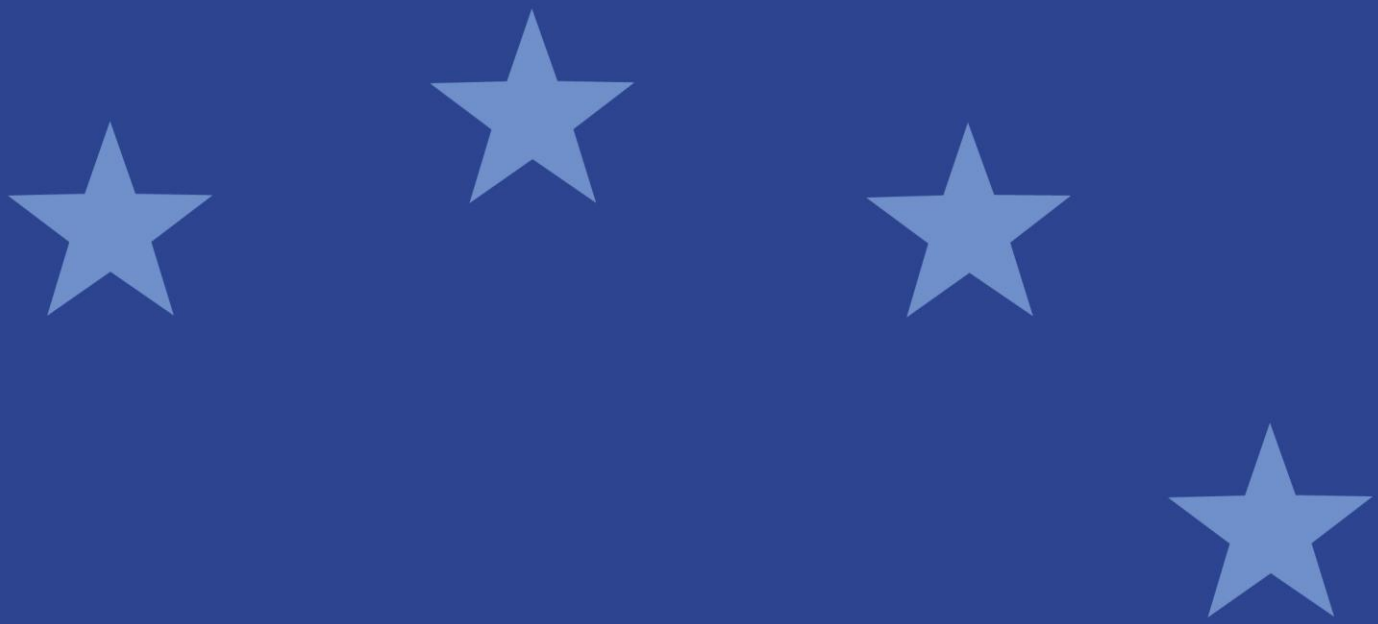
esma European Securities and Markets Authority

Consultation paper

Draft technical standards on data to be made publicly available by TRs under Article 81 of EMIR



15 December 2016| ESMA/2016/1661

European Securities and Markets Authority

Date: 15 December 2016
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Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. 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 **15 February 2017**

All contributions should be submitted online at 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 publically 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 under the heading Legal Notice.

Who should read this paper

This consultation paper may be specifically of interest to trade repositories, benchmark administrators and entities subject to RTS 20 of MiFID II/ MiFIR.

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1 Executive Summary

Reasons for publication

Article 81 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC Derivatives, CCPs and Trade Repositories (EMIR) requires ESMA to develop draft regulatory technical standards specifying the frequency and the details of the information to be made available to the relevant authorities and the information to be published by trade repositories.

Public data has experienced several problems related to the comparison and aggregation of data across trade repositories. Therefore, ESMA is setting out several proposals to enhance the data made publicly available by trade repositories and to increase the transparency to the public in general as well as allowing the publication of certain figures required by EU regulations such as MiFID II and the Benchmarks Regulation.

Contents

This document presents the proposals related to the publication of data by trade repositories and in particular for the avoidance of double counting of cleared derivatives, on the details of aggregations for commodity derivatives and derivatives using benchmarks, as well as on the general technical aspects of publication of aggregate data.

Next Steps

ESMA is consulting publicly on the proposed standards for aggregation of data to be made publicly available. Following the finalisation of the consultation period of the proposed technical standards, ESMA will be preparing a final report to be submitted to the European Commission for its endorsement.

Acronyms and definitions used

BMR	Benchmarks Regulation - Regulation (EU) No 2016/1011 on benchmarks
CM	Clearing Member
CCP	Central Counterparty
CSD	Central Securities Depository
CPMI	Committee on Payments and Market Infrastructures
CPSS	Committee on Payment and Settlement Systems
ECB	European Central Bank
EEA	European Economic Area
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories – also referred to as “the Regulation”
ESMA	European Securities and Markets Authority
ETD	Exchange-traded derivative
EU	European Union
FSB	Financial Stability Board
IOSCO	International Organisation of Securities Commissions
ISIN	International Securities Identification Number
ITS	Implementing Technical Standards
LEI	Legal entity identifier
MIC	Market identifier code
MiFID	Markets in Financial Instruments Directive 2014/65/EU
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012
NCA	National Competent Authority

OJ	The Official Journal of the European Union
OTC	Over-the-counter
Q&A	Questions and Answers
RTS	Regulatory Technical Standards
RTS 20	Draft RTS under MiFID II on criteria for establishing when an activity is to be considered ancillary to the main business
RTS 23	RTS under MIFID II/MiFIR on reference data
SFTR	Regulation (EU) No 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012
SMSG	Securities and Markets Stakeholder Group
TR	Trade repository
UTI	Unique Transaction Identifier
XML	Extensible Mark-up Language

2 Review of the EMIR Technical Standards on data to be made publicly available

2.1 Background

1. Article 81 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, CCPs and trade repositories (EMIR) requires ESMA to develop draft regulatory technical standards specifying the frequency and the details of the information to be made available to the relevant authorities and the information to be published as well as operational standards required in order to aggregate and compare data across repositories and for the relevant authorities to have access to information as necessary.

2. ESMA fulfilled this mandate in September 2012 and submitted those drafts to the Commission, which became the Commission Delegated Regulation (EU) No. 151/2013 (RTS, hereafter).

3. The RTS consisted of a definition of the data (i) to be made publicly available on a weekly basis by the trade repositories (TRs, hereunder), (ii) the access levels for EEA and third country authorities, as well as (iii) a brief reference to the use of communication procedures, standards for messaging and reference data used at international level without specifying or prescribing standards to be used.

4. This consultation paper focuses on the aggregate position data to be made publicly available by the TRs under EMIR and specifies the relevant operational standards to compare and aggregate this type of data across TRs.

5. At the time of drafting the RTS (2011-2012), there were still a number of discussions at international level on the aggregation of data across TRs. The final report from CPSS-IOSCO on "OTC derivatives data reporting and aggregation requirements"[1] was published in January 2012, while the "FSB Feasibility Study on Aggregation of OTC Derivatives Trade Repository Data"[2] did not start until early 2014 and the publication of the final Study took place only in September 2014. Therefore, ESMA decided to keep the wording of the RTS sufficiently flexible to accommodate further developments of international standards.

6. The standards for data to be made publicly available were an area where ESMA could not build on lessons learnt. The practical implementation of EMIR reporting and the experience gained so far has shown several shortcomings and limitations that need to be addressed so that the data published by the trade repositories under EMIR can be better used by the general public.

7. Due to non-standard, sometimes insufficient tools and functionalities provided by TRs, the public needed to spend considerable time accessing the websites of the different TRs,

[1] http://www.bis.org/cpmi/publ/d100.pdf
[2] http://www.financialstabilityboard.org/wp-content/uploads/r_140919.pdf

downloading files in TR-customised formats published with different frequencies, translating them into a common one, and finally trying to aggregate it across all the TRs. These are all overly manual processes. As a result, the EMIR public data was difficult to use and the transparency of derivatives towards the general public was not achieved.

8. As part of its supervisory actions, ESMA discussed and agreed with the TRs the implementation of several practical aspects to overcome some of the aforementioned issues and to increase the value for the public of the EMIR aggregated data. Following this initiative, common templates were adopted and data started becoming more comparable.

9. In the meantime, several other EU regulations are requiring entities to assess their activities with regards to derivatives concluded in the EU. Three years after the start of the reporting obligation the TRs have gained considerable experience with regards to derivatives data and have demonstrated being able to put in place complex reporting and data processing systems. From that perspective, and taking into account that EMIR reporting comprises both exchange-trade derivatives and OTC derivatives, ESMA understands that the TRs are in a privileged position to provide the most comprehensive derivatives data aggregation in the EU. Expanding and making more granular the information that TRs will need to publish appears necessary to make a better use of the stream of data reaching TRs and to provide the best possible aggregated data that EU financial markets need for functioning under the current regulatory framework.

2.2 Trading activity on commodity derivatives under MiFID

10. Article 2 of draft RTS 20 under Directive 2014/65/EU[3] (MIFID II, hereinafter) requires the assessment of the size of the trading activity in commodity derivatives, emission allowances and derivatives of persons performing activities under MIFID II in order to assess the application of certain exemptions. In that regard, ESMA sees additional benefits from providing aggregation of the different types of commodities derivatives concluded in the EU.

11. Article 2(1)(j) of MiFID II grants persons performing MiFID II activities in commodity derivatives, emission allowances and derivatives thereof an exemption if their activities are ancillary to their main business. Article 2(4) of MiFID II requires such persons to compare the size of their trading activity in commodity derivatives, emission allowances and derivatives thereof to the overall market trading activity in a particular asset class over a certain period of time (the trading activity test).

12. The asset classes and the relevant thresholds per asset class have been further specified by ESMA in draft RTS which are yet to be endorsed by the European Commission. The relevant RTS by ESMA went through an opinion process in accordance with Article 10 of Regulation (EU) 1095/2010 where the trading activity test has not been subject to any

[3] http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0065&from=FR

objection by the European Commission so ESMA considers the trading activity test as designed as stable.

