.

€6 bn threshold
Counterparties subject to the AAR are not subject to the representativeness requirement if their notional clearing volume outstanding in relevant derivatives is less than €6 bn (see Art 7a(4), 2nd subpara).

85% threshold
Counterparties subject to the AAR that, at a point in time, clear at least 85% of their relevant derivatives at EU CCPs are exempt from operational, stress-testing and reporting requirements but not the representativeness requirement itself (see Art 7a(5)).

€100 bn threshold
Counterparties subject to the representativeness requirement must clear, on an annual average basis, at least five trades in each of the most relevant subcategories per class of derivative contracts and per 'reference period' (see Art 7a(4), 5th subpara).

Under the AAR RTS the reference periods for these purposes differ depending on whether the counterparty has a notional clearing volume outstanding in relevant derivatives of more than or below €100 bn (see Art 7a(8), 4th subpara, and Arts 4(3), 5(3) and 6(3) and (4) AAR RTS).

Reporting obligation
Counterparties subject to the AAR must report every six months to their competent authority on the information necessary to assess compliance with the AAR (see Art 7b(1)).

These reports include reports on the aggregate thresholds for assessing compliance with the AAR including details of the total gross notional amount outstanding of the aggregate month-end average position for the previous 12 months in the categories of cleared relevant derivatives, broken down by category of derivative and by CCP (see Art 7 and Annex II AAR RTS).

Notes: bases for AAR calculations

Cleared or uncleared derivatives?
The bases of calculation of condition 1a (clearing threshold - NFCs) and condition 1b(i) (clearing threshold – FCs) do not include OTC derivative contracts that are cleared at an EU CCP or a non-EU CCP recognised under EMIR (see Arts 4a(3) and 10(3)). However, the basis of calculation of condition 1b(ii) (clearing threshold – FCs) includes both cleared and uncleared derivatives (see Art 4a(3)).

The bases of calculation for the other thresholds and for the purposes of reporting obligation are limited to cleared derivatives, which may include derivative contracts cleared otherwise than on an EU CCP or a recognised non-EU CCP.

Type of derivatives?
EMIR defines 'OTC derivatives' as derivatives that are not executed on a regulated market or a non-EU market which has been deemed equivalent by the Commission (see Art 2(7)).

The bases of calculation of condition 1a and 1b (clearing thresholds – NFCs and FCs) and condition 2 (AAR threshold) are limited to 'OTC derivatives' and thus exclude other derivatives (exchange-traded derivatives or ETDs). Derivatives executed on a non-EU market which has not been deemed equivalent by the Commission are considered 'OTC derivatives' (e.g., STIRs denominated in euro executed on ICE Futures Europe in the UK).

Type of derivatives? (continued)
The basis of calculation of condition 2 (AAR threshold) is limited to relevant derivatives that are OTC derivatives and thus excludes STIRs denominated in euro that are ETDs.

In contrast, all STIRs denominated in euro (whether OTC derivatives or ETDs) must be included when calculating the €6 bn, 85% and €100 bn thresholds and for the purposes of the reporting obligation as these calculations require the inclusion of all relevant derivatives.

The class of relevant derivatives is broader than the classes and sub-categories of derivative contracts relevant in relation to the selection of the five most relevant sub-categories of derivative for the purposes of the representativeness requirement (see Art 4(2) and Annex I AAR RTS).

In particular, the class of relevant derivatives may include euro short-term interest rate options even though these contracts are not included in the classes and sub-categories of derivatives relevant in relation to the selection of the five most relevant sub-categories of derivative.

Group or entity level?
Condition 1a (clearing threshold – NFCs) is calculated at an entity level (see Art 10(3)). In contrast, condition 1b (clearing threshold – FCs) is calculated on a group basis, except in relation to funds, where the calculation is at the level of the fund (see Art 4a(3)).

Condition 2 (AAR threshold) and the €6 bn, 85% and €100 bn thresholds are calculated on a group basis, but only where the counterparty is subject to EU consolidated supervision, in which case all entities in 'the group' must be included for the purposes of the calculation (see Art 7a(2)).

The AAR RTS do not specify that reports should be calculated on a group basis in accordance with Art 7a(2). They require the information required by Art 7(1) AAR RTS to be reported at the level of the counterparty, and that, where the counterparty is part of a group subject to EU consolidated supervision, the information must "also be reported at the level of any subsidiaries, within and outside the [EU]" (see Art 7a(2) AAR RTS).

However, ESMA's final report on the draft AAR RTS (para 178) indicates that the reporting obligation is intended to enable ESMA and national competent authorities to monitor compliance with both the €6 bn and the €100 bn thresholds which would not be possible unless those thresholds and the reports are calculated in the same way.

Notes: bases for AAR calculations
(continued)

Exclude intragroup transactions?
For the purposes of condition 1b (clearing threshold – FCs), both sides of a transaction between group members should be counted and the total contribution to the group-level threshold calculation would therefore be twice the notional of the contract.

