EBA/DP/2025/01

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Discussion Paper

EBA's response to the provisional request of the European Commission for a technical advice on a possible Delegated Act specifying the method for the determination of the amount of the fees, and the modalities of the payment of such fees, to be paid by financial and non-financial counterparties requiring the validation of pro forma models under the European Market Infrastructure Regulation (EMIR)

Contents

1. Responding to this Discussion Paper

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions stated in the boxes below (and in the Annex of this paper).

Comments are most helpful if they:

- respond to the question stated.
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the view expressed;
- describe any alternatives the EBA should consider; and
- provide where possible data for a cost and benefit analysis.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 07.04.2025. Please note that comments submitted after this deadline or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

Disclaimer

The views expressed in this discussion paper are preliminary and will not bind in any way the EBA in the future development of the EBA's response to the Call for Advice of the European Commission on a possible delegated act on fees. They are aimed at eliciting discussion and gathering the stakeholders' opinions at an early stage of the process.

2. Executive Summary

On 31 July 2024 the European Banking Authority (EBA) received a formal request from the European Commission (Commission) to provide technical advice[1] to assist the Commission in formulating a possible delegated act specifying the method for the determination of the amount of the fees, and the modalities of the payment of such fees, to be paid by financial and non-financial counterparties requiring the validation of pro-forma models under EMIR.

After providing definitions, the present Discussion Paper outlines:

- the EBA budgeting approach (section 4.2),
- the main EBA costs incurred by EBA for the performance of its new tasks resulting from its new role as central validator of pro-forma IM models (section 4.3),
- the expected fees per counterparty including the calculation methods (section 4.4), and
- the modalities of payment (section 4.5).

EBA is looking for potential comments on the following aspects: scope of the new tasks and corresponding costs expected from the new role of EBA as central validator of pro forma models; calculation of the monthly average outstanding notional amount of non-centrally cleared OTC derivatives over the past 12 months (ANAPF); fee calculation methods and payment modalities.

Based on the responses received, EBA will finalise its technical advice and intend to submit its final report to the European Commission by 30 June 2025.

[1] See Calls for Advice | European Banking Authority for details on the Commission request, which was received on 31. July 2024.

3. Background and rationale

On 7 December 2022, the Commission published its proposal to amend Regulation (EU) No 648/2012 concerning the European Market Infrastructure Regulation (EMIR)[2] as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets. Amending Regulation (EU) 2024/2987 amending EMIR was published on 4 December 2024 (EMIR 3)[3] in the Official Journal and entered into application on 24 December 2024.

The aim of EMIR 3 is to promote a safer and more resilient clearing system, by improving the EU supervisory framework for central counterparties (CCPs), reinforcing the role of the European Securities and Markets Authority (ESMA), and drawing lessons from the market events of the past few years.

This Regulation also grants EBA additional tasks on models used by some counterparties as part of the risk-mitigation techniques used on their portfolios of non-centrally cleared OTC derivatives by: i) setting out a prior authorisation regime by competent authorities for Initial Margin (IM) models used by counterparties in the EU, ii) establishing a new EBA central validation function for pro forma models such as the Standard Initial Margin Model developed by the International Swaps and Derivatives Association 'ISDA SIMM', and iii) introducing supervision of IM models by competent authorities with greater focus on larger counterparties.

In accordance with Article 11(3) of EMIR, counterparties shall apply to the EBA for the validation of pro forma models and provide the EBA with all relevant information via a central database. For that purpose, Article 11(12a) of EMIR, provides that the EBA must set up a central validation function for the elements and general aspects of pro forma models, and changes thereto, used or to be used by a subset of financial and non-financial counterparties as part of the risk mitigation techniques used on their portfolios of non-centrally cleared OTC derivatives. Consequently, EBA will charge annual fees, per pro forma model, to financial and non-financial counterparties using the validated models.

Article 11(12a), sixth subparagraph EMIR specifies that a 'pro forma model' means an "initial margin model established, published, and revised through market-led initiatives". Pro forma models are models used "industry-wide" and "by a large number of Union counterparties". Thus, they require central validation to ensure uniformity.

[2] 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. (Link)

[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: http://data.europa.eu/eli/reg/2024/2987/oj)

On 31 July 2024, the Commission requested EBA's technical advice on a possible delegated act on fees to be charged to financial and non-financial counterparties requiring the validation by EBA of pro forma models, with the request to submit its response by Q2 2025. As part of its response, the EBA is requested to provide a 'quantitative and qualitative cost-benefit analysis of all the options considered and proposed' and to 'widely consult market participants'.

