

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



EFET response – 11 February 2015

The European Federation of Energy Traders (EFET)<sup>1</sup> welcomes the opportunity to comment on the review of EMIR reporting standards under Article 9, put to consultation by ESMA. The review of the RTS addresses key elements in relation to EMIR reporting. While we welcome the clarifications brought about by some of the proposals for a new version of the RTS and ITS, we would like to draw ESMA's attention to a number of points highlighted in our general remarks, our answers to the consultation questions, and our detailed comments on specific articles.

### **General comments:**

While we appreciate the launch of the consultation on the reporting standards under EMIR EFET would like to share some preliminary concerns. We currently see 2 major hurdles to a harmonised and consistent reporting, which are not yet overcome:

- the lack of interoperability between the Trade Repositories (TRs). Only once such interoperability has been established will all reporting issues and challenges be known. As the TRs have implemented the reporting process (e.g. delivery receipts of reported transactions) and fields differently, in terms of the format of fields, interpretation (Termination Dates un/applied to compressed trades) and also of custom (non-EMIR) fields and custom values for Action Type, we are confronted with significant interoperability problems. We believe that ESMA should focus primarily on

---

<sup>1</sup> The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent, sustainable and liquid wholesale markets, unhindered by national borders or other undue obstacles. We currently represent more than 100 energy trading companies, active in over 27 European countries. For more information, visit our website at [www.efet.org](http://www.efet.org).

improving interoperability between TRs. And are of the opinion that any change in the reporting requirements might be premature. Most of the changes proposed by ESMA require significant resources and work from the market participants. Once interoperability and consistent validation rules are used between TRs, there will be a need to reassess where all the remaining matching problems lie. We are concerned that implementation of some of the proposals would need to be reviewed. Therefore our view is to postpone some or all of the proposed changes until after the interoperability between the TRs is working.

- the absence of trade recording standardisation. Today several trade registration systems are available to counterparties and as a result different counterparties are making use of different trading and trade registration systems: each system has defined its own trade recording rules independently of the other (and sometimes independently of the legal qualification of a transaction) such that for example a non-standard OTC Derivative might be considered a swap by a certain system while being registered as an option in another.

On the details of the proposal itself (and subject to our preliminary concerns here above), we welcome ESMA's effort to clarify the content and required format of fields. However, there is still room for different interpretations of the requirements. As commodity trading firms we are still struggling with some of the definitions and have to apply our own interpretation. We would suggest that ESMA provides more guidance to the market. Not necessarily as part of the RTS and ITS, but by creating an EMIR-TRUM (transaction reporting user manual), similar to what ACER is doing for REMIT. 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.

We also note that ESMA is aiming to improve the matching rate by clarifying, modifying and extending the reporting obligations. It should be underlined that in practice matching can only be expected after conclusion of the confirmation process, which will not be on T+1. Similar to REMIT, it would make sense to allow more time for reporting of non-standard transactions. Reporting these on T+3 instead of T+1 would probably also improve the matching rate.

There should be a commonly accepted "go-live" date for the proposed changes to avoid confusion in the market and allow for a sufficient lead-time 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.

## 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.**

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 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 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 a 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 be appreciated if ESMA could clarify the definition of “Reporting Entity” in this regard and differentiate 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 questions 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.**

No comment, not applicable to NFC-.

**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 BICs as alternative to the LEIs for the time being as we have noticed that not all trade counterparties have a LEI (such as e.g. Asian counterparties). Abandoning the use of BICs will trigger new difficulties.
34	<p>“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?</p> <p>It is also not clear why there is now a difference between “original notional” and actual notional. If the notional of a transaction changes, then we would assume this is reported as an update to the transaction. Therefore the new field “actual notional” is not needed.</p>
36	“Report tracking number” (Field 13, Table 2): EFET welcomes the clarification in the light of MIFID transaction reporting. Nevertheless the current

