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ESAs Final Report

Draft RTS amending Commission Delegated Regulation (EU) 2016/2251 with regard to initial margin requirements applicable to contracts of counterparties that fall below the threshold

Contents

1. Executive Summary

Reasons for publication

1. Commission Delegated Regulation (EU) 2016/2251 adopts the regulatory technical standards (RTS) on the risk mitigation techniques for OTC derivative contracts not cleared by a central counterparty (CCP) developed by the European Supervisory Authorities (ESAs) under Article 11(15), first subparagraph, points (a), (b) and (c) of Regulation (EU) No 648/2012 (European Market Infrastructure Regulation – EMIR). In particular, this Regulation specifies the level of collateral that counterparties to bilateral derivatives transactions need to maintain, the type of collateral, and segregation arrangements.

2. Article 28(1) of Commission Delegated Regulation (EU) 2016/2251 allows counterparties to derogate in their risk management procedures under Article 11(3) of EMIR from the collection of initial margins for all new over-the-counter (OTC) derivative contracts entered into within a calendar year, where one of the two counterparties has an aggregate month-end average notional amount (AANA) of non-centrally cleared OTC derivatives for the months March, April and May of the preceding year below the threshold of EUR 8 billion.

3. The draft RTS included in this document propose to extend the scope of the derogation to existing contracts once one of the counterparties falls below that threshold to address the practical issues resulting from the absence of such derogation. As a consequence, the draft RTS simplify the treatment applicable when one of the two counterparties falls below the threshold, while aligning with the treatment applied in other jurisdictions in these situations.

Next steps

4. This Final Report is sent to the European Commission, and the ESAs are submitting the draft technical standards presented in this document for endorsement, in the form of a Commission Delegated Regulation, i.e. a legally binding instrument directly applicable in all Member States of the European Union. Following the endorsement, they are then subject to non-objection by the European Parliament and the Council, before being published in the *Official Journal of the European Union*.

2. Background and rationale

5. Commission Delegated Regulation (EU) 2016/2251 adopts the RTS on the risk mitigation techniques for OTC derivative contracts not cleared by a CCP developed by the European Supervisory Authorities (ESAs) under Article 11(15), first subparagraph, points (a), (b) and (c), of Regulation (EU) No 648/2012 (European Market Infrastructure Regulation – EMIR). In particular, this Regulation specifies the level of collateral that counterparties to bilateral derivatives transactions need to maintain, the type of collateral, and segregation arrangements.

6. Article 28(1) of Commission Delegated Regulation (EU) 2016/2251 allows counterparties to derogate in their risk management procedures under Article 11(3) of EMIR from the collection of initial margins for all new OTC derivative contracts entered into within a calendar year, where one of the two counterparties has an aggregate month-end average notional amount (AANA) of non-centrally cleared OTC derivatives for the months March, April and May of the preceding year below the threshold of EUR 8 billion. In this regard, this requirement exempts from initial margin requirements new trades entered into by the two counterparties once one of them falls below the threshold; however, existing trades between the counterparties are not exempt from initial margin requirements.

7. This partial exemption from initial margin requirements in case one of the counterparties falls below the threshold imposes a burden for counterparties that have to maintain initial margins calculation and exchange, and custodial relationships, for existing contracts. In particular, this burden continues for the length of those contracts. On the contrary, new trades entered into by those counterparties would remain outside initial margin requirements. In addition, the regulatory approach in other jurisdictions exempts existing contracts from initial margin requirements once a counterparty falls below the threshold. This discrepancy leads to complexity in the management of trades with counterparties from those jurisdictions, and it raises potential level playing field issues, given the resulting incentives to trade with counterparties from jurisdictions that exempt existing contracts from initial margin requirements.

8. Against this background, this Report includes draft amending RTS to extend the exemption in Article 28(1) of Commission Delegated Regulation (EU) 2016/2251, to also cover existing OTC derivative contracts entered into by the two counterparties, when one of the counterparties falls below the threshold.

9. With regard to the time schedule to exempt the contracts from initial margin requirements, Article 28(1) of Commission Delegated Regulation (EU) 2016/2251 foresees that the two counterparties may not collect initial margins from 1 January until 31 December of a given year when the AANA referring to the months of March, April and May of the previous year is below the threshold of EUR 8 billion. Under the rules in other jurisdictions, counterparties may be

required to perform alternative calculations to assess if they fall below the threshold and could be exempt from initial margin requirements with a different timeline[1], such as already from 1 September following the threshold calculation.