Unlike other aspects of the EMIR, there are no exemptions based on the size or trading activity level of a counterparty. Article 11(12a), fifth subparagraph EMIR sets out that for counterparties utilising pro forma models, "*The fee shall be proportionate to the monthly average outstanding notional amount of non-centrally cleared OTC derivatives over the last 12 months of the counterparties concerned using the pro forma models validated by EBA and shall be assigned to cover all costs incurred by EBA for the performance of its tasks*". This ensures that counterparties with larger portfolios contribute proportionately more.

The fees charged by the EBA should cover the full cost to the EBA of the central validation of pro forma models, including the validation of aspects such as model calibration, design, risk factors, and coverage of instruments and asset classes. They also cover any other costs stemming from that validation activity. The costs will include both direct costs and related indirect costs.

To provide clarity on how fees are calculated and paid, the Commission has been empowered to adopt a delegated act in accordance with Article 82 EMIR. This delegated act will specify the determination of the amount of the fees and the modalities of the payment of the fees.

With a view to widely consulting market participants, as requested under the Commission's Call for Advice (CfA), this DP aims to gather feedback from stakeholders on the various issues or options raised. This process should guarantee transparency in the design of fee structure while ensuring that the fees are sufficient to fund the EBA's central validation responsibilities.

4. Discussion

4.1 Definitions/Glossary

1. The following table provides definitions for the envisaged timeline for validation.

Date	Definition
Reference date	End date of the 12-month reference period to be used by counterparties for reporting the monthly average outstanding notional amount of non-centrally cleared OTC derivatives over the past 12 months (ANAPF)
Reporting deadline	Deadline by which information relevant for fee calculation should be communicated by counterparties using - or applying for the use of - a pro-forma model to EBA. Date proposed: 31 March of each calendar year.

4.2 EBA's budgeting model

2. In order to enable EBA to conduct its new tasks related to the pro forma IM models validation and oversight effectively, as well as to ensure an efficient use of EBA's budget, it is necessary that financial and non-financial counterparties using pro forma IM models cover all costs related to EBA's assistance of competent authorities in their authorisation processes, and central validation function of pro forma IM models.

3. EBA applies a universal budgeting approach, which means that income from fees is treated as general revenue. This is in line with the standard practice of other partially funded EU agencies, as recommended by DG Budget of the European Commission.

4. EBA's budget is managed on the basis of an activity-based management methodology. EBA prepares its annual budget aiming at balancing income through fees with the incurred expenditure, understanding that deficits or surpluses are to be balanced by the EU and NCA contributions.

5. In case of deficits (EBA collecting less than incurred), EBA does not recover the deficit from the supervised entities. If the deficit is recurrent or significant, EBA should analyse the reasons why this happened, drawing up lessons for the next budgeting period. For surpluses (EBA collecting

more than incurred), the same reasoning should be followed so surpluses will not be paid back to the supervised entities. This mechanism is already in place at EBA for DORA and MiCAR.

6. Through the existing mechanisms in place (EU budgetary procedure, annual reporting, single programming document), the EBA Management Board and Board of Supervisors, of which the European Commission is a permanent member, remain fully appraised of the fees' collection and expenditure levels.

7. The determination of fees needs to be based on the latest available information. More detailed information on the costs is specified in the following Section.

4.3 EBA's costs

8. According to Article 11(12a), sub-paragraph 5 of EMIR, EBA will charge an annual fee, per pro forma model, to financial and non-financial counterparties, covering all costs incurred by EBA for the performance of its tasks.

9. Due to the constraints of the EBA Financial regulation[4], and in particular the rules on annuality and surplus, EBA will calculate and invoice each year's fees based on estimated costs for the year. This is similar to the approach for DORA and MiCAR. The costs will be based on a full cost recovery principle, which means that a reasoned proportion of overhead and other horizontal costs will be included in the fees.

10. As explained in Section 4.2, EBA's budget is managed on the basis of an activity-based methodology. Financial and staff resources are allocated per activity, rather than per functional cost or per internal management hierarchy. This methodology is used both for budget planning (i.e., calculation of the estimated costs generated per activity, which is a combination of direct costs and overhead costs), and for budget costing (i.e., calculation of EBA's actual costs per activity). Direct costs include: staff salaries and allowances, IT systems maintenance and development costs; missions and meetings costs, other consultancy services costs. Overhead costs cover items such as office space, IT infrastructure, communications, and other shared services.