	<p>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. A link to MiFID is required in the field description.</p>
38	<p>Format for time periods: EFET appreciates the effort to create uniform data fields in order to facilitate the matching of the reports, which is a key element to reach transparency. It needs to be underlined and noted that matching of timestamps is <b>in practice</b> an impossible task as these timestamps (in precise hours, minutes and seconds) are provided by individual systems that are not mandatorily synchronised on any universal 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 traders to register their OTC transactions at different times during a trading day. EFET would thus not recommend to define Timestamps as a matching field for OTC Derivatives and to allow for appropriate tolerances where derivatives are entered into through organised platforms.</p>
39	<p>Point 39 requires for 'other' option to be removed from 'Action Type Details'. Amongst others this is used for Confirmation Timestamps, so if it is removed, guidance is required on how to isolate confirmation events and breaches, using M or R.</p>
40	<p>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.</p>
41	<p>In theory a good idea, which however creates major uncertainties:</p> <ul style="list-style-type: none"> <li>- It is not clear when action type "R" should be used, opposed to type "E". Does "R" have to be used when it comes to a data field change and "E" where a trade has been wrongly submitted (e.g. duplicated trades)? See below for more details.</li> <li>- in the event of major corrections to a reported transactions, we believe that the use of "E" should still be allowed, provided that this is followed by a new submission of report marked with action type "N"</li> <li>- in practice substantial implementation efforts will be required to add the new action type "R" to the market participants systems. We would therefore appreciate if a certain flexibility (see bullet point above for example) could be provided by allowing alternatives to the use of "R".</li> </ul>

#### **More detail on paragraph 41, new ActionType "R"**

The new ActionType "R" is used to correct a report that was made before. There is no change in trade data details (as this would be sent as "M" for modify) it is only to correct a report of a trade because it contains wrong data.

One example would be that a wrong UTI was used in the original report of the trade.

This approach is problematic since it is not always clear what is the unique key that TRs have implemented in their databases to identify a trade. Some of them are using the UTI for this so how would a change of the UTI work?

Example:

1. Trade with UTI ABDEF submitted with ActionType "New"
2. Try to correct that trade, new UTI 12345, ActionType "R"

In the step #2 the TR will not be able to know which trade in their database needs to be modified as the unique key to identify this trade from their side is missing.

There are two ways to solve this issue, both involving the insertion of an additional field:

1. The trade is identified by a unique document ID, where such document ID is readily available to both counterparties. This is the only unique key to identify a trade report.
2. Add a new field "Prior UTI" to identify, which trade to modify

The proposed change might also need a TR process description by ESMA to ensure the practical benefit thereof. (E.g. Some TRs even use UTI plus Buyer plus Seller as unique key so a change of Buyer or Seller would also not be possible without IT changes at the TR.)

#### **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 re fixed rate; fields 46 & 47 re floating rate and fields 49 & 50 re 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 29, Table 2: Settlement dates

In the draft RTS ESMA proposes in a helpful manner that in the event of several settlement dates, "further fields may be used". Could ESMA please clarify what is meant by "further fields"? Does this mean multiple entries in this field, or should reporting entities expect additional fields to be specially created by TRs for this purpose?

Field 52, Table 2: Commodity base

Multiple values should be accepted as certain non-standard OTC derivative transactions might occur across different commodities.

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?

UTI generation:

Further guidance for a harmonised UTI construction would be welcome

**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.

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

Paragraph	Comment
45	<p>“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.</p> <p>In the alternative:</p> <p>(i) clarification would be welcome on what is actually required: the country of the principal to the contract or its agent?</p> <p>(ii) It should be allowed to leave the new data field on country code of domicile counterparty blank if the counterparty has been identified by a LEI (new field 4, table 1), similar to field 6, table 1 which can be left blank if the reporting party is identified by a LEI. It would also be useful to clarify "Residence" opposed to "Nationality" and precise the reference to ISO country codes to avoid any discrepancy in the codification used.</p>
46	<p>The new/modified “Section 2b – Product Identification“ introduces new issues:</p> <ul style="list-style-type: none"> <li>- What must be reported if there is no CPI, UPI, ISIN or All available or known?</li> <li>- If Underlying identification type = X (for index) then the full name of the index may be used, but if Underlying identification type = B (for basket) this seems not to be allowed.</li> </ul> <p>ESMA should provide clear guidance on how to populate these fields and which fields are mandatory and which are optional.</p>
47	<p>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. See above our view on new added fields.</p>