13. Persons wanting to benefit from the MiFID II exemption in Article 2(1)(j) of MIFID therefore have to execute a test where they compare their own trading to the total trading in the EU market based on eight distinct asset classes.

2.3 Benchmarks Regulation

14. Regulation (EU) No 2016/1011 on benchmarks (BMR, hereinafter) requires the establishment of appropriate measurement for measuring the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds for the purposes of assessing benchmarks under the thresholds in Article 20(1) and Article 24(1)(a) of BMR. Depending on the nature of the benchmark the assessment is performed either by the European Commission, by the relevant competent authorities or by the administrators.

15. The European Commission proposed a draft Regulation on indexes used as benchmarks in financial instruments and financial contracts[4] in September 2013 in the wake of the manipulation of various benchmarks. An agreement was reached with the European Parliament in November 2015. Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indexes used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014, (BMR, hereinafter) was published on 29 June 2016.

16. Under Article 20(1) of BMR, the European Commission "shall adopt implementing acts in accordance with the examination procedure referred to in Article 50(2) to establish and review at least every two years a list of benchmarks provided by administrators located within the Union which are critical benchmarks, provided that one of the following conditions is fulfilled: the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value of at least EUR 500 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable (…)."

17. Furthermore, under Article 20(6) of BMR it is provided that the Commission shall be empowered to adopt delegated acts in accordance with Article 49 BMR in order to specify how the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds are to be assessed, including in the event of an indirect reference to a benchmark within a combination of benchmarks, in order to be compared with the thresholds referred to in Article 20(1) of BMR and in point (a) of Article 24(1) of BMR.

[4] The press release of the European Commission on the proposal is available at the following address: http://europa.eu/rapid/press-release_IP-13-841_en.htm?locale=en

18. Article 24(1)(a) of BMR provides that "a benchmark which does not fulfil any of the conditions laid down in Article 20(1) is significant when it is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investments funds having a total average value of at least EUR 50 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable, over a period of six months"

19. Under Article 24(2) of BMR the European Commission shall be empowered to adopt delegated acts in accordance with Article 49 in order to review the calculation method used to determine the threshold referred to in point (a) of Article24 (1) of BMR "in the light of market, price and regulatory developments as well as the appropriateness of the classification of benchmarks with a total value of financial instruments, financial contracts or investment funds referencing them that is close to that threshold. Such review shall take place at least every two years as from 1 January 2018.

20. Finally, it is provided that an administrator shall immediately notify its competent authority when its significant benchmark falls below the threshold mentioned in point (a) of Article 24(1) of BMR.

21. On 11 February 2016, ESMA received a request from the European Commission for technical advice on possible delegated acts[5] under the BMR.

22. In order to facilitate data aggregations and links between the different types of benchmarks used, ESMA has included in its final report on the technical advice under Article 20(1) and Article 24(1)(a) of BMR a recommendation to request the benchmark administrators to obtain an ISIN for all their indexes.

23. However, co-legislators have not envisaged a specific mechanism to measure and publish the total use of a specific benchmark. Absent this publication, it would be difficult if not impossible to conduct the measurement of the conditions mentioned above. ESMA considers that TR regulated data constitutes the best alternative for these calculations.

2.4 Areas with proposed amendments to the RTS

24. While it was not an original objective of EMIR to provide granular aggregate position data to the public, ESMA understands that establishing a comprehensive framework for data aggregation is essential to achieve the objectives for derivatives transparency set out by the G20 in September 2009. While defining the data aggregations per class of derivative to be performed, ESMA leverages on its experience with granular derivatives data and also ensures that the details published would allow for the comparison and aggregation of data across TRs.

[5] The mandate for the technical advice is publicly available: http://ec.europa.eu/finance/securities/docs/benchmarks/160211-mandate-esma-request_en.pdf

25. Under Article 2(6) of EMIR, a class of derivative is defined as "a subset of derivatives sharing common and essential characteristics including at least the relationship with the underlying asset, the type of underlying asset, and currency of notional amount." Furthermore, it is specified that "Derivatives belonging to the same class may have different maturities." In that respect, while drafting the initial requirements for data aggregation under Article 1 of RTS, ESMA referred only to the lowest level of granularity, i.e. the asset class of a derivatives without further specifying the rest of elements. In the proposals in this consultation paper, ESMA is further specifying those elements for derivatives in the commodities asset class and for derivatives that use indexes.

26. The definitions on data access that are used in EMIR are fully consistent with those included in the Final report on "Authorities access to trade repository data" issued in August 2013 by CPSS-IOSCO[6]. In that regard, aggregate positions refer to both gross and netted data attributable to all participants that may be summed using various categories, including by product, currency, region, underlying, etc. that are not specific to any uniquely identifiable participant or transaction.

27. Furthermore, as mentioned in sections 2.2 and 2.3, there are two EU regulations, in particular MiFID II and BMR, which require the use of EU aggregate derivatives data for different purposes. In one case, MiFID II provides that market participants assess their trading volumes in certain classes of commodity derivatives. In the other case, BMR establishes that index providers assess the significance of their respective indexes vis-à-vis a threshold established in the BMR. In the absence of TR data these entities would need to run complex processes to compile the data across all the different venues and post-trade providers. Clearly this process would not be error-free and it is highly possible that there will be different figures obtained by each entity. This would run contrary to the objectives of the regulations and would create an unlevelled playing field.

28. From the perspective of the supervisory authorities such situation would significantly hamper the fulfilment of their duties. Should the authorities be required to recreate the aggregations from the derivatives data to which they have access, it will be impossible to compare the results, since every authority has different access levels based on its responsibilities and mandates. In case it would be for ESMA to perform these aggregations, such task would be overly burdensome and, most importantly, ESMA would lack the direct contact with the reporting entities should any amendments to the underlying data be needed. TRs are therefore a natural choice in this regard as they play a pivotal role in the EU derivatives reporting regime, they already serve a public purpose of providing derivatives data to competent authorities and being a central market infrastructure established to improve the transparency of derivatives markets, they are naturally placed to play this role.

29. This being said, ESMA acknowledges that there is still some work to be done with regards to the quality of the data reported to TRs. Albeit the extensive guidance on reporting provided by ESMA and the definition of strict data validation rules, the analysis of the data

[6] http://www.iosco.org/library/pubdocs/pdf/IOSCOPD417.pdf

shows that there are still certain areas (i) where the quality of the data reported needs to be improved or (ii) where the reporting practices by market participants need to become more consistent. Furthermore, ESMA also notes the dynamic nature of the rules on derivatives reporting which is determined, among others, by the appearance of new derivative products, the breadth of the existing ones, the granularity of the details to be reported and by the specificities of the requirements set out by the authorities[7]. The rules on aggregate position data leverage on the rules on reporting and by default might need to be updated whenever necessary to ensure alignment with the reporting rules.

30. ESMA is aware that the quality of the aggregate position data published by the TRs is dependent on the quality of the data reported, however ESMA is also certain that the publication of aggregate data by TRs would allow to address additional data quality issues which are only seen at more aggregate level, namely over and under-reporting, incorrect identification of the side of the trade or erroneous classification of derivatives, etc.

31. Last, but not least, an enhanced public data provided by the TRs shows the benefits of the EMIR reporting framework where private market infrastructures were tasked to become repositories of transactions and to give access to data to the authorities, but also to the general public. The key points in choosing trade repositories instead of public bodies were the inherent flexibility of private entities, the potential scalability of their systems and the relevant know-how in data processing.

32. In the Final report on Draft technical standards on access to data and aggregation and comparison of data across TR under Article 81 of EMIR[8], ESMA defined the operational standards for aggregation and comparison of transaction data across TRs. In order to ensure that the end users are able to aggregate and compare the aggregate position data published by the TRs, ESMA is also defining in this consultation paper the general rules for making the data available and is establishing the specific rules to perform aggregations at the level of the individual TRs.

33. In order to address these aspects, stemming from the empowerment under Article 81(5) of EMIR which requires ESMA to draft technical standards specifying the frequency and details of public data, ESMA has drafted the amendments to the RTS on data to be made publicly available by TRs to define:

    a. the frequency and timeliness of publication

    b. the general technical aspects of aggregation for the purposes of publication

    c. the details of aggregations for the purposes of benchmarks' thresholds

    d. the details of aggregations for the purposes of trading size of commodity derivatives

[7] At this stage, CPMI-IOSCO has three work streams on data harmonisation, namely UTI, UPI and critical data elements, which would need to be incorporated to the EU reporting rules when finalised

[8] https://www.esma.europa.eu/press-news/esma-news/esma-issues-amended-rules-access-aggregation-and-comparison-data-across-trade

34. Finally, ESMA will be considering also the feedback received on the consultation on publication of aggregate data under Regulation 2015/2365[9].

3 Avoidance of double counting of cleared transactions for the purposes of calculation of aggregate market volumes

35. The reporting of cleared transaction is provided in Article 2 of Commission Delegated Regulation 148/2013[10] (current RTS on reporting) and it is further clarified in several ESMA EMIR Q&As[11]. Moreover, the reporting of exchange-trade derivatives (ETDs) is addressed in a specific section, where two possible scenarios are depicted. While essential to determine the risk exposures between the different entities in the clearing chain, the reporting logic results in additional numbers of transactions which, for the purposes of market volume and size, need to be addressed.

36. Similarly, in the case of the OTC transactions, the reporting of the clearing by the CCPs, while allowing for swift identification of exposures, practically duplicates the actual volume of transactions.

37. ESMA proposed amendments to the EMIR reporting rules on ETDs which are included in paragraph 50 of the Final report on Review of the Regulatory and Implementing Technical Standards on reporting under Article 9 of EMIR[12] (Amended TS on reporting). In particular, when the transaction is concluded on a venue and immediately cleared, it is proposed that it is reported only in its cleared form. While this is the general case, there are potentially some instances where the clearing might not take place immediately.

