
EACH Response to the ESMA consultation on Draft Technical advice to the European Commission on fees charged to Tier 1 Third-Country CCPs under EMIR

December 2023

Introduction

The European Association of CCP Clearing Houses (EACH) represents the interests of Central Counterparties (CCPs) in Europe since 1992. CCPs are financial market infrastructures that significantly contribute to safer, more efficient and transparent global financial markets. EACH currently has 19 members from 15 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96.

EACH appreciates the opportunity to provide feedback to the ESMA consultation on Draft Technical advice to the European Commission on fees charged to Tier 1 Third-Country CCPs under EMIR¹ (hereinafter called “The consultation”).

EACH answers

Q1: Do you agree with the proposal to introduce different annual fees levels based on the Tier 1 CCPs global turnover?

As a first comments, EACH Members would like to express the opinion that, although understanding ESMA’s rationale explained in paragraph 20, they consider that annual fees should be **based on the activities in the EU instead of the proposed global turnover**. This approach would appear consistent with the tiering itself (i.e. materiality to the EU or one or more NCAs). We would also consider it very helpful if ESMA were to provide details of how the appropriate levels of resourcing for Tier 1 third-country CCPs would be quantified.

Secondly, we overall agree that the cumulatively levied fees should correspond to **the overall expenses incurred by ESMA in relation to the oversight of Tier 1 CCPs**. However when considering the weighting for Group 2 and 3 Tier 1 CCPs, it seems that the collectively levied fees will be higher than this total cost incurred by ESMA and therefore go against the cost-based principle. Once ESMA has use of these additional funds, the fear is that these will be used for additional Tier 1 supervisory activity and will gradually increase the total cost base.

Furthermore, considering ESMA’s reliance on the CCP’s home authority for the oversight of Tier 1 CCPs, we would like to kindly ask ESMA to clarify how the **fees structure reflects the extent to which it will rely on the expertise of the home regulator** and why higher supervisory fees are justified.

Finally, we would like to point out that the level of fees should **not add unjustifiably large costs to incoming CCPs** wishing to continue providing services to both EU markets and clients

Q2: Do you agree that the relevant turnover should be based on audited figures of the Tier 1 CCP’s worldwide revenues from clearing services for the financial year n-2?

EACH would like to underline the following issues:

¹ [ESMA91-2145765636-8277 Consultation Paper on Tier 1 CCP fees \(europa.eu\)](https://www.esma.europa.eu/press-material/consultations-and-public-views/consultation-paper-on-tier-1-ccp-fees)

- We have some concerns regarding the requirement to provide audited accounts from January to December, as **some CCPs’ fiscal year end in other months**;
- We would suggest creating **another group before Group 1** for relatively smaller CCPs with lower revenues.

Q3: Do you agree with the proposed thresholds and weighting factors to calculate Tier 1 CCPs annual fees?

EACH Members respectfully **disagree with the weighting factors**. When considering the weighting for Group 2 and 3 Tier 1 CCPs, it seems that the collectively levied fees will be higher than this total cost incurred by ESMA and therefore go against the cost-based principle. Once ESMA has use of these additional funds, the fear is that these will be used for additional Tier 1 supervisory activity and will gradually increase the total cost base.

Q4: Do you agree that the Tier 1 CCPs annual fee framework should include a maximum and a minimum amount?

EACH overall agrees that the Tier 1 CCPs annual fee framework should **include a maximum amount as this avoids undue burden on Tier 1 CCPs** who only have a limited activity in the EU. In general though, we kindly request ESMA to limit its cumulatively levied fees to the overall expenses incurred by ESMA in relation to the oversight of Tier 1 CCPs.

Q5: Do you agree with the proposed amounts for the maximum and minimum annual fees for Tier 1 CCPs?

The originally calculated fee for Tier 1 CCPs was calculated at 50 000 EUR. This has since increased for all Tier 1 CCPs based on the cost-base fee principle. Compared to the originally estimated calculation the threshold of 250 000 EUR seems an excessive increase. We are however aware that this would only occur in extraordinary circumstances. Should such an extraordinary circumstance occur, we would like to kindly ask **ESMA to justify such a drastic increase**.

Q6: Do you agree that an incentive mechanism should be implemented to ensure that ESMA is able to compute the fees for a given year?

While it seems justified that an incentive be put in place to ensure CCPs comply with their regulatory requirements, automatically charging Tier 1 CCPs the fee for Group 3 seems excessive. We would suggest that such a measure only be implemented if the CCP does not deliver its audited financial statement after several reminders.