

Supervisory briefing

On AAR representativeness obligation



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1 Executive Summary

1. The Review of the European Market Infrastructure Regulation (EMIR 3) seeks to address the financial stability risks caused by EU clearing members and clients being exposed to systemically important third-country central counterparties (Tier 2 CCPs), by requiring certain financial counterparties (FCs) and non-financial counterparties (NFCs) with exposures to clearing services of substantial systemic importance to hold an operational and representative active account at EU CCPs.
2. ESMA has developed Regulatory Technical standards (RTS) to further specify the conditions of the Active Account Requirement (AAR)¹. These RTS were published in the Official Journal of the European Union (OJEU) on 6 February 2026².
3. The current supervisory briefing aims to clarify and provide examples as to how compliance with the representativeness obligation should be performed and reported by counterparties in accordance with Article 7b of EMIR and Annex III of Commission Delegated Regulation (EU) 2026/305.
4. This briefing is expected to be considered by National Competent Authorities (NCAs) when supervising entities subject to the representativeness obligation under Article 7a of EMIR. It can also give market participants indications of compliant implementation of the relevant provisions.

2 Introduction and Background

5. ESMA is mandated to play an active role in building a common supervisory culture by promoting common supervisory approaches and practices.
6. Following the adoption by ESMA's Board of Supervisors of the draft RTS further specifying the conditions of the Active Account Requirement (AAR), ESMA and NCAs agreed that further guidance should be provided in relation to a key aspect of the RTS: the monitoring of counterparties' compliance with the representativeness obligation.

¹ ESMA91-1505572268-4201

² Commission Delegated Regulation (EU) 2026/305 of 29 October 2025 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards specifying the operational conditions, the representativeness obligation and the reporting requirements related to the active account requirement, OJ L, 2026/305, 6.2.2026

7. This supervisory briefing therefore seeks to provide guidance and promote supervisory convergence for the supervision of counterparties subject to the AAR, and particularly to the representativeness obligation.
8. This supervisory briefing is issued under Article 29(2) of the ESMA Regulation which enables ESMA to develop new practical instruments and convergence tools such as supervisory briefings. The purpose of these tools is to promote common supervisory approaches and practices. The content of this supervisory briefing is not subject to any 'comply or explain' mechanism for NCAs and is non-binding.
9. In addition, this Supervisory Briefing supports ESMA's broader objective of Simplification and Burden Reduction (SBR). By providing clearer supervisory expectations and promoting consistent application of the AAR representativeness obligation, the briefing aims to streamline supervisory interactions and reduce unnecessary complexity for NCAs and counterparties alike. In doing so, it contributes to a more efficient and proportionate supervisory framework while maintaining high standards of oversight and market integrity.
10. The next sections of this document are organised as follows: section 3.1 clarifies how counterparties should identify the most relevant subcategories for the purpose of the AAR representativeness obligation; section 3.2 explains how to report trades for the purpose of Article 9 and Annex III of Commission Delegated Regulation (EU) 2026/305, and section 3.3 provides a worked example of compliance with reporting of the representativeness obligation.

3 Supervisory briefing on the representativeness obligation

3.1 Identifying the most relevant subcategories

11. Articles 4(2), 5(2) and 6(2) of Commission Delegated Regulation (EU) 2026/305 specify that "The [five] most relevant subcategories shall be selected, for each class of derivatives [...] over the reference period referred to in paragraph 3".
12. Accordingly, counterparties should identify on a continuous basis, for each reference period, the relevant number of most relevant subcategories, in accordance with Commission Delegated Regulation (EU) 2026/305.

Category of derivatives	# of most relevant subcategories	Out of...	Reference period	
			<100 bn EUR counterparties	>100 bn EUR counterparties
EUR OTC IRD	5	12	6 months	1 month

PLN OTC IRD	1	1	12 months	12 months
EUR STIR Euribor	4	4	6 months	1 month
EUR STIR €STR	4	4	12 months	6 months

13. As a result, **for EUR OTC IRD contracts (Fixed-to-float, OIS and FRA)**, the identification of the most relevant subcategories may change from one reference period to the other, depending on the activity of the counterparty in the relevant derivatives at the clearing service of substantially systemic importance.
14. Indeed, for the remaining categories of AAR contracts (PLN OTC IRD, and EUR STIR), the number of most relevant subcategories to be selected is always equal to the maximum number of subcategories.