38. The current reporting logic under EMIR does not allow to accurately distinguish in all cases between the trades where the CM is clearing for its clients from those where it is clearing trades concluded on its own account.

39. To ensure high quality data and to address risks of misreporting or potential omission of information, ESMA has included in its ESMA EMIR Q&As guidance that when one of the counterparties to a derivatives contract has several roles in the derivatives transaction, the identification of that entity should be included in each of the relevant fields – “Broker ID”, “Beneficiary ID”, “Report submitting entity ID”, “Clearing member ID”, “CCP ID”.

40. Last, but not least, the accuracy and correctness of the aggregation performed by the TRs is dependent on (i) how the TRs have implemented the ESMA’s requirements and (ii) how the counterparties have reported the data. In case one of those is not accurate enough, the actual number would neither be. Particularly in the case of the commodity derivatives,

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9 https://www.esma.europa.eu/press-news/consultations/consultation-draft-rts-and-its-under-sftr-and-amendments-related-emir-rts

10 COMMISSION DELEGATED REGULATION (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories, L52. OJ 23.2.2013, p.1

11 https://www.esma.europa.eu/sites/default/files/library/2016-1176_qa_xix_emir.pdf

12 https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-esma-1645_-_final_report_emir_article_9_rts_its.pdf

in order to allow the TRs to perform consistent and comparable aggregations, it is of utmost importance that the counterparties populate correctly and only with monetary value the field “Notional”.

3.1 ETDs

3.1.1 Scope of the data

3.1.1.1 Determination of Clearing-member-to-client volumes

41. Usually ETD are cleared shortly after their conclusion, hence under the new TS on reporting it is proposed that ETDs are reported only in their cleared form. There are potentially some instances where the clearing might not take place immediately. It remains unclear whether trades in the scope of EMIR concluded on venues outside the EU are reported in a consistent manner with the ones concluded on EU venues.

42. To avoid missing some trades, ESMA considers that given the central role of the CM in ETDs, only the transaction where the CM participates should be taken into account. ESMA is also aware that at the level of each CM, at least three separate types of accounts, e.g. own trading, omnibus client, segregated client, need to be kept in order to allow for the correct operational and regulatory treatment of risks and positions. Therefore, the netting at the level of CCP is carried out per each of the separate accounts of the CM. The derivatives trades concluded by the CM on own account may face the CCP directly or may be also versus one of its clients.

43. To that extent, the transactions concluded by the CM with counterparties which are not CCPs, i.e. with the CM’s clients, would need to be taken fully for the purposes of calculation of the trading activity. Furthermore, ESMA would propose that when the TRs aggregate ETDs for the purposes of market activity, they include the trades where (a) the field “Venue of execution” is not populated with “XXXX” or “XOFF”, (b) where neither counterparty is a CCP and (c) where (i) the reporting counterparty is identified as a clearing member or (ii) either of the counterparties is also identified as CM for the transaction. Given that in some of the cases, the CM might not be reporting, because it is not subject to the reporting obligation under Article 9, ESMA is still exploring which of the two alternatives would give more accurate final result. The final requirement on aggregation would take into account the feedback received on this aspect.

Q1. **For the purpose of more accurate aggregation of ETD volumes between the CM and its clients should only the trades where the CM is reporting counterparty be taken into account or should all trades where CM is on either side of the ETDs be considered? Please elaborate.**

3.1.1.2 Determination of Clearing-member-to-CCP volumes

44. Furthermore, it still remains unclear how to add to the trades descried in the previous section the ones that are directly concluded between the CM and the CCP and which are not stemming from potentially netted positions of the CM clients.

45. Option 1 considered by ESMA with regards to aggregation of ETDs is to use the field "Transaction reference number", which is labelled "Report tracking number" in the amended TS on reporting. While this would have been ESMA's preferred option, given that the field was originally meant to ensure the uniqueness of ETD executions independently of the risk exposures, ESMA is aware that this field is currently not populated in a consistent way. Any potential aggregation based on this field might produce results which are not accurate.

46. Option 2 would be to use "Beneficiary" field instead of the field "Transaction reference number" field. In those cases, where there are trades between the CM and the CCP, the CM would need to identify whether it is the beneficiary or whether the beneficiaries are its clients. Given that the netting between own trades and client trades is not possible under EMIR, the ETD trades relevant for the purposes of aggregation would be clearly identified.

47. The "Beneficiary" field is currently also reported in a different manner. However, for the purposes of achieving consistency, ESMA understands that Option 2 which uses a field which is populated with a closed list of values such as LEIs, would allow achieving the objectives of identifying the trades between the CM and the CCP more easily than through Option 1 which uses a field which is populated with different number for each single execution on a venue.

48. For the reasons above, Option 1 is considered burdensome at this stage, although ESMA would reassess this situation as the EMIR reporting reaches more mature stage. Therefore, at this stage, ESMA understands that only option 2 is practically achievable. Any feedback to this consultation paper will be considered for the purposes of ensuring consistent ESMA guidance on derivatives reporting.

Q2. **For the purpose of more accurate aggregation of ETD volumes between the CM and the CCP, is the "Beneficiary ID" the appropriate field or the "Transaction reference number/Report tracking number" field should be used? Do you envisage any other alternative at this stage? What are the potential costs and benefits of implementing any of the proposed options? Please elaborate on the reasons for your response.**

Q3. **In general, do you agree with the approach outlined in section 3.1.1 to determine the scope of the data subject to aggregation for the purpose of calculating market volumes? Please elaborate on the reasons for your response.**

3.1.2 Aggregation proposal[13]

49. The current rules on reporting require the counterparties to report their new derivatives trades, ETD executions included, with action type "N". The logic is explained in detail in ESMA EMIR Q&A 17, as well as in the EMIR ETD Q&As. Under the amended TS on reporting, the counterparties would be allowed to report their original executions with only one action type – action type "P". The subsequent reporting of CCP cleared positions remains unaffected.

50. Given that for the purposes of assessing market activity, what is important is the actual transaction volume and not where the risks stand, it is essential that the TRs include all the underlying transactions between CM and its clients that are reported with action type "N" under the current rules on reporting or with action type "P" and where the field "Level" is populated with "transaction" under the amended TS on reporting.

51. The ETDs identified as "Position" should be excluded from the calculations of aggregate positions that refer to market volumes.

52. The identification of the ETDs between CCP and CM would depend on the option taken with regards to the identification of trades where the CM is concluding on its own account, which are discussed in paragraphs 45-48.

53. For the purposes of assessing ETD volumes, after classifying the trades among the categories defined in paragraph 76 and performing the necessary adjustments detailed in that paragraph, the TRs would need to divide by 2 the relevant aggregate positions. This mechanism would cater for the actual duplication of the reporting of a single execution on the derivatives venue which is transformed into simultaneous buy and sell transactions versus the CCP. As mentioned in paragraph 35, this logic was introduced to be able to capture the risks in the clearing chain.

Q4. **For the purposes of more accurate aggregation of ETD market volume, do you agree with the proposed approach to take into account only the original ETD executions, i.e. those that are reported under the current RTS on reporting with action types "N" which would be reported under the amended TS on reporting with action type "P"? Please elaborate on the reasons for your response.**

Q5. **For the purposes of calculating ETD market volume, do you agree with the proposed approach to divide by 2 the resulting aggregations in order to cater for the inherent duplication of trading volume of ETDs? Please elaborate on the reasons for your response.**

[13] Among others, the aggregation proposal would rely on the correct reporting by counterparties of the details of the derivatives

3.2 OTC and XOFF transactions

54. Differently to the ETDs, where the actual counterparties of the derivative are not in contact with each other, in the case of the OTC derivatives there is usually an original bilateral transaction which is subsequently sent for clearing. Hence, in the case of the OTC transactions it is expected that by taking only the original bilateral trades, the TRs would be able to accurately calculate the volume of market activity.

55. This can be done by including in the aggregations only the non-cleared trades, i.e. those where the field “Venue of execution” is populated with “XXXX” and where the field “Cleared” is populated with “No”.

56. ESMA understands that the derivatives where the field “Venue of execution” is populated with XOFF will work in similar way as the OTC trades, with the only practical difference that the XOFF would be expected to be cleared in all cases. Therefore, the TRs should include in the aggregations only the pre-cleared trades, i.e. those where the field “Venue of execution” is populated with “XOFF” and where the field “Cleared” is populated with “No”

57. To avoid double counting, only the records with field “Action type“ populated with “New” should be included.

Q6. **For the purpose of aggregating more accurately OTC derivatives volume of market activity, do you agree with the proposed approach to take into account only the original bilateral OTC and XOFF trades, i.e. those that are reported with action type “N”? Please elaborate on the reasons for your response.**

Q7. **Do you consider that the approaches outlined in sections 3.1 and 3.2 should be taken into account for the purposes of calculating also total volumes of reported transactions? Please elaborate on the reasons for your response.**

4 General aspects of data aggregation

4.1 Frequency and timeliness of the publication of data

58. The frequency of publication of data is one of the aspects where harmonisation is required. At the start of the reporting obligation under EMIR, some TRs published data on weekly basis, some others on a daily basis. This led to non-comparable figures.

59. In order to overcome this hurdle in data aggregation, ESMA proposes the publication by TRs of aggregate data on a weekly basis.

60. Each TR should publish data aggregated in accordance with the criteria set out in section 4.2 by Tuesday noon. The data should take into account all derivatives reported as of 23:59:59 UTC on the previous Friday. For the purposes of weekly reporting aggregates, the data should include all derivatives trades reported between Saturday 00:00:00 UTC

and Friday 23:59:59 UTC. When providing aggregates on the outstanding trades, those would be the ones that remain outstanding as of Friday 23:59:59 UTC.

Q8. **Do you agree with the proposed cut-off and publication times? If not, what other aspects need to be considered? Please elaborate.**

4.2 Operational standards for aggregation and comparison of public data

4.2.1 Scope of the data to be taken into account for the purposes of general aggregations at asset class level

61. When performing the general data aggregations, the TRs should take into account all derivatives reported to them under Article 9 EMIR. In particular, the TRs should include the derivatives that are reported at position level. For that purpose, each TRs should ensure that when performing data aggregations, it does not count twice the derivatives trades and the subsequently reported cleared positions. However, when TRs are required to perform specific aggregations at class of derivatives level, as those outlined in sections 5.2 and 6.2.2, the TRs should take due account of the specificities of the aggregations for those trades.