[4] EBA Financial regulation dated 1 July 2019 adopted by the EBA Management Board (EBA FR 2019)

At this stage of the process, EBA expects costs to be driven by the following tasks:

- Validation of pro forma models
- Assistance to the competent authorities in their authorisation processes of IM models
- Development and maintenance of statistics and IT tools for the central validation function
- Fee calculation, invoicing, and debt collection

11. The performance of these tasks under the new EBA central validation function implies the recruitment of a dedicated team of experts, as foreseen by EMIR 3, but also will require EBA staff support, IT infrastructure as well as may require the support of external consultancy services for validation tasks.

Validation of pro forma models

12. According to Article 11(12a) EMIR, EBA will set up, as a central validator, a function for the elements and general aspects of pro forma models, and changes thereto, used or to be used by counterparties. In its role, EBA will validate the elements and general aspects of those pro forma models, including their calibration, design and coverage of instruments, asset classes and risk factors.

13. Related costs cover work relating to (i) the assessment of initial applications for validation as well as subsequent model changes, (ii) the EBA onsite missions for initial validation or subsequent reviews, as well as (iii) the processing of applications; (iv)the ongoing monitoring of validated pro forma models, including interaction with pro forma model developers and counterparties using those pro forma models, as well as (v) the collection of feedback from ESMA, EIOPA, and the competent authorities responsible for the supervision of counterparties, and finally (vi) international cooperation on this matter with third-country regulators.

Assistance to the competent authorities on authorisation

14. According to Article 11(12a), EBA will also assist the competent authorities in their authorisation processes regarding the general aspects of the implementation of IM models. In this respect, EBA will prepare a yearly report on the relevant aspects of its validation work, including the verification of the calibration of the models and the analysis of the issues reported.

15. Related costs will cover: (i) the assessment of issues reported by competent authorities in relation with the implementation - at counterparty level - of pro forma models and, (ii) where relevant, the development in accordance with dedicated EBA internal governance arrangements of recommendations addressed to competent authorities. This may also include costs relating to the participation of EBA staff in onsite missions of authorisation of IM models led by competent authorities.

Development and maintenance of statistics and IT tools for the validation function

16. In order to enable EBA to effectively conduct its central validation function, it is necessary to develop and maintain dedicated statistics and IT tools to support the following – non-exhaustive - tasks:

    - receiving applications [5] from counterparties using pro forma models, including all relevant information to calculate the annual fees, as well as notifying counterparties about their application status;
    - calculating the annual fees, generating annual bills and tracking the collection of fees;
    - performing analysis of elements and general aspects of pro forma models, including calibration, design and coverage of instruments, asset classes and risk factors;
    - collecting and analysing data from pro forma model developers, as well as collecting and analysing feedback from ESMA, EIOPA and competent authorities on the performance of pro forma models, as implemented by counterparties.

17. Development and maintenance of these tools will require EBA staff support, IT infrastructure, and may require external IT consultancy services.

Fee calculation, invoicing, and debt collection

18. EBA operations and accounting staff will be required to calculate the estimated and actual costs, operate the fee calculation system, generate invoices and collect debts.

Estimated aggregated costs

19. Building on preliminary costs estimates and assuming that only one pro forma model will be submitted for validation in the first year, the estimated cost for a full year comes to 1.5 - 2.0 MEUR for the first full year.

20. Each year, annual costs will vary according to several parameters. Some components of the cost structure are expected to be stable while others will depend on developments affecting models. For instance, in case of counterparties requesting the validation of additional pro forma model(s), EBA will face higher corresponding costs. The costs will also be proportionate to the frequency of changes to "already validated pro forma models".

Question

Q1. Do you have any comments on the scope of the new tasks expected from the new role of EBA as central validator of pro forma models? Please elaborate.

[5] Until ESMA has announced the establishment of its central database in accordance with Article 17c(1) of EMIR, applications for validation of pro forma models, as well as corresponding information, will be submitted directly to the EBA as per alternative arrangements foreseen under Article 89(11) of EMIR.

4.4 Fees

21. Article 11(12a) subparagraph 5 EMIR specifies that counterparties using pro forma models for initial margins shall cover the full costs stemming from the new EBA role as central validator of pro forma models, with fees scaled according to the size of their non-centrally cleared OTC derivative portfolios. In particular, EMIR clarifies that the fee applicable to a given counterparty using a pro forma model is to be proportionate to the monthly average outstanding notional amount of non-centrally cleared OTC derivatives over the past 12 months, for which initial margin is computed using that pro forma model. The EBA's fee calculation system should be designed to apply this proportionality.

