



Association des Banques et Banquiers, Luxembourg  
The Luxembourg Bankers' Association  
Luxemburger Bankenvereinigung

## Response from the ABBL to the ESMA Consultation on: Review of the technical standards of reporting under article 9 of EMIR

### Information about the ABBL:

**ABBL ID number in the COM Register of interest representatives:** 3505006282-58

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### Introduction

The ABBL is worried that solely one year after the reporting obligation started there is already a tentative to review the requirements. Not to say that it is a success, but as the Association sees it the quality and challenges around the reporting obligation would clearly benefit of stability and from a pan-EU approach to the definition of both UTI and UPI, we see ESMA as one of the best placed entity to support a coherent and concerted approach. The Association thinks that it is appropriate to impose a common definition and understanding on these 2 parameters to achieve significant results.

Under any scenario, if there are changes to be envisaged, a reasonable transition phase between the 2 reporting requirements must be defined. Introduction of a grandfathering period or decision about the status of previously reported trades or the handling of trades to be back-loaded are a de minimis points of concern.

Probably one of the biggest issues for easy reporting obligation seems to be the requirement for both counterparties to report a trade. We think that this problem comes from ESMA itself requiring two full sets of counterparty data. If changes are to be introduced at reporting level through the technical standards, this should be so that only one counterparty data report would be enough both in terms of workload as well as on the data quality terms. We believe that such a proposal would not be contradictory to level 1 text and could then be introduced in the review process.

**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.**

In most cases, deletion from reporting is simplifying the task of reporting entities. However, this category is appropriate for tailor-made products. The ABBL is therefore not fully confident that it would really help, as there are products to be classified as "other".

With all changes proposed in this consultation, it would be more than welcomed to ensure a sound warning process for when it will become applicable, ensure as well a decent grandfathering period from the current reporting model.

In addition the reporting is developed from level 1 requirements as a consequence the ABBL is unsure if even fields may be amended by a level 2 measure.

In the end the ABBL wonders if it is appropriate to propose changes before the EMIR review which is scheduled mid-year.

**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.**

Any clarification is helpful under EMIR, but the ABBL is not convinced that only a fine-tuning of the reporting will solve all issues. However it would be helpful to ensure a consistent application of the EMIR reporting requirements. Some of the clarified elements are more than awaited by the market participants (e.g. how to correctly reflect buy/sell indicators, mark-to-market value etc.).

**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.**

In general, ABBL strongly supports a harmonisation of the calculation approach for the mark-to-market value. As the proposed approach by ESMA under paragraph 21 second bullet point reflects better the definition of market value for derivatives, we recommend using this approach for all derivative classes except futures and options.

For futures and options many existing financial applications are based on the market standard described under the first bullet point. In order to prevent market participants from cost- and time-intensive new developments and in order to align the EMIR reporting to the market standard, we strongly encourage ESMA to use the approach described in paragraph 21 and drop the approach described in paragraph 23.

However, ABBL encourages ESMA to clearly define how the market participants should calculate the replacement cost for each derivative class falling into the second bullet point of paragraph 21.

In addition, technically speaking it may be difficult to report “CCP calculated values” on derivatives under the T+1 time. Therefore reporting should allow the counterparty’s own calculated values on a daily basis.

**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.**

Generally speaking, the ABBL considers that the EMIR reporting, as many parts of this

regulation, needs strong and clear improvements. We do not believe that these changes will dramatically improve the reporting management and quality, but they may contribute to it. The most pressing factors to strongly improve reporting quality are well known it is a common definition of UTI and UPI as well as clear rules to govern their use (who gives it, how...). Although we understand it is not the scope of this consultation, the ABBL nevertheless believes that ESMA may contribute in pushing these debates.

We would like to reiterate that similarly to the MIFID II/MIFIR debate client identification, especially for non-legal entities, should authorise the use to firm level unique identifier. We do not believe that relying on national IDs or other method is helpful. What is certain is that cross-border firms will have to adapt to multiple standards, which costs and implies follow-up procedures in case these numbers are changed.

That said the proposed changes might help the market to align its practices (provided that these changes would not be modified in a short-term).

**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 Association is of the view that even if it is not fully satisfactory, the dire state of the reporting does not need additional fields or new definitions at this stage.

Example given: The LEI of the other counterparty contain the domicile already in the attached metadata to the LEI.

In addition the existing field TR1-14 indicates already if the information whether the other counterparty is outside the EEA and therefore the opposite reporting from the other counterparty may be missing.

The issue is that these additional fields would create a need for reinterpretation of data among reporting entities. It would also trigger some questions regarding the backloading of transactions which may not be closed when these new rules will apply leading to inconsistencies at firm level between two sets of data reported under different standards, but not at the same time.

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

n/a

**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.**

No if it is limited to the first digits of the NACE code or equivalent. The underlying issue is to determine where is the line to be drawn to the first digits. For the ABBL it shall be limited to the broadest categories, to the risk of being less appealing than equivalent national standards if they exist.

**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.**

No if it is duly linked to the counterparty and not to the underlying instruments. An issue may arise in case of branches located in a different MS than the head quarter, but then these shall be defined by the HQ location.

**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.**

Probably yes, but this would again complicate the current data management of firms that do not necessarily have the information required in the right format. In some respect, additional fields imply more complexity for management that is not warmly welcomed at this stage.

**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?**

If it were the only issue, that approach would be optimal. However at this time, the ABBL would prefer to stabilise the reporting as it is than start a review. A balance should be made between stabilising the reporting and improving it or developing it but at this stage, the balance still is in favour of stabilising the report.

With all the proposed changes in this consultation, a good warning process would be more than welcome to ensure a grandfathering period from the current reporting model.

In addition, the reporting is developed from level 1 requirements and the ABBL has doubts if even fields may be amended by a level 2 measures.

**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:**

Under the different items, we consider that:

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.