49	Regarding "B" (baskets): it's not clear what is expected and what reporting entities should do prior to MIFIR coming into force. A clarification seems necessary and welcome (including on the exact definition of Basket).
52	<p>(in connection with Field 22 and following Table 1) 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.</p> <p>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?</p> <p>If bilateral margining agreements are encompassed: Initial and variation margin are known values concerning ETDs.</p> <p>But within bilateral margining there is one collateral amount only. This means that the total collateral received from a counterparty or posted to a counterparty can be reported. But we would struggle to report a separate initial margin and a separate variation margin for bilateral (OTC) trades.</p>
55	<p>There is a need for increased clarity on UTI generation rules.</p> <p>General remark on the matching of reports (see Section 55, page 13 CP): in practice counterparties already today agree on the contents of the reports before submitting them to their respective Trade Repositories. This does not seem to help the matching of reports by the TRs. We have tried to research and understand the reasons therefore which can be mainly attributed to 2 factors:</p> <ul style="list-style-type: none"> <li>- Each TR has its own interpretation (beyond the terms of the ITS and RTS) of the fields in the reports and seems to decide which fields need to be matched. Certain of these fields include for example timestamps (where matching is per se not feasible – see earlier comment)</li> <li>- Each TR has created additional fields (or expanded existing fields) that go beyond EMIR's standards, which increases the burden on reporting counterparties and does not facilitate matching.</li> </ul> <p>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.</p> <p>In particular in the practical case where a transaction is:</p> <ul style="list-style-type: none"> <li>- Confirmed by both counterparties at T+2</li> <li>- Matched accordingly</li> <li>- And paid/settled without dispute (on the payment/settlement date)</li> </ul> <p>There should be no viable explanation for non-matching reports. ESMA could propose that additional "action fields" be added in the reports for later</p>



	completion by the counterparties which flag these elements.
58	ESMA suggests that “Original Notional” should be calculated with end-of-day settlement price of the underlying. This means that reporting during the day is no longer possible for those trades, which increases the operational burden for counterparties to ensure compliance with EMIR!

**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. In the view of matching records, we would like to underline that consistency is necessary and where negative values are allowed, 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.

In other words, if negative values should be allowed, every TR should consider this the same way and have the same approach established by ESMA. They should all accept negative values, or absolute values, but all of them should assume the same consideration in order to enable efficient reporting.

**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 do not anticipate any difficulties.

**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.**

We assume the question relates to paragraph 49, not 45.

The required index names can be provided. We do however anticipate issues with:

- The uniform naming of the indices across all counterparties
- The differences in format used by the different TR's

This is one of the measures whose enforcement would benefit from full interoperability and consistent validation rules between TRs before being applied.

**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.**

No comment.

**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?**

On the one hand, it would be good if the reporting of strategies would be allowed as a set of decomposed transactions or as one single transaction. This would give the parties maximum flexibility. On the other hand having two approaches at the same time will increase confusion and decrease transparency.

This change would require significant work if implemented now, while it would require thorough review once the interoperability and the consistent validation rules between TRs are applied.

**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?**

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 financially 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?)

We believe the definitions in the document do not provide sufficient clarity (for instance, a clear reference to the *applicable contractual price at the date of conclusion of the contract* would help mutual understanding in §61). Detailed examples per trade type should be provided (not necessarily in ITS or RTS, but could be in the EMIR-TRUM we previously suggested)

Clarification is required on "Partial Early Terminations".

Additional elements could be added:

Paragraph	Comment
60	In the case of swaps, futures and forwards traded in monetary units, original notional shall be defined as the reference amount from which contractual payments are determined in derivatives markets
61	In the case of options, contracts for difference and commodity derivatives designated in units such as barrels or tons, original notional shall be defined as the resulting amount of the derivative's underlying assets at the applicable

	price at the date of conclusion of the contract
62	In the case of contracts where the notional is calculated using the price of the underlying asset and the price will only be available at the time of settlement, the original notional shall be defined by using the end of day settlement price of the underlying asset at the date of conclusion of the contract;
63	In the case of contracts where the notional, due to the characteristics of the contract, varies over time, the original notional shall be the one valid on the date of conclusion of the contract.