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ASSOCIAZIONE
ITALIANA
INTERMEDIARI
MOBILIARI

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MFE/lm

ESMA
CS 60747
103 rue de Grenelle
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Re: ASSOSIM contribution to ESMA Consultation paper "Review of the technical standards on reporting under Article 9 of EMIR"

Preliminary remarks

Assosim[1] welcomes the opportunity to comment on the ESMA consultation document for the review of the technical standards on reporting under Article 9 of EMIR and is pleased to provide the following observations.
Please, note that the present document was drafted in cooperation with the Italian Banking Association (ABI).

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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.
Our member do not envisage any difficulties with removing the 'other' category referred to in the question. On the contrary, the removal of such field might even contribute to the reduction of the several mismatching(s) currently occurring on this specific field.

[1] ASSOSIM (*Associazione Italiana Intermediari Mobiliari*) is the Italian Association of Financial Intermediaries, which represents the majority of financial intermediaries acting in the Italian Markets. ASSOSIM has nearly 80 members represented by banks, investment firms, branches of foreign brokerage houses, active in the investment services industry, mostly in primary and secondary markets of equities, bonds and derivatives, for some 82% of the Italian total trading volume.

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.

1. As it regards the proposal of redenomination of some field, we have specific comments. As long as the new labelling is part of wider plan to address and reduce the overall number of mismatching occurring, our members do support the initiative and the proposal. On the contrary, we are strongly against any increase of the current number of fields to be populated and reported to TRs as this could more likely increase the room for potential mismatching, without adding any further substantial informative value.
2. As it regards the proposal of adding further information to Section 2G (Commodities) of the annexed Table 2, this would imply, on one hand, the extension of the existing trans-codification of the existing fields and, on the other hand, the creation of new fields. Part of the information, particularly for commodities, is not available at all times and for every financial instrument negotiated on the trading venue, hence it would be necessary to define common rules specific for the following cases: reporting of the financial instrument and absence of the information required by the new record format. In current practice, section 2G is already subject to several mismatches and a further addition of fields to be populated without an appropriately detailed regulatory framework, could jeopardize/threaten the actual goal of a the more punctual envisaged reporting regime.
3. As it concerns the proposal of a more detailed description of the Buy/Sell indicator (Table 1, field 13) and the consequent introduction of the "Counterparty side" in article 3a of Reg. 1247/2012, our member banks have no comments in case of swaps and other derivatives. However, they consider important to signal the necessity of having a definition and description that be **complete and equal** for every TRs, so that the TRs' technical schedules and spreadsheets be harmonized, if not equal, thus preventing any differences among them. Further to this, we consider it valuable to provide a sample of the cases occurred so far, translating them according to the new wording of the article:
    - Coupon swap (Fixed vs Variable): the TR indicates that the Buyer of the swap is the counterparty paying the fixed rate. Such fixed rate would need to be reported as Leg1, hence in the field FixedRateLeg1, while the floating rate would be reported in Leg2 under FloatingRateLeg2. Accordingly, FixedRateLeg2 and FloatingRateLeg1 would be blank;
    - Basis Swap (Variable vs Variable): the TR indicates that the buyer of the swap is the party paying the rate with the longer Tenor. Such rate would be reported in Leg1, hence in field FloatingRateLeg1, while the shorter term rate would be reported in field FloatingRateLeg2. Accordingly, FixedRateLeg1 and FixedRateLeg2 would be left blank. Currently, a TR does not provide for guidance in case of Tenor being equal for the two rates.
    - Cross Currency Swap: regardless the type of rates (fixed or floating), the side of the CCS depends on the currencies involved in the transaction. Made exception for the exchange rate EUR/USD, the Buyer of the swap is the party who pays the interest (fixed or floating) on the currencies' "quote". E.g.: for the EUR/GBP, the Buyer of

the swap is the party paying the interests on GBP. As far as the case of EUR/USD is concerned, the opposite situation lays out: the Buyer is the party paying the interests on EUR (i.e. "base" currency). The related fields of Leg1 and Leg2 would hence be populated accordingly, computing the Buyer of the swap in Leg1 as it is the case of the other scenarios/swaps.

