

Consultation Paper – ESMA/2014/1352

Review of the technical standards on reporting under Article 9 of EMIR

CoDiese is an independent consultancy firm, specialising in market structures. Our clients interact with financial markets and are willing to adapt appropriately and timely operational processes and business models to on-going regulatory evolutions .

In 2013, in partnership with GMEX-Group Ltd, CoDiese set-up GRC an independent third-party EMIR reporting service for derivative markets users.

As a sponsor of the GRC reporting service, CoDiese is a well-placed observer of the data which are reported. CoDiese shares ESMA's will to improve the quality of derivatives reported data, and welcomes the consultation which should help achieve this objective.

We have observed some of the shortcomings ESMA refers to in its Executive Summary.

Generally speaking, data quality has not necessarily been a priority for organisations as it is a long-term ongoing costly effort and they have to focus on achieving short-term goals. However, non addressing the poor quality of data may result in adverse effects and may lead to large business failures. The lack of consistency, completeness, correctness in data may drive errors and inadequate decisions across organisations.

On the other hand, the delays left to financial markets users:

- to design and implement an efficient data collection process across various systems with inconsistent data dictionaries,
- to create data records for information that may not have been captured, and
- to resolve all technical and operational issues raised by the EMIR reporting requirements may have been insufficient to address all potential internal data shortfalls. This has been worsen by the lack of complete metadata shared across the community of entities subject to EMIR reporting at the time of the Regulation publication.

Certainly, the lack of clarity on the counterparty field or the B/S indicator as examples, the process complexity of reporting ETD transactions have widely contributed to the laboriousness and the distress expressed by the market participants over the EMIR reporting process implementation.

The regular issuance of Q&A over the last year have addressed some of these shortcomings in defining comprehensive description of what is expected. However, many areas are still unclear and subject to organisations' individual interpretation.

The combination of these factors has generated an intricate situation where overall, the quality of data sent to Repositories is poor. In this respect, the requirement of having the 2 parties to a transaction to report is a critical factor to raise overtime the level of data quality stored by Trade Repositories.

We have noticed that the reconciliation process between counterparties to a transaction has not become yet a standard practice across the industry. We strongly support the concept of dual reporting as we believe it is a powerful way to ensure data quality across the financial industry and ultimately the overall stability of the financial system. Reconciliation of data reported independently by both sides to the transaction stands as a guaranty of reported data quality.

Data reconciliation appears extremely challenging for the derivative markets participants. It will require time and cooperation between the various actors to raise the level of data quality at a satisfactory level and allow European regulators to achieve the Pittsburgh objectives. The data reconciliation process may appear so daunting that in order to remove the challenge, some market participants claim for the implementation of a single side reporting process. We consider these intricacies as the materialization of the lack of quality data management processes across financial markets users. This is in itself a serious source of risks that need to be addressed in order to increase the overall level of financial system transparency. The implementation of the independent two-sides reporting is an efficient way to lean towards this objective.

Current reconciliation issues demonstrate how the set-up of a specific global reconciliation process is necessary to ensure overall higher data quality. We have observed that many actors do not see any added value of the current EMIR reporting process and consider it only as an additional regulatory cost. Few have taken the opportunity to revisit their internal data management process and improve its efficiency.

In this respect, we believe it is crucial the regulatory authorities increase the level of communication on the global and individual benefits that could be achieved through this process.

The consultation paper does not address the issues of the cleansing of data already reported. ESMA should clarify what is its position as per the potential retroactive impact of the clarifications of data fields

As an example, ESMA suggests to widen the scope of field 6 “Corporate Sector of the Counterparty” or the addition of field to better report the evolution of contract notional. ESMA should clarify at the same time if it expect this to impact the contracts already reported or if these additional values will be required at a future date compatible with the time required by the organisations to adapt their systems accordingly.

We have noticed differences in the tables and the description of certain fields between the draft implementing technical standards in Trade Repository and the delegated Regulation 148/2013. These concern fields that are not subject to comments by ESMA in its consultation.

For example, this concerns the field 5 of the counterparty table. In the draft, the comment on the fact that this field may be left blank if the LEI is provided has disappeared. Could ESMA clarify if this field will have to be filled systematically?

1 Clarification of data fields, their description or both

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?

Although the use of the "other" category could appear inconsistent with the indication of the most similar derivative contract, it gives the reporting entities flexibility when the transaction to report is slightly different in nature from the standard categories. We consider valuable to maintain this category to address the possibility of instruments that may not be close of a standard form.

Of course, this entails that both counterparties agree on the nature of the transaction and the way to report it prior to reporting to the Trade Repository.

