



clear to trade

## **Eurex Clearing**

### **Response to**

ESMA Consultation Paper on Review of the technical standards on reporting under Article 9 of EMIR

(10 November 2014 | ESMA/2014/1352)

Frankfurt am Main, 09 February 2015

## **Acronyms Used**

<b>CM</b>	Clearing Member
<b>EEA</b>	European Economic Area
<b>EMIR</b>	European Market Infrastructure Regulation, EU Regulation No. 648/2012
<b>ESMA</b>	European Securities and Markets Authority
<b>ETD</b>	Exchange Traded Derivatives
<b>LEI</b>	Legal Entity Identifier
<b>NCM</b>	Non-Clearing Member
<b>RC</b>	Registered Customer
<b>UPI</b>	Unique Product Identifier
<b>UTI</b>	Unique Trade Identifier

## **A. Introduction**

Eurex Clearing, Europe's leading clearing house, offers fully-automated, straight-through post-trade services for derivatives, equities, bonds and secured funding & financing. As a globally leading central counterparty (CCP), Eurex Clearing assures the safety and integrity of markets while providing innovation in risk management, clearing technology and client asset protection.

As part of Eurex Group, Eurex Clearing acts as the CCP for Eurex, Eurex Bonds, Eurex Repo, the FWB® Frankfurter Wertpapierbörse (the Frankfurt Stock Exchange) - both Xetra® and floor - and the Irish Stock Exchange. Eurex Clearing serves 178 Clearing Members in 17 countries, managing a collateral pool of EUR 50 billion and processing a gross risk valued at almost EUR 16 trillion every month. In 2014 Eurex Clearing's national competent authority BaFin (Federal Financial Supervisory Authority) has approved its application as a clearing house in accordance with the European Market Infrastructure Regulation (EMIR).

Eurex Clearing has contributed to the consultation of market standards for EMIR transaction reporting to trade repositories through various available channels. In our external communication we regularly update our Clearing Members via circulars to provide the possibility to align reporting activities covering clearing transactions. In the regular context we actively participate in the ESMA Market Data Reporting Working Group or Consultative Working Groups thereof.

In section B of this document general remarks we have on the consultation paper are considered. Finally, section C of this document, contains responses to the questions of the consultation paper that we believe are relevant for Eurex Clearing as a CCP. As requested, we have included the question to which our responses refer to and, if applicable, suggested alternatives for ESMA to consider on the proposed text.

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## **B. General remarks**

Eurex Clearing appreciates that ESMA is actively revising its EMIR Q&As in order to specify the regulatory technical reporting standards in more detail. We consider the technical guidance of ESMA beneficial to address ongoing reporting issues in a way to significantly improve the trade reports of various market participants subject to the reporting obligation set forth in Article 9 EMIR. Additionally, we allocate resources to support the definition of common reporting standards within the European Union and see in this consultation paper another chance to set the functional reporting requirement needed.

As a first step we wonder if ESMA would also comment in its consultation paper on the reconciliation rate of reported transactions (intra-TR transactions) to one trade repository and of reported transactions to two trade repositories (inter-TR transactions). An open discussion triggered and moderated by ESMA might facilitate the alignment of reported trades of different counterparties from several sectors.

This consultation paper provides ESMA with the opportunity to draw the attention to certain deficiencies that ESMA could specifically address with further more detailed reporting standards. Nevertheless the focus of this consultation paper is apparently not to review and detail existing reporting standards only but rather to extend the reporting obligation substantially. In particular, Eurex Clearing objects to ask central counterparties to report margin numbers to trade repositories as this contradicts with record keeping requirements in place. According to Article 29 EMIR the competent authorities and other stakeholders will be provided with margin requirements on recorded positions of Clearing Members on request.