10. However, the application date of initial margin requirements from 1 January of a given year as envisaged by Article 28(1) of Commission Delegated Regulation (EU) 2016/2251 provides counterparties that were not subject to initial margin requirements with additional preparation time for the compliance with those requirements once the threshold is exceeded. In this context, Article 28(1) of Commission Delegated Regulation (EU) 2016/2251, read in conjunction with Article 36 of that Regulation, is understood to specify both when counterparties that are subject to initial margin requirements should cease to be subject to those requirements for new transactions, and when counterparties that are not subject to initial margin requirements should become subject to those requirements.

11. The amending draft RTS propose to preserve the additional time until 1 January of the following year granted to counterparties that were previously not subject to initial margin requirements, with a view to ease their preparation for the application of those requirements. At the same time, the amending draft RTS propose to exempt the application of initial margin requirements as early as 1 June once the AANA calculated on the basis of the months of March, April and May is below the threshold. To summarise, the following mechanics applies under the proposed draft RTS:

   a) If one of the two counterparties has an AANA referring to the months of March, April and May of year X which is below the threshold of EUR 8 billion, initial margin requirements cease to apply for all non-centrally cleared OTC derivatives between the two counterparties as early as 1 June of year X. It should be noted that counterparties retain the possibility to delay ceasing the collection of initial margins at a later date, as necessary, and also have the possibility to collect initial margins at any time, should they wish to.

   b) If both counterparties have an AANA referring to the months of March, April and May of year X which is above the threshold of EUR 8 billion, the counterparties will become subject to initial margin requirements on new[2] non-centrally cleared OTC derivative contracts from 1 January of year X+1. It should be noted that this does not preclude counterparties to start collecting initial margins earlier than 1 January of year X+1, should they wish to.

The proposed mechanics should enable to exempt initial margin requirements as soon as one of the counterparties is shown to have an AANA below the threshold, while however preserving

[1] ISDA has compiled the AANA calculation methods and periods, compliance dates and thresholds here.

[2] MGN90.4 of the Basel IOSCO framework envisages that initial margin requirements will apply to all new contracts when entering the framework, while applying initial margin requirements to existing derivative contracts is not required.

adherence to international standards[3] with regard to the calculation method and months that should be taken into account for the determination of the AANA.

12. In addition, Regulation (EU) 2024/2987 (EMIR 3) adds a new paragraph 3a in Article 11 of EMIR, which exempts single stock options and equity index options not cleared by a CCP from risk-management procedures requiring the timely, accurate and appropriately segregated exchange of collateral. Taking this into account, the amending draft RTS included in this document propose to consistently update Commission Delegated Regulation (EU) 2016/2251 by removing the outdated transitional arrangements applicable to single stock equity options and equity index options, while these transactions continue to remain exempt from margin requirements in accordance with the Level 1 text.

[3] MGN90.2 of the Basel IOSCO framework envisages the calculation of the AANA as a month-end average with reference to the months of March, April and May of a given year.

3. Draft Regulatory Technical Standards

COMMISSION DELEGATED REGULATION (EU) …/…

of XXX

amending the regulatory technical standards laid down in Delegated Regulation (EU) 2016/2251 as regards initial margin requirements applicable to contracts of counterparties that fall below the threshold

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (1) [4], and in particular Article 11(15), fifth subparagraph thereof in relation to the first subparagraph, points (a), (b) and (c) of that Article,

Whereas:

(1) Commission Delegated Regulation (EU) 2016/2251 (2) [5] specifies, among others, the risk-management procedures, including the levels and type of collateral and segregation arrangements referred to in Article 11(3) of Regulation (EU) No 648/2012, that financial counterparties are required to have for the exchange of collateral, with respect to their OTC derivative contracts not cleared by a central counterparty.

(2) The derogation set out in Article 28(1) of Delegated Regulation (EU) 2016/2251 to collect initial margins where one of the two counterparties has an aggregate month-end average notional amount of non-centrally cleared OTC derivatives for the months March, April and May of the preceding year of below EUR 8 billion, only applies to new OTC derivatives entered into within a calendar year. The requirement to maintain initial margins calculation and exchange, and custodial relationships, for existing OTC derivative contracts once one of the counterparties falls below that threshold creates a burden for counterparties, and an inconsistency with the initial margin requirements applied to new OTC derivative contracts entered into by the counterparties. To avoid this complexity and align with the treatment in jurisdictions outside of the Union, the

[4] (1) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1, ELI: http://data.europa.eu/eli/reg/2012/648/oj).

