



SSE Energy Supply Limited response to Consultation Paper on review of the technical standards on reporting under Article 9 of EMIR



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

General Comments

A concern that we would like to raise is the timing of the enforcement of any agreed changes to the technical standards as foreseen by this consultation. As a utility company, we will be subject to complying with the reporting obligation under the Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency that is due to start in October 2015. Changes to the “Gas Day” across Europe are also due to come into effect from the beginning of October 2015, making this a very congested period for ensuring compliance with regulatory obligations. As such any delay in the implementation of any change to the technical standards to avoid a conflict with the above would be most welcomed.

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.

As EMIR is focussed on the five named asset classes, the removal of ‘other’ from Article 4(1)(a) should not impact the reporting obligation faced by market participants, although the removal from Article 4(1)(b) of ‘other’ may lead to problems if the type of derivative is not listed as this differs from the asset class of the derivative and hence this should remain.

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.

As a non-financial counterparty below the relevant clearing threshold, the proposed changes to the reporting of valuations does not impact our reporting obligation and as such we do not have the experience to comment on these changes. In relation to the other changes proposed these appear minor in nature and should not have an impact on how we report, but should help clarify the content acceptable to the data fields in question.

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.

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.

The quality of the data provided to trade repositories is key to ESMA being able to monitor the market and so any proposed changes must add to the process and help eliminate misinterpretation. To that end, the following table looks to comment on the proposals offered by ESMA within the Adaptations section of the consultation.

Proposed Adaptation	Comment
Consistent Date format (para. 28)	The clearer defining of the date formats for each applicable field is to be welcomed.
Use of LEI (para. 29)	Given that all market participants to which EMIR applies should use an LEI, this adaptation is sensible, with provision made for participants that are not eligible.
Corporate sector of the counterparty (para. 30 to 31)	The requirement to identify the corporate sector of the counterparty should be made as simple as possible. To that end, the use of one reference data set such as 'NACE' would help avoid any superfluous entries. The format should also be established for consistency, and hence the two digit division code should be used e.g. '35' for a utility company. This would eradicate the potential need for an entity to identify itself as more than one valid character.
Nature of counterparty (para. 32)	Extending the options under this data field should help clarify the nature of the counterparty.
Location of counterparty (para. 33)	Replacing the data field indicating if the counterparty was within the EEA or not with a requirement to populate with a country code (using an ISO standard) will remove the potential for incorrect population of the data field. However, clarity should be provided on the information required in situations where the counterparty trades from a branch situated in a different country to the registered office.
Notional Amount (para. 34)	The proposed adaptation to have two data fields for notional amounts needs to be carefully considered as it is not instantly obvious why this is being proposed.
Change of format for All codes (para. 35)	Amending the number of characters to meet the requirement of reporting the full All code is eminently sensible.
Renaming of "Transaction Reference Number" field (para. 36)	As the logic for populating this data field is unchanged the renaming of the field is an acceptable adaptation.
Clarification around availability of a UPI (para. 37)	The preference for the UPI would be for one to be endorsed and hence sections 2e to 2h would not require population. For clarity though it would be preferable to keep the wording as it is clear that if a UPI is unavailable, then the relevant data fields must be populated.
Use of time periods within Interest Rates asset class (para. 38)	No comment.

Use of Actions Type (para. 39 to 42)	<p>Clarification around the use of action types is welcomed and the proposed adaptation does appear to provide this clarity, although the use of the word 'termination' should be better defined. A contract will expire under normal circumstances, whereas termination normally applies where the contract is being cancelled prior to its recognised expiry date. The inclusion of new action types should improve reporting, but again clarity over the action type 'R' is required as any amendment would be due to an incorrect population of a data field and hence would involve a change to the contract terms reported. If the UTI was incorrectly reported would the use of the 'R' action type be acceptable as it would be correcting previously submitted erroneous data.</p>
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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 quality of the data provide to trade repositories is key to ESMA being able to monitor the market and so any proposed changes must add to the process and help eliminate misinterpretation. To that end, the following table looks to comment on the proposals offered by ESMA within the Introductions section of the consultation.

Proposed Introduction	Comment
Reporting at position level (para. 43)	<p>Within Article 9(1) of EMIR it states that "Counterparties and CCPs shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to a trade repository". As such the obligation on market participants is to report the executed derivative contract and not the position that is created from trading multiple derivative contracts. The reporting of positions is not an obligation under EMIR and this is clarified in the Questions and Answers document produce by ESMA under TR Question 17. As ESMA has allowed the reporting of positions as a supplement to reporting the trade then the introduction of the new field to differentiate between a trade and a position will improve the quality of data provided, although it should not be seen as imposing an obligation on all parties to report at position level.</p>
Introduction of special characters (para. 44)	<p>The introduction of special characters within certain data fields will help improve the quality of data provided as long as it is clearly explained how the special character will be handled within the format of the data field. This has been done within some of the data fields e.g. Counterparty Data Field 17 (Value of Contract) of draft implementing technical standards, but not others such as Common Data Field 46 (Floating rate of leg 1) where the '/' is permissible, but the field has not been defined as to the number of allowed characters and whether the '/' is excluded as one of the characters.</p>