4. As of today, the same data is reported by the parties by filling in multiple field with the same information/data (i.e. a fixed rate reported in both the FixedRate and the Price fields). As ESMA is working on improving the reporting framework and requirements, it would be advisable to provide for a list of fields, being relevant for each asset class (i.e. to be populated with the correct value of the derivative instrument) and a list of fields being less relevant (to be populated with default values), these lists being adequately shared with/communicated to the TRs and the market in general. Indeed, it was noted that the largest portion of mismatches is caused by "excessive" degree of discretion being left to the market participants in the scope of reporting. Indeed, a number of times TRs, in the absence of specific regulatory provisions, suggest their clients different reporting schemes/approaches for specific fields. It would then be appropriate that TRs and/or ESMA provide a closed subset of fields for these cases, among which counterparties are allowed to choose the data to be reported.

For all the considerations above, IT implementation issues will depend also on how the TRs will implement/develop the new record format.
Indeed, as it regards the changes to the record format proposed on the consultation paper, we deem it important to call for a clarification by ESMA regarding the population of the "Valuation Type" field (current Table 1, 21): specifically, the meaning of the new value "C" ("CCP's valuation") shall be clarified when compared to the value "M" ("Mark to Market"), the latter of which is currently used to report OTC contracts centrally cleared.

Finally, but equally importantly, our member banks deem it crucial that the revised reporting framework will explicitly mention that the new provision will only be applicable to the transactions to be reported as of the date of their actual applicability (not just of their entry in to force), equally excluding their applicability to the reports already sent to the TRs.

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.

The reporting of the mark-to-market valuation on cleared swaps would cause problems especially for counterparties of smaller sizes. Indeed, for an indirect member of a CCP (and even more when these members are smaller counterparties and buy side users) receiving and reporting these valuations it does represent a substantial challenge, as it implies to get brokers and CCPs to deliver these values to their clients. Consequently, we consider that the technical

standards should allow for reporting the counterparty's own calculated market values on a daily basis, perhaps by providing for a new field allowing the reporting entities to specify whether the MTM was computed by the reporting entity or by the CCP.

Finally, as it regards the method/methodology, it appears that the content of paragraph 24 contradicts paragraph 21, as well as paragraph 23 seems not implementable.

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.

1. Italian banks and financial intermediaries do welcome the adaptations illustrated regarding the computation of the time and date and their format. However, in order to further improve the data quality on each report, our members highlight the need to put clearly in evidence the value of the Execution Timestamp, i.e. whether this shall always be equal to the Trade Date, or it shall initially be populated with the Trade Date, and later on updated with the time and date of the restructuring. In case of correction/amendment of the original trade (so called "market operations", MOP, i.e. re-notioning, novation, etc.), whether it shall be populated with the date of the deal or the date of the market operation. As of today, the ExecutionTimeStamp is subject to several mismatches, both infra TR and among different TRs.
2. We understand the need to foster the universality and cross-industry use of the LEI code to identify the parties. However, we believe that the time is not mature to prevent the use of other codes currently available for reporting under EMIR, such as the Client Code, BIC and Interim Entity Identifiers. Indeed, the cost of issuance and maintenance of a LEI code is still too expensive – in relative terms – for those small companies/counterparties who rarely conclude deals in derivative contracts and, when they happen to do so, it is in combination with financing instruments, not for other purposes. This becomes substantial when we consider the extremely numerous small firms composing the texture of the Italian domestic economy.

A further consideration relating to the LEI code, and its perceived costly nature, is that our banks strongly suggest ESMA to take this occasion to formalize the rules applicable to cases of **Expired LEIs**, especially when the Party conferring the reporting mandate to the FC does not renew it and it occurs either that (i) no amendments are agreed upon the derivative, or (ii) some amendments are needed, or even (iii) the party does not confer the FC the mandate to report, as it reports trades on its own behalf.
As a matter of fact, it occurs that a TR was asked about the procedure applicable in case of an expired LEI (provided by the counterparty on whose behalf the reporting was to be made), and it informed one of our members that a report containing an expired LEI would not be rejected, which is not consistent with ESMA's (Q&A) provision.
Hence, it would be extremely important to provide for rules applicable to the following report scenarios/cases:

a) Parties exempted from the reporting obligation (as parties responsible for the management of the Public Debt governmental bonds, such as Italian Local Council Houses), which would anyway apply for an LEI;
b) Parties exempted from the EMIR obligations in general, whom it is not feasibly possible to assign an LEI code (physical persons – i.e. non-legal);
c) When one of the counterparty to a reportable transaction is based outside the European Union and, consequently, is not subject to a formal obligation of applying for an LEI

Eventually, ESMA should (i) provide for an obligation requiring any non-financial party, which intends to sign a derivative contract, to mandatorily apply for an LEI and (ii) state that an expired LEI shall be used for a given deal.