A fee is to be charged per pro forma model validated or to be validated, to all counterparties using or applying for the use of that model

22. Article 11(12a), sixth subparagraph defines 'pro forma model' as an *'initial margin model established, published, and revised through market-led initiatives'*. Recital 24 helps clarify that pro forma models are initial margin models used *'industry-wide'* and by *'a large number of Union market participants'*.

23. In accordance with the of Article 11(12a), first subparagraph of EMIR *'EBA shall set up a central validation function for the elements and general aspects of pro forma models, and changes thereto, used or to be used by financial counterparties and non-financial counterparties'*. Accordingly, Article 11(12a), second subparagraph of EMIR distinguishes between *'new pro forma models'*, for which EBA shall grant or refuse validation within six months of receipt of the application, and *'already validated pro forma models'*, subject to model changes, for which EBA shall grant or refuse validation within three months of receipt of the application for a change.

24. It should be noted that Article 11 of EMIR does not capture in its scope pro forma models in use prior to the date of entry into force of its amendments by EMIR 3. As such, existing models may continue to be used without having prior validation. The first instance of a counterparty seeking validation from EBA for such pro forma model will be following a change in the existing model. This is notably the approach that will apply for ISDA SIMM, which has been in use since 2016 and will be subject to EBA validation at the first model change after EBA has publicly announced that it has set up its central validation function.

25. In accordance with the fifth subparagraph of Article 11(12a), *'EBA shall charge an annual fee, per pro forma model, to financial counterparties and non-financial counterparties referred to in Article 10(1) using the pro forma models validated by EBA under the second subparagraph of this paragraph'*.

26. Counterparties subject to the requirement to exchange initial margin in accordance with EMIR and Article 36 of Commission Delegated Regulation 2016/2251 of 4 October 2016[6] (the joint

[6] The EBA, ESMA and EIOPA developed, pursuant to Article 11(15) of EMIR, draft regulatory technical standards (RTS) supplementing EMIR on risk mitigation techniques for non-centrally cleared over-the-counter (OTC) derivatives ('Joint

ESAs RTS on uncleared OTC derivatives) are required to apply to EBA for the validation of a given pro forma model – where they use or plan to use such pro forma model - and, as a result, should not be allowed to use such pro forma model if they have not applied to EBA for that model or if that model has not been validated by EBA[7]. As a result, the population of counterparties to be charged per pro forma model for a given calendar year will be made of **all the counterparties having applied or applying to EBA for the use of that pro forma model:**

- at the date of first application after EBA has publicly announced that it has set up its central validation function (e.g. application for first model change for the specific case of ISDA SIMM or initial application for new pro forma models)

- or by the reporting deadline (i.e. 31 March of each calendar year) for pro forma models already validated by EBA.

27. The fifth subparagraph of Article 11(12a) refers to an annual fee to be charged, per pro forma model, to counterparties *'using the pro forma models validated by EBA under the second subparagraph of this paragraph'*. Considering that the second paragraph refers to the validation of both 'new pro forma models' and 'already validated pro forma models' and that a reading of the fifth subparagraph leading to the conclusion that EBA must positively validate a pro forma model in order to be able to charge fees would be incompatible with the power of EBA to grant or refuse validation, **Article 11(12a), fifth subparagraph is understood to empower the EBA to charge an annual fee for any pro forma model submitted for validation to EBA, regardless of the positive or negative outcome of such validation.** Thereafter, the EBA will be entitled under the provisions of Article 11(12a), fifth subparagraph to charge a fee on the grounds of an application that will not receive validation. Indeed, such fee will be associated to the work incurred for assessing the absence of validation and the issuance of the EBA decision further to Article 11(3) EMIR.

28. In accordance with Article 12(2), second subparagraph, *'To facilitate EBA's validation work, developers of pro forma models shall, upon EBA's request, submit to EBA all the necessary information and documentation.'* This includes, in the case of developers of new pro forma models, informing EBA as soon as possible of any official application - by counterparties sponsoring that new pro forma model - for the purpose of facilitating the validation process and the resource planning, including estimation of additional costs expected by the EBA, for the validation of such new pro forma model.

ESAs RTS on uncleared OTC derivatives'), which were adopted by the European Commission (EC) as Delegated Regulation (EU) 2016/2251 of 4 October 2016, OJ L 340, 15.12.2016, p. 9. These RTS constitute the framework that prescribes the exchange of variation and initial margins in the EU and implement the global standards agreed by BCBS and IOSCO.

[7] Except for existing pro forma models already in use that may continue to be used as referred to in paragraph 24 above.

