

ESMA Consultation Paper on the clearing and derivative trading obligations in view of the 2022 status of the Benchmark transition

AMAFI' s answer

Association française des marchés financiers (**AMAFI**) is the trade organisation working at national, European and international levels to represent financial market participants in France. It mainly acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI has more than 150 members operating in equities, fixed-income and interest rate products, as well as commodities, derivatives and structured products for both professional and retail clients. Nearly one-third of its members are subsidiaries or branches of non-French institutions.

AMAFI welcomes the opportunity to comment on ESMA's Consultation Paper on the EMIR EU derivatives clearing obligation (EU CO) and the MiFIR EU derivatives trading obligations (EU DTO) in the context of the benchmark review and supports competent authorities' work on these matters.

1. GENERAL COMMENTS

Q1: Are there general comments you would like to raise?

AMAFI supports ESMA's Consultation Paper as it believes that it is crucial to revise the regulatory technical standards on the EU CO in light of the recent benchmark transition away from LIBOR and to take into account the new Risk-Free Rates (SONIA, €STR and SOFR) in the application of these obligations.

In this vein, AMAFI welcomes the proposed amendments on the CO that take into account the increase in liquidity of the OIS TONA (7D-30Y) and IOS SOFR (7D-50Y) since the time of the RTS developed in 2021.

However, AMAFI would like to raise concerns on the ongoing MiFIR Review. In this context, the European Commission (EC) is considering the possibility to suspend the EU DTO for investment firms that would have overlapping obligations while dealing with third countries' counterparties. Negotiations between the Parliament and the Council are still in progress, but we have good reasons to believe that such a mechanism will be integrated in the reviewed MiFIR as they both seem to have met a political compromise on its necessity.

Considering this, AMAFI asks ESMA not to introduce any class of overnight index swaps contracts referencing €STR (EUR) to the EU DTO until the new DTO suspension mechanism proposed by the EC is in place. Furthermore, AMAFI would like ESMA to consider both topics (EU CO and EU DTO) distinctly in two sets of technical standards¹. Once the MiFIR review is implemented, the CO RTS could then be published.

2. RESPONSES TO ESMA QUESTIONS

GENERAL ANALYSIS

Q2: Are there any other aspects of the transition that need to be taken into account? Please share any data that would help qualify further the progress with the transition or any other aspects that you think should be considered.

AMAFI thanks ESMA for its in-depth analysis, which complements the analysis carried out during the elaboration of its RTS in 2021, given the increase in liquidity of classes referencing RFRs since then.

AMAFI has no comments on that matter.

CLEARING OBLIGATION

Q3: Do you agree with the assessment of the EMIR criteria and with the proposed classes? Do you also agree that the maturities for SOFR OIS could be extended, including up to 50 years? If not, please detail how the assessment could differ and please also provide data and information to justify a different assessment.

AMAFI agrees with ESMA's propositions.

Q4: Do you agree with the proposed implementation of the changes? if not please provide details that could justify a different implementation.

Although most of the counterparties active in OTC interest rate derivatives both denominated in JPY and USD already clear their contracts on a voluntary basis, AMAFI believes that a three month phase-in approach between the date of publication of the RTS and its application should be provided so that actors have sufficient time to adapt their procedures.

Furthermore, as mentioned in ESMA's CP², other jurisdictions are currently having the same discussions on the integration of the new RFRs in the CO and the DTO. Consequently, we would propose an implementation date after the enforcement date in those jurisdictions to maintain competitiveness.

¹ That being a solution ESMA considered in her CP "depending on the market evolution reflected in ESMA's analysis and taking into account the feedback from the consultation, ESMA may consider proceeding with two RTSs distinctly for CO and DTO and, with different timing of entry into force, should this be necessary"

² "2.2 Status of the CO and DTO in other jurisdictions" p .15.

DERIVATIVE TRADING OBLIGATION

Q5: Do you agree with this assessment and therefore, not to introduce DTO for contracts referencing TONA, SONIA and for the time being SOFR? If not, please explain.

AMAFI agrees with ESMA's assessment to not introduce DTO for contracts referencing TONA et SONIA considering the low proportion of activity on these RFRs. AMAFI also agrees with ESMA that DTO should not apply to SOFR at least in the short term and despite an increase in its use, as the CFTS has not yet included contracts referencing SOFR in its DTO.

Anyhow, as previously stated in our preliminary remarks, AMAFI believes that no new classes of derivatives should be included in the scope of the DTO until the suspension mechanism, that should be provided in the MiFIR review, has been implemented. The contrary could enhance the unlevel playing field between European firms and their third country counterparts.

Q6: Do you agree with this assessment? Do you consider that also contracts with constant notional and 3 months tenor and trade start date Spot (t+0) should be subject to the DTO? If so, please specify also the other relevant standardised parameters used with those contracts. Do you consider that also contracts with constant notional and 3 years tenor and trade start date second next IMM date shall be subject to the DTO? If so, please specify also the other relevant standardised parameters used with those contracts. Should other tenors be considered for the DTO?

Regarding ESMA's findings³, it appears that the volumes of €STR OIS swaps with constant notional of 3 months tenor and trade start date spot (t+0) are marginal. Therefore, those contracts should not be subject to DTO.

AMAFI would again⁴ like to emphasise the fact that the EC is currently working on MiFIR review and that the final text will most likely provide for the possibility to suspend the DTO for certain investment firms for competitive purposes. Adding new obligations regarding the DTO, without even having the final MiFIR text would be totally inconsistent and could have aggravating effect for European firms which is precisely what the revision of MiFIR regarding the DTO seeks to repair. AMAFI is of the view that the scope of the DTO should be treated independently of the CO, through another RTS and after the implementation of the revised MiFIR.

Q7: Do you agree with this assessment? Do you consider that also the daily floating leg reset frequency is a standardised contract feature that could be considered for the DTO?

As previously stated in Q1, Q5 and Q6, AMAFI is against ESMA's proposal to add new classes of derivatives in the EU DTO until the ongoing revision of MiFIR is fully finalised and implemented.

Q8: Do you agree with this proposal? If not, what amendments do you think are necessary?

AMAFI does not agree with this proposal, for the above-mentioned reasons (See. Q1, Q5, Q6 and Q7).

³ Table 11, 12, 13 and 14 of its CP.

⁴ See Q1 and Q5.

Q9: Do you agree with proposing to not provide for an implementation period for the entry into force of the amended DTO? If not, please explain.

ESMA's proposition not to provide for an implementation period is not ideal as market participants might need time to adapt their internal systems and procedures in light of the new requirements. However, AMAFI believes that this question is irrelevant as the EU DTO regime should not be amended until the complete finalisation of the MiFIR review.

COST-BENEFIT ANALYSIS

Q10: Are there other elements that should be taken into account and that would impact the outcome of the cost-benefit analysis? Please provide quantitative and qualitative details.

At this stage AMAFI does not see any other elements that should be taken into account and that would impact the outcome of the cost-benefit analysis.