3. As it regards the new labelling of the field "Corporate sector of the counterparty" to "Corporate sector of the reporting counterparty", no comments were gathered. However, concerns were raised about the newly proposed wider extent of applicability, comprising non-financial counterparties too.
4. No comments were raised regarding the deletion of field "Contract with extra-EEA" and the related addition to identify the "Country of the other counterparty"
5. The amendment of the field currently labeled "Notional Amount" seems to imply that there will be two fields to be populated, i.e. the "*original amount*" and the "*actual notional*". We deem it important to call for a clarification by ESMA on the actual population of these fields, specifically, as to whether the "*Actual Amount*" has to be populated only in case of amendment of the relevant contract, or whether this field would refer also to amortization of the notional (which could not result by the amendment of the contract's clauses but would certainly result by the amortization schedule provided for in the initial/original contract).

In case of deals which are already amortized, it would be important to understand which field, out of those two, would have to be amended. This issue relates also to Q11 (4), where we deem it necessary further analysis of the reporting update timeframe(s) for any deals already provided with an amortization schedule.

In light of the above, we suggest ESMA to improve the quality of the reported data by detailing the population of the fields "Actual" and "Original" on the basis of the contract life events: amortization schedule, partial exercise of an option, restructuring. More in detail:

a) It is necessary to clarify whether the Actual Amount be populated only in cases of contractual amendments or even in cases of amortization of the notional which do not represent a change in the contract conditions/clauses as the amortization schedule is known by the parties since the contract signature (i.e. mere update of the data to be reported and not a contractual change subject to the EMIR reporting obligation);

b) In case of deals already amortized, it seems necessary to provide clarity as on which of the two fields will have to be populated, also in relation to Q11 (4);

6. As it regards the proposals presented in the product identification section and, specifically the integration of the fields which replace the current "Product ID.1", we deem it very important to highlight the following: currently a number of our banks use the Taxonomy "E" and in the filed "*Venue of execution*" they report the market identification code. ESMA's proposal presented in the consultation paper implies a thorough restructuring of such section, which require substantial IT changes. If, for the ETD space, the code "CFI" could be used, there could be a sole IT intervention (and not a number of them). Instead, in the OTC space, question raise as to whether, in the absence of a UPI widely recognized, the ISDA Taxonomy could be used. Indeed, as long as it is clear the goal of ESMA proposal in such space (i.e. the standardization of reporting), it must be considered that the UPI is not approved yet, and this makes it difficult to foresee the actual impact of such proposal.
7. No concerns were raised with regards to the redenomination of the field "Transaction Reference Number" in the new "Report Tracking Number". However, the main issue in this regard is still related to brokers not passing on this information to other banks and financial intermediaries. Indeed, the current TRN is only available to market members. A similar issue occurs with brokers and markets located outside the E.U. as they are not subject to the obligation of passing on such piece of information.
8. As it regards the format to be adopted for the frequency, it would be appropriate to define a list of the "frequencies" so as not to leave any room for leeway to market participants, finally avoiding situations in which the same 'period of time' be reported in different formats (*i.e.* 1 year = 1Y, or 12M)
9. Finally, we support the proposal for an extension of the "Action Type" field. Also, as to further improve the quality of such data, we deem it important to provide for, in the RTS, a description of each event that be more focused, detailed, so as to guide with no uncertainty or discretion the actions foreseen in the scope of the E/R. in this scope, it would also be useful to agree upon the kind of actions to adopt in order to populate the reports in case of mergers, acquisitions, spin-offs, sale of subsidiaries, change of reporting delegation (discontinuation of delegation), which are currently reported as/by "cancellation due to a mistake/error" and "input".

For all the considerations above, IT implementation issues will depend also on how the TRs will implement/develop the new record format.