[5] (2) Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty (OJ L 340, 15.12.2016, p. 9, ELI: https://eur-lex.europa.eu/eli/reg_del/2016/2251/oj).

derogation from collecting initial margin requirements should be extended to cover also existing OTC derivative contracts when one of the two counterparties falls below the threshold.

(3) Due to the entry into force of Regulation (EU) 2024/2987 (3) [6] amending Regulation (EU) No 648/2012 and which introduced a new Article 11(3a) therein, single stock options and equity index options not cleared by a CCP are not subject to risk-management procedures requiring the timely, accurate and appropriately segregated exchange of collateral. Delegated Regulation (EU) 2016/2251 should accordingly be amended to correct the outdated references to transitional arrangements applicable to single stock equity options and equity index options, which continue to remain exempt from margin requirements in accordance with Article 11(3a) of Regulation (EU) No 648/2012.

(4) Delegated Regulation (EU) 2016/2251 should therefore be amended accordingly.

(5) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (the ESAs).

(6) The amendments to Delegated Regulation (EU) 2016/2251 are limited adjustments of the existing regulatory framework. Given the limited scope and impact of those amendments introduced by the regulatory technical standards, it would be highly disproportionate for the ESAs to conduct open public consultations or analyses of the potential related costs and benefits of introducing such standards. The ESAs nevertheless requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council (4) [7], the opinion of the Insurance and Reinsurance Stakeholder Group and the Occupational Pensions Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council (5) [8], and the opinion of the Securities and Markets

[6] (3) Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets (OJ L, 2024/2987, 4.12.2024, ELI: https://eur-lex.europa.eu/eli/reg/2024/2987/oj).

[7] (4) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12, ELI: https://eur-lex.europa.eu/eli/reg/2010/1093/oj).

[8] (5) Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48, ELI: https://eur-lex.europa.eu/eli/reg/2010/1094/oj).

Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [(6)] [9],

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2016/2251

Delegated Regulation (EU) 2016/2251 is amended as follows:

(1) in Article 28, paragraph 1 is replaced by the following:

'1. By way of derogation from Article 2(2), and subject to the following conditions, counterparties may provide in their risk management procedures that:

(a) where one of the two counterparties has an aggregate month-end average notional amount of non-centrally cleared OTC derivatives for the months March, April and May of a given year of below EUR 8 billion:

(i) initial margins are not collected for non-centrally cleared OTC derivative contracts between the two counterparties;

(ii) initial margins collected between the two counterparties for outstanding non-centrally cleared OTC derivative contracts are released;

(b) where both of the counterparties have an aggregate month-end average notional amount of non-centrally cleared OTC derivatives for the months March, April and May of a given year of above EUR 8 billion, counterparties collect initial margins exclusively for new non-centrally cleared OTC derivatives contracts entered into by the two counterparties.

Where the condition in point (a) is met, counterparties may implement the resulting exemption from the application of initial margin requirements as early as 1 June of the year mentioned in that point. Where the condition in point (b) is met, counterparties shall apply initial margin requirements in accordance with Article 2(2) no later than 1 January of the calendar year following the year mentioned in that point.

The aggregate month-end average notional amount referred to in this paragraph shall be calculated at the counterparty level or at the group level where the counterparty belongs to a group.'

(2) in Article 38, paragraph 1 is deleted.

[9] [(6)] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84, ELI: https://eur-lex.europa.eu/eli/reg/2010/1095/oj).

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President

4. Consultation of the ESAs Stakeholder Groups

13. The Stakeholder Groups of the three ESAs were consulted in parallel during one month. The ESAs received a number of responses from individual members.

14. The members who provided feedback were largely supportive of the proposed draft RTS and shared some considerations or suggestions. In view of the feedback received, no changes to the proposed draft RTS were made. Nonetheless, the ESAs wish to provide the following feedback to the following comments provided by members:

- With regard to the relationship between the thresholds for cleared and uncleared derivatives, these are independent and are referring to different scopes of transactions. For example, the EUR 8 billion threshold under Article 28 of the RTS is relative to all uncleared OTC derivatives contracts at group level in accordance with Article 39 of the RTS. In contrast, the clearing thresholds are set by asset class of OTC derivatives contracts. It is also noted that the EUR 8 billion threshold under Article 28 of the RTS is aligned with the BCBS-IOSCO international standards on margin requirements for non-centrally cleared derivatives.

