EBA/RTS/2014/09

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EBA FINAL draft regulatory technical standards

on the margin periods of risk used for the treatment of clearing members' exposures to clients under Article 304(5) of Regulation (EU) No 575/2013 (Capital Requirements Regulation – CRR)

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Abbreviations

CCP	central counterparty
CRR	Capital Requirements Regulation, Regulation (EU) No 575/2013
EMIR	European Market Infrastructure Regulation, Regulation (EU) No 648/2012
IMM	internal model method
MPOR	margin period of risk
NCA	national competent authority
RTS	regulatory technical standards
QCCP	qualifying central counterparty

1. Executive summary

In accordance with Article 304(5) of Regulation (EU) No 575/2013 (CRR), the EBA has the mandate to draft regulatory technical standards (RTS) specifying the minimum margin periods of risk (MPOR) that financial institutions acting as clearing members may use as input for the calculation of their capital requirements for exposures to clients.

MPOR are used both for institutions authorised to use the internal model method (IMM), and for those using the non-internal methods (i.e. mark-to-market, standardised method or original exposure method). For the IMM, the MPOR will be an input for the internal model, whereas for the other models, the MPOR will determine a multiplier of the exposure value that is less than one. These draft RTS specify MPOR in a different manner for different classes of derivatives to be used in both the internal and standardised approaches, therefore covering the full spectrum of derivative types for all counterparty credit risk models.

The estimates provided by the CCPs for the liquidation periods used for the initial margin calculations are identified as the best proxies currently available for the MPOR. However, a CCP's estimates of the liquidation periods for initial margin calculations should not be confused with the MPOR for the purpose of building up capital against counterparty credit risk. A CCP's initial margins are supplemented by additional resources (default fund, committed contributions), whereas for a clearing member, the capital represents the ultimate financial resource available to absorb losses.

CCP estimates, however, do take into account the liquidity of a class of financial instrument, the concentration of positions in that class, the specific features of the markets used to close-out or hedge the positions, and several other factors, suggesting that they are reasonable proxies. These CCP liquidation period estimates are subject to supervisory approval and the methodologies are harmonised under the EMIR[1].

There are, however, major differences between the risks faced by a CCP and those faced by a clearing member. A CCP will typically have arrangements with members to participate in the hedging or liquidation of a portfolio, contractually generating liquidity, which a clearing member will not. On the other hand, a portfolio inherited by a CCP from a defaulting clearing member is likely to be larger and more complex than a portfolio inherited by a clearing member from a client.

Consequently, on balance, there is a reasonable case for the RTS to set MPOR at the same level as the liquidation periods of a CCP. These estimates are subject to a minimum length of five working days, as this requirement stems from Article 304(3) of the CRR. This approach strikes a balance between being simple to use whilst still taking account of the risk sensitivity of the MPOR.

[1] Regulation (EU) No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, known as the European Market Infrastructure Regulation (EMIR).

2. Background and rationale

Capital requirements for bank exposures to CCPs were introduced in the Basel Accord via an amendment to the chapter on counterparty credit risk.[2] This amendment requires institutions acting as clearing members to hold capital for exposures to central counterparties (CCPs) and bilateral exposures for exposures to clients. The European Union implementation of these rules in Articles 301 ff. of the CRR[3] requires a clearing member to set aside capital against both exposures. These draft regulatory technical standards (RTS) relate to setting aside capital against one of these sets of exposures (the exposures of the clearing members to their clients); setting aside capital against exposures to CCPs is beyond the scope of these RTS.

The MPOR is defined as the time period from the most recent exchange of collateral covering a netting set of transactions with a potentially defaulting counterparty, until the transactions are closed out and the resulting market risk is re-hedged.[4] Generally, MPOR (under the IMM for counterparty credit risk) are estimated by institutions depending on the liquidity of the trades and the collateral in the netting sets, and the minimum MPOR is that under Article 285(2) of the CRR of 10 days for netting sets that include derivatives and long settlement transactions. A higher MPOR of 20 days is set by Article 285(3) of the CRR for all netting sets including more than 5 000 trades, containing an over-the-counter (OTC) derivative that cannot be easily replaced, or those that involves illiquid collateral. The minimum MPOR under the IMM is also increased in re-margining with a periodicity that is less frequent than daily (Article 285(5) of the CRR), or if the institution has been involved in more than two margin call disputes on a particular netting set over the last two quarters (Article 285(4) of the CRR).