Finally, as already mentioned above, our member banks deem it crucial that the revised reporting framework will explicitly mention that the new provision will only be applicable to the transactions to the reported as of the date of their actual applicability (not just of their entry in to force), equally excluding their applicability to the reports already sent to the TRs.

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.

1. We welcome the introduction of field no. 74 in Table 2, so to distinguish whether the reporting is at position level or trade level.
2. With reference to the identification field "Country of the other Counterparty", please clarify the meaning of "main residence": for example, in case of a branch and its headquarter, which Country has to be considered? The Country where the company is incorporated or the country where the branch is located?
3. We do not have any particular comment on the proposal regarding field "value of collateral". Anyhow, should this field be implemented, IT function would be seriously affected as, at the time of writing, initial margin and variation margin are not reported separately.
   Furthermore, both the present text and the one under consultation do not clarify how securities collateral can be filled in; which of the following elements should be reported: value or quantity?
4. We do not have comments on the proposal concerning the liability of the reporting entity regarding UTI generation and transmission, should there not be an agreement between the relevant counterparties (actually, the current practice is already compliant with the proposed new process).

As a general remark for the above four points, IT hurdles depend on how TRs will acquire the new reporting format.

Moreover, please clarify that the new provisions will apply to future reporting only and that previous transactions already reported are out of scope.

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

We understand that question no. 6 refers to paragraph no. 44; as a consequence, we believe that the population of negative values can be reasonably set for the following fields:

1. Value of Contract (MtM)
2. Price / Rate
3. Up-Front Payment
4. Fixed rate leg 1
5. Fixed rate leg 2

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 understand that question no. 7 refers to paragraph no. 46; as a consequence, we are of the opinion that the proposed amendment can have a relevant impact on master data

management cost. Therefore, it is necessary to consider the actual benefit in comparison to the foreseeable impact (please, refer to Question no. Q3, point 3 too).

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 understand that question no. 8 refers to paragraph no. 49; as a consequence we believe that the proposal concerns the underlying. The new data structure provided for identification of underlying, matches the one provided for financial instrument identification and has the same scope. We understand the reason for it, nevertheless, we highlight again the relevant IT impact already described for the product identification (please, refer to Question no. 4, point 6).

Moreover, please consider that at present the basket specifications are not available for all financial instrument as not all CCPs provide the market with such data. As a consequence, identification and monitoring of single index or basket over time, would be a particularly demanding activity.

With the aim to make such activity less burdensome, CCP should be required to make such data available.

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.

We are of the opinion that the introduction of a specific section for Credit Derivatives will improve the reporting quality. Nonetheless, it is important to properly define "Life Cycle Event".

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?

We appreciate the interest in this type of reporting (mainly for complex product). Similarly to strategies, the so called "deal package" might be considered too.

To this regard, the introduction of two new fields would be deeply appreciated, namely:

1) the first new field would have the scope to clarify if reporting refers to a strategy or to a "deal package";
2) the second new field would have the scope to identify all deals part of a strategy or of a "deal package".

There is another possibility too:
To report "deal package" as one record, as confirmed with counterparty; in doing so, on the one hand, it is probably easier to reconcile if the two parties report one record only; nevertheless, on the other hand, building one record only starting from several deals could be more difficult from the technical point of view.

At the moment some of our members report "deal package" as a single trade, using the Product-Id referred to the main trade and reporting, in the MTM report, the whole MTM. The method for registering "deal packages" depends on the IT system used, so the number of single trades could be different for the parties involved; this will cause reconciliation mismatch.

Anyhow, we stress the importance of giving enough time to the market to implement the (new) reporting of structures or strategies.

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:

1. ***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;***
2. ***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;***
3. ***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;***
4. ***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.

Regarding the above four points:

1. Please be more specific about the reporting rules of the deal amortizing notional.
2. Please clarify the meaning of "applicable price" (is it the market price at inception? Or the transaction price filled in the front office system? Other?
3. We have no remarks.
4. Based on what stated above and on the answer to Question no. 4, point 5, we believe that in presence of amortizing, no update of the original notional is required.

We kindly ask a 6 month phase-in period as a minimum to be ready with the new standards. Therefore, we ask that the new RTS will enter into force 6 months after their publication.

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We remain at your disposal for any further information or clarification.
Please do not hesitate to contact ASSOSIM at assosim@assosim.it or +390286454996 should you wish to discuss any of the above.

Yours faithfully,