We also take notice of ESMA's legal mandate set forth in Article 9 ESMA to draft implementing and regulatory standards on reporting that ESMA deems fulfilled with the Regulation (EU) No 1247/2012 and (EU) No. 148/2013. The cost-benefit analysis states that there are no issues of a political nature governed in these draft technical standards. Again, Eurex Clearing appreciates ESMA providing the technical advice to comply with legal reporting standards. However in this consultation paper given reporting requirements are extended and Eurex Clearing is impacted with increased reporting costs. The benefits have not been outlined and therefore it is difficult to understand how these might justify further necessary investments from a regulatory perspective. Further we would ask ESMA to state if the technical standards are "future-proof" or if these will become outdated in the near future. As market participants implemented reporting solutions and switched to ongoing operating reporting systems, the introduction of these new extended EMIR reporting requirements should be announced accordingly.

## C. Detailed comments on the discussion paper

**Question 1: 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.**

Section 2 Paragraph 20:

From our point of view dropping the derivative class and derivative type "Other" is no problem. However, ESMA should provide guidance which contract type and asset class has to be chosen for products where it is not obvious, e.g. for FX Swaps: contract type SW=Swap, asset class CU= Currency.

**Question 2: 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.**

Section 2 Paragraph 17:

We consider a clearer differentiation between "Reporting Entity ID" and "Counterparty ID" a helpful clarification.

Section 2 Paragraph 19:

We cannot follow why ESMA "adapts the format [of commodity base and commodity details] according to the name of the fields". In any case it is appreciated if format constraints are derived from indicators that are widely used in the market and if ESMA refers to these market standards in the ITS.

For feedback regarding paragraphs 21-24 please refer to Q3. The detailed rules for the Buy/Sell flag are incomplete and not necessary if transaction reports with swapped legs and swapped counterparty side are treated as equivalent.

**Question 3: 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.**

Section 2 Paragraph 21:

We agree that mark to market value requires clarification.

Since futures are exchange traded forwards the mark to market valuation must be the same as for forwards, i.e. for a future the initial value is zero, and over time it can be negative or positive.

There are also future-styled options where the premium is paid at expiry or exercise. Here also the initial value is zero and it can turn negative or positive. For traditional style options where the premium is paid at the conclusion of the contract the value for the option holder (buyer) is always positive. For the seller it is always negative. Hence the sentence that the value reported by one counterparty should be approximately the value reported by the other counterparty multiplied by minus one also applies to options. This will ensure that the sign is used consistently for the value of a contract for all valuation methods. It would not be correct to use the buy/sell-flag to indicate the sign, since its purpose is to differentiate between buyer and seller.

Furthermore also the option value is the replacement cost of the option so we support ESMA's approach to always require that mark to market value must represent the replacement value of the contract.

#### Section 2 Paragraph 22:

We agree with this since it will improve reconciliation rates to use the CCP valuation for cleared trades.

#### Section 2 Paragraph 23:

From our point of view also for options the option value is the replacement cost. The value of the contract should always be the current replacement cost of the contract at the time of valuation. This should not pose any challenges since market participants need to monitor the replacement cost of a contract regularly.

#### Section 2 Paragraph 24:

The meaning of this paragraph is unclear. We presume that the conclusion is that any Variation Margin paid out is not part of the actual replacement value and therefore should not be part of the calculated mark to market value. We agree with this approach. To avoid confusion it should be stated accordingly.

#### Section 2 Paragraph 25:

The descriptions are actually in Article 1(2) of the ITS EU No 1247/2012: They do not include e.g. a floating versus floating swap, where we would suggest to determine the party paying the leg with the shorter frequency as the buyer. However, we rather suggest to keep the rule that the payer of leg 1 is the buyer and to allow the reporting party to choose the order of the legs freely. They only need to make sure to populate the "Counterparty side" accordingly. During reconciliation the trade repositories will just have to make sure that a report where a counterparty has reported leg A as leg 1 and leg B as leg 2 and counterparty side as "Buy" is equivalent to a report where it shows leg B as leg 1 and leg A as leg 2 and counterparty side as "Sell" and vice versa. This will accommodate any possible structure without the need to define complex rules for any possible configuration.