- With regard to the request to consider whether the release of initial margins already collected for outstanding contracts should be described as taking place in an orderly manner, in line with contractual arrangements and operational readiness, this is already reflected in the proposal. Under the proposal, counterparties are free to decide not to apply the derogation proposed and to continue exchanging initial margins. Should they decide to apply such derogation, they are also free to clarify how the release of initial margins should take place.

- With regard to the fast-track adoption process of these RTS via a consultation with the Stakeholders Groups of the ESAs, as opposed to a standard public consultation, and the absence of impact assessment in light of the limited scope and impact of the RTS, the ESAs note that this process has already been used in the past when it was considered highly disproportionate to conduct open public consultations or analyses of the potential related costs and benefits of introducing the standards. The ESAs take note in particular of the acknowledgement received (see second response below from the Insurance and Reinsurance Stakeholder Group) that for these RTS it might be not necessary to run an open public consultation.

— With regard to the suggestion to acknowledge via a new recital the difference in impact of the draft amending RTS depending on different types of sectors, it is noted that these RTS, which were published in December 2016, are not sector specific. Therefore, despite different entities may be affected by the draft RTS in different ways, it does not appear appropriate to include such recital.

— With regard to the alignment with other jurisdictions with regard to the AANA calculation period, the ESAs note that international standards refer to the months of March, April and May for the purposes of the calculation of the AANA. The approach included in the draft RTS is hence considered aligned with international standards.

— With regard to evidence-based policy making, the ESAs inform that they have been repeatedly approached concerning the requirements of the RTS by a relevant industry association that represents affected counterparties. The treatment employed in other jurisdictions was also considered by the ESAs, as it matters to ensure a level playing field.

— With regard to the suggestion on review clause and research mandates to the ESAs and the Commission in relation to the RTS amendment, it is noted that mandates are for co-legislators to include in the Regulation. In addition, the ESAs at this stage do not consider that the amendment should be temporary.

15. The individual responses received are listed below for reference.

a) EBA Stakeholder Group

16. With regard to the Banking Stakeholders Group, it was received the response of one member:

EACT will support this report because gives significant regulatory relief that directly benefits corporate treasurers managing over-the-counter (OTC) derivative portfolios. By amending the existing regulatory technical standards (RTS), the EBA and ESAs aim to reduce the operational and financial pressure on firms that fluctuate around the EUR 8 billion threshold.

Here is how these changes specifically benefit treasury operations:

1. Reduced Operational Overhead

— Elimination of Legacy Margining: Previously, if a counterparty fell below the EUR 8 billion threshold, they were exempt from margining new trades but still had to manage initial margins for existing ones. The report proposes extending the exemption to all outstanding contracts, allowing treasurers to shut down margin calculation and exchange processes entirely for that counterparty relationship.

— Termination of Custodial Relationships: Treasurers will no longer be forced to maintain costly custodial accounts and legal arrangements for 'legacy' trades once the threshold is no longer met.

2. Immediate Liquidity Relief

— Collateral Release: The new rules explicitly state that when a counterparty falls below the threshold, initial margins already collected for outstanding contracts can be released. This provides an immediate return of liquid assets to the corporate balance sheet.

— Accelerated Exemption Timeline: Under the proposed rules, firms can cease the collection and exchange of initial margins as early as 1 June of the year they are found to be below the threshold, rather than waiting until the following January.

3. Regulatory Harmonisation and Certainty

— Level Playing Field: The report aligns EU rules with other global jurisdictions that already exempt existing contracts when a firm drops below the threshold. This removes the incentive to favor non-EU counterparties simply to avoid the 'burden' of legacy margining.

— Preparation Buffer: While firms can stop margining quickly (by June) when they fall below the threshold, they are still granted until 1 January of the following year to start margining if they cross back above the threshold. This 'asymmetric' timeline gives treasurers more time to prepare for compliance when growth occurs.

4. Simplified Asset Treatment

— Equity Options Clarity: By removing outdated transitional arrangements and confirming that single stock and equity index options are exempt from margin requirements per EMIR 3, treasurers gain permanent legal certainty for these hedging instruments.

b) EIOPA Stakeholder Groups

17. With regard to the Occupational Pensions Stakeholder Group, it was received the response of one member:

I think this targeted simplification goes in the right direction. More generally, AEIP support measures that reduce unnecessary operational complexity and compliance burdens where these do not seem to deliver a commensurate prudential benefit. This is particularly relevant for long-term institutional investors and occupational pension institutions using OTC derivatives for prudent risk-management purposes, including hedging.

