

## **EAPB Response to ESMA Consultation 2014/1352 on Review of the technical standards on reporting under Article 9 of EMIR**

13 February 2015

The European Association of Public Banks (EAPB) is pleased to provide the ESMA with its feedback to the proposed revised Regulatory Technical Standards (RTS) and implementing technical standards (ITS) in relation to the European Market Infrastructure Regulation (EMIR), responding to the related ESMA Consultation 2014/1352 published on 10/11/2014.

Please find our answers to the individual questions as follows:

**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.**

Yes, we do not consider appropriate to remove the "other" category from the derivative class and type descriptions in Articles 4(3)(a) and 4(3)(b) in ITS 1247/2012. We understood Article 4(3)(c) as covering hybrid /mixed forms of derivatives whereas the "other" category in Article 4(3)(a) covers structured derivatives such as weather derivatives, derivatives on emission allowances, or derivatives on freight rates. While in principle it would be possible to categorize all of these using the existing classifiers, the proper choice of category can at times be far from obvious. Likely, this re-categorization will in future create additional bilateral reconciliation efforts for counterparties to ensure that they report the same category. It does not seem feasible that the counterparties agree on the derivative class upfront. It might lead to a different way of reporting for the same derivative class between different counterparties. Thus, removing the „other“ category could lead to difficulties if not all derivative classes are specified by ESMA. Therefore, in case of a removal of the “other” category, ESMA and/or the NCAs should remain responsible for providing sufficient information on how each derivative class should be reported.

At the same time, it seems unclear that there will be significant benefit in adding these products to a category to which they only loosely resemble. If the "other" category would be deleted, these derivatives would probably have to be qualified as commodity derivatives, a qualification failing to meet the specific characteristics of such contracts.

Currently, consistency between the reported category and the ISDA–taxonomy is provided by reporting products as ESMA category "other" and applying ISDA–taxonomy "ForeignExchange:ComplexExotic". If the category "other" were removed, some products of e.g. ESMA category "swap" would map to ISDA–taxonomy "ForeignExchange:ComplexExotic".

On the other hand, it would not be advisable either to delete Article 4(3)(c), since there is a number of derivatives, such as swaptions, consisting of two different types of derivatives. In some cases, the swaption may resemble more closely either an option or a swap, thus Article 4(3)(c) could apply, whilst in other cases, no such allocation according to resemblance may be possible and, thus, the "other" category in Article 4(3)(b) would apply.

**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 requirement that the counterparties should agree on features such as the derivative type might be not feasible to implement within the day–to–day work on an operational level.

**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.**

It causes problems when mapping data, if the values regarding ETD can only be reported as positive numbers.

**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.**

As a general remark, changing the names and contents of data fields requires adjusting all reporting structures and leads to high efforts. It is doubtful whether this will provide any advantages. It would definitely be beneficial to reduce the data fields (e.g. the EEA indicator).

Paragraph 29: To delete the possibility to use BIC or client code is very far-fetched. The problem remains that many counterparties in particular in the non-financial sector, refrain from obtaining a LEI and there is no indication, that this problem will be solved in the near future.

Paragraph 34: It is not clear how these values would be calculated for e.g. a commodity swap, where a constant quantity of the underlying commodity is used to determine contractual payments based on the market price and the predetermined swap rate. Is the “original notional” the sum of all notionals for all cashflows of the swap or is the notional used for determining a single payment? In the first case, will the “current notional” be amended after each payment?

**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.**

Paragraph 45: In case of ETD which are ordered by the customer of a Clearing Member, it is necessary that ESMA further clarify

- if the legal relationship between the customer and the Clearing Member is to be reported as a derivative (ETD/OTC?); and
- if so, which country should be determined by the customer (CCP’s country of domicile / Clearing Members country of domicile)?

Paragraphs 52 – 54: The restructuring of the collateral reporting requires some time to be implemented as the reporting mechanisms have to be set up anew.

Paragraph 55: In practice, some counterparties from the sales side fail providing a UTI in time. Besides determining a party that is responsible for providing a UTI, ESMA should also consider a provision, by which the party who is obliged to communicate a UTI to its counterparty:

- should do so as soon as possible but at least within the confirmation process;
- should provide the UTI in a standardized way (e.g. within the confirmation of the transaction) especially instead of (i) requesting its counterparty to obtain the UTI from a website or (ii) communicating it via separate e-mail) (both, (i) and (ii) cannot be considered by the party receiving the UTI in an automated way).

Art. 4 (a) Draft RTS 1247/2012: in paragraph 2 (b) the sentence “Subsequently, the unique trade identifier should be generated by the clearing member for its counterparty;” seems to be missing. In general, we agree with the proposed changes regarding the UTI generation. In this regard we would like to address that the implementation period should be set by reasonable terms.

Furthermore, due to deviant interpretations in the market, ESMA should clarify whether a UTI is to be reported regarding ETD.

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

All fields considering a value that can be negative from the perspective of one of the counterparties.

**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.**

Presumably, Q7 refers to paragraph 46, not 42. We anticipate difficulties since it is not feasible to the reporting financial counterparty to define the sector of its non-financial client or, in case of delegated reporting, would need to request the information from the non-financial counterparty.

**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.**

The question refers to paragraph 49. In principle the EAPB welcome the suggestion to allow ISO 3166, however the expansion of value ranges for such field as suggested may lead to a higher quota of mismatches.

**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.**

We cannot see any advantages in providing more detailed information in this section.

*The European Association of Public Banks (EAPB) represents the interests of 30 public banks, funding agencies and associations of public banks throughout Europe, which together represent some 100 public financial institutions. The latter have a combined balance sheet total of about EUR 3,500 billion and represent about 190,000 employees, i.e. covering a European market share of approximately 15%.*