

# Reply form

**Consultation Paper on draft RTS amending Commission Delegated Regulation (RTS) 153/2013 in relation to public guarantees, public bank guarantees and commercial bank guarantees as collateral and in relation to certain aspects of investment policy and highly secure arrangements for the deposit of financial instruments**



## Responding to this paper

ESMA invites comments on all matters in the Consultation Paper and in particular on the specific questions in this reply form. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **30 April 2026**.

## Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in this reply form.
- Please do not remove tags of the type <ESMA\_QUESTION\_COLL\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA\_COLL\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_COLL\_ABCD.

- Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

## **Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on 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 ESMA's Board of Appeal and the European Ombudsman.

## **Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings 'Legal notice' and heading '[Data protection](#)'..

## 1. General information about respondent

Name of the company / organisation	Finnish Energy
Activity	Non-financial counterparty
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Finland

## 2. Questions

**Q1 Do you agree that the existing provision on concentration limits should apply to guarantees and as such Article 42 should be amended to provide legal clarity on this?**

<ESMA\_QUESTION\_COLL\_1>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_COLL\_1>

**Q2 Do you agree with the inclusion of the level of collateralisation of the guarantee as a criterion for the CCP to consider when establishing concentration limits?**

<ESMA\_QUESTION\_COLL\_2>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_COLL\_2>

**Q3 Do you agree with the inclusion of the new criteria (e) in paragraph 3 of Article 42, so that the CCP can consider the activity of the non-financial client when setting concentration limits?**

<ESMA\_QUESTION\_COLL\_3>

We support the inclusion of criterion (e), which allows CCPs to consider the underlying activities of non-financial clients when setting concentration limits. This introduces necessary proportionality and better reflects the economic reality of hedging-related exposures in non-financial sectors.

For many non-financial energy companies, the use of bank guarantees does not indicate an elevated risk profile but reflects their business model. These companies hold substantial physical assets in generation, distribution or retail, and their derivatives exposures - primarily linked to hedging operational needs - are backed by these tangible assets. At the same time, they often lack large pools of highly liquid financial assets, which explains their reliance on bank or public guarantees as eligible collateral.

The severe liquidity stress during the energy price spike a few years ago further illustrates this point. Extreme volatility led to frequent and significant margin calls, putting considerable pressure on companies' cash resources. Allowing CCPs to take account of the underlying activity can therefore help avoid disproportionate liquidity impacts on fundamentally sound non-financial entities with economically justified, asset-backed positions.

Criterion (e) thus enables CCPs to distinguish between speculative positions and those linked to operational needs, enhancing risk sensitivity, reducing unintended liquidity pressures, and supporting both financial stability and the efficient functioning of energy markets. ]

<ESMA\_QUESTION\_COLL\_3>

**Q4 Shall there be specific concentration limits established for guarantees provided by non-clearing members, given these exposures are not considered in the Stress Test?**

<ESMA\_QUESTION\_COLL\_4>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_COLL\_4>

**Q5 Is ESMA's understanding correct? Are there other essential features of the guarantees that should be highlighted?**

<ESMA\_QUESTION\_COLL\_5>

In general, it is essential that the conditions imposed on banks (both clearing and non-clearing members) and CCPs facilitate the practical use of bank guarantees. The framework should not unduly restrict banks' ability to provide guarantees or limit CCPs' capacity to accept them.

As concentration limits directly affect the overall availability of bank guarantees as collateral, they should not result in a situation where only the largest market participants are able to access bank guarantees. More broadly, the requirements should not lead to situations where non-financial counterparties face sudden restrictions on the availability of guarantees or are subject to unexpected or unreasonable payment obligations in terms of timeframe or amount.

Finally, the framework should not place European banks at a competitive disadvantage in the provision of these services. |

<ESMA\_QUESTION\_COLL\_5>

**Q6 Do you agree with the conditions proposed by ESMA? Please provide your views specifically for each condition (a), (b), (c) and (d).**

<ESMA\_QUESTION\_COLL\_6>

|TYPE YOUR TEXT HERE |

<ESMA\_QUESTION\_COLL\_6>

**Q7 In relation to condition (c), do you agree with ESMA proposal? If not, is it in your opinion legally and practically feasible that guarantees are posted to an omnibus account?**

<ESMA\_QUESTION\_COLL\_7>

|TYPE YOUR TEXT HERE |

<ESMA\_QUESTION\_COLL\_7>

**Q8 Is there any other condition you consider would be necessary in relation to the extension of the use of guarantees to guarantee non-financial clients? E.g. should it be mandated that CCPs have in place a mechanism to identify the default of a non-financial client?**

