

ESMA consultation on the review of the technical standards on reporting under Article 9 of EMIR

A EURELECTRIC response paper

February 2015

EURELECTRIC is the voice of the electricity industry in Europe.

We speak for more than 3,500 companies in power generation, distribution, and supply.

We Stand For:

Carbon-neutral electricity by 2050

We have committed to making Europe's electricity cleaner. To deliver, we need to make use of **all low-carbon technologies**: more renewables, but also clean coal and gas, and nuclear. Efficient electric technologies in **transport and buildings**, combined with the development of smart grids and a major push in **energy efficiency** play a key role in reducing fossil fuel consumption and making our electricity more sustainable.

Competitive electricity for our customers

We support well-functioning, distortion-free **energy and carbon markets as** the best way to produce electricity and reduce emissions cost-efficiently. Integrated EU-wide electricity and gas markets are also crucial to offer our customers the **full benefits of liberalisation**: they ensure the best use of generation resources, improve **security of supply**, allow full EU-wide competition, and increase **customer choice**.

Continent-wide electricity through a coherent European approach

Europe's energy and climate challenges can only be solved by **European – or even global – policies**, not incoherent national measures. Such policies should complement, not contradict each other: coherent and integrated approaches reduce costs. This will encourage **effective investment to** ensure a sustainable and reliable electricity supply for Europe's businesses and consumers.

EURELECTRIC. Electricity for Europe.

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KEY MESSAGES

- EURELECTRIC – the sector association representing the electricity industry at European level – welcomes the opportunity to comment on the review of EMIR reporting standards under Article 9, out to consultation by ESMA.
- The review of the RTS addresses key elements in relation to EMIR reporting. We appreciate the efforts made by ESMA to increase the clarity of the reports and the clarification of the reporting tasks, however there is still room for different interpretations of the requirement. As commodity trading firms we are still struggling with some of the definitions and have to apply our own interpretation
- We would thus encourage the ESMA to create a single document containing all information necessary for market participants to perform their reporting under EMIR, without any need to research or access additional documentation or guidelines from TRs. Only such uniform reporting rulebook may lead to increased standardisation and transparency. Those additional guidance to the market should not necessarily be part of the RTS or ITS, but we would encourage ESMA to create an EMIR-TRUM (transaction reporting user manual), similar to what ACER did for REMIT reporting. Such an EMIR-TRUM should give more detailed information on how to populate the different fields and should also provide market participants with clear and detailed examples and scenarios.
- Last but not least, there should be a commonly accepted “go-live” date for the proposed changes to avoid confusion in the market and allow for a sufficient leadtime for companies to implement the new reporting rules. It should be recognised that these changes should only apply to reports that are submitted after the “go-live” date.

Q1: Do you envisage any difficulties with removing the ‘other’ category from derivative class and type descriptions in Articles 4(3)(a) and 4(3)(b) of ITS 1247/2012? If so, **what additional derivative class(es) and type(s) would need to be included?** Please elaborate.

We believe that the “other” category should be maintained, as there are a number of non-standard transactions in energy commodities that fit in none of the six proposed categories.

Counterparties in energy OTC Derivatives often enter into transactions in order to hedge a particular risk, with products that are not otherwise available on the market but that are proposed to them OTC. Thus some non-standard OTC derivatives might combine contract types, while others might be freely created without fitting into any of the pre-existing categories, such as swing contracts for example. We therefore believe that the “other” category should be kept as an alternative, in the event where none of the existing categories (or any combination thereof) would be appropriate.

Allowing the disaggregation of a complex transaction into smaller/simpler disaggregated transactions, which could be linked to one another by a specific mention in the report field would also be seen as beneficial.

Q2: Do you think the clarifications introduced in this section adequately reflect the derivatives market and will **help improve the data quality of reports?** Will the proposed changes cause significant **new difficulties?** Please elaborate.

The clarifications introduced by ESMA will certainly help where they address existing discrepancies.

Nevertheless, the creation of the notion of “Reporting entity” while helpful in certain circumstances, might in others increase confusion. It is not clear from the current proposal in the Consultation Paper that the Reporting Entity needs to be one of the counterparties to the transaction. This can only be inferred when considering other fields in the reports. Confusion is added where the reports are submitted by a third party (delegated reporting) as in this case the “Reporting Entity” is *stricto sensu* not a counterparty to the transaction. It would thus be appreciated if ESMA could clarify the definition of “Reporting Entity” in this regard and differentiate it with “Report Submitting entity” (Field 10, Table 1).

On a general note, detailed guidance is needed on all fields to improve the quality of the reports. In the past, much confusion and uncertainty was created by fields to which there was no appropriate answer: could the reports mention “Not applicable” or should the fields generally be left blank? The clarifications brought by ESMA’s last Q&A (including the EMIR Validation Table) provided a leap forward in terms of clarity. We would appreciate if these efforts would not be lost and ESMA would clarify in the draft RTS and ITS which fields can be populated with N/A or left blank, where the question don’t apply for example to NFC- (for example Fields 17 to 32 Table 1, Field 10 Table 2, Field 23 Table 2 ...).