A fee is to be charged at the level of each counterparty subject to the requirement to exchange IM in accordance with EMIR and using - or applying for the use of - a pro forma model to meet that requirement

29. Article 11(3) third subparagraph requires financial counterparties and non-financial counterparties referred to in Article 10(1), where their IM model is based on a pro forma model, to apply to EBA for the validation of that pro forma model. In addition, in accordance with Article 11(12a) fifth subparagraph, *'EBA shall charge an annual fee, per pro forma model, to financial counterparties and non-financial counterparties referred to in Article 10(1) using the pro forma models validated by EBA under the second subparagraph of this paragraph'*.

30. Hence, fees should be calculated and charged, separately, at the level of each counterparty subject to the requirement to exchange initial margin in accordance with EMIR and Article 36 of the joint ESAs RTS on uncleared OTC derivatives, that is a counterparty using or applying for the use of a pro forma model submitted for validation to EBA and which has applied to EBA for the validation of such pro forma model.

31. Taking into account the outcome of the EBA's November 2024 survey on entities to be included in the scope of IM model authorisation, EBA expects several counterparties (i.e., legal entities) of a same group to use a given pro forma model. As EBA intends to issue an annual fee invoice per counterparty using or applying for the use of a pro forma model, it implies that a group encompassing several counterparties using the validated pro forma models will receive several separate fee invoices.

Calculation of monthly average outstanding notional amount of non-centrally cleared OTC derivatives over the past 12 months

32. While requirements to exchange initial margins are defined in relation to entities' aggregate average notional amount (AANA) as calculated under Article 39 of the joint ESAs RTS on uncleared OTC derivatives, EMIR requires the use, for fee calculation purposes, of the monthly average outstanding notional amount over the past 12 months of non-centrally cleared OTC derivatives, for which initial margin is calculated using IM model(s) based on a given pro forma model (ANAPF).

33. Although both measures are different (in particular, AANA is calculated at the level of the consolidated group, while ANAPF should be calculated at the level of the counterparty), rules applying for the calculation of AANA should, in order to ensure overall consistency, be extended, where relevant, to the calculation of the monthly average outstanding notional amount over the past 12 months. In particular, the monthly average outstanding notional amount over the past 12 months should also be calculated – as is the case for AANA - as an average of month-end notional amounts. Hence, the new EMIR 3 measure ANAPF should be computed as an average of the gross notional amounts recorded on the last business day of each of the past 12 months.

34. The requirement to consider the "past 12 months" has to be read in light of the operational constraints linked to the calculation of month-end notional amounts and to the computation of fees. In particular, an annual **reporting deadline** (31 March of each calendar year) has to be set for the calculation of the annual fee required under EMIR. By that reporting deadline, each counterparty with the approval for using a pro forma model, should report the monthly average outstanding notional amount of non-centrally cleared OTC derivatives using that model over the past 12 months (ANAPF). However, due to the time needed to perform the calculation of month-end notional amounts for the purposes of calculating ANAPF, the past 12 months should be considered backwards from a **reference date** set in a manner to allow for sufficient time **between the reference date and the reporting deadline** to compute the last month-end notional amount of the 12-month window needed for ANAPF.

35. Counterparties are hence requested to comment on whether 3 months (e.g. if a 31 March reporting deadline is used as proposed, reference date = last business day of December) would be appropriate for that purpose.

36. It is implicit that, where the counterparty has not used the pro forma model for all the past 12 months (i.e. the use of the pro forma model for that counterparty is recent e.g. case of counterparty being subject for the first time to the requirement to exchange initial margin in accordance with EMIR and Article 36 of the joint ESAs RTS on uncleared OTC derivatives), the notional amount should be set to zero for those months where the pro forma model has not been used.

37. To sum up this section, it is proposed that, for a given (applying) counterparty, the monthly average outstanding notional amount over the past 12 months (ANAPF) should:

- be calculated at the level of that counterparty;
- be calculated as the average of total gross notional amounts of non-centrally cleared OTC derivatives of that counterparty recorded on the last business day of each month over a 12-month period considered at a given reference date;
- include all the non-centrally cleared OTC derivative contracts of that counterparty, for which initial margin is calculated using IM model(s) based on that pro forma model.

38. In addition, it should be clarified that there is a presumption that an IM model is based on a pro forma model, where the two following conditions are met:

  - the IM model uses the methodology of that pro forma model and in particular implements corresponding methodology version updates;
  - the entity owning or providing that IM model is a licensed user of that pro forma model or is part of a group that is a licensed user of that pro forma model.

39. Finally, it should be noted that counterparties are expected to start computing ANAPF from now on – or at least make sure that they have all the information needed to compute figures retroactively - so that figures with a high degree of accuracy are available, should EBA start its central validation function in 2026.