For cleared contracts between CCP and Clearing Member where current exposure is paid out daily as variation margin the mark to market value should be as follows:

- for CFDs, forwards, FRAs, futures, future-styled-options, and swaps: 0

- for premium-paid options: the current option premium

For contracts where current exposure is not paid out as variation margin but collateralised:

- for CFDs, forwards, FRAs, futures, future-styled-options, and swaps: the cumulated variation margin

- for premium-paid options: the current option premium + cumulated variation margin

Eurex Clearing appreciates to consistently use CCP settlement prices as a basis for valuation.

Section 2 Paragraph 26:

The changes in fields are not minor but add considerable efforts due to:

- 29 new fields (+13 renamed fields),
- 19 fields with new or updated content/description/format,
- 4 deleted fields

**Question 4: 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 the adaptations of existing reporting fields mentioned in the paragraphs 27 to 42, we would like add the following to ESMA's considerations. In general we support the adaptations and believe that these will lead to a higher reconciliation rate.

Section 2 Paragraph 28:

The date/time format clarification is helpful.

Section 2 Paragraph 29:

Eurex Clearing's Clearing Members are all required to have a Legal Entity Identifier and we understand ESMA's effort to increase reconciliation for the whole transaction chain by permitting only robust identifiers. As a central counterparty we can only report in our transactions beneficiaries with their LEI's as long as these beneficiaries are known to us.

Section 2 Paragraph 30:

It is helpful to allow several characters for the "corporate sector of the counterparty".

Section 2 Paragraph 33:

Deleting the EEA flag is useful. However, the country of the other counterparty field should only need to be filled in case there is no LEI available since the country of residence is part of the LEI reference data.

Section 2 Paragraph 34:

The new "original notional" field can only apply to OTC products and not to Exchange traded derivatives where transactions are netted (compressed) daily and a position changes with every trade and does not have an original notional.

Section 2 Paragraph 35:

We welcome the clarification to put the MIC code in front of the A.I.I. product code to ensure uniqueness while still permitting XOFF to be reported as "venue of execution".

Section 2 Paragraph 36:

We rather propose to rename "Transaction Reference Number" to "Unique execution number" instead of "Report tracking number" because report tracking number would leave the impression that it is unique per record reported. However the purpose is to have the same number for report records belonging to the same execution.

Section 2 Paragraph 39:

Please note that we see the necessity to be able to cancel a contract even on the day of maturity as this can happen before end of day and is different to the contract maturing at the end of the maturity day.

Section 2 Paragraph 41:

The addition of a "Correction" is very useful. The possibility to revoke a transaction which should not have been reported with "Error" must remain.

Section 2 Paragraph 42:

The addition of a new Action Type "Position Component" is very useful to reduce the data transfer. The option to use action type New and Compression should still remain.

**Question 5: 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.**

**In the general remarks Eurex Clearing points out that the focus should be on improving the data quality of existing fields in the trade reports. The introduction of any new field poses a challenge for the daily ongoing operations and require a dedicated implementation effort, including impact assessment, specification, build and testing phase. Therefore we point out that a more detailed cost-benefit analysis could possibly reduce the amount of additional fields necessary.**

**Additional attention might also be required to align reporting requirements for market participants on trading, clearing and settlement level. Hence any reporting requirements should be consulted and aligned as far as possible to avoid contradicting reporting requirements.**

Section 2 Paragraph 43:

To avoid ambiguity it should be clarified that the transactions going into a Position will have action type "P" = Position component and Level "T" = trade.

Section 2 Paragraph 47/48:

Eurex Clearing proposes to mention that those fields are optional and can be left empty (e.g. there is no CFI/UPI for OTC products). Furthermore original notional should not



apply to Exchange Traded Derivatives since single trades are netted into positions and positions do not have an original notional.