In this respect, I view positively the proposed clarification that, where one of the two counterparties has an AANA below EUR 8 billion, initial margins would no longer need to be collected for non-centrally cleared OTC derivative contracts between those counterparties, and initial margins already collected for outstanding contracts could be released. I also note positively that the draft allows counterparties to apply that exemption as early as 1 June of the relevant year, while preserving the later 1 January timeline for counterparties that move into scope after exceeding the threshold. This seems to me a pragmatic approach that combines simplification with operational preparedness.

I also note the removal of outdated transitional provisions relating to single stock options and equity index options following EMIR 3. This appears to be a sensible technical alignment with the updated Level 1 framework.

Overall, I have no major concerns regarding the direction of the proposed amendment.

At the same time, I believe that legal clarity, operational simplicity and proportionality remain essential. The amended framework should be easy to apply in practice, including in cross-border relationships and in cases where counterparties move above or below the threshold over time. More generally, operational requirements should remain appropriately calibrated to the actual scale and risk profile of the activity concerned.

One additional point on which I would welcome further clarification concerns the interaction between the proposed initial margin treatment and the central clearing framework under EMIR. I understand that the EUR 8 billion threshold in the draft RTS relates to non-centrally cleared OTC derivatives and therefore serves a different purpose from the thresholds relevant for the clearing obligation. Nevertheless, at first sight, the relationship between the two frameworks is not entirely self-evident, particularly as the threshold used here appears relatively high compared with the clearing thresholds under EMIR. Further clarification on the practical scope of the proposed simplification, including whether this may differ depending on the category of counterparty or the type of derivatives concerned, would therefore be helpful.

18. With regard to the Insurance and Reinsurance Stakeholder Group, two members provided comments.

a) First response:

I am supportive of the overall direction of the proposal, particularly as it appears to promote simplification, proportionality and consistency in the treatment of new and existing uncleared OTC derivative contracts where one of the counterparties falls below the relevant AANA threshold.

I would only suggest considering a few minor points:

— whether the release of initial margins already collected for outstanding contracts should be described as taking place in an orderly manner, in line with contractual arrangements and operational readiness;

— on a purely editorial note, paragraph 12 appears to refer to ’singe stock equity options’, which should presumably read ‘single stock equity options’.

Overall, I am supportive of the amendments, which seem aligned with proportionality and simplification.

b) Second response:

The consultation of the ESAs stakeholder groups, especially also with the Insurance and Reinsurance Stakeholder Group (IRSG), on the ‘Draft RTS amending Commission Delegated Regulation (EU) 2016/2251 with regard to initial margin requirements applicable to contracts of counterparties that fall below the threshold’ (the ‘draft RTS’) is welcomed. In the following some issues are highlighted and suggestions are made which the ESAs should consider.

1. Non-public consultation without impact assessment

It is acknowledged that in this case it might be not necessary to conduct an open public consultation or an impact assessment to analyse the potential related costs and benefits of different policy options. However, the consultation of stakeholder groups is not a substitute for open consultations and should be restricted to purely technical issues. In this case, an exemption might be justified, however, it should not become the standard procedure for changing regulation for financial markets.

In Recital 6 the exemptional character of the non-public consultation process without any impact assessment should be clarified and mentioned:

‘The ESAs nevertheless requested as an exception only the opinion of [the ESAs stakeholder groups]. This is without prejudice to other amending RTS in the future and open public consultations with im-pact assessments with different policy options and a cost benefit analysis will be the regular procedure.’

The final report does not deal with other policy options. However, different options to reduce the problem might be also feasible, e. g. changing the threshold of the aggregate month-end average notional amount (AANA) to EUR X billion. But the proposed solutions might be the first option.

2. Insurance vs. banking

It is important to note that insurance companies and insurance groups have a different role than other investors and other than credit institutions.

Insurance companies are also subject to the Initial Margin (IM) requirements for non-centrally cleared OTC derivatives, although the impact on them can differ significantly from that on banks. Under EMIR, insurers are classified as financial counterparties, which means they must exchange both Variation Margin and, once certain thresholds are exceeded, Initial Margin. In principle, the regulatory framework applies uniformly across financial institutions, but the practical effects vary depending on the scale and nature of their derivatives activity.

Banks typically maintain large, complex, and highly active derivatives portfolios, often spanning multiple asset classes and trading strategies. As a result, they tend to exceed the EUR 8 billion average aggregate notional threshold for IM much earlier and more consistently. For them, IM exchange is a routine and deeply embedded part of their collateral management infrastructure.