Questions

Q2. Could you confirm that 3 months is appropriate to compute ANAPF for the purposes of submitting the information for fee calculation by the reporting deadline?

Q3. Do you have any comment with respect to the calculation of ANAPF? Please highlight any expected issue linked with the estimation of ANAPF (including accuracy of such estimation).

Number of counterparties

40. EBA, in cooperation with ESMA and EIOPA, launched on 29 October 2024 a short survey to better identify entities falling within the scope of IM model authorisation. The aim was to get general information on those entities, as well as specific information relevant for fee calculation to inform the CfA on fees.

41. In brief, 103 counterparties responded to the survey (i.e. around one third of the expected population), including mostly credit institutions (79%) followed respectively by UCITS/AIF, pension funds/insurance/reinsurance and investment firms.

Methods for the calculation of fees

42. Elements of the basis for the fee to be charged and the relevant timelines vary according to the fee trigger.

43. Fees to be charged to a counterparty can be triggered by one of three different actions undertaken by that counterparty:

    a. Counterparty uses the existing ISDA SIMM and applies to the EBA for approval to use that pro forma model at the first model change after EBA has publicly announced that it has set up its central validation function;

    b. Counterparty applies for validation of a new pro forma model;

    c. Counterparty is using an existing pro forma model validated by the EBA, at the reporting deadline of a given year.

44. In the case of application for a new pro forma model (other than ISDA SIMM), the amount to be charged for the validation of a new pro forma model should be calculated based on the additional costs expected to be incurred in the same financial year by the EBA for the model validation (see below), divided equally over all counterparties sponsoring that new pro forma model (i.e., all the counterparties having applied to EBA for that new pro forma model).

45. For the other two triggers (first year of application of EMIR 3 to ISDA SIMM; continued use of model validated by EBA in earlier year), the EBA proposes two possible methods to calculate the fees.

Method 1 – full proportionality

46. The share of the total costs to be paid by the counterparty (i.e., the fee to be paid to the EBA) is calculated from the share of that counterparty's average notional amount of the aggregated averages across all counterparties, multiplied by the total estimated EBA costs for that calendar year.

47. Advantages of this method:

a. It is proportionate at the highest possible level i.e., every one of the counterparties would be invoiced proportional to their average notional amount.

b. It is simple to understand and to calculate.

48. Disadvantages of this method:

a. The EBA strives to operate an efficient invoicing process, however there is a risk with this method that the cost of invoicing and collection may exceed the fee charged, particularly in cases where the fee is not paid by the due date.

b. It may lead to significant relative fluctuations in the fee to be paid by a given counterparty over the years.

Method 2 – fixed element and fully proportional variable element

49. The fee is composed of a fixed and a variable amount, with the fixed amount justified by the administrative cost of issuing the invoices and collecting the fees, and the variable amount being distributed over the counterparties as per method 1. This counters one disadvantage of method 1.

50. The calculation is:

$$Fee\ for\ Counterparty\ n = \ Fixed\ fee + (Total\ variable\ fee * \frac{ANAPF_{Counterparty_n}}{ANAPF_{Total}})$$

51. The total variable fee is calculated as:

$$Total\ variable\ fee = \ Total\ costs - (Fixed\ fee * Number\ of\ counterparties)$$

52. The proposed amount of the fixed fee is EUR 200 initially. This fee would be reviewed annually considering inflation and other factors, however such review would not necessarily result in a change to the amount of the fixed fee.

Impact on fees calculation of there being more than one pro forma model

53. In the case that more than one pro forma model has been validated by the EBA and there are counterparties applying to use each model, the costs must first be apportioned between the models before being attributed to the counterparties using each model.

54. Given that this work is new to the EBA, the proposed approach is as follows:

    a. In the first year in which more than one model is in use and has been validated by the end of the previous year: the estimated costs shall be divided by the number of models;

    b. Then, the resulting costs shall be attributed to the counterparties using each model according to the chosen calculation method.

55. For example:

- Total estimated annual cost = 2 MEUR
- Number of validated models = 2 models
- Cost per model = 2 MEUR / 2 models = 1 MEUR / model
- Number of counterparties using each model:
  - Model A: 300 counterparties, sharing 1 MEUR of cost
  - Model B: 50 counterparties, sharing 1 MEUR of cost

56. This approach is suggested by the fact that, in the steady stage, a large part of the EBA costs corresponding to its central validation function will be driven by the number of models, and not by the numbers of counterparties using each model. Once divided by the number of models, the costs will then be assigned to each counterparty in a proportionate manner. In addition to its simplicity, this approach fulfils the proportionality requirement set by the Regulation.