However, institutions acting as clearing members with an approved IMM can determine the capital requirement of the exposure to their clients by applying a MPOR of less than ten days. Article 304(5) of the CRR mandates the EBA to draft a set of RTS specifying the MPOR that institutions may use under the IMM when calculating regulatory capital requirements. For clearing members using the mark-to-market method, the original exposure method or the standardised method, a reduction in the own funds requirements is obtained by multiplying the exposure value by a scalar less than one.[5] Article 304(3) of the CRR establishes a minimum length for the MPOR of five days for all of the different classes of derivatives.

In a similar, although non-identical scenario, CCPs are required to estimate the timescale for the liquidation of a portfolio of a defaulting clearing member. Under the European Market Infrastructure Regulation -EMIR[6], CCPs are required to estimate the liquidation period based on: the liquidity of a class of financial instruments; the concentration of positions in that class; the particularities of the markets used to close-out or hedge the positions; the complexities and level

[2] Capital requirements for bank exposures to central counterparties, July 2012, BCBS Paper No 227.

[3] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

[4] Article 272(9) of the CRR.

[5] Article 304(1) to (4) of the CRR and paragraph 113 of BCBS Paper No 227.

[6] Regulation (EU) No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories and Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012.

of pricing uncertainties of that class; and the risk characteristics including volatility, duration, non-linearity, jump-to-default and wrong-way risk.

In the course of the development of these draft RTS, the EBA undertook a survey and held a round-table discussion with industry stakeholders. The overall reaction can be summarised into two points. Firstly, the effects of this special treatment of using MPOR that is lower than the standard MPOR should be relatively small and should not generate any major market turbulence. Accordingly, the preliminary suggestion of the industry stakeholders was to keep the framework as simple and as consistent as possible with the requirements for CCPs. Secondly, some criticism was voiced, including by the derivative exchanges, regarding the five-day minimum (set in the CRR in accordance with the Basel Committee rules), in that it would prevent a full alignment with the requirements for CCPs where the liquidation periods for exchange traded derivatives are subject to a minimum of two days. This, however, would not be compatible with the requirement in Article 304(3) of the CRR, and remains beyond the scope of these RTS.

The authorisation process of a European CCP guarantees a certain level of harmonisation, given that CCP methodologies (including the estimates of liquidation periods) need to be validated by the national competent authority (NCA) and are subject to the opinion of the CCP college. Any significant changes to the CCP's models and parameters are subject to independent validation, and to validation by the CCP's NCA and the CCP's college.[7]

On the one hand, when a CCP's estimates of this timescale are longer than five working days, these estimates should be taken into account in setting the clearing member's own fund requirements with its own clients. As a general consideration, there are a number of structural differences between CCPs and clearing members, which means it is not possible to guarantee that CCP estimates of the liquidation period are always conservative for the purpose of these RTS. For example, a CCP clearing OTC derivatives will typically impose contractual requirements to assist with default management, and actively participate in auctions, therefore generating liquidity. An individual clearing member must liquidate (or hedge) with any liquidity available in the market, and therefore a clearing member may need more time to liquidate or re-hedge the portfolio of a major client than an efficient CCP. Additionally, a CCP has additional resources available beyond the initial margin calculation (default fund, assessment rights, loss-allocation rules), whereas a clearing member will be reliant on its own capital (after any collateral) to absorb these losses. As such, no false equivalence should be assumed between liquidation periods in CCP margin models and MPOR for capital purposes.

On the other hand, the above differences between the two concepts are mitigated by the practical differences between the likely risk exposure, notably the size and composition of the portfolio. A clearing member will typically inherit a smaller and less complex portfolio from a defaulting client than a CCP would inherit from a defaulting clearing member; where this assumption is accurate, use of the CCP estimate for setting the MPOR would (for the purpose of these RTS) probably lead to a conservative requirement. Furthermore, to the extent that market conditions are equally applicable to CCPs and clearing members, changes to the CCP liquidation period because of changing market conditions are also relevant to the MPOR for clearing members.

[7] In accordance with Articles 41(2) and 49(1) of the EMIR.