Overall the clarifications given under N°17-26 are satisfactory, except for N° 25 on the buy/sell indicator for which we would recommend ESMA to replace its guidelines by confirming that the reporting of these fields should be done in accordance with the deal confirmation practices between financial institutions and Corporates (field 13, table 1) as the current guidelines are not aligned with trade confirmation practices, processes and systems like SWIFT accord, triggering additional and unnecessary investments.

Q3: What **difficulties** do you anticipate with the approaches for the population of the **mark to market valuation described in paragraphs 21 or 19 respectively**? Please elaborate and specify for each type of contract what would be the **most practical and industry consistent way to populate this field** in line with either of the approaches set out in paragraphs 21 and 23.

Only NFC+ and FC should provide additional information. NFC- do not fall under in this obligation.

Q4: Do you think the adaptations illustrated in this section adequately reflect the derivatives market and will help improve the data quality of reports? Will the proposed changes cause significant new difficulties? Please elaborate

For majority of the proposed adaptations, we do not expect major difficulties with the proposed changes. Nevertheless, we believe that some of the definitions are not clear and further guidance is needed. Please find below our detailed comments:

Paragraph	Comment
29	We do not agree with the proposal to abandon the use of LEIs or BICs as we have noticed that not all trade counterparties have a LEI (such as e.g. Asian counterparties). Abandoning the use of BICs or LEIs will trigger new difficulties.
34	“Actual Notional” (Field 20, Table 2): this seems to be a highly confusing and burdensome approach, leading to a high degree of mismatches. According to the proposed guidance, actual notional should reflect the current reference amount from which the contractual payments are determined “if the terms of the initial contract have changed (see page 10 CP). It is unclear how this field should be populated: in the event where the terms of the initial contract have changed, there should be a new report filed (Amendment of existing transaction). Does this cover the situation whereby (e.g. novation) the notional of the initial deal with the new counterparty is adjusted to the "outstanding" notional? If so, we suggest calling it "Revised Notional". Please clarify in more detail.
38	Format for time periods: EURELECTRIC appreciates the effort to create uniform data fields in order to improve the matching of the reports, which is a key element to reach transparency. However, it must be underlined and noted that the matching of timestamps is in practice an impossible task as these timestamps (in precise hours, minutes and seconds) are provided by individual systems that are not mandatorily synchronized on any world clock. Regarding the execution timestamp for example this might be in practice impossible to retrace as counterparties may have different internal procedures, all complying with EMIR and the RTS, which require their trades to register their OTC transactions at different times during a trading day. EURELECTRIC would thus not recommend to define Timestamps as a matching field for OTC Derivatives and to allow for tolerances where derivatives are entered into through organised platforms.
40	It is necessary to clarify whether the action type "Cancel" will be applied to full AND partial early termination (or whether a partial early termination would get a "Modification" action type).
41	It is not clear when action type "R" should be used, opposed to type "E". Does "R" has to be used when it comes to a data field change and "E" where a trade has been wrongly submitted (e.g. duplicated trades)?

Suggested additional guidance:

Rates

Additional guidance on how to populate fields related to "rates" would be very helpful and avoid mismatches (e.g. fields 40 & 41 regarding fixed rate; fields 46 & 47 regarding floating rate and fields 49 & 50 regarding exchange rate; ...). We notice that counterparties still populate these fields differently. E.g. 1,075 % can be reported as 0,01075 or 1,075).

Field 14, Table 2: Venue of execution

ESMA's proposal to populate the field with "XOFF" is burdensome as it would force counterparties to each OTC Derivative transaction to research potentially numerous organised venues (EU? EEA? Non-European? Only RM? All?) for the existence of an equivalent transaction in order to be able to populate this field. This is particularly time consuming for non-standard transactions in the light of the reporting timelines. We would support the introduction and acceptance of "OTC" as possible answer. Where the parties have the relevant knowledge concerning their OTC transaction, they should complete the field with the relevant MIC number.

Field 22 and following Table 1: Collateralisation/IM/VM

ESMA should specify whether the information required here only concerns collateralisation and margining under EMIR or whether voluntary margining arrangements (typically Credit Support Annexes under ISDA) are encompassed.

Where no margining agreements are in place (whether under EMIR or any bilateral agreement) how are these fields to be populated: N/A or blank?

Field 54, Table 2: Delivery point (Same question for interconnection point, field 55)

Where the transaction is financially settled, there is no delivery point available. Which answers are then acceptable: N/A? Blank? Or should "Cash" settlement be mentioned for the avoidance of doubt?