62. TRs should provide aggregate data per asset class for trades reported in the previous week and for outstanding trades as of the relevant cut-off time defined.

63. In addition, ESMA expects that the TRs include in their internal procedures a reference to a process which allows them to correct in timely manner any mistakes on the aggregate position data that are being detected.

Q9. **Are there any further specific additional conditions that need to be included? Please elaborate on the reasons for your response.**

64. The TR should strive to ensure that the data published is of sufficient quality to allow for meaningful aggregations across TRs. As part of the obligations to ensure accuracy of data and compliance with the reporting requirements under Article 19 of RTS 150/2013, a TR should require the reporting counterparties to amend data which is apparently wrong.

65. For instance, the TRs could put in place soft checks for identifying outliers. The soft checks could be calibrated for specific products, currencies, etc. Standard deviations on normal and log-normal distributions could be used. Given the breadth of derivatives, ESMA notes that identifying outliers is not straight-forward, hence ESMA would welcome any specific feedback on this aspect.

66. In addition, ESMA understands that it is important that the TRs ensure that when outliers are removed from the aggregate position data, this is clearly represented. There are two potential alternatives. On the one hand, the TRs could publish two different aggregations – one with removed outliers (cleansed data aggregation) and another one without them

(raw data aggregation). Alternatively, the TRs could publish only cleansed data aggregation.

Q10. **Further to products and currencies, what other data elements need to be taken into account to correctly identify outliers from the aggregate position data? How should the outliers be treated – not at all included in data aggregations or included in a raw data aggregation, but removed from a cleansed one? Please elaborate on the reasons for your response.**

67. ESMA is also willing to explore to what extent the reconciliation status of derivatives could be taken into account. ESMA's preferred approach would be to include only reconciled data in the aggregated positions calculated under Article 81(5) of EMIR. ESMA understands that this would increase the quality and the reliability of public data.

68. However, ESMA is concerned that the current level of data quality and the high number of non-reconciled transaction (also linked to UTI issues) might not allow for the publication of significant amount of data reported by the counterparties. From that perspective, ESMA considers to what extent the reconciled and the non-reconciled trades should be provided in separate aggregations.

Q11. **Should the reconciliation status be taken into account? Should only reconciled trades be included? Please elaborate.**

4.2.2 Types of aggregations per venue of execution

69. When performing aggregations, the TRs should aggregate separately the derivatives taking into account the venue where those are concluded. The practice has showed that aggregating OTC and ETD trades as well as exchange traded and traded off exchange derivatives has little value from the perspective of a public user.

70. OTC trades are those for which the Common data field 10 is populated with XXXX and XOFF refers to trades on listed derivatives which are traded off-exchange. ETD trades are those for which Common data field 10 is populated with a MIC code as per ISO 10383. Those MIC that are included in the MIFID Database and pertaining to EEA trading venues should be included in the "EEA Venue" aggregation. The rest of MICs should be included in the "non-EEA Venue" aggregation.

71. In that respect and in order to allow for sufficiently granular data, ESMA proposes that the TRs publish data classifying the trades based on the common data field "Venue of execution" as follows:

    a. Reports where the field "Venue of execution" is populated with "XXXX", classified as OTC

    b. Reports where the field "Venue of execution" is populated with "XOFF", classified as XOFF

c. Reports where the field “Venue of execution” is populated with MIC code, in accordance with ISO 10383, pertaining to a venue located in the Union, classified as EEA MIC

d. Reports where the field “Venue of execution” is populated with MIC code, in accordance with ISO 10383, pertaining to a venue located outside the Union, classified as non-EEA MIC

Q12. **Do you agree with the suggested aggregation per type of “Venue of execution”?**

4.2.3 Types of quantitative aggregations

72. The aggregate data to be provided includes the following types of aggregation:

a. By notional, by aggregating the absolute value reported in common data field “Notional”[14]

b. By value, by aggregating the absolute value of the amount reported in counterparty data field “Value of the contract”. In case both counterparties have reported to the same TR, the TR should take only the value reported by the seller of the derivative.

c. By number of contracts, by aggregating the value reported in common data field “Quantity”, except in the case of spreadbets, where the quantity should be taken as equal to 1.

d. By number of transactions, by aggregating the unique transactions between two counterparties.

73. Assuming that the reporting counterparties have reported the data on their derivatives and CCP cleared positions as per the guidance included in ESMA EMIR Q&A 41, the TRs would simply need to add the relevant notional amounts reported.

Q13. **What other aggregations could be provided? What additional aspects should be taken into account? Please elaborate.**

4.2.4 Avoidance of double counting across TRs

74. Furthermore, to avoid the possible double counting of derivatives across TRs, TRs should provide separate aggregation per derivatives where (i) both counterparties report to the same TR, i.e. Dual-sided trades, (ii) only one counterparty reports to the TR and the other counterparty also has reporting obligation under EMIR, i.e. single-sided EEA and (iii) only one counterparty reports to the TR and the other has no reporting obligation under EMIR, i.e. single-sided non-EEA.

[14] The counterparties should report the data in accordance with the guidance provided in ESMA EMIR Q&A 41.

75. ESMA considers that given that most of the cleared trades are also reported twice, it might be useful to include as additional more granular level aggregation between cleared and non-cleared derivatives.

76. The actual categories would be:

    a. Dual-sided cleared

    b. Dual sided non-cleared

    c. Single-sided EEA cleared

    d. Single-sided EEA non-cleared

    e. Single-sided non-EEA cleared

    f. Single-sided non-EEA non-cleared

77. The quantitative aggregates for all dual-sided trades should be calculated as described in paragraphs 72 and 73 and then should be halved to show the actual aggregate per unique UTI.

78. The aggregates for the different types of single-sided trades should be performed as defined in paragraphs 72 and 73.

Q14. **Do you agree with the suggested categories? If not, what other aspects should be taken into account? Please elaborate on the reasons for your response.**

4.2.5 Accessibility of public data

79. The accessibility of data should be without restrictions or conditions and downloadable or at least enabled to copy. ESMA understands that the data should be available for the public for at least 104 weeks. This would allow the relevant users to have access to aggregate information for the last 2 years.

Q15. **Should ESMA establish a longer period of time for keeping publicly available aggregates? What are the costs and benefits of a longer availability? Please elaborate.**

4.2.6 Format and presentation of public data

80. The form in which public data is reported so far by TRs is presented in pivoted tables. ESMA considers that for the purpose of facilitating the usage for the public a tabular form of report may be more convenient for the purpose of aggregating data from different TRs.

81. Given the wider target public, ESMA considers that it is not necessary to include a requirement for publication in xml schema defined in accordance with ISO 20022.

Q16. **Should the data made published by the TRs be in pivoted table form or in tabular form? What are the potential costs and benefits of each alternative?**

4.2.7 Conversion rates

82. The public aggregate reports shall be presented in Euros. For the purpose of currency conversion, the relevant exchange rates published by the ECB as of the reference date of the provided figures (i.e. Friday) should be used. The exchange rate should be used as published, taking into account all the digits after the decimal mark.

4.2.8 Legacy trades

83. Some of the trades which are part of aggregations were reported prior to the establishment of harmonised data validations and the entry into force of the amended EMIR RTS and ITS on reporting. Therefore, it is possible that for some of those trades a TR might not be able to accurately classify or even aggregate them.

84. While finalising these standards, ESMA proposes to take into account the relevant guidance provided with regards to the reporting of modifications to trades reported prior to the entry into force of the amended EMIR RTS on reporting.

85. ESMA understands that the TRs should provide the aggregate data based on the best use that they can make of the data reported to them. In case for some of the aggregations, particularly those referring to outstanding trades, it results impossible for a TR to classify certain reports, then those should be labelled as “Other”.

Q17. **Do you agree with the proposed treatment of legacy trades? Please elaboarate on the reasons for your response.**

4.2.9 Publication of the aggregation methodology

86. The methodology for calculation should be provided to the public together with the figures.

Q18. **What other aspects should be taken into account for the purposes of publication of data? Please elaborate.**

5 Aggregation on commodity derivatives

5.1 Aggregation requirement

87. In order to apply the RTS on ancillary under MiFID II, as explained in section 2.2, market participants, NCAs and ESMA would need to know the market size in terms of notional value traded in the EU, including both on venue and OTC trading, for each of the classes of commodity derivatives mentioned in RTS 20. Given the granular and comprehensive derivatives data that TRs collect and their specialization on data management and processing, they are best placed to publish statistics on the total trading executed per each class of commodity derivatives. NCAs would not have access to the necessary information to publish market sizes at the EU level and any other alternative to collect and aggregate this information would create an unnecessary burden and a duplication of costs.

88. Article 2(1) of the draft RTS 20 establishes thresholds for the assessment of trading activity on the following classes of commodity derivatives:

    a. metals;

    b. oil and oil products;

    c. coal;

    d. gas;

    e. power;

    f. agricultural products;

    g. other commodities, including freight and commodities referred to in Section C 10 of Annex I to Directive 2014/65/EU;

    h. emission allowances or derivatives thereof.

89. It is further stated that “the overall market trading activity in each of the asset classes shall be calculated by aggregating the gross notional value of all contracts that are not traded on a trading venue within the relevant asset class to which any person located in a Member State is a party and of any other contract within that asset class that is traded on a trading venue located in a Member State.”

90. Finally, the calculation of the size of the trading activities shall be undertaken annually on the basis of a simple average of the trading activities carried out in the three annual calculation periods preceding the date of calculation. The calculation of the size of trading activities and capital shall commence with trading activities carried out as of 1 July 2016. The calculation period starts on 1 July of a given year and ends on 30 June in the following year.