<ESMA\_QUESTION\_COLL\_8>

|TYPE YOUR TEXT HERE |

<ESMA\_QUESTION\_COLL\_8>

**Q9 Do you agree with ESMA's proposal to require that there are a credit rating and reliable financial data on the guarantor available for the CCP to use in its internal assessment?**

<ESMA\_QUESTION\_COLL\_9>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_COLL\_9>

**Q10 Do you consider that the direct access of a public guarantor to real-time gross settlement systems such as T2 should be a requirement for public guarantors? Please provide evidence or reasoning to support your response.**

<ESMA\_QUESTION\_COLL\_10>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_COLL\_10>

**Q11 Do you agree that public guarantees should be accompanied by a legal opinion confirming the effective representation of the guarantor, the validity of the guarantee and its enforceability?**

<ESMA\_QUESTION\_COLL\_11>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_COLL\_11>

**Q12 Do you agree that the conditions for commercial bank guarantees should explicitly foresee that the guarantor is a credit institution as defined in CRR?**

<ESMA\_QUESTION\_COLL\_12>

Yes. We agree that explicitly requiring the guarantor to be a credit institution as defined in the CRR provides legal clarity and supports a harmonised risk assessment across CCPs. This clarification is consistent with the objective of ensuring enforceability and sound risk management, while

not constraining the practical usability of commercial bank guarantees for non-financial counterparties. |

<ESMA\_QUESTION\_COLL\_12>

**Q13 Do you agree that the possibility for CCP to accept uncollateralised bank guarantees should be specified in Section two of Annex I of RTS 153/2013?**

<ESMA\_QUESTION\_COLL\_13>

|Yes. Explicitly specifying the possibility for CCPs to accept uncollateralised commercial bank guarantees is essential. This reflects the EMIR 3 policy intent and ensures that the use of bank guarantees provides real liquidity relief to non-financial counterparties, rather than remaining a purely theoretical option subject to divergent CCP interpretations.

However, the current wording of draft RTS Annex I, Section 2, still lacks sufficient clarity, as it neither refers to “uncollateralised” guarantees nor explicitly acknowledges the possibility for CCPs to accept uncollateralised bank guarantees.

While the wording of Annex I, Section 2(1)(h) (“when commercial bank guarantees are backed by collateral, that collateral shall meet the following conditions...”) could be interpreted as implying that guarantees may also exist without collateral, such an indirect reference is not sufficient to provide the necessary legal certainty. |

<ESMA\_QUESTION\_COLL\_13>

**Q14 Do you agree with ESMA that the conditions applicable to commercial bank guarantees should also be applicable to public bank guarantees? Please specify in your answer whether any addition condition should be considered.**

<ESMA\_QUESTION\_COLL\_14>

|We support the underlying principle, but not the current wording.

We agree that, as a starting point, the same core conditions (enforceability, irrevocability, wrong-way risk mitigation) should apply to public bank guarantees. However, we note that Annex I Section 2(3)(j) currently establishes a presumption of full collateralisation for public bank guarantees, unless CCP operating rules provide otherwise. This risks undermining the effectiveness of public bank guarantees as a liquidity tool.

We recommend that the RTS more clearly align public bank guarantees with commercial bank guarantees by:

explicitly allowing uncollateralised public bank guarantees, subject to the same risk controls, and avoiding an RTS-level presumption of mandatory collateral backing, which may lead to inconsistent and overly restrictive CCP practices. |

<ESMA\_QUESTION\_COLL\_14>

**Q15 Do you agree with the proposed way to address the lack of definition of “public bank”?**

<ESMA\_QUESTION\_COLL\_15>

|Yes, in principle. Clarifying that “public banks” are publicly owned banks distinct from central banks and multilateral development banks improves legal certainty. That said, the definition should be applied in a way that does not re-introduce de facto restrictions on the usability of public bank guarantees, particularly where credit risk and enforceability are equivalent with commercial bank guarantees. |

<ESMA\_QUESTION\_COLL\_15>

**Q16 Do you agree with the proposed change concerning the conditions under which debt instruments can be considered highly liquid, bearing minimal credit and market risk (and hence considered as eligible financial instruments for the purpose of CCP investment policy)?**

<ESMA\_QUESTION\_COLL\_16>

|TYPE YOUR TEXT HERE |

<ESMA\_QUESTION\_COLL\_16>

**Q17 Do you agree with the proposed change concerning the highly secure arrangements for the deposit of financial instruments posted as margins or as default fund contributions?**

<ESMA\_QUESTION\_COLL\_17>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_COLL\_17>