Insurance companies, by contrast, generally use derivatives in a more targeted and risk-management-oriented way, for example, to hedge interest-rate or currency exposures arising from long-term liabilities (e.g. life insurance). While some large (international) insurance groups do exceed the IM threshold and therefore must exchange segregated Initial Margin, many insurers operate below this level. For these firms, only Variation Margin applies, and the operational burden associated with IM, such as third-party segregation, model validation, and expanded documentation, does not arise.

In short, insurers are indeed covered by the IM framework, but the degree to which they are affected depends on their derivatives volumes and business model. Large international insurance groups may face obligations similar to those of banks, whereas smaller or more conservatively positioned insurers may remain below the threshold and therefore experience a much lighter regulatory impact. In summary, the amendments might help insurance companies and insurance groups also even if they do trade less frequently.

In Recital (2new) this difference of impact of the amendments could be acknowledged:

(2new) Although all financial counterparties will benefit from the amendments it is acknowledged that insurance companies and insurance groups are more often closer to the thresholds than other financial institutions because of the different nature of their trading.

This new recital highlights sector-specific differences and tries to capture the impact of the amendments.

3. Alignment with other jurisdictions (outside the EU)

The ESA final report mentions alignment with other jurisdictions (outside the EU), but there are no examples of how other jurisdictions deal with the same problem regarding the AANA calculation period (three months). It should be noted that EU insurers and reinsurers as international institutional investors benefit from harmonised rules across jurisdictions (outside the EU). An alignment prevents regulatory arbitrage and promotes equal conditions of competition.

4. Evidence-based policy making

From an academic perspective, proposals for amendments to existing regulations should be evidence-based.

Evidence-based regulation refers to regulatory decision-making that is grounded in verifiable data, rigorous analysis, and systematic evaluation rather than ideology, intuition, or political expediency. It requires regulators and supervisors to collect and assess the best available evidence to understand a problem, evaluate policy options, and predict likely impacts. This approach ensures that rules are proportionate, effective, and aligned with clearly identified objectives, as emphasised in the EU's better regulation agenda, which aims to design policies informed by robust evidence and tailored to societal needs.

In practice, evidence-based regulation involves systematic evidence gathering, rigorous analysis, transparency, and continuous evaluation. OECD guidance highlights that evidence is central to 'regulating for results', helping governments address complex challenges while maximising benefits and minimising costs through smarter, risk-based approaches. This means regulators must not only collect data but also critically assess its quality, engage stakeholders, and monitor regulatory outcomes over time. By doing so, evidence-based regulation strengthens legitimacy, improves policy effectiveness, and helps maintain public trust by ensuring that regulatory interventions are both necessary and proportionate.

In this case, in the final report of the ESAs the number of cases where the threshold was met is not mentioned. It would be helpful to have more information about how common the issue described is in practice (and not only in theory). Therefore, a review clause and a 'research clause' are suggested (see points 5. and 6.).

5. Review clause

The amendments should be reviewed after three years to ensure practicability and to take into account market developments:

Article 1a – Review

By [insert date three years after the date of entry into force], the European Supervisory Authorities (ESAs) shall review the application and the impact of the exemption from initial margin requirements set out in Article 28(1) of Delegated Regulation (EU) 2016/2251.

This review shall specifically assess the appropriateness of the EUR 8 billion aggregate month-end average notional amount threshold, the reduction of operational burden for financial counterparties, differentiated into groups like banks and insurers, and any potential effects on *the level playing field with other jurisdictions. The ESAs shall submit a report thereon to the European Commission, accompanied, if appropriate, by a proposal to amend this Regulation.*

6. Research clause

The ESA should encourage more sector-specific research on financial markets:

Article 1b – Support for Sector-Specific Research and Future Revisions

The Commission, in cooperation with the European Supervisory Authorities (ESAs), shall actively encourage and support independent research regarding the impact, efficiency, and systemic consequences of initial margin requirements and the exemptions set out in this Regulation.

Such research shall be also sector-specific, explicitly differentiating between the operational realities, liquidity profiles, and risk management models of credit institutions (banking sector) and insurance undertakings and insurance groups (insurance sector).

The Commission and the European Supervisory Authorities shall systematically take the findings of this sector-specific research into account during any future reviews, impact assessments, and revisions of the regulatory technical standards under Regulation (EU) No 648/2012.

Such research could help to avoid one-size-fits-all approaches and contribute to the short-, medium- and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses (= EIOPA's objective, see Article 1(6) of the EIOPA Regulation).

c) ESMA Stakeholder Group

19. No feedback was received from the Securities and Markets Stakeholder Group.