5.2 Commodity derivatives aggregation proposal

91. The proposal in this Consultation Paper requires trade repositories to aggregate and publish aggregate position data for eight classes of commodity derivatives to enable any person wanting to benefit from the MiFID II exemption to identify the total market size from the publications of the various trade repositories and to consequently perform the calculations of their own trading size against those total market sizes to determine whether they are in breach of any of the thresholds set in the draft RTS 20.

92. ESMA notes that the market size aggregate produced by TRs would exclude all those trades where two non-EU counterparties conclude a commodity derivative trade in the EU. Nevertheless, at this stage, the EMIR aggregations are considered as the most reliable data on overall market size available.

5.2.1 Scope of the data

93. The TRs should include in this aggregation only records on commodity derivatives. Under the current TS on reporting, the commodity derivatives are identified either with CO in common data field Product ID 1 in the case of OTC derivatives or with CFI codes (O**T** or FC****) for ETD. Under the amended TS on reporting the commodity derivatives would be reported with value “Commodity” in the common data field “Asset class”.

94. The relevant classes of commodity derivatives are defined as follows:

    a. metals – “commodity base” field reported as ‘ME’.

    b. oil products – “commodity details” reported with ‘OI’

    c. coal – “commodity details” reported with ‘CO’

    d. gas – “commodity details” reported with ‘NG’

    e. power – “commodity details” reported with ‘EL’ or ‘IE’

    f. agricultural products – “commodity base” reported with ‘AG’

    g. other commodities including freight and C10 – “commodity base” reported with ‘FR’ or ‘IN’ or ‘EX’ or ‘OT’ or “commodity details” reported with ‘WE’

    h. derivatives on emission allowances – “commodity details” reported with ‘EM’.

95. To avoid double counting, the TRs should include the records that correspond to the criteria defined in sections 3.1 and 3.2 of this Consultation Paper.

96. Given they may not be representative of actual trading activity, ESMA has decided, on balance, that the intragroup transactions need to be removed from the calculations, i.e. trades reported with Common data field 38 “Intragroup” reported with “Y”.

Q19. **Do you foresee any potential issues with identifying correctly the data to be included in the commodity derivatives aggregations? If so, please provide concrete examples of cases where you would not be able to identify the trades in scope of the aggregation. Please elaborate.**

5.2.2 Aggregations to be performed

97. To allow entities to assess their trading activity against each of the thresholds, ESMA proposes that the TRs provide aggregate for all the commodity derivatives in the eight classes of commodity derivatives as reported in the relevant commodity derivatives data fields, namely common data fields 45 and 46 of the current EMIR TS on reporting 65 and 66 of the amended EMIR TS on reporting and as detailed in paragraph 94 of this consultation paper.

98. The aggregations per class of commodity derivatives are separate and should be provided by the TRs in addition to the aggregations at the level of the relevant commodities derivatives which use indexes which are discussed in section 6 of this consultation paper.

99. With regard to granularity of information per venue of execution, TRs should follow the separation per “Venue of execution” type defined in section 4.2.2. More importantly, for the purposes of this aggregation, the transactions concluded on non-EEA venues should be provided in a separate aggregation. This classification of the venues located outside the EEA is independent from the fact whether the venue is covered by an equivalence decision of the Commission or not.

100. The division per dual-sided and single-sided EEA and non-EEA trades, used for general public data aggregation is also required for this aggregation. This granularity allows to avoid double counting of trades that are reported by both contractual sides.

101. The aggregation should be performed at the level of reported transactions. The aggregate positions per each class of commodity derivatives should cover only the aggregation per “Notional” and per “Number of transactions”, as defined in section 4.2.3.

102. Given the high-level aggregation to be performed, it is not expected that there are any potential confidentiality issues around the publication of the aggregates.

Q20. **Do you agree with the proposed types of aggregation of commodities derivatives? If not, what other aspects should be taken into account? Please elaborate.**

103. ESMA understands that the TRs already possess the data necessary to perform the aforementioned calculations. ESMA is also aware that most of the underlying data quality issues related to EMIR reporting are being gradually addressed. ESMA takes into account the requirement under Article 80 of EMIR providing that TRs should maintain the records of derivatives for at least 10 years after the termination of the derivative contract. From that perspective, ESMA would expect that the TRs would be able to aggregate the data in accordance with the proposals outlined in this section.

Q21. **Is there any issue that could potentially prevent TRs from performing aggregation on classes of commodity derivatives on historical data reported before the date of application of the amended TS on reporting? Please provide concrete examples.**

104. Following the performance of the quantitative data aggregations as detailed in sections 3.1, 3.2, 4.2.2, 4.2.3 and this specific section, the trade repository should be able to publish an aggregate number of the relevant aggregate positions per class of commodity derivative, which can be them easily aggregated across repositories.

Q22. **Do you foresee any issues in publishing a single aggregate figure per class of commodity derivative and a TR in accordance with the aforementioned rules?**

5.2.3 Frequency of publication

105. As mentioned in section 5.1, the entities need to assess their trading activity on an annual basis staring form 1 July 2016.

106. With regard to frequency of publication of the commodity derivatives aggregation there are several alternatives. On the one hand, the publication can be made on a weekly basis as defined in section 4.1 of this consultation paper. On the other hand, a lower frequency can be allowed, although the data published should comprise all the transactions in the relevant period as per the criteria specified in the previous sections.

107. If a weekly frequency is established, then the TRs would need to keep in an easily accessible way aggregate data of at least the last 104 weeks. Regardless of the publication of data, the TRs would be required to keep an easily accessible form aggregate data that cover at least two years of activity.

Q23. **Which alternative, weekly or lower frequency, is more accurate and useful to the entities relying on the data? What are the potential costs and benefits of aligning the frequency of publication of commodity derivatives data with other data aggregations? Please elaborate on the reasons for your response.**

6 Aggregation of derivatives for the purposes of measurement of the reference value of a benchmark under Benchmarks Regulation

6.1 Aggregation requirements

108. The BMR sets three categories of benchmarks that will be subject to different requirements according to their size and nature. Benchmarks used as a reference for financial instruments or financial contracts or for the determination of the performance of investment funds will be categorised mainly on the basis of the following criteria:

a. if they have a total value of at least €500bn on the basis of all the range of maturities or tenors of the benchmark, where applicable, or they have a total value of 400 billion EUR on the basis of all the range of maturities or tenors of the benchmark, where applicable, and meet some additional conditions, they will be deemed to be "critical benchmarks"[15];

b. if they have a total value of at least €50bn on the basis of all the range of maturities or tenors of the benchmark, where applicable, over a period of six months, they will be deemed to be "significant benchmarks";

c. if they have a total value below €50bn, they will be deemed "non-significant benchmarks".

109. As stated in Article 24(3) and article 26(2) of the BMR, an administrator has to notify its competent authority when its significant / non-significant benchmark falls below / above the threshold of 50 billion EUR. Furthermore, the national authorities would need to supervise the assessments made by the administrators and the European Commission would have to adopt the relevant implementing acts to establish a list of critical benchmarks.

110. Article 3(1)(16) of the BMR defines a financial instrument as any of the instruments listed in Section C of Annex I to MiFID II for which a request for admission to trading on a trading venue has been made or which are traded on a trading venue or via a systematic internaliser.

111. For the purpose of the mandate to assess benchmarks under the relevant quantitative thresholds referred in Article 20(1) and Article 24(1)(a) of BMR, ESMA was requested by the European Commission to provide technical advice on the appropriate measurement of:

a. the nominal amount of financial instruments other than derivatives;

b. the notional amount of derivatives; and

c. the net asset value of investment funds.

112. For all these three elements, the measurement would include both the direct case and the case of the indirect reference to a benchmark within a combination of benchmarks. The indirect case relates to the nominal amount of the financial instrument / notional amount of the derivative / net asset value of the investment fund referencing to a single benchmark (within a combination of benchmarks) which is being assessed as critical or significant.

113. The issue of determining these measures should be considered together with the availability of the data needed for the calculation. ESMA completed an overview of the current and upcoming European legislation that could be considered as input data for the measurement of the reference value of a benchmark. From that perspective, the notional

[15] According to Article 3(1)(25) of the BMR, regulated-data benchmarks (as defined under Article 3(1)(24)) are excluded from the category of critical benchmarks.

of a derivative as defined under the current RTS on reporting and under the amended TS on reporting is fulfilling the requirements for the measurement of the reference value of a benchmark.

114. Whereas the competent authorities would have access to this data, the main concern is related to the non-availability of these data to benchmarks' administrators. Therefore, ESMA proposes to extend the current public data published by trade repositories on their websites or online portals to a breakdown of the aggregate open positions per index and a breakdown of aggregate transactions volumes per index.

115. Some transactions in the scope of BMR might be concluded on venues or systemic internalisers that are not identified currently with a MIC code. However under RTS 23 on reference data under MiFID II/MIFIR (RTS 23, hereinafter), the systematic internalisers would need to identify themselves also with a Mic code. To the extent that the counterparties report consistently their derivative strades concluded on a systematic internaliser, it would not be needed that the TRs publish also aggregate data on the OTC trades that reference an index.

116. Furthermore, as indicated in paragraph 22 in order to facilitate data aggregations and links between the different types of indexes used, ESMA included in its final report on the technical advice under Article 20(1) and Article 24(1)(a) of BMR a recommendation to request the benchmark administrators to obtain an ISIN for all their indexes.

6.2 Aggregation proposal for derivatives that reference indexes

6.2.1 Scope of the data

117. The data to be taken into account for the purposes of this aggregation is the one defined in sections 3.1 and 3.2, except the derivatives identified as pure OTC - reported with value "XXXX" in field "Venue of execution", of this consultation paper.