Fees for counterparties submitting an application after the reporting deadline

57. Counterparties aiming at using a pro forma model are required to apply to the EBA before starting using that model. For counterparties submitting an application after the reporting deadline in a given year (e.g. the counterparty just received a license to use the pro forma model), the EBA will charge the fixed fee proposed in option 2 to cover fee invoicing and collection costs, the estimated costs for the year already having been calculated for the counterparties applying by the reporting deadline.

58. In particular for 'new counterparties' (e.g. counterparties being subject for the first time to the requirement to exchange initial margin in accordance with EMIR and Article 36 of the joint ESAs RTS on uncleared OTC derivatives), this treatment is consistent with the fact that the average over the past 12 months of end-month notional amounts is expected to remain very low the first year (zero being included in the average for those months where the pro forma model was not used).

Fees for validation of a new pro forma model in year of application

59. In accordance with the second paragraph of Article 12(2), *'To facilitate EBA's validation work, developers of pro forma models shall, upon EBA's request, submit to EBA all the necessary information and documentation.'* This includes, in the case of developers of new pro forma models, informing EBA as soon as possible in advance of any official application - by counterparties sponsoring that new pro forma model - for the purpose of resource planning for the validation of such new pro forma model.

60. Such applications are expected to be received by the EBA not later than 30 September, to allow time for invoicing and fee collection.

61. Given that there is no ANAPF by which to split the cost proportionally over all counterparties applying to use the new model, the EBA considers it appropriate to charge all new model applicant (NMA) counterparties equally, based on a fixed fee per new pro forma model. It is proposed to set this fee at EUR 500 000 initially, with this amount to be reviewed by the EBA after the first year in which a new model application is received. This EUR 500 000 fee will be equally shared among all counterparties applying to use the new model.

Other considerations

62. EBA considered setting a monetary floor below which fees not charged, with the fees falling below this floor being redistributed as cost to the rest of the counterparties. For EBA Finance, this would be an advantage as it significantly would reduce the transaction volume. However, this idea was dropped due to the Level 1 requirement for proportionality.

Question

Q4. Do you have any comments/relevant input to the proposed calculation methods for the fees? Please elaborate, in particular if you raised issues linked with the estimation of ANAPF as part of Question 3, on how the calculation methods for the fee could be adjusted to address those issues (e.g. bucketing of counterparties according to ANAPF levels).

4.5 Payment modalities

Consideration on timing of invoicing of the fees

63. The EBA intends to issue one fee invoice per counterparty per pro forma model per year.

64. Given the relatively low amount of the fees as a proportion of EBA total revenue, the EBA does not see the necessity to collect the fees in the first semester of a given year.

65. For counterparties notifying their intention to use a pro forma IM model by the reporting deadline, EBA proposes to issue all fee invoices not later than 30 June each year. From the EBA perspective, this has the following advantages:

    a. Being later in the year, the cost estimates will be more accurate;

    b. It is three months after other fee invoicing deadlines (e.g. DORA oversight fee), allowing for a better distribution of EBA workload in its finance area.

66. The payment deadline will be the standard 30 days from date of issue of the invoice.

67. Derogating from the above:

    a. in the first year of implementation, EBA proposes to issue the fee invoices not later than three months following the validation decision of the pro forma model;

    b. for fee invoices to applicants to use a new model, the fee invoice shall be issued not later than 31 October in the year of application.

Considerations on collecting the fees

Late payment interest

To ensure consistency with the other delegated acts on fees, any late payments shall incur the default interest laid down in Article 99 of Regulation (EU, Euratom) 2024/2509[8].

Annual budget cycle

68. Due to the annual nature of the EBA budget, whereby funding for a year's expenditure must be received that same year, the EBA wishes to avoid issuing invoices later than 31 October.

[8] Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast) (OJ L, 2024/2509, 26.9.2024, ELI: http://data.europa.eu/eli/reg/2024/2509/oj)

That Regulation supplements, where needed, the EBA Financial regulation dated 1 July 2019 and adopted by the EBA Management Board based of the Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies.