Section 2 Paragraph 49:

We do not see any additional value in sending the same product master data with every transaction/position for standard ETD products since the index/basket information does not vary per trade. The underlyings of standard ETD products are public information which can be accessed by anyone. Therefore this should only apply to OTC contracts.

Section 2 Paragraph 51:

As commented on Paragraph 34 “original notional” should be only relevant for OTC derivatives.

In general Eurex Clearing asks to consider that collateral and margin requirement are not identical and therefore significant implementation effort results with the introduction of fields on margin requirements. Moreover the margin requirements can already be specifically requested from central counterparties based on Article 29 EMIR. Therefore CCPs should be not required to report margin requirements or to double reporting and recording requirements.

Section 2 Paragraph 52:

The actual collateral posted has to cover all margin requirements and may be more or less than the required margins. Furthermore the collateral posted is not differentiated between the types of margin so it is impossible to report “margin posted”. There are also other types of margin requirements e.g. option premium margin. If you want to compare collateral posted against margin required you should keep the field for collateral value posted and add one total margin requirement field.

Section 2 Paragraph 53:

As said before collateral received cannot be differentiated into the types of margin since collateral needs to cover the total margin requirements. Any further categorization does not add benefit to compare margin requirements and collaterals received. Eurex Clearing asks to introduce new reporting fields with a clear rationale for each field.

Furthermore there is a significant additional effort to require the collateral receiver to report the collateral value which is already reported by the collateral provider and we do not see sufficient benefit to justify this.

The collaterals are relevant only to reflect in how far margin requirements are met as only collaterals can be posted. It is misleading to define margin that are posted as these are the requirements that have to be met.

Section 2 Paragraph 54:

For the assessment of daily margin movements, the field to report variation margin does not provide additional information (“variation margin posted”, “Currency of the variation margins posted”, “Variation margin received”, “Currency of the variation margins

received”). In the context of collateral reporting the variation margin is not relevant as the changes of market prices are reflected in a new exposure end of day. For instance, an open future contract is valued 0 due to the fact that the overall position has changed. Hence, there is no additional margin requirement to cover a contract valued at 0. We ask Eurex Clearing to provide further clarification in this regard.

Section 2 Paragraph 55:

We believe that the prescription on UTI hierarchy is helpful. The article being introduced in the draft ITS rather seems to be 4a than 6.

Question 6: In your view, which of the reportable fields should permit for negative values as per paragraph 40? Please explain.

For the following fields negative values should be allowed:

1.17 Value of contract

2.16 Price / rate

2.19 + 2.20 Notionals

2.23 Up-front payment"

**Question 7: 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.**

For some smaller market participants Eurex Clearing took notice that further in the reporting chain it would be difficult finding an appropriate sector or sectors for them.

**Question 8: 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.**

This should only apply to OTC products since ETD products are standard products where the composition is known from the exchange reference data as public information. Sending the same product master data with every transaction/position for standard ETD products would create huge effort, high amounts of redundant data and lead to possible inconsistencies.

Section 2 Paragraph 45:

The country code should be the country code of the legal residence of the counterparty. However, since this information is part of the LEI reference data it should not be required if a LEI is provided for the other counterparty.

**Question 9: 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 are currently not clearing Credit Derivatives. However, we have the impression that the suggested fields and field values do not provide a sufficient basis for the representation of credit derivatives and suggest to use fields from the ISDA credit

derivative definition. Showing the date of the last lifecycle event is redundant since lifecycle events are reported separately.

**Question 10: 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?**

The current approach to report strategies as separate contracts for all legs is the standard approach in the internal systems. The valuation is anyway the sum of the value of all legs. Trying to fit any possible strategy into an EMIR reporting record would require a lot of new fields and would never provide as good a representation as the separate reporting of the legs. Furthermore if single legs are changed it would be very difficult to correctly reflect this in a single reporting record. Therefore we strongly advise against reporting strategies on a single report.