118. The derivative trades to be included in this aggregation should be those where under the current RTS the field "Underlying" is populated with "I". The reporting under the current RTS on reporting would not allow the correct identification of the rest of indexes. To that extent, the aggregations on indexes could only be performed once the amended TS on reporting become applicable. The derivative trades to be included in this aggregation should be those where Common data field 7 under the amended EMIR ITS on reporting "Underlying Identification type" is populated with "X" for index or where common data fields "Floating rate of leg 1" or "Floating rate of leg 2" are populated. ESMA considers that would uniquely identify all the derivatives where the underlying is an index. This would include:

a. Equity derivatives, in particular those using stock market indexes and dividend index

b. Credit derivatives, in particular credit default swaps on indexes or total return swaps[16]

c. Commodity derivatives on indexes

d. Interest rate derivatives, such as interest rate swaps or derivatives where the underlying is a bond index

e. Currency derivatives, where the underlying is a currency index

119. When performing the data aggregations for the purposes of measurement of benchmarks, the trade repositories should make use of the derivatives traded or admitted to trading on trading venues or systematic internalisers that reported to them by the counterparties under the current and amended TS standards on reporting under Article 9 of EMIR and the reference data to be published by ESMA under RTS 23. .

120. Where two different indexes are used in a derivative trade, the notional of that derivative trade should be taken into account for each of the relevant aggregations per index.

Q24. **Are there any other types of derivatives than those mentioned in paragraph 118 that need to be taken into account in order to provide more comprehensive aggregations of derivatives that reference indexes? Please provide concrete examples. Please elaborate.**

6.2.2 Aggregations to be performed

6.2.2.1 Aggregation of derivatives trades where an interest rate index is used

121. A trade repository should provide aggregate data per each index used. The index could be used either as a floating rate of a derivative contract or as an underlying.

122. In the case of floating rates, ESMA has already provided a closed list of values to be reported, hence the identification and aggregation of floating rate interest rate derivatives is facilitated. This still leaves open the question on updates of the values included in that list. The proposed way forward for data updates would be made in accordance with the governance structure of ISO 20022 messages, which is outlined in paragraph 132.

123. From the perspective of index used as underlying, the trade repository should identify in advance the relevant ISINs issued for indexes so that it can easily perform aggregations at index level. This can be done by making use of the reference data provided in RTS 23. For the purposes of interest rate indexes, ESMA has included in RTS 23 the same list of allowable values as the one provided for in Common data fields 55 and 58 under the amended ITS on reporting under EMIR.

[16] It is worth mentioning that total return swaps would have also an underlying equity index

124. It is important that, when establishing the relevant links for the purposes of data aggregations the TRs, validate the data used to identify the relevant derivative using an index. This would ensure that the subsequent aggregations are correctly performed.

125. As mentioned in paragraph 108, in the case of derivatives using interest rate indexes, the aggregations should be made across all the maturities and tenors of the same interest rate index. Hence it would not be necessary that TRs aggregate the data per each maturity or tenor. In that case the TRs are expected to present the data identifying separately each index. This aggregation would be different form the one on non-interest rate indexes where the aggregation should be at the level of each ISIN.

126. The aggregate positions per each index should cover only the aggregation per "Notional" and per "Number of transactions, as defined in section 4.2.3.

127. The rest of practicalities of the actual aggregations are detailed in sections 4 and 6.2.2.4 .

Q25. **What practical issues would you foresee in aggregating data on interest rate indexes? What mechanisms should be put in place to ensure that a TR is in a possession of accurate reference data to identify derivatives that have an underlying interest rate index? How the objective of publishing accurate aggregations can be achieved in the most efficient way? Please elaborate**

6.2.2.2 Aggregation of derivative trades where a non-interest rate index is used

128. In the case of the non-interest rate indexes, ESMA understands that at this stage this applies only when indexes are used as underlyings[17]. The amended EMIR TS on reporting provide that the index is identified either with (i) an ISO 6166 code, i.e. an ISIN or a (ii) full name of the index as assigned by the index provider. Under RTS 23 the entities are required to choose among the values in the closed list or use a free text to report this information. As mentioned earlier, ESMA included in its final advice under Article 20(1) and Article 24(1)(a) of BMR a recommendation to request the benchmark administrators to obtain an ISIN for all their indexes.

129. The most widely used contracts under this classification are indicatively included in paragraph 131 of this consultation paper.

130. The objective is that, by using the reference data, the TRs identify and link all the ISINs that refer to the same index in order to prepare and calculate all the relevant aggregations for that index.

131. ESMA understands that the definition and requirements currently included in RTS 23 under MiFID II might not be sufficient to ensure unique and unambiguous identification of the derivatives and there is still a possibility that the reporting entities are not providing

[17] None of the other reporting fields under EMIR refers to indexes

reference data in a consistent way. This might lead to practical problems for data aggregation. In particular, this would affect:

a. Equity indexes, such as stock market indexes and dividend indexes, e.g. Eurostoxx 50, FTSE 100, DAX 30, CAC 40, etc.

b. Credit indexes, such as CDX, iTraxx, etc.

c. Commodity indexes, such as CCI, etc.

d. Bond indexes, such as Merrill Lynch Global Bond Index, Barclays Capital Aggregate index, etc.

e. Currency indexes, such as Euro Currency index, etc.

6.2.2.3 Identification and linking of derivatives using non-interest rate indexes

132. It is worth mentioning that RTS 23 requires reporting to be made in ISO 20022 template. For the purpose of ISO 20022 messaging standards, certain maintenance functions are performed as part of the general governance. In this regard, ESMA considers that gradually a comprehensive data catalogue or data dictionary with all the indexes used in the EU could be built. This would ensure the consistent reporting of the relevant reference data by the entities and it will ensure the unique and unambiguous identification and linking of data by TRs.

133. Given that the accuracy and consistency of reference data is dependent on the data reported, ESMA understands that, subject to the implementation of the recommendation to obtain an ISIN for each index, the benchmark administrators would contribute to the building of data catalogue to be used for the purposes of data aggregation under EMIR.

134. This approach would ensure the production of free of cost data catalogue with the most relevant indexes, however the time to complete the data catalogue might be somehow extensive, which might lead to practical difficulties for competent authorities and benchmark administrators to assess timely and correctly the information.

135. In the particular case of credit derivatives, the notional amount used for calculation should be adjusted by the index factor reported in Common data field 89 in the amended EMIR TS on reporting.

Q26. **Do you consider this approach feasible? What type of information should be provided by the benchmark administrators? Which other entities should be involved in the reference data collection? How timely should be the provision of reference data to update the ISO 20022 data catalogue? What are the potential costs of such solution? Please elaborate.**

Q27. **What alternative solutions are available? Please elaborate.**

6.2.2.4 General aspects on aggregation of derivatives that reference indexes

136. ESMA is also aware that there are certain instances where a basket of indexes is traded as relevant underlying of a derivative. In that case the current TS on reporting do not allow the identification of the individual components, however the amended TS on reporting would allow such identification. ESMA is of the opinion that to the extent that a trade repository could identify the weightings of the components, those should be used as they are. In case the weightings are not available, ESMA has included in its final advice that the weightings of the components should be equal. Stemming from this, if a derivative has a notional of 1,000,000 and two components, each should be accounted as 500,000.

Q28. **Do you foresee any difficulties in implementing the suggested approach on data aggregation in the case of baskets? Please elaborate on the reasons for your response.**

137. Furthermore, Article 81(5) EMIR provides that the draft regulatory technical standards shall aim to ensure that the information published by the TRs is not capable of identifying a party to any contract.

138. In order to fulfil this confidentiality requirement and not allow the identification of individual parties, the breakdown per index to be published has to take into account the following limit – publication of the aggregate notional amounts of derivatives using an index should take place only for derivatives transactions on indexes where the aggregate notional amount is at least 5 billion and where there are at least 6 different counterparties, i.e. entities with different LEIs involved. In case there are less than 6 different counterparties that have concluded derivatives transactions in the scope of this aggregation, but the aggregate notional amount is above, the trade repository should include the aggregate figure together with other aggregations that have similar characteristics in a bucket called “Other”.

Q29. **Is the limit of 5 billion EUR per index and TR, where there are at least 6 different counterparties to trades, sufficient to provide the sufficient transparency over those transactions, while not undermining the confidentiality of the data? Please elaborate on the reasons for your response.**

139. The trade repository should be able to publish an aggregate number of the relevant aggregate positions for derivatives that reference indexes, where the field “Venue of execution” is populated with “XOFF” and an “EEA MIC”, as those are defined in section 4.2.2.

140. Following the performance of the quantitative data aggregations as detailed in section 3.1, 3.2, 4.2.2 and 4.2.3, the trade repository should be able to publish also an aggregate number of the relevant aggregate positions for each index, which can be them easily aggregated across repositories.

Q30. **Do you foresee any issues in publishing a single aggregate figure per index and a TR in accordance with the aforementioned rules?**

6.2.3 Frequency of publication

141. While the NCAs and the benchmark administrators would need to assess the significance of the index over six months period, ESMA understands that it will be sufficient to provide the aggregate data with the same frequency as the rest of aggregations are provided, as detailed in section 4.1.

7 Annexes

7.1 Annex I

Legislative mandate to develop draft technical standards

Article 81(5)

In order to ensure consistent application of this Article, ESMA shall, after consulting the members of the ESCB, develop draft regulatory technical standards specifying the frequency and the details of the information referred to in paragraphs 1 and 3 as well as operational standards required in order to aggregate and compare data across repositories and for the entities referred to in paragraph 3 to have access to information as necessary. Those draft regulatory technical standards shall aim to ensure that the information published under paragraph 1 is not capable of identifying a party to any contract.

