

10 March 2026

ESMA Publications and Consultations on EMIR 3

Introduction

The purpose of this Circular is to draw the attention of all market participants entering into OTC derivatives, both financial and non-financial counterparties, to the following communications and consultations:

- a. [ESMA publication of a supervisory briefing on the representativeness obligation linked to the active account requirement \(AAR\)](#). (20 February 2026)
- b. [ESMA Statement reminding firms of their obligation to assess whether newly offered products fall within the scope of existing product intervention measures on contracts for differences \(CFDs\)](#). (24 February 2026)
- c. [Final Report on the Draft Technical Standards amending Regulation \(EU\) 149/2013 to further detail the new EMIR clearing thresholds regime](#). (25 February 2026)
- d. [Consultation on the regulatory standards on the post-trade risk reduction services under EMIR 3](#). (26 February 2026)

This Circular should be read in conjunction with the Regulation, its Delegated Regulations and Implementing Regulation as well as previous Circulars issued by the Authority, where applicable.

Background Note

A. ESMA Supervisory Briefing on the AAR Representativeness Obligation

The MFSA wishes to draw the attention of investment firms providing services in relation to contracts for differences (CFDs) and other speculative products to the supervisory briefing issued by ESMA on 20 February 2026 concerning the Active Account Requirement.

The supervisory briefing aims to promote supervisory convergence across Member States and to ensure the consistent application with the representativeness obligation.

The supervisory briefing provides guidance to national competent authorities (NCAs) on assessing firms' compliance with the AAR representativeness obligation and outlines ESMA's expectations regarding the calculation, presentation, and periodic review of the disclosed metrics.

In its supervisory briefing, ESMA highlights, inter alia, the following key considerations:

- a. The methodology used for calculating the AAR must be robust, transparent, and based on reliable data;
- b. Disclosures must accurately reflect the relevant reference period;
- c. Firms must ensure appropriate governance and internal controls relating to the calculation and completion of the reporting template; .
- d. Firms are expected to maintain adequate documentation supporting their methodology and be able to demonstrate compliance to the MFSA upon request.

The MFSA will integrate this supervisory briefing into its authorization, on-site and thematic supervisory work and may request firms' gap-analyses and evidence of remediation where necessary.

B. ESMA Statement on Firms' Obligations under CFD Product Intervention Measures amid Rising Offerings of Perpetual Futures

ESMA has issued a statement reminding firms of their obligations under the existing CFD product intervention measures, particularly in light of the growing marketing and offering of so-called "perpetual futures" to retail clients.

ESMA notes an emerging trend in the distribution of perpetual futures including to retail clients. It emphasises that, depending on their structure and characteristics, such instruments may fall within the scope of the CFD product intervention framework.

ESMA reiterates that firms must not circumvent these requirements through the design, naming, or marketing of financial instruments that exhibit substantially similar features and risk profiles to CFDs.

ESMA emphasises, inter alia, the following obligations:

- a. Compliance with retail leverage limits ;
- b. Provision of margin close-out protection;
- c. Provision of negative balance protection;
- d. Prohibition of monetary and non-monetary incentives;
- e. Inclusion of prescribed risk warnings;
- f. Adherence to MIFID II product governance requirements.

Firms are reminded of their responsibility to conduct a thorough legal and regulatory assessment of any financial instruments they manufacture and/or distribute, taking into account their economic substance and risk characteristics.

C. Final Report on the draft technical standards amending Regulation (EU) 149/2013 to further detail the new EMIR clearing thresholds regime

ESMA has published its Final Report on the draft regulatory technical standards (RTS) amending the clearing thresholds (CTs) under Regulation (EU) 149/2013. This follows last year's [Consultation Paper](#) and reflects the changes introduced via Regulation (EU) 2024/2987 (EMIR 3), which revises the CT regime.

EMIR 3 moves away from the previous distinction between exchange-traded derivatives (ETD) and OTC derivatives – where only OTC contracts were counted towards the threshold – towards a methodology based on the level of uncleared positions, thereby better recognising the benefits of central clearing.

The Final Report sets out ESMA's detailed proposals, which seek to maintain continuity in the coverage of systemic risk while avoiding unnecessary complexity and additional compliance burdens for market participants.

As detailed in ESMA's [Public Notice](#), to minimise complexity and compliance costs, ESMA has:

- i. Retained the existing five CTs categories, avoiding additional categories or more granular thresholds;
- ii. Clarified the timing of position calculation, allowing counterparties to apply the new CTs during their usual assessment window or earlier, if they wish to benefit sooner from the new regime;
- iii. Enhanced stability and predictability in the mechanism triggering the CT reviews.

ESMA has submitted the final draft RTS to the European Commission for endorsement. Once endorsed, they will proceed to formal adoption.

D. ESMA Consultation on the Post-Trade Risk Reduction Services under EMIR 3

The Malta Financial Services Authority (MFSA) draws the attention of market participants to ESMA's consultation paper on post-trade risk reduction services (PTRRS) under the revised European Market Infrastructure Regulation (EMIR 3).

The consultation paper sets out ESMA's proposed regulatory technical standards (RTS) and guidelines detailing the conditions and requirements applicable to providers and users of PTRRS.

EMIR 3 amends Regulation (EU) No 648/2012 on OTC derivatives, central counterparties (CCPs) and trade repositories. It introduces a harmonised regulatory treatment of PTRRS, including portfolio compression and other risk mitigation techniques.

The proposed measures aim to enhance transparency, strengthen risk management practices, and promote supervisory convergence across Member States, while facilitating the safe and efficient reduction of outstanding derivatives exposures.

The consultation covers, inter alia:

- a. The definition and scope of PTRRS under EMIR 3;
- b. Operational and organisational requirements for PTRRS providers;
- c. Risk management and governance arrangements;
- d. Transparency and disclosure requirements;
- e. Reporting and supervisory considerations.

Stakeholders are encouraged to assess the consultation paper carefully and consider its operational, risk management, and compliance implications.

Comments should be submitted directly to ESMA in accordance with the submission instructions provided therein.

The consultation closes 20 April 2026. ESMA will consider the feedback received to this Consultation Paper in Q2 2026 and expects to publish a final report and submit the draft RTS to the Commission for endorsement in Q4 2026.

Contacts

Should you have any queries on the above, please do not hesitate to contact the Authority's EMIR team on EMIR@mfsa.mt for any further clarifications.