3.2 Reporting on the representativeness compliance

15. ESMA notes that Article 7a(4), fifth subparagraph of EMIR provides that “For the representativeness obligation referred to in paragraph 3, point (d), to be fulfilled, counterparties shall clear, **on annual average basis**, at least five trades in each of the most relevant subcategories per class of derivative contracts and per reference period”.
16. In addition, Recital (14) of Regulation (EU) clarifies that “in assessing whether counterparties fulfil the representativeness obligation, competent authorities should consider the **total number of trades over a year**”.
17. As a result, even if the identification of the most relevant subcategories should be performed per reference period, ESMA notes that there is no requirement for counterparties to clear 5 (or less) trades per subcategory every reference period (e.g. every month or every 6 months). Instead, compliance should be assessed on a yearly average basis, i.e. on the basis of the trades cleared over the past 12 months at the reporting date.
18. Based on the above, ESMA notes that, given the potential changes in the identification of the most relevant subcategories, it would be challenging to require counterparties to rapidly clear 5 trades “on average” in a given subcategory which was not considered as most relevant during the previous reference period(s).
19. Therefore, in order to ensure predictability and facilitate compliance by counterparties, ESMA is of the view that, for compliance and reporting purposes, counterparties should identify, on each reporting date (i.e. January and July), the 5 most relevant subcategories, “on average”, over the past rolling 12 months period, and demonstrate that they have cleared the relevant number of trades per subcategory on average over this 12 months period.

20. While this approach will significantly simplify the reporting, it will not entirely remove uncertainty for EU counterparties with a highly volatile activity across subcategories. Indeed, for such counterparties, the 5 most relevant categories “on a yearly average” would be known with certainty only toward the end of the rolling year, hence possibly forcing them to concentrate their trades at the end of the reporting period to meet the representativeness obligation.

21. ESMA however notes that:

- (i) a careful monitoring of the most relevant subcategories per reference period should allow counterparties to anticipate and calibrate their trades in the active account, and
- (ii) the limited number of trades required (60 trades per year per subcategory for products with a 1-month reference period) would limit the burden on counterparties.

22. Based on the above-described approach, the reporting in accordance with Article 9 and Annex III of Commission Delegated Regulation (EU) 2026/305 should indicate:

1. the most relevant subcategories identified by the counterparty for each class of derivative contracts cleared at clearing service of substantial systemic importance;
2. the number of trades cleared in the each of the most relevant the subcategories at a clearing service of substantial systemic importance, over the past 12 months [left part of the table];
3. the number of trades cleared, based on the average for the 12 previous months, in each of the most relevant subcategories at an EU-CCP [right part of the table];
4. the duration of the reference period used for calculating the minimum required number of trades to meet the condition of representativeness.

3.3 Worked example

Hypothetical example on EUR OTC Fixed-to-float

23. The following hypothetical example is based on a theoretical counterparty with more than 100 billion EUR cleared national, subject to the representativeness requirement, and active on all subcategories of the EUR OTC Fixed-to-float category.

24. The reporting month is January. The different subcategories of the EUR OTC Fixed-to-float have been arbitrarily named A to L, as illustrated in the table below.

TABLE 1 - HYPOTHETICAL NAMING OF SUBCATEGORIES

Maturity	Trade size (in EUR million)		
	[0-25M]	(25M-50M]	(50M+]
[0-5Y]	A	E	I
(5Y-10Y]	B	F	J
(10Y-15Y]	C	G	K
(15Y+]	D	H	L

25. The below table illustrates the hypothetical number of trades cleared by the counterparty at a clearing service of substantial systemic importance, per subcategory.