7.2 Annex II

List of questions

Q1. For the purpose of more accurate aggregation of ETD volumes between the CM and its clients should only the trades where the CM is reporting counterparty be taken into account or should all trades where CM is on either side of the ETDs be considered? Please elaborate.
Q2. For the purpose of more accurate aggregation of ETD volumes between the CM and the CCP, is the “Beneficiary ID” the appropriate field or the “Transaction reference number/Report tracking number” field should be used? Do you envisage any other alternative at this stage? What are the potential costs and benefits of implementing any of the proposed options? Please elaborate on the reasons for your response.
Q3. For the purposes of more accurate aggregation of ETD market volume, do you agree with the proposed approach to take into account only the original ETD executions, i.e. those that are reported under the current RTS on reporting with action types “N” which would be reported under the amended TS on reporting with action type “P”? Please elaborate on the reasons for your response.
Q4. For the purposes of calculating ETD market volume, do you agree with the proposed approach to divide by 2 the resulting aggregations in order to cater for the inherent duplication of trading volume of ETDs? Please elaborate on the reasons for your response.
Q5. For the purpose of aggregating more accurately OTC derivatives volume of market activity, do you agree with the proposed approach to take into account only the original bilateral OTC and XOFF trades, i.e. those that are reported with action type “N”? Please elaborate on the reasons for your response.
Q6. Do you consider that the approaches outlined in sections 3.1 and 3.2 should be taken into account for the purposes of calculating also total volumes of reported transactions? Please elaborate on the reasons for your response.
Q7. Do you agree with the proposed cut-off and publication times? If not, what other aspects need to be considered? Please elaborate.
Q8. Are there any further specific additional conditions that need to be included? Please elaborate on the reasons for your response.
Q9. Further to products and currencies, what other data elements need to be taken into account to correctly identify outliers from the aggregate position data? How should the outliers be treated – not at all included in data aggregations or included in a raw data aggregation, but removed from a cleansed one? Please elaborate on the reasons for your response.
Q10. Should the reconciliation status be taken into account? Should only reconciled trades be included? Please elaborate.
Q11. Do you agree with the suggested aggregation per type of “Venue of execution”?
Q12. What other aggregations could be provided? What additional aspects should be taken into account? Please elaborate.
Q13. Do you agree with the suggested categories? If not, what other aspects should be taken into account? Please elaborate on the reasons for your response.
Q14. Should ESMA establish a longer period of time for keeping publicly available aggregates? What are the costs and benefits of a longer availability? Please elaborate.
Q15. Should the data made published by the TRs be in pivoted table form or in tabular form? What are the potential costs and benefits of each alternative?

Q16. Do you agree with the proposed treatment of legacy trades? Please elaboarate on the reasons for your response.
Q17. What other aspects should be taken into account for the purposes of publication of data? Please elaborate.
Q18. Do you foresee any potential issues with identifying correctly the data to be included in the commodity derivatives aggregations? If so, please provide concrete examples of cases where you would not be able to identify the trades in scope of the aggregation. Please elaborate.
Q19. Do you agree with the proposed types of aggregation of commodities derivatives? If not, what other aspects should be taken into account? Please elaborate.
Q20. Is there any issue that could potentially prevent TRs from performing aggregation on classes of commodity derivatives on historical data reported before the date of application of the amended TS on reporting? Please provide concrete examples.
Q21. Do you foresee any issues in publishing a single aggregate figure per class of commodity derivative and a TR in accordance with the aforementioned rules?
Q22. Which alternative, weekly or lower frequency, is more accurate and useful to the entities relying on the data? What are the potential costs and benefits of aligning the frequency of publication of commodity derivatives data with other data aggregations? Please elaborate on the reasons for your response.
Q23. Are there any other types of derivatives than those mentioned in paragraph 117 that need to be taken into account in order to provide more comprehensive aggregations of derivatives that reference indexes? Please provide concrete examples. Please elaborate.
Q24. What practical issues would you foresee in aggregating data on interest rate indexes? What mechanisms should be put in place to ensure that a TR is in a possession of accurate reference data to identify derivatives that have an underlying interest rate index? How the objective of publishing accurate aggregations can be achieved in the most efficient way? Please elaborate
Q25. Do you consider this approach feasible? What type of information should be provided by the benchmark administrators? Which other entities should be involved in the reference data collection? How timely should be the provision of reference data to update the ISO 20022 data catalogue? What are the potential costs of such solution? Please elaborate.
Q26. What alternative solutions are available? Please elaborate.
Q27. Do you foresee any difficulties in implementing the suggested approach on data aggregation in the case of baskets? Please elaborate on the reasons for your response.
Q28. Is the limit of 5 billion EUR per index and TR, where there are at least 6 different counterparties to trades, sufficient to provide the sufficient transparency over those transactions, while not undermining the confidentiality of the data? Please elaborate on the reasons for your response.
Q29. Do you foresee any issues in publishing a single aggregate figure per index and a TR in accordance with the aforementioned rules?

7.3 Annex III

Draft regulatory technical standards on trade repositories

COMMISSION DELEGATED REGULATION (EU) …/…

of [ ]

Amending Commission Delegated Regulation (EU) No 151/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to the opinion of the European Central Bank,

Having regard to 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, and in particular Article 81 (5) thereof,

Whereas:

(1) [To be completed once RTS is finalised]

(2) Therefore, it is imperative to amend Commission Delegated Regulation (EU) No 151/2013 in order to better specify the operational framework for publication of aggregate data and comparison of data across trade repositories.

(3) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.

(4) In accordance with Article 10 of Regulation (EU) No 1095/2010, ESMA has consulted the relevant authorities and the members of the European System of Central Banks (ESCB) before submitting the draft regulatory technical standards on which this Regulation is based. ESMA has also conducted open public consultations on these draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION

Article 1

Amendments to Commission Delegated Regulation (EU) No 151/2013

(1) Article 1 is replaced as follows:

1. A trade repository shall publish aggregate position data per asset class on its website on a weekly basis.no later than Tuesday noon on the derivatives reported by 23:59:59 UTC of the previous Friday in accordance with the aggregations detailed in the following paragraphs.

2. To allow aggregation of data on volumes of derivatives across trade repositories, each trade repository shall publish aggregate position data for all the derivatives reported with action type “New”, of Commission Implementing Regulation (EU) No 1247/2012, between 00:00:00 UTC of Saturday and 23:59:59 UTC of Friday.

3. A trade repository shall publish aggregate data of all the derivatives that have not matured or for which reports with action types “E”, “C”, “P” or “Z,” of Commission Implementing Regulation (EU) No 1247/2012, as of 23:59:59 UTC of Friday, have not been made.

4. A trade repository shall publish aggregate position data on the basis of the type of venue of execution of each derivative in the following manner:

    a. Reports where the field “Venue of execution” is populated with “XXXX”

    b. Reports where the field “Venue of execution” is populated with “XOFF”

    c. Reports where the field “Venue of execution” is populated with MIC code, in accordance with ISO 10383, pertaining to a venue located in the Union

    d. Reports where the field “Venue of execution” is populated with MIC code, in accordance with ISO 10383, pertaining to a venue located outside the Union

5. A trade repository shall publish aggregate data in accordance with the following categories:

    a. Dual-sided cleared

    b. Dual sided, non-cleared

    c. Single-sided EEA cleared

    d. Single-sided EEA non-cleared

    e. Single-sided non-EEA cleared

    f. Single-sided non-EEA non-cleared

6. A trade repository shall publish aggregate position data per derivative asset class, as defined in common data [insert: *field "Product ID 1" and common data field "Product Id 2" of the Commission Implementing Regulation (EU) No 1247/2012* or *field "Asset class of the amended Commission Implementing Regulation (EU) No 1247/2012*] calculated by:

    a. Aggregating the absolute value of Common data field "Notional"

    b. Aggregating the number of the derivative contracts, based on filed "Quantity", except in the case of spreadbets where the number of contracts should be considered as equal to 1.

    c. Aggregating the number of derivative transactions, considering the unique Trade IDs between two counterparties

    d. Aggregating the absolute value of Counterparty data field "Value of the contract"

    Where an aggregate position is categorised as dual-sided cleared or dual-sided non-cleared, a trade repository shall divide the resulting aggregate figure by two.

7. A trade repository shall publish all aggregate data in euro and shall use the exchange rates published in the ECB website as of the previous Friday.

8. A trade repository shall include in the aggregate position data under this Article, derivatives reported where the common data field "Intragroup" of Commission Implementing Regulation (EU) No 1247/2012 is reported as "Yes".

9. A trade repository shall publish aggregate data in tabular form as detailed in Table A of the annex to this RTS.

10. A trade repository shall keep in its website in easily accessible form aggregate data for the previous 104 weeks.

Article 1a

Publication of data on commodity derivatives

1. A trade repository shall publish aggregate position data for classes of commodity derivatives as per each of the following details reported in common data [insert: either common data *fields 45 and 46 of Commission Implementing Regulation (EU) No 1247/2012* or *fields 65 and 66 of the amended Commission Implementing Regulation (EU) No 1247/2012*]:

    a. metals – "commodity base" field reported as 'ME'.

    b. oil products – "commodity details" reported with 'OI'

    c. coal – "commodity details" reported with 'CO'

d. gas – “commodity details” reported with ‘NG’

e. power – “commodity details” reported with ‘EL’ or ‘IE’

f. agricultural products – “commodity base” reported with ‘AG’

g. other commodities including freight and C10 – “commodity base” reported with ‘FR’ or ‘IN’ or ‘EX’ or ‘OT’ or “commodity details” reported with ‘WE’

h. derivatives on emission allowances – “commodity details” reported with ‘EM’.

2. When publishing aggregate position data under paragraph 1, a trade repository shall exclude all reports where the common data field “Intragroup” of Commission Implementing Regulation (EU) No 1247/2012 is reported as “Yes”.