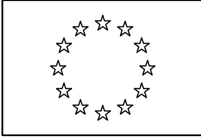
Consequently, notwithstanding the different purpose of the liquidation periods for CCPs, and of the MPOR for clearing members under these RTS, CCPs' estimates of the liquidation period for margin purposes can be used as a proxy for the MPOR for clearing members' members' capital requirements vis-à-vis their clients. Although that should not create a false equivalence between the two concepts, it has the clear advantage that MPOR change when market conditions change. For example, new products could show an increasing level of liquidity from the moment they are introduced in the market. CCPs' estimates of the liquidation period should reflect this trend so that the MPOR used by the institutions as the input for counterparty credit risk is proportionally reduced.

Since CCPs are required to disclose publicly[8] information regarding the models used in margin calculations, estimates of the liquidation periods will be available to the clearing members and their supervisors. In order to give the right incentives to the CCPs toward transparency concerning their risk management procedures, clearing members are only allowed to use publicly disclosed information.

The above considerations result in draft RTS that set the MPOR at a level that is equal to whichever is the longer period: the regulatory minimum of five days, or the liquidation period disclosed by the CCPs.

[8] Article 10(b)(vi) of Commission Delegated Regulation (EU) No 153/2013.

3. Draft regulatory technical standards on the margin periods of risk used for the treatment of clearing members' exposures to clients under Article 304(5) of Regulation (EU) No 575/2013 (CRR)



EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

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supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the specification of margin periods of risk for the treatment of clearing members' exposures to clients

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 575/2013 of 26 June 2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and amending Regulation (EU) 648/2012[9], and in particular the fourth subparagraph of Article 304(5) thereof,

Whereas:

(1) The framework for the calculation of Margin Periods of Risk ('MPORs') for the computation of capital requirements of clearing members vis-à-vis their counterparties needs to be appropriate both for institutions using the Internal Model Method ('IMM') as well as for those that use the standardised methods. It also needs to reflect changes in the market conditions in order to constitute a prudentially sound approach, while representing minimum burden on these institutions.

(2) The construction and use of the liquidation periods by the CCPs, while different in nature from the MPORs to be used by clearing members for the purpose of calculating their capital requirements regarding exposures to their counterparties, presents similarities to them given that the estimation of both should take into account close-out periods of contracts and transactions. Given that the use of such periods works for both IMM and non-IMM institutions; it reflects changes in the market conditions; it takes into account of close-out periods of contracts and transactions and it covers all types of products and transactions listed in Article 301(1) of Regulation (EU) No 575/2013, it would be appropriate to use the CCPs' estimates of the liquidation periods as a proxy for the MPORs for the computation of capital requirements of clearing members vis-à-vis their counterparties.

(3) One of the differences between liquidation period and MPOR is that liquidation periods disclosed by the CCPs sometimes include additional periods to allow for the novation of the positions to a non-defaulting clearing member. As these additional periods are specific to the liquidation periods and do not reflect any difference on the

[9] OJ L 176, 27.6.2013, p. 1.

risks being incurred by clearing members, such additional periods need not be added to the MPOR that institutions may use for the calculation of the own funds requirements for their exposures to a client when acting as clearing members

(4) In order to guarantee that such estimates are subject to supervisory approval, only the liquidation periods estimated by qualifying central counterparties (‘QCCPs’) as defined in point 88 of Article 4 of Regulation (EU) No 575/2013 should be allowed to be used as proxies for the MPORs for the computation of capital requirements of clearing members vis-à-vis their counterparties.

(5) Paragraph 3 of Article 304 of Regulation (EU) No 575/2013 provides that institutions with centrally-cleared transactions, which are acting as clearing members, and which calculate their own funds requirement for their exposures to clients in accordance with the Internal Model Method (‘IMM’), may apply shorter margin periods of risk, in the manner that is further specified in this Regulation. As a result, where such institutions choose to apply shorter margin periods of risk, they do so as an alternative to the provisions of Articles 285(2) to (5) of Regulation (EU) No 575/2013. The latter provisions apply by default to IMM firms in a general manner, relating also to non-centrally cleared transactions.

(6) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.

(7) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010.

HAS ADOPTED THIS REGULATION:

Article 1

Margin periods of risk

1. The margin periods of risk of a netting set that institutions may use for the purpose of paragraphs 3 and 4 of Article 304 of Regulation (EU) No 575/2013 shall be determined according to paragraphs 2 and 3.

