EDF Group's comments on ESMA's Consultation Paper of 10 November 2014: Review of the technical standards on reporting under Article 9 of EMIR

11 February 2014

I. General remark

While we appreciate ESMA's initiative in launching the consultation on the reporting standards under EMIR our view is that due to the lack of interoperability between the Trade Repositories (TRs) many reporting issues may not, as yet, have manifested themselves. We believe the current focus should primarily be in making sure that interoperability is working effectively. The need for robust interoperability and the establishment of reliable data reporting is crucial not just for EMIR but also in the context of MiFID II and the need for publication of market size data for assessment of the ancillary activity exemption. Only after the industry has had a sustained period of interoperability will we have a better view and understanding of the full range of reporting issues which can then be rectified in a more comprehensive revised RTS. This would be preferable to having to again revisit (and approve) the RTS in the near future once interoperability is established.

If ESMA decides to proceed at this stage with revised RTS we have a number of comments on the suggested changes as outlined below. In general, many of the changes proposed require lot of resources and significant internal development. We are concerned that implementation of some of the proposals from ESMAs consultation would need to be reviewed or further enhanced once interoperability is working. . Any changes now should only focus on areas that are quick and easy to implement.

II. II EDF's answers to ESMA's consultation questions

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.

EDF: We don't think there are issues in removing 'other' from 4(3)(a) and 4(3)(b). However in the case of 4(3)(b) it has been used temporarily and modified later.

There are a number of non-standard transactions in energy commodities that fit in neither of the 6 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 are structured bilaterally. 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. Also we also use other 'category' to describe CAP/FLOOR operations as IR-OT because there is no alternative category to describe it properly.

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.

EDF: In general we agree that the clarification provided should improve the quality of reports.

We also note that 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 last Q&A 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, which don't apply to NFC-; Field 10 Table 2; Field 23 Table 2.

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.

EDF: N/A

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.

EDF: In general these adoptions require significant work and it is not clear what the benefits will be due to the lack of interoperability between TRs.

- Paragraph 28 of the consultation paper requires formatting according to ISO 8601 shouldn't require a lot of work and we support it. It is nevertheless worth noting that 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 synchronised on any world clock. We would thus not recommend to define Timestamps as a matching field for OTC contracts and to allow for tolerances where contracts are entered into through organised platforms.
- Paragraphs 33-34 proposes new data fields and we believe this requires significant work with no real benefits. Even though this might introduce some precision on the same time we think adding the 'Actual Notional' field will cause a lot of mismatches. Our view is that no change is undertaken on this at this stage.
- Paragraph 36, 'Report tracking number' (Field 13, Table 2): we welcome the clarification in the light of MIFID transaction reporting. Nevertheless the current explanations for the population of the field lack the link to MiFID and it could be easily misunderstood that the population of the field is mandatory for all reporting entities. This should be clarified, along with the acceptable values for the population, in particular N/A or blank.

- Paragraph 39 requires for 'other' option to be removed from 'Action Type'. Amongst others this is used for Confirmation Timestamps, so if it is removed, which we support, a guidance is required on how to isolate confirmation events and breaches, using M or R.
- Paragraph 41 may potentially cause a biggest impact and it will certainly need to be reviewed once the interoperability and the consistent validation rules between TRs are applied. Our view is that no change is undertaken on this at this stage.

In adaptations 27-41 there's no direct reference to the field "Details of Action Type" (field n.59 of Table 2 of ITS 1247/2012 and Commission Delegated Regulation (Eu) No 148/2013), but the field looks suppressed from Table 2 of both Annex IV and Annex V. In case the field "Details of Action Type" will not be available anymore what will be the correct way to replace a dummy, temporary UTI with the permanent UTI? (Also considering that cancelling the old report (with Action Type=E) and submitting a new one would create a reporting breach).

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.

EDF: We have nothing against changes proposed on paragraphs 42-44 and 55.

Application of ISIN is duplicated in new fields – 'I' in 2b.5 and 2b.7, and the ISIN code is repeated in 2b6 and 8. New fields require significant developments to be undertaken by the firms while it is likely that once interoperability between TRs is working this and many other parts will need to be reviewed. Therefore our view is that no change is undertaken on this at this stage.

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

EDF: We assume ESMA meant paragraph 44, if so we agree and already apply this for fields 'Price/Rate' and related fields, e.g. 'Price/Time Interval Quantities' and 'Fixed Rate Leg 1'. In any case this should apply only in the cases where underlying is traded with the negative price and not to show to represent buy or sell side of the trade.

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.

EDF: N/A

We assume ESMA meant paragraph 46, if so we think that it will not cause any issue. Point 46 refer to NACE's (1893/2006) codes while NACE has been updated in 2008 in NACE 2. A clarification is needed in order to clarify which the document to refer to is.

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.

EDF: We assume ESMA meant paragraph 49, in which case we agree with the proposal, however we would like to reiterate the need to review this after the interoperability and the consistent validation rules between TRs are applied as changes at this stage might cause additional 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.

EDF: N/A

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?

EDF: This is another change that requires significant work and will need to be reviewed once the interoperability and the consistent validation rules between TRs are working. Our view is that no change is undertaken on this at this stage. However, additional clarity should be given on reporting if FX swaps too.

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:

EDF: See above our remark on notional value. We don't think this will improve the quality of the report, and will potentially create additional mismatches. Therefore in our view any change on this together with additional clarity should be undertaken after the interoperability is up and running.