Domicile of the other Counterparty (para. 45)	<p>As per the answer provided in question 4, the issue with the introduction of a country code for the other counterparty is in respect to the location of the entity and whether the counterparty trades out of a branch in a different location. Given that the LEI is defined by ISO 17442 standard and that the jurisdiction of the entity forms part of the standard, there should be consideration given to removing this data field as the reporting counterparty has to rely on the other counterparty keeping the information accurate, which is already an obligation under the LEI.</p>
Expansion of corporate sector (para. 46)	<p><i>See answer to Consultation Question 7.</i></p>
Instrument identification and classification (para. 47 to 49)	<p>The separation of the “Product ID” fields needs to be such that the applicability of the data fields should be clearly defined. The draft makes no mention of how the four new fields within the common data (Fields 3 through 6) should be populated if it is not applicable.</p>
Dedicated section for the Credit asset class (para. 50)	<p>No comment.</p>
Notional amount (para. 51)	<p>With the introduction of new fields, ESMA should be aware that the new fields may not add clarity for those subject to reporting obligations. The addition of a new field for reporting the notional amount could be considered one of these as it appears from the consultation that ESMA is introducing this field to aid clarity for specific types of derivative contracts. A different solution would be to clarify the meaning of the original data field and avoid the introduction of a new data field which may only cause confusion to market participants who do not trade derivative contracts that would be subject to two notional amounts.</p>
Initial and variation margin reporting (para. 52 to 54)	<p>The reporting of collateral in its constituent parts i.e. initial and variation both received and posted will provide ESMA with a clearer picture of the provision of collateral.</p>
Prescriptive rules on responsibility for generation of a UTI (para. 55)	<p>The proposal to have a prescriptive set of rules in relation to the generation of a UTI is eminently sensible. The proposed rules take account of the venue of execution as the primary determinant followed by the status of the counterparty, it may be worth considering whether the “reporting” status of a counterparty should be used as a determinant rather than the hierarchy as there is the possibility that in the case of two counterparties of the same status, the “seller” as foreseen by the draft may not have the capability of generating a UTI.</p>

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

The data fields that ESMA has identified within the draft implementing technical standards appear to cover those that should have the option of being reported as negative values. Further clarity should be provided to ensure the correct use of a negative value, such that there is consistency in reporting. Without clear guidance there could be an opportunity for counterparties to interpret the use of negative values to reflect how a contract would be captured within their own internal systems to reflect the direction of the transaction e.g. a purchase or sale.

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.

The expansion of corporate sector for non-financial counterparties should not impose any additional burden on these entities in reporting trades. As such the extension of the list of variables as set out within the draft implementing technical standards should allow the parties to identify themselves, but it would avoid potential reporting errors if the classification codes were the actual two digit codes defined in Regulation (EC) No 1893/2006 e.g. '35' for a utility company. This would then allow the NACE codes to be used by both financial and non-financial counterparties.

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.

For the identification of indices and baskets, the approach put forward by ESMA would appear to meet the requirements. In terms of indices, this is likely to identify a single index, whereas a basket would suggest multiple indices. There may though be pre-defined baskets which could be identified by the basket reference, this being the case is ESMA looking for a breakdown of the make-up of these baskets? There may well be additional variables that are formulaic in construction and may affect the weighting of a particular index. The proposed draft does not allow for the reporting of this information, which may or may not be of interest to either ESMA or a national competent authority.

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?

In terms of strategies as envisioned within the consultation question, the main focus appears to be on whether valuations should be reported on the strategy or the component parts. In our experience any traded strategy would be captured within our internal system as the component parts and so any valuation would be based on the components and not the strategy. This in our opinion would be the preferred way of reporting as there is a stronger likelihood of there being active market prices for the components of a strategy than there would be for the strategy itself. There is also that chance that part of the strategy could be traded out leaving only one side which would then have to be valued against its own component market. In the case of energy commodities, strategies would also include spreads and sparks, where again the valuation and reporting should be at component level.

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:

“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.”

Please elaborate.

As previously mentioned the introduction of an additional data field to report notional amount needs to be very clearly defined to avoid misinterpretation by market participants. The proposed text focuses on the method of calculating the value for the “Original notional”, but does not provide any guidance for the calculation of the “Actual notional” and it would be helpful if this could be included for those parties less experienced with the concept of two notional amounts.

Where the text would benefit from revision is in regards to the split of the contract types and the separation of monetary and non-monetary units. Swaps, futures and forwards are traded by reference to non-monetary units such as barrels and tons as well as being traded in monetary units and the same can be said of options and contracts for differences, as such the split that ESMA has defined does not clarify for example how the original notional would be calculated for a swap traded in a non-monetary unit.