2. Where the relevant netting set includes transactions cleared with a qualifying central counterparty as defined in point 88 of Article 4 of Regulation (EU) No 575/2013, the margin periods of risk that institutions may use shall be (a) or (b), whichever is the longer:

   (a) the five business days as referred to in paragraph 3 of Article 304 of Regulation (EU) No 575/2013;

   (b) the longest liquidation period of the contracts or transactions included in the netting set, as that liquidation period has been disclosed in accordance with Article 10(b)(vi) of the Regulation (EU) No 153/2013 by the qualifying central counterparty with which those contracts or transactions are cleared. Where the liquidation period disclosed expressly includes an additional period for the purpose

of the novation of the positions to a non-defaulting clearing member, the period to be used by institutions as margin period of risk shall exclude that additional period.

3. Where the relevant netting set includes transactions not cleared with a qualifying central counterparty as defined in point 88 of Article 4 of Regulation (EU) No 575/2013, the margin periods of risk that institutions may use shall be at least ten business days.

Article 2

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

[For the Commission
On behalf of the President

[Position]

4. Accompanying documents

4.1 Draft cost-benefit analysis / impact assessment

4.1.1 Introduction

1. Article 304(5) of the CRR requires the EBA to develop draft RTS related to the treatment of clearing members' exposures to clients.

2. Article 10(1) of the EBA regulation (Regulation (EU) No 1022/2013 of the European Parliament and of the Council) states that before any draft regulatory technical standards developed by the EBA are submitted to the Commission for endorsement, the EBA should analyse 'the potential related costs and benefits'. This analysis is to provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

3. The section below includes a cost-benefit analysis and impact assessment of the provisions included in the RTS.

4. It should be emphasised that this methodology does not assume that the liquidation periods of a CCP for setting margins are equivalent to the MPOR for regulatory capital requirements, but, for this specific application, for this specific application, it does identify the liquidation periods developed by a CCP as the best proxies for the MPORs.

4.1.2 Procedural issues and consultation process

5. The EBA organised a round-table discussion and a written survey to gather the preliminary views of industry stakeholders on this topic. There was broad agreement that the alignment between the MPOR and the CCP liquidation periods for initial margin calculations is justified because CCPs already include in their models the liquidity profile of the transactions, their concentration, the composition of the client portfolio, and the ability to unwind those transactions in the market.

4.1.3 Problem definition

6. Since, under the CRR, institutions acting as clearing members have to set aside capital against counterparty credit risk with respect to the CCPs and to clients, there is the risk that these requirements will eventually discourage central clearing. To overcome this, the provisions in Article 304 of the CRR introduce a special method of dealing with transactions that are centrally cleared, by reducing the regulatory capital requirements.

4.1.4 Baseline scenario

7. The baseline scenario can be defined as the set of requirements of the CRR for counterparty credit risk without the reduction in the regulatory capital requirements under Article 304 of the CRR. Without Article 304, institutions using the IMM would use the minimum margin periods defined in the CRR. Institutions using non-IMM methods would not refer to MPOR at all.
8. This section investigates the cost and the benefits of the policy decisions taken when developing these RTS if institutions decide to use shorter MPOR in accordance with Article 304 of the CRR.

4.1.5 Objectives of the regulatory technical standards

9. The objectives of these regulatory technical standards are:

    a. detecting risk sensitivity and reflecting it in the margin period as a parameter for the calculation of capital requirements (specific objective);

    b. creating a common benchmark for MPOR when calculating own-fund requirements for exposure to a client (operational objective).

    c. promoting central clearing (specific objective);

    d. harmonising the application of the benchmark among the institutions in the EU (general objective);

    e. providing technical standards to set a cost-effective regulatory framework that will not place an excessive administrative burden on the institutions.

4.1.6 Technical options

10. When developing the technical standards, the following alternative approaches were considered:

    Option 1: Static list
    The first option proposes a static and predefined list. The list could be determined on the basis of current practices, clearing members' opinions or on a one-off quantitative analysis.

    Option 2: Clearing members' internal estimates
    Clearing members estimate the MPOR internally and the national supervisory authorities approve the internal methodology of the institutions.