Communication

69. All communications between the EBA and the counterparties shall take place by electronic means.

70. Each year, by the reporting deadline, all financial and non-financial counterparties using pro forma IM models, are expected to communicate to the EBA the following elements:

    a. The list of pro forma models IM models used over the 12-month reference period and until the reporting deadline;

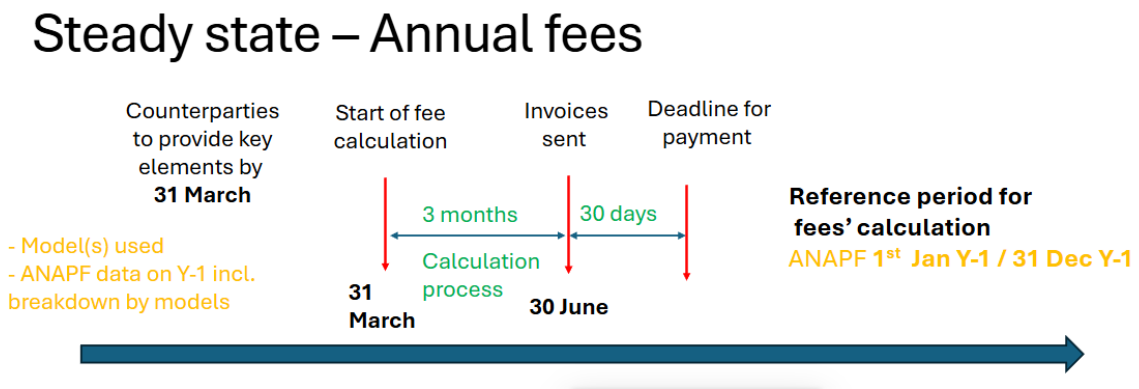
    b. ANAPF per pro forma used, as well as the end-months amounts of non-centrally cleared OTC derivatives used to compute ANAPF, per pro forma used, as defined in section 4.3 including a breakdown by months;

    c. The relevant information regarding the financial details of the counterparty as required for the billing process.

4.6 Timelines

71.The table below sets out the annual timelines envisaged, for the three fee-triggering situations.

Deadline	First year of validation of existing ISDA SIMM	Validation of new pro forma model	Subsequent years
31 March	Submission of applications		Reporting deadline
30 June	EBA decision on SIMM model validation		EBA calculates fees (based on estimated costs for full year) and issues invoices
30 July			CTPs pay invoices (deadline is invoice issue date + 30 days)
30 September	EBA calculates fees (based on estimated costs for 9 months) and issues invoices	Submission of applications	
30 October	CTP invoice payment deadline (invoice issue date + 30 days)	EBA charges fixed fee of EUR 500 000 and issues invoices	
30 November		CTP invoice payment deadline (invoice issue date + 30 days)	
Notes			
	First year of validation of ISDA SIMM could be 2026, subject to EBA having previously publicly announced that it has set up its central validation function. In the case of firms starting to use ISDA SIMM after 31 March (i.e. new users of ISDA SIMM), a fixed fee – the EUR 200 initially proposed in paragraph 52 - will be charged (as per paragraph 57).	Costs will typically be comprised of mission costs for EBA staff and cost of external consultancy services. EUR 500 000 fee will be equally shared among all counterparties applying to use the new model.	In the case of firms starting to use a validated pro forma model after the reporting deadline (i.e. new users), a fixed fee – the EUR 200 initially proposed in paragraph 52 - will be charged (as per paragraph 57).



Questions

Q5. Do you have any comments on the proposed timing of invoicing? Please elaborate.

Q6. Do you have any comments on the proposed list of information to be communicated to EBA for the calculation of fees? Do you have any comments on the proposed timeline to submit this list of information to EBA (i.e. by the reporting deadline each year)? Please elaborate.

Q7. Do you have any other comments on the proposals made in this discussion paper?

Annex - Summary of questions

1. Do you have any comments on the scope of the new tasks expected from the new role of EBA as central validator of pro forma models?

2. Could you confirm that 3 months is appropriate to compute ANAPF for the purposes of submitting the information for fee calculation by the reporting deadline?

3. Do you have any comment with respect to the calculation of ANAPF? Please highlight any expected issue linked with the estimation of ANAPF (including accuracy of such estimation).

4. Do you have any comments/relevant input to the proposed calculation methods for the fees? Please elaborate. Please elaborate, in particular if you raised issues linked with the estimation of ANAPF as part of Question 3, on how the calculation methods for the fee could be adjusted to address those issues (e.g. bucketing of counterparties according to ANAPF levels).

5. Do you have any comments on the proposed timing of invoicing? Please elaborate.

6. Do you have any comments on the proposed list of information to be communicated to EBA for the calculation of fees? Do you have any comments on the proposed timeline to submit this list of information to EBA (i.e. by the reporting deadline each year)? Please elaborate.

7. Do you have any other comment on the proposals made in this discussion paper?