Intragroup transactions within the relevant group are excluded when calculating condition 2 (AAR threshold), the €6bn threshold, the 85% threshold and the €100 bn threshold (see Art 7a(2) and the definition of intragroup transactions in Art 3).

It may be necessary to exclude intragroup transactions in accordance with Art 7a(2) for the purposes of calculating the reporting obligation if the reports are to facilitate monitoring of compliance with both the €6 bn and the €100 bn thresholds (see note above).

Exclude hedging transactions?
See Art 10(3) in relation to condition 1a (clearing threshold - NFCs). In contrast, hedging transactions should be included when calculating the other thresholds and for the purposes of the reporting obligation.

Exclude client cleared trades?
Client cleared trades should only be included when calculating conditions 1a and 1b(i) (clearing threshold – NFCs and FCs) if the trade is not cleared at an EU CCP or a non-EU CCP recognised under EMIR (because trades cleared at those CCPs are not included when calculating those conditions). However, an FC should include client trades cleared at any CCP when calculating condition 1b(ii) (clearing threshold – FCs), because both cleared and uncleared trades are included when calculating that condition. Counterparties required to include client cleared trades when calculating condition 1a or 1b (clearing threshold – NFCs and FCs) may also need to include both the client leg and the CCP (or clearing member) leg of the trade when calculating that condition.

Client cleared trades should also be included when calculating condition 2 (AAR threshold) and the 85% threshold, but it may only be necessary to count a client cleared trade once for these purposes.

Client cleared trades should be excluded when calculating the €100 bn threshold (see Art 7a(4), 6th subpara). It may also be possible to exclude client cleared trades when calculating the €6 bn threshold because this threshold directly relates to the representativeness requirement, which does not apply to client clearing activities (see Art 7a(4), 6th subpara).

The AAR RTS do not explicitly state that reports should exclude client cleared trades, but this may be necessary if the reports are to facilitate monitoring of compliance with both the €6 bn and the €100 bn thresholds (see note above).

Valuation and netting
The thresholds are calculated by reference to the gross notional value of the derivatives (converted into euro where relevant). However, when calculating the 'gross' notional values for the purposes of the conditions 1a and 1b (clearing thresholds – NFCs and FCs):

- a counterparty should first net its positions per counterparty, including where the counterparty is a CCP, and contracts and then add up the absolute notional value of all these net positions (calculated based on the notional amounts of the contracts); and
- netting per contract and counterparty should be understood as fully or partially offsetting contracts having exactly the same characteristics (type, underlying, maturity, etc.) with the only exception being the direction of the trade and notional amount (in case of partial offset) concluded with the same counterparty (ESMA OTC Answer 3(f)).

The same methodology may apply for the purposes of calculating the other thresholds and the reporting obligation.

A clearing member may not be able to net house trades and client trades or to net the client trades of different clients (even in the same omnibus account) for these purposes. Those trades may not be regarded as having "exactly the same characteristics" when "the only exception [is] the direction of the trade and notional amount (in case of partial offset) concluded with the same counterparty."

ESMA Q&As on the AAR

Q&A no. (date)	EMIR Art(s)	Summary of ESMA response
ESMA_QA_2418 (27 February 2025)	7a(1)	Only relevant derivatives that are OTC derivatives should be assessed for the purposes of the second condition (exceeding the AAR threshold) in Art 7a(1).
ESMA_QA_2506 (10 July 2025)	7a(1)	The second condition (exceeding the AAR threshold) should be calculated using the same methodology as for the first condition (exceeding the clearing threshold) in Art 7a(1), but on a continuous and not an annual basis.
ESMA_QA_2507 (10 July 2025)	7a(5)	The 85% threshold should be calculated by dividing the outstanding notional of relevant derivatives cleared at EU-authorised CCPs by the total notional of relevant derivatives cleared at any CCP.
ESMA_QA_2508 (10 July 2025)	7a(2)	The group-level treatment in Art 7a(2) applies to any EU entity in a group under EU consolidated supervision, not only groups consolidated under the Capital Requirements Directive.
ESMA_QA_2509 (10 July 2025)	7a(1); 7a(2)	The group-level treatment in Art 7a(2) only applies to the second condition (exceeding the AAR threshold) not the first condition (exceeding the clearing threshold) in Art 7a(1).
ESMA_QA_2510 (10 July 2025)	7a(2); 7a(4), 2nd subpara	The group-level treatment in Art 7a(2) applies when calculating the €6 bn threshold, but the representativeness requirement itself applies at entity level.
ESMA_QA_2511 (10 July 2025)	7a(2); 7a(8), 4th subpara	The group-level treatment in Art 7a(2) applies when calculating the €100 bn threshold, but the representativeness requirement itself applies at entity level.
ESMA_QA_2512 (10 July 2025)	Art. 7a(1)	The requirement to hold an active account at an EU CCP applies at individual entity level, if that entity has positions in relevant derivatives.
ESMA_QA_2513 (10 July 2025)	7a(2); 7a(3), point (d)	An entity subject to the representativeness requirement should determine the number of trades to clear based on its own activity in relevant derivatives, even though group activity determines whether the AAR applies at all.
ESMA_QA_2514 (10 July 2025)	7a(1), 7a(3), point (d); Art. 7a(6)	An entity subject to the representativeness requirement that only has a sub-set of relevant derivatives outstanding should meet the requirement for those derivatives, regardless of group activity. An entity that does not have any outstanding relevant derivatives is not subject to the AAR.
ESMA_QA_2515 (10 July 2025)	Art. 7a(1), 2nd subpara	An entity subject to the AAR may outsource notification to the competent authority to another group entity but remains responsible for the accuracy and timeliness of the notification.