Q5: Do you think the introduction of **new values** and **fields adequately reflect the derivatives market** and will help **improve the data quality** of reports? Will the proposed changes cause significant new difficulties? Please elaborate.

The introduction of new undisputable values and fields that are clearly defined by reference to existing standards is a useful step forward.

In general, we would welcome more prescriptive and mandatory requirements from ESMA to the TRs, in an effort of standardisation which will increase readability and accessibility of data for NRAs. In this sense the TRs should comply with the standards set by ESMA without being authorised to set diverging or additional reporting requirements. ESMA should equally define which fields from the reports are defined as "matching fields" and as applicable set tolerance levels for discrepancies.

In particular in the practical case where a transaction is:

- Confirmed by both counterparties at T+2
- Matched accordingly
- And paid (as payment date)

There should be no viable explanation for non-matching reports. ESMA could propose that additional "action fields" be added in the reports for later completion by the counterparties which flag these elements.

On the new introductions, we would like to put forward the following comments.

Paragraph	Comment
45	“Country of the other counterparty” (Field 4, Table 1): We believe that this information can be derived by ESMA from the LEI of the other counterparty and therefore this field appears unnecessary and should be removed. We consider that it should be compulsory to have a LEI . This would prevent many other confusions. As a matter of fact, “country of the counterparty” or “corporate sector” issues would not exist if a consistent LEI was established. The LEI to be reported is the one under which the company is operating, a LEI issued by a national entity, that would not give place to confusions.
49	Regarding "B" (baskets): it's not clear what is expected and what reporting entities should do prior to MIFIR coming into force. Please clarify (also the exact definition of Basket/...)

Q6: In your view, which of the reportable fields should permit for **negative values as per paragraph 40?** Please explain.

We welcome the admissibility of negative values for certain fields. However, in the view of matching records, we would like to underline that consistency is necessary. If negative values are going to be permitted, every TR should then consider this in the same way. They should all accept negative values, or absolute values, but all of them should assume the same consideration in order to make this reports efficient and consistent. Furthermore, aggregated values should be prohibited. Otherwise two different values will be populated by the counterparties to the transaction, the first one using negative values, while the second one uses aggregated numbers.

Q7: Do you anticipate any difficulties with populating the corporate sector of the reporting counterparty field for non-financials as described in paragraph 42? Please elaborate

We consider that this information should not be required, if the entity is correctly identified, this information is already given. We thus propose to eliminate this proposal.

Q8: Do you envisage **any difficulties** with the approach described in **paragraph 45** for the identification of indices and baskets? Please elaborate and specify what would be the **most practical and industry consistent way to identify indices and baskets.**

NA

Q9: Do you think the introduction of the dedicated section on **Credit Derivatives** will allow to **adequately reflect details of the relevant contracts?** Please elaborate.

NA

Q10: The current approach to reporting means that strategies such as straddles cannot usually be reported on a single report but instead have to be decomposed and reported as multiple derivative contracts. This is believed to **cause difficulties** reconciling the reports with firms' internal systems and also difficulties in reporting valuations where the market price may reflect the strategy rather than the individual components. **Would it be valuable to allow for strategies to be reported directly as single reports?** If so, **how should this be achieved?** For example, would additional values in the Option Type field (Current Table 2 Field 55) achieve this or **would other changes also be needed?** What sorts of **strategies could and should be identified in this sort of way?**

As mentioned in Q1, a method that allows counterparties to report easily should be established. By giving place to the possibility of desagregating big operations into simpler ones, transparency and confusion avoidance would be guaranteed.

Q11: Do you think that **clarifying notional in the following way would add clarity** and would be **sufficient** to report the main types of derivatives:

EURELECTRIC welcomes ESMA intent of better defining the criteria for the calculation of contracts' notional amount and would like to take this opportunity to suggest further improving the clarity of notional amount definitions, with the following slight amendment in § 61: "*applicable contractual price at the date of conclusion of the contract*".

While the additional clarification is welcome, we would like to underline the importance of defining which notional amount needs to be reported at the time of completing the report. This is in particular important for OTC Derivative transactions with variable volumes (for example, the option for a party to purchase "up to 100 MW of electrical power per day". ESMA should define clear rules to determine which notional amount of commodity shall be used in such case: 100, or less. Furthermore, further clarification is required on "Partial Early Terminations".

EURELECTRIC pursues in all its activities the application of the following sustainable development values:

Economic Development

▶ Growth, added-value, efficiency

Environmental Leadership

▶ Commitment, innovation, pro-activeness

Social Responsibility

▶ Transparency, ethics, accountability



Union of the Electricity Industry - EURELECTRIC aisbl
Boulevard de l'Impératrice, 66 - bte 2
B - 1000 Brussels • Belgium
Tel: + 32 2 515 10 00 • Fax: + 32 2 515 10 10
VAT: BE 0462 679 112 • www.eurelectric.org