**Question 11: Do you think that clarifying notional in the following way would add clarity and would be sufficient to report the main types of derivatives:**

As stated before for Exchange Traded Derivatives a differentiation of original and actual notional does not provide any benefit from our perspective.

The above definitions for notional still leave room for ambiguity so we advise to include examples. Paragraph 60: E.g. for a Bund future we currently report as notional the following: number of contracts x multiplier x trade price. If notional is rather considered as a constant contract reference amount it might be better to just report the 100.000 EUR contract size.

Paragraph 61:

Eurex Clearing assumes ESMA asks the resulting quantity of the underlying asset to be reported as notional.

**Annex IV – Draft RTS – Preamble Whereas (1):**

So far it has been clear that if there is a bilateral trade which is then cleared, the original bilateral trade is cancelled and new cleared transactions between the CCP and its clearing members as well as between the clearing member and the customer are effected. So clearly the CCP is a counterparty of the clearing member. This section contradicts this understanding and should therefore be removed.

**Annex IV – Draft RTS – Preamble Whereas (2):**

It is correct to compare exposure with exchanged collateral. However, margin requirements and collateral are not the same. Posted collateral can be more or less than margin requirements and differentiating it by different margin types is not possible since collateral is posted against the total margin requirements. In addition you would also have to consider option premium margin. Furthermore requiring double reporting of collateral by both sides is doubling the effort. Instead correct reporting by one side should be achieved by providing clear guidance.

**Annex IV – Draft RTS – Article 1 (2):**

We do not see any benefit to also include received collateral in addition to posted collateral. This double reporting is not in the interest of an efficient regulation.

**Annex IV – Draft RTS – Article 2:**

Entry into force: Industry needs to be given sufficient time after ESMA’s publication of these new reportings standards and the obligation to report accordingly. For the changes envisioned a preparation time of at least 15 months is required.

**Annex V – Draft ITS – Article 1 (2) – new Article 3a:**

The complex rules for the definition of counterparty side are incomplete and ineffective. It would be a lot easier to stick to the rule that the buyer is the payer of leg 1 and treat a report where a counterparty has reported leg A as leg 1 and leg B as leg 2 and counterparty side as "Buy" as equivalent to a report where it shows leg B as leg 1 and leg A as leg 2 and counterparty side as "Sell" and vice versa.

**Annex V – Draft ITS – Article 1 (2) – new Article 3 b:**

The agreement on collateralisation between counterparties does determine which margin requirements have to be collateralised in total. It does generally not determine that a certain type of collateral needs to be provided separately. The definitions for the collateralisation field suggested by ESMA are ambiguous. Therefore please provide a table showing all possible combinations and how the collateralisation field should be filled.

Suggested table:

Reporting collateral	CP posting	Other counterparty posting collateral	Collateralisation field
No		No	Uncollateralised
Yes		No	one-way collateralised
No		Yes	one-way collateralised
Yes		Yes	fully collateralised

**Annex V – Draft ITS – Article 1 (2) – new Article 4 c:**

It is not feasible to ask single market participants to come up with a derivative product classification code with is "unique, ..., open source, scalable (?), available at a reasonable cost basis, subject to an appropriate governance framework". This would be

a task for the Regulatory Oversight Committee. As long as such a code is not available it must be possible to leave the product classification empty. Therefore part 4 of the new article 4c should be removed.

**Comments to field list in Annex IV and V:**

ESMA should clearly define on trade and position level which fields are mandatory in what circumstances and how empty or null values can be reported.

Eurex Clearing appreciates that ESMA issues guidance on the alignment of trade reports in Article 4a of the draft implementing technical standards.

**D. Closing**

We hope that you have found our comments useful and remain at your disposal for further discussion. If you have any questions please do not hesitate to contact:

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