ESMA Q&As on the AAR

(continued)

Q&A no. (date)	EMIR Art(s)	Summary of ESMA response
ESMA_QA_2516 (10 July 2025)	Art. 7a (general)	An entity subject to the AAR may outsource the tasks to which it is subject to another group entity but retains the legal responsibility for performance of those tasks.
ESMA_QA_2517 (10 July 2025)	7a(5)	Counterparties that exceed the 85% threshold are exempted from the operational, stress-testing and reporting requirements under Arts 7a(3), 7a(4), 4th subpara and 7b(1) (but not the representativeness requirement itself).
ESMA_QA_2518 (10 July 2025)	7a(4), 5th subpara	Counterparties carrying out the two-step calculation under Art 5a(4), 5th subpara, may be able to satisfy the representativeness requirement by clearing at least one trade per relevant subcategory per reference period.
ESMA_QA_2519 (10 July 2025)	7a (general)	Non-EU entities are not subject to the AAR, as it only applies to FCs and NFCs.
ESMA_QA_2626 (13 October 2025)	7a(5)	Counterparties that exceed the 85% threshold are exempted from the reporting requirements necessary to demonstrate compliance with the representativeness requirement, as well as from the reporting of activities, risk exposures and operational conditions.
ESMA_QA_2630 (13 October 2025)	7a(3), point (d)	The representativeness requirement does not apply to counterparties that do not have any activity at a Tier 2 non-EU CCP.
ESMA_QA_2776 (27 February 2026)	7a(4), 2nd subpara	The representativeness requirement ceases immediately a counterparty falls below the €6 bn threshold, subject to a final reporting obligation.
ESMA_QA_2777 (27 February 2026)	7a(4), 2nd subpara	The representativeness requirement applies when the €6 bn threshold is reached, with first reporting at the next reporting date (January or July) and full compliance demonstrable after a full year.
ESMA_QA_2778 (27 February 2026)	7a(4), 4th subpara	Stress testing of the AAR operational requirements should occur annually, model a three-fold increase in cleared notional, and be performed separately for each active account.
ESMA_QA_2779 (27 February 2026)	7a(1); 7a(2)	For an entity subject to the group-level treatment in Art 7a(2), only derivatives cleared by it and its group members, excluding intragroup transactions, should be assessed for the purposes of the second condition (exceeding the AAR threshold) in Art 7a(1).
ESMA_QA_2867 (subm. 15 June 2026)	7a(1)	Not yet answered: How should the second condition (exceeding the AAR threshold) be assessed under the new clearing threshold regime distinguishing FCs and NFCs and cleared and uncleared trades?
ESMA_QA_2872 (subm. 22 June 2026)	7a(2); 7a(3), point (d)	Not yet answered: Can an entity subject to the group-level treatment in Art 7a(2) rely on intragroup transactions to fulfill the representativeness requirement?

Glossary

AAR	Active account requirement under Art 7a(1)
AAR threshold	The threshold for the purposes of the second condition in Art 7a(1)
EMIR	Regulation (EU) No 648/2012 on OTC derivatives, CCPs and trade repositories
EMIR 3.0	Regulation (EU) 2024/2987 amending EMIR to mitigate excessive exposures to third-country CCPs and improve the efficiency of EU clearing markets
AAR RTS	Commission Delegated Regulation (EU) 2026/305 specifying the operational conditions, representativeness requirement and reporting requirements for the AAR
Clearing RTS	Commission Delegated Regulation (EU) No 149/2013 specifying, among other things, the clearing obligation
CCP	Central counterparty
FC	Financial counterparty
ETDs	Derivatives executed on an EU regulated market or a non-EU trading venue deemed equivalent by the Commission under Art 2a
Funds	Alternative investment funds and UCITS
IRD	Interest rate derivative
NFC	Non-financial counterparty
NFE	Non-financial entity
OTC derivatives	Derivatives not executed on an EU regulated market or a non-EU trading venue deemed equivalent by the Commission under Art 2a
Relevant derivatives	The derivative contracts relevant for the application of the AAR under Art 7a(6)
Representativeness requirement	The obligation under Art 7a(3), point (d), to clear representative derivative trades in an active account
RTS	Regulatory technical standards
STIRs	Short-term interest rate derivatives

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