Q2: Do you think the clarifications introduced in this section adequately reflect the derivative market and will improve the data quality of reports

We welcome the clarifications proposed by ESMA. As expressed in our introduction, the quality of consolidated information available to regulators is highly dependent from the clarity of the field definitions as well as the ability of the set-up taxonomy to reflect adequately the full range of transactions and the nature of each of them. The field descriptions imposed by ESMA should limit as much as possible users' interpretation.

It has to be noted that Trade Repositories may require additional fields to the mandatory fields identified in the technical standards to complete and facilitate data consolidation and reporting.

We agree with 17. We outline that clarifications concerning counterparty fields should also include field 3 "other counterparty" to avoid any further confusion. This clarification should also be linked with field 25. Concerning the Buy/Sell indicator.

We agree with 18.

Q3 What difficulties do you anticipate with the approaches for the populations of the marked to market valuation described in paragraphs 21 or 19 respectively?

We agree with 19.

We welcome the clarifications proposed on the "marked to market" value reporting (21). To limit diverse interpretations of the regulation, we appreciate that ESMA details as much as possible on what is expected to be provided by the reporting parties.

2 Adaptations of existing fields to the reporting logic prescribed in existing Q&As or to reflect specific ways of populating them

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.

34. It is proposed to amend and rename the current Table 2 Field 14 Notional amount and introduce an additional field on the notional amount .

We agree it makes sense to distinguish between the initial notional amount & the current reference nominal. The “ actual” field will correspond either to a contractual change in the nominal or to a modified amount included in the original terms of the contract (as an example, amortization schedules).

35. We do not see an issue in the increase of the size of table 2 field 2.

36. It is proposed to rename the “Transaction Reference Number” the “Report Tracking Number” while maintaining its population logic, i.e. unique code assigned to the execution and common among a group of reports related to the same execution.

We do not see an issue with the field renaming, but we would like to take the opportunity of the consultation paper to highlight the complexity of tracking and reporting the same report number along the instrument process chain often across several market users. Considering how complex it is to agree and capture a unique trade reference number between two counterparties (see point 55 below), the complexity of having to maintain & communicate one single trade reference number along the chain (through brokers, clearers, Exchanges and CCPS) may be extremely challenging to implement.

38. We welcome the set-up of unique standard on the format for time periods. So far, the variety of individual taxonomies for the concerned fields has created a significant number of reconciliation issues that will disappear as soon as a common standard is in place.

39. We welcome the clarification of the various values in the “action type” field

41. We very much welcome this proposal which will help reducing the number of reports. It will simplify the process of cleansing the data reported as issues related to data quality are spotted on an ongoing basis.

We would encourage ESMA to be very specific on the action type to be used for the various reporting scenarios. As an example, would there be a different action type to be used when there is a modification of data due to a contract change (Action type M?) versus a change anticipated in the original contract (as example : recurrent reporting of amortising schedules).

42. To avoid the need for counterparties to report essentially the same details

twice (as N and Z), it is proposed to include a new action type “P” that will be treated as being a combination of an “N” and a “Z” report, thus requiring the submission of only one report for this type of trades.

We do welcome the simplification, which highlights by using the “P” code action type, that the position encompasses the underlying trades (executed the same day). This will reduce the reporting process workload, specially for cleared derivative contracts.

3 Introductions of new fields and values to reflect market practice or other necessary regulatory requirements

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.

43. It is proposed to add a new Field 74 Table 2 to differentiate between the two reports being done at trade level and done at the position level.

It is indeed important to differentiate between the reports done at trade level with those done at position level. Life-cycles of a single trade and a cleared one are different: as soon as the trade is cleared, only information relating to the position are relevant.

55. The existing technical standards prescribe that the Unique Trade Identifier must be agreed with the other counterparty (see Table 2, field 8 of the RTS). In light of the low pairing rates of the TR reconciliation process, ESMA considers that an additional prescriptive rule should be included to account for the cases where counterparties fail to agree on the responsibility to generate a UTI. On this basis, it is proposed to introduce Article 6 of the Draft Implementing Technical Standards. The Article prescribes which reporting entity is responsible for the creation and transmission of the UTI in the absence of agreement between counterparties.

We do agree with this recommendation. However, we would like to highlight the importance of imposing to the counterparty responsible for creating the UTI, to **transmit it to its counterparty on an easily accessible form and in a timing compatible with the reporting process obligations**. This is the condition under which we can reasonably expect the UTI to be unique and shared by both counterparties.

We would suggest that the entity responsible for creating the UTI is the one who is able to communicate it timely to the other counterparty and in an easily accessible form.

This conditions the success of the transaction reconciliation process by the TRs. As both parties to the contract would be effectively in a position to assume their responsibility on the quality of data reported, it will improve the percentage of transaction reconciliation.