3. When publishing aggregate position data under paragraph 1, a trade repository shall include :

a. Derivatives where

i. the common data field “Venue of execution” is reported with a MIC code different from XXXX or XOFF,

ii. the LEI reported in the counterparty data fields “Reporting Counterparty ID” or “ID of the other counterparty” is the same as the LEI reported in counterparty data field “Clearing member ID”,

iii. the LEI reported in counterparty data fields “Reporting Counterparty ID” or “ID of the other counterparty” is not a CCP, and

iv. the common data field “Action type” is populated with [*insert: either “N” and the common data field “Compression” is populated with “No” for reports before the date of application of the amended technical standards on reporting or “P” and the common data field “Level” is populated with “Transaction” for reports after the date of application of the amended Commission Implementing Regulation (EU) No 1247/2012*]

b. Derivatives where

i. the common data field “Venue of execution” is reported with a MIC code different from XXXX or XOFF,

ii. the LEI in the counterparty data fields “Reporting Counterparty ID” or “ID of the other counterparty” is the same as the LEI reported in counterparty data field “Clearing member ID”,

iii. the LEI reported in counterparty data fields “Reporting Counterparty ID” or “ID of the other counterparty” is a CCP, and

iv. the field [insert: the field “Beneficiary ID” is not populated with the LEI of the clearing member ID]; the common data field “Action type” is populated with [insert: either “N” and the common data field “Compression” is populated with “No” for reports before the date of application of the *amended Commission Implementing Regulation (EU) No 1247/2012*or “P” and the common data field “Level” is populated with “Transaction” for reports after the date of application of the *amended Commission Implementing Regulation (EU) No 1247/2012*]

c. Derivatives where

i. the common data field “Venue of execution” is reported with “XXXX”;

ii. the common data field “Cleared” is reported as “No”;

iii. the common data field “Action type” is populated with N; and

iv. the common data field “Compression” is populated with “No”,

d. Derivatives where

i. the common data field “Venue of execution” is reported with “XOFF”,

ii. the common data field “Cleared” is reported as “No”,

iii. the common data field “Action type” is populated with N, and

iv. the common data field “Compression” is populated with “No”.

4. When publishing aggregate position data as defined under points a and b of paragraph 3, the trade repository shall divide all the relevant aggregate figures by two.

5. A trade repository shall publish aggregate data under paragraph 1 in accordance with the requirements established in paragraphs 1, 4 and 5, points a and c of paragraph 6 and paragraphs 7 and 10 of Article 1 and taking due account of paragraph 4 of this Article.

6. After performing the aggregations in paragraphs 4 and 5, a trade repository shall also publish a total aggregate notional per each commodity derivatives asset class, as defined in paragraph 1.

7. A trade repository shall publish aggregate data under this Article in tabular form as detailed in Table B of the annex to this RTS.

8. When publishing the aggregations under this Article for the first time, a trade repository shall include all the relevant aggregations starting from 1 July 2016.

Article 1b

Publication of data on derivatives that reference indexes

1. A trade repository shall only publish aggregate position data for derivative contracts referencing indexes.

2. When publishing aggregate position data under paragraph 1, a trade repository shall include:

    a. Derivatives where

        i. the common data field “Venue of execution” is reported with a MIC code different from XXXX or XOFF,

        ii. the LEI reported in the counterparty data fields “Reporting Counterparty ID” or “ID of the other counterparty” is the same as the LEI reported in counterparty data field “Clearing member ID”,

        iii. the LEI reported in counterparty data fields “Reporting Counterparty ID” or “ID of the other counterparty” is not a CCP, and

        iv. the common data field “Action type” is populated with [insert: either “N” and the common data field “Compression” is populated with “No” for reports before the date of application of the *amended Commission Implementing Regulation (EU) No 1247/2012* or “P” and the common data field “Level” is populated with “Transaction” for reports after the date of application of the *amended Commission Implementing Regulation (EU) No 1247/2012*]

    b. Derivatives where

        i. the common data field “Venue of execution” is reported with a MIC code different from XXXX or XOFF,

        ii. the LEI in the counterparty data fields “Reporting Counterparty ID” or “ID of the other counterparty” is the same as the LEI reported in counterparty data field “Clearing member ID”,

        iii. the LEI reported in counterparty data fields “Reporting Counterparty ID” or “ID of the other counterparty” is a CCP, and

        iv. the field [insert: the field “Beneficiary ID” is not populated with the LEI of the clearing member ID]; the common data field “Action type” is populated with [insert: either “N” and the common data field “Compression” is populated with “No” for reports before the date of application of the *amended Commission Implementing Regulation (EU) No 1247/2012* or “P” and the common data field “Level” is populated with

"Transaction" for reports after the date of application of the *amended Commission Implementing Regulation (EU) No 1247/2012*]

c. Derivatives where

i. the common data field "Venue of execution" is reported with "XOFF",

ii. the common data field "Cleared" is reported as "No",

iii. the common data field "Action type" is populated with N, and

iv. the common data field "Compression" is populated with "No".

3. When publishing aggregate position data as defined under points a and b of paragraph 2, the trade repository shall divide all the relevant aggregate figures by two.

4. Where two or more indexes are used in a derivative under paragraph 2, for the purpose of publishing aggregate data, the notional of that derivative shall be divided by the trade repository by the number of the different indexes used.

5. A trade repository shall publish aggregate data under paragraph 1 in accordance with the requirements established in paragraphs 1, 4 and 5, points a and c of paragraph 6 and paragraphs 7, 8 and 10 of Article 1 and taking due account of paragraphs 3 and 4 of this Article.

6. After performing the aggregations of position data in paragraph 5, a trade repository shall also publish a total aggregate notional per each index.

7. To ensure the confidentiality of aggregate position data, a trade repository shall publish aggregate position date on indexes that reference an index only the aggregate notional amount is greater than 5 billion EUR and there are at least six different counterparties that have concluded the relevant derivative contracts.

8. A trade repository shall publish under "Other" total aggregate data on all the derivatives that reference an index and do not fulfil the requirement under paragraph 7

9. A trade repository shall publish aggregate data under this Article in tabular form as detailed in Table C of the annex to this RTS.

Article 2

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 1b shall apply from [insert: the latest between the entry into force of Commission Delegated Regulation under Article 20(1) and Article 24(1)(a) of BMR and three months after the entry into force of the Commission Delegated Regulation under RTS 23 MIFIR]

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, […]

[For the Commission

The President]

[On behalf of the President]

	Table A. Aggregation per asset class								
Date	**TR**	**Aggregation Type**	**Venue type**	**Reporting type**	**Asset class**	**Aggregate Notional**	**Aggregate Value**	**Aggregate No transactions**	**Aggregate No contracts**
20161007	EU TR	Reported	XXXX	Dual-sided cleared	Commodities	…	…		…
…	…	Outstanding	XOFF	Dual sided, non-cleared	Credit	…	…		…
…	…	…	EEA MIC	Single-sided EEA cleared	Currency	…	…		…
…	…	…	non-EEA MIC	Single-sided EEA non-cleared	Equity	…	…		…
…	…	…	…	Single-sided non-EEA cleared	Interest	…	…		…
…	…	…	…	Single-sided non-EEA non-cleared	…	…	…		…

Table B Aggregation per commodities derivatives class								
Date	**TR**	**Aggregation Type**	**Venue type**	**Reporting type**	**Asset class**	**Commodity class**	**Aggregate Notional**	**Aggregate No transactions**
20161007	EU TR	Reported	XXXX		Commodities	Metals	…	…
…	…	…	XOFF	Dual sided, non-cleared		Oil	…	…
…	…	…	EEA MIC			Coal	…	…
…	…	…	non-EEA MIC	Single-sided EEA non-cleared		Gas	…	…
…	…	…	…			Power	…	…
…	…	…	…	Single-sided non-EEA non-cleared	…	Agricultural	…	…
						Other commodities		
						Emission allowances		

Table C. Aggregation per derivative using indexes

Date	TR	Aggregation Type	Venue type	Reporting type	Asset class	Index ID	Aggregate Notional	Aggregate No transactions
20161007	EU TR	Reported	XXXX		Commodities	XXXIBOR	…	…
…	…	….	XOFF	Dual sided, non-cleared	Credit	ISIN	…	…
…	…	…	EEA MIC		Currency	…	…	…
…	…	…	non-EEA MIC	Single-sided EEA non-cleared	Equity	…	…	…
…	…	…	…		Interest	…	…	…
…	…	…	…	Single-sided non-EEA non-cleared	…	…	…	…

7.4 Annex IV

Cost-benefit analysis

ESMA's choices in this review are of a pure technical nature and do not imply strategic decisions or policy choices.

ESMA's options are limited to the approach it took to drafting these particular regulatory technical standards and the need to ensure harmonised and standardised aggregate data and to provide greater value of the data which is reported under EMIR.

The main policy decisions have already been analysed and published by the European Commission taken under the secondary legislation, i.e. EMIR.

The impact of such policy decisions has already been taken into account when drafting the technical standards on reporting to trade repositories, including the ones being amended, and may be found under the following link:

http://www.esma.europa.eu/system/files/2012-379.pdf

As mentioned in sections 2.2 and 2.3, there are two EU regulations, in particular MiFID II and BMR, which require the use of EU aggregate derivatives data for different incumbent entities. In one case, MiFID II provides that market participants assess their trading volumes in certain classes of commodity derivatives. In the other case, BMR establishes that index providers assess the significance of their respective indexes vis-à-vis a threshold established in the BMR. In the absence of TR data these entities would need to run complex and costly processes to compile the data across all the different venues and post-trade providers. Clearly this process would not be error-free and it is highly possible that there will be different figures obtained by each entity. This would run contrary to the objectives of the regulations and would create unlevelled playing field.

From the perspective of the supervisory authorities such situation would significantly hamper the fulfilment of their duties. In case the authorities are required to recreate the aggregations from the derivatives data to which they have access, it will be impossible to compare the results, since every authority have different access levels based on its responsibilities and mandates. In case it would be for ESMA to perform these aggregations, such task would be overly burdensome and, most importantly, ESMA would lack the direct contact with the reporting entities should any amendments to the underlying data be needed. TRs result a natural choice in this regard as they play pivotal role in the EU derivatives reporting regime.

Last, but not least, an enhanced public data provided by the TRs shows the benefits of the EMIR reporting framework where private market infrastructures were tasked to become repositories of transactions and to give access to data to the authorities, but also to the general public. The key point in choosing trade repositories instead of public bodies was the inherent flexibility of private entities, the potential scalability of their systems and also the relevant know-how in data processing.

ESMA understands that the main costs attached to the changes required in this RTS will be borne by Trade Repositories and authorities, and thus ESMA requests precise estimates from them in the context of public consultation. ESMA expects to gather further information on the cost-benefit analysis of the proposed amendments based on the evidence and feedback received.