TABLE 2 - NUMBER OF TRADES AT A CLEARING SERVICE OF SUBSTANTIAL SYSTEMIC IMPORTANCE

Subcategories	Number of trades cleared at a clearing service of substantial systemic importance												Average number of trades
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
A	259	529	704	270	421	488	212	507	690	555	33	774	453.50
B	405	535	692	387	312	70	340	650	71	135	270	48	326.25
C	786	200	562	123	160	720	367	40	107	579	516	736	408.00
D	739	75	662	190	362	749	243	344	222	569	792	777	477.00
E	435	2	275	240	414	434	342	723	505	568	370	660	414.00
F	587	704	509	281	442	589	743	181	594	166	799	159	479.50
G	31	571	11	40	712	411	563	574	227	217	647	259	355.25
H	488	595	637	368	304	174	188	726	749	101	537	223	424.17
I	205	756	617	221	113	575	400	645	470	539	296	141	414.83
J	369	538	498	211	282	352	264	615	291	736	160	300	384.67
K	94	400	425	74	705	386	297	766	498	680	431	525	440.08
L	40	407	500	119	302	413	380	310	532	274	565	346	349.00
Most relevant	C,D,E,F,H,F,G,H,I,J,K,A,B,D,H,I	A,B,E,F,H,A,E,F,G,K	A,C,D,F,I	C,F,G,I,L	B,E,F,H,L	A,E,F,H,L	C,D,E,J,K	D,F,G,H,L	A,C,D,E,K	A,D,F,H,K			

26. The most relevant subcategories are identified, based on the number of trades, per reference period. However, to simplify reporting, compliance will be assessed only on the most relevant subcategories identified on a yearly average basis (i.e. in this case on subcategories A, D, F, H and K).

27. Table 3 below indicates the hypothetical number of trades cleared in the active account, and the yearly average for all subcategories. The counterparty is deemed compliant as they have cleared on a yearly average, more than 5 trades in the 5 most relevant subcategories.

TABLE 3 - NUMBER OF TRADES IN THE ACTIVE ACCOUNT

Subcategories	Number of trades cleared at an EU CCP												Averge number of trades
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
A	10	6	8	6	10	4	2	4	3	4	2	3	5.17
B	8	5	8	5	4	3	1	7	2	10	6	2	5.08
C	3	4	2	5	7	8	5	3	1	0	9	3	4.17
D	5	9	3	1	6	5	4	6	4	9	10	9	5.92
E	10	5	2	5	6	5	5	1	3	2	1	2	3.92
F	9	4	4	8	3	5	10	8	8	7	2	3	5.92
G	1	5	6	7	3	5	5	0	7	1	5	5	4.17
H	6	10	9	7	10	9	2	7	8	10	2	4	7.00
I	6	5	6	2	3	2	10	1	3	4	8	6	4.67
J	7	8	1	4	4	8	9	3	1	2	2	1	4.17
K	6	4	10	1	2	8	6	3	5	6	6	10	5.58
L	3	8	3	9	4	3	1	2	2	6	4	6	4.25

28. For the purpose of reporting, the counterparty would have to report, in accordance with Annex III of Commission Delegated Regulation (EU) 2026/305:

1. The frequency of the reference period: monthly, bi-annually and annually.
2. The number of trades cleared in the most relevant subcategories at a clearing service of substantial systemic importance, over the past rolling 12 months period.
3. The number of trades cleared, on average over the past rolling 12 months period, in the most relevant subcategories identified.

TABLE 4 - REPORTING EXAMPLE

Reference period	Monthly						
Clearing service of substantial systemic importance under Article 25(2c)				Authorised CCP under Article 14			
Maturity	[0- 25M]	(25M50M]	(50M+]	Maturity	[0- 25M]	(25M50M]	(50M+]
[0-5Y]	453.50			[0-5Y]	5.17		
(5Y-10Y]		479.50		(5Y-10Y]		5.92	
(10Y15Y]			440.08	(10Y-15Y]			5.58
(15Y+]	477	424.17		(15Y+]	5.92	7.00	