    Option 3: CCPs' liquidation periods as proxies
    The estimates of the liquidation period that CCPs estimate for initial margin purposes are used as proxies for MPOR.

4.1.7 Assessment of the options

Option 1

11. Option 1 might be considered to be closest to the wording of point (a) of the mandate (Article 304(5) of the CRR).

12. A static list would not be able to reflect changes in market conditions such as the volatility in the market value and the level of liquidity of a product over time. A product that is currently highly liquid may be subject to lower demand in the future, hence lose its liquidity. A static list cannot reflect this dynamic behaviour of the product in terms of its liquidity. Similarly, when new products enter the market, they may be unknown to investors. In this case, a static list would penalise the products given their low initial liquidity, even though the trading volumes may increase in the future.

13. Option 1 does not address the problems stated under 4.1.3. It does not provide a sensitive benchmark to reflect risks adequately over time or indicate the optimal level of capital.

Option 2

14. The second option is a viable solution for institutions that use their own internal methodologies (i.e. IMM).

15. This option would be very costly for institutions that rely on other methods because they would have to build their own methodologies and/or change their internal processes to estimate the MPOR.

16. Option 2 is not viable because it fails to meet the proportionality criteria.

Option 3

17. Option 3 suggests that the liquidation period calculated by a CCP for the initial margin can be used as a proxy for the MPOR.

18. This option has the following advantages:

    (a) It is dynamic and reflects the volatility in the level of liquidity of the products. Therefore, it provides a more sensitive risk analysis to calculate own fund requirements for exposures to clients.

    (b) The estimates for the liquidation periods are already available for all products and the national supervisory authorities check and approve the methodologies for calculating the liquidation periods (under the EMIR).

    (c) This option will thus create no additional cost for institutions or for NCAs.

    (d) The EMIR guarantees a high level of harmonisation. This approach guarantees that an MPOR is available for all products that are cleared centrally.

19. On the other hand, the option has a number of shortcomings.

    (a) The models for calculating the liquidation periods are designed for the margins set by the CCPs and not to assess the additional capital requirements for counterparty risk. The MPOR, on the other hand, is a parameter that clearing members apply when calculating capital requirements for exposures to clients. Therefore, the estimates can only be proxies and not precise indicators for the MPOR.

    (b) Liquidation periods of non-qualifying CCPs cannot be recognised and the special treatment of Article 304 of the CRR is not applicable.

    (c) This option covers all products and does not provide an explicit list of products as referred to in Article 304(5)(a) of the CRR.

20. Having considered the advantages and the disadvantages described above, the EBA developed these draft RTS using the methodology referred to in Option 3.

4.1.8 Costs and benefits

21. Cost to the industry:

    (a) The cost of the approach set out in these draft RTS is expected to be low for institutions using the IMM and for institutions using the other approaches. The cost is mainly due to data collection and processing.

    (b) Costs should also be limited for CCPs that are already required to produce the estimates of the liquidation periods which will then be used for MPOR. The additional cost for CCPs will come from transmitting the data and information to the clearing members.

    (c) The minimum of five days introduced by Article 304(3) of the CRR does not distinguish between exchange-traded derivatives (ETDs) and OTC derivatives. These RTS do not go into detail on that point because it is beyond the scope of the mandate. Nonetheless, one respondent to the consultation pointed out that this requirement, which obviously applies to the RTS, would have unwanted effects including: 1) incentives for clearing members to charge clients a margin based on an MPOR higher than the CCP liquidation periods for all ETD products, creating unnecessary charges for clients; 2) further encourage bi-lateral, non-cleared trading where the initial margin does not have to be collected; and 3) encourage clients to continue trading less liquid OTC products.

22. Cost to supervisors:

    (a) Clearing members’ competent authorities will not need to review any additional methodology for the estimation of MPOR as they are not estimated internally. The

additional costs for these authorities are monitoring and inspection activities but are expected to be low.

(b) The methodologies for the liquidation periods are already reviewed during the authorisation process. As a result, the additional monitoring costs for the CCPs' competent authorities are expected to be zero.

4.2 Views of the Banking Stakeholder Group (BSG)

No feedback has been received from the BSG.

4.3 Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted for ten weeks and ended on 9 May 2014. Three responses were received and they are all published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments, and the actions taken to address them if deemed necessary.

In those cases where several industry bodies made similar comments, or the same body repeated its comments in the response to different questions, the comments, and the EBA analysis are included in the section of this paper where the EBA considers them most appropriate.

Changes to the draft RTS have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the EBA's response

With only one exception, the respondents welcomed the approach set out by these RTS. Most respondents wanted the EBA to clarify the application of the rules under certain scenarios. Clearing members did not comment directly but left the International Swaps and Derivatives Association (ISDA) and the Association for Financial Markets in Europe (AFME) to provide a joint response.

There was one request to modify the proposed approach by introducing an average liquidation period instead of the more conservative approach based on the maximum. One respondent expressed strong concerns about the framework and, in particular, about having the same five-day minimum MPOR for both OTC and ETD.

Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses	EBA analysis	Amendments to the proposals
Weighted average liquidation period	In a portfolio with a single counterparty consisting mostly of transactions with a short liquidation period and of a single transaction with a longer transaction period, the use of a single benchmark based on the maximum MPOR in the netting set is not suitable. It would be more appropriate to give institutions the opportunity to set a nominally weighted average liquidation period in a given netting set. This would more accurately reflect the risk present in a netting set.	Giving financial institutions the opportunity to use a weighted average of the liquidation periods could result in non-harmonised implementation. The introduction of a weighted average would also make the framework substantially more complex.	None.
Netting set including non-qualifying CCPs	EBA should clarify how to deal with a netting set consisting of transactions cleared with a qualifying CCP as well as transactions cleared with a non-qualifying CCP.	Paragraph 4 of Article 1 14lays down that the MPOR to be used for netting set including transactions cleared via a non-qualifying CCP are not subject to any special treatment. The general objective to encourage central clearing does not include non-qualifying CCPs.	None.
Aggregate MPOR	The final RTS should be explicit that the appropriate MPOR for purposes of Article 304 of CRR is the liquidation period and not the QCCP's aggregate MPOR	The liquidation period to be used as proxy for the MPOR for the purpose of Article 304(5) of the CRR is the one referred to in Article 41(5) of the EMIR and in Article 26 of the Commission Delegated	Specified in Article 1

Comments	Summary of responses	EBA analysis	Amendments to the proposals
		Regulation (EU) No 153/2013.	
Liquidation period disclosure	What MPOR should apply in scenarios where the liquidation periods applied by the QCCP are not identifiable? That is a scenario where the relevant liquidation period is beyond the scope of Article 10(b)(vi) of the Commission Delegated Regulation (EU) No 153/2013.	Article 10(b)(vi) of the CRR requires CCPs to disclose the information regarding its rules including risk management systems, techniques and models used in margin calculations.	
		In those cases where the liquidation period is adjusted by sub-type of product and it is not disclosed, the clearing member cannot use the information communicated bilaterally. Allowing the use of non-public information would create incentives in a direction that contradicts the objectives of Article 10(b)(vi) of Commission Delegated Regulation (EU) No 153/2013.	None, as the proposed text refers only to disclosed information.
		In those cases where the liquidation period is individually adjusted for a specific clearing member, the clearing member will have to use liquidation periods publicly disclosed by the CCP.	None, for the same reasons as the preceding point.
MPOR under Article 285(3) and 285(4) of the CRR	Article 304(3) and 304(4) should supersede the MPOR provisions described elsewhere in the CRR, specifically those detailed under Articles 285(3) and 285(4).	As long as the products are cleared via a QCCP, the CRR also allows the use of shorter MPOR when the conditions of Articles 285(2) to285(5) are met.	This aspect has been clarified in an additional recital.

Comments	Summary of responses	EBA analysis	Amendments to the proposals
Five-day minimum MPOR for ETDs and OTC derivatives	On the five-day minimum MPOR that includes ETDs, (reiterated) concern about the potential consequences that the regulatory misalignment could have on the ETD markets. This standard does not account for the long-established and proven liquidity profiles of certain ETD products.	As recognised by the respondent, the same five-day minimum for OTC derivatives and ETD is a choice made by those setting international standards and confirmed by the EU legislators in the Level 1 text. Setting this minimum level is beyond the scope of these RTS.	No change to the draft RTS. This issue is addressed in an additional paragraph of the impact assessment.