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| 15 November 2017 |

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| Response form for the Consultation Paper on  ESMA’s Guidelines on position calculation under EMIR |
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| Date: 15 November 2017 |

Responding to this paper

ESMA invites responses to the questions set out throughout this Consultation Paper. Responses are most helpful if they:

respond to the question stated;

contain a clear rationale; and

describe any alternatives ESMA should consider.

ESMA will consider all responses received by 15 January 2018.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

Insert your responses to the questions in the Consultation Paper in the form “Response form\_Consultation Paper Guidelines EMIR.docx”, available on ESMA’s website alongside the present Consultation Paper ([www.esma.europa.eu](http://www.esma.europa.eu) 🡪 ‘Your input – Open consultations’ 🡪 ‘Consultation on ESMA’s Guidelines on position calculation under EMIR’).

Please do not remove tags of the type <ESMA\_QUESTION\_EMIR\_1>. Your response to each question has to be framed by the two tags corresponding to the question.

If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.

When you have drafted your response, name your response form according to the following convention: ESMA\_ EMIR\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_EMIR\_ABCD\_RESPONSEFORM.

Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input – Open consultations’ 🡪 ‘ESMA’s Guidelines on position calculation under EMIR’).

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Data protection’.

Who should read this Consultation Paper

This consultation paper may be specifically of interest to trade repositories (TRs), trade associations and relevant entities defined in Article 81(3) of Regulation (EU) No 648/2012.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | KDPW |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | Poland |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_EMIR\_1>

The implementation of position calculation algorithms requires very profound analysis. Any guidelines proposed to calculation methods should be clear, detailed enough and realistic in order to be applied properly by TRs. In our opinion, the proposed guidelines itself do not specify the requirements enough to build any business specification. It is also impossible to assess the implementation scale, scope and timeframes. The requirement for identification of outliers is statistically incorrect. More details can be found in answers to the below question. <ESMA\_COMMENT\_EMIR\_1>

: Are there any other definitions related to the reporting of derivatives under Article 9 of EMIR that need to be taken into account to ensure the guidelines are clear? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_1>

Definition of *Outstanding Trades* vs *Outstanding Derivatives*

Trade Repositories reporting logic includes reporting on 2 levels: trades (T) and positions (M); participants can report trades, close them and report all outstanding derivatives as a position on the same date (if necessary). It means that *Outstanding Trades* and *Outstanding Derivatives*  are different terms. Outstanding Trades would be those which have been reported as a Level T reports, while outstanding derivatives include also Level P reports. The definition proposed in the consultation paper is not clear enough. One can understand that all reports (level P and level T) shall be included, but on the other hand, term “outstanding trades” suggests to include only trades, which is not enough for position calculation. What is more, term “outstanding trades” is then never used again in the consultation paper. We suggest to delete phrase “outstanding trades” form the definition and include clear guidance that both, level T and P reports shall be included in “outstanding derivatives”.

We also suggest to delete definitions of 4 sets (4 last definitions). These sets are main subject of the paper, and they are being defined later, while definitions placed in glossary are not fully compatible with what is being written in the following chapters.

For example: “*Currency Position Set” is a set of derivatives that have the same currency reported in the relevant dimensions.*

This definition suggests that set includes all reports where in 4 specified currency dimensions the same currency (e.g. EUR) is reported, while later chapter specifies that it shall be one of the dimensions including the currency (e.g. EUR). The same can be said in case of Currency Position Collateral Set definition.

Definition of *Trade State*: “Trade state” means the end of day state of an outstanding derivative reported under EMIR for a particular entity and which forms part of that entity’s outstanding derivatives vis-à-vis another entity for a particular moment in time.

The term Trade state is also used as trade state reports, trade state data or “the most current values reported for a trade” in later chapters.

KDPW\_TR believes that it will introduce unnecessary confusion in the understanding of the term that is a key element of position calculation. Is it end of day? Is it for particular entity and its counterparty? These can be used and specified depending on the necessity. We understand that “end-of-day state of derivative” would better suit the need of that document. It means that we include all, positions and trades (trade state would suggest trades only) and the data used for calculations shall be those most current at the end of day. Specification of whether it is being calculated for “particular entity” or “particular currency” can be then added (if needed) in calculation description, not definition itself.

Definition of variable, metric, dimension

**Variable**

*“Variables” are those values taken either directly from the EMIR reporting fields or derived from those fields which will be used by TRs to calculate positions.*

First of all, by the definition, variable is not a single value but a set of values rather, so “variables” are sets of data (values) itself. They can be represented by sets of values taken from some EMIR reported fields.

**Metric**

*“Metrics” are variables that include the quantitative information that populates the position calculations.*

*In later chapters we also find that: „Metrics are quantitative measures which allow for the aggregation of different exposures to counterparties”. As previously explained each metric in these guidelines is an EMIR reporting field.*

The first definition is completely abstruse. The second definition states that actually it is dimension, as it is dimension that allows aggregation of metrics while and metrics are being aggregated.

**Dimension**

*“Dimensions” are variables that include qualitative information about the derivative. They are used*

*to group together derivatives into position sets and collateral sets.*

We suggest the following simple definitions:

Variable – set of values that can be measured or counted. Variables in this document are either data taken from EMIR reported fields or derived from them;

Metrics – qualitative variable;

Dimension – quantitative variable.

All the properties and applications of metrics and dimensions shall be specified later in the paper.

<ESMA\_QUESTION\_EMIR\_1>

: Do you agree that using trade state reports is the most effective way of ensuring that the information used to aggregate derivatives is current and useful for authorities? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_2>

It is not quite clear what is understood as “trade state report”. We suggest “end-of-day state” rather; see also answer to Q1. Also, it is not quite clear what is “the most current value”, in particular, in case where participant reported AT=R on day T+1, where T is effective date. The most current value would be that reported in day T+1, while “end-of-day” would be the one reported previously.

<ESMA\_QUESTION\_EMIR\_2>

: Do you agree with Guideline 4 and the use of Effective date (T2F26) to determine which derivatives should be included in a calculation? Do you see there being an alternative approach to better ensure that relevant derivatives which are effective are those included in a calculation. Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_3>

Effective date is not the only date necessary to calculate position; also dates like maturity date, termination date and error reporting date shall be included in calculation; Position effective date D1 can be no longer effective if it was terminated, compressed, matured or withdrawn; it is not currently explained in any of the proposed guidance points, we believe it shall be made clear in guidance 3.

<ESMA\_QUESTION\_EMIR\_3>

: Do you agree that the proposed Guideline 6 and Guideline 7 will ensure consistent reports are made available by TRs? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_4>

*Guideline 7 states: Thus, TRs’ position-level data should be constructed in such a manner that authorities can map and analyse entities’ exposures, including aggregation of TR-level positions across TRs to obtain an overall entity level position.*

We believe this problem should be harmonized on an Inter TR level rather, as single TR cannot be responsible for mapping the data across TRs. What is more, we believe that without detailed specification, the data sets created by different TRs will differ in terms of format, methodology etc., which will neither facilitate mapping nor analysis of the positions reported in more than one TR.

<ESMA\_QUESTION\_EMIR\_4>

: Do you agree with the proposed frequency for updating position calculations and making them available to authorities? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_5>

*Guideline 8: TRs should ensure that the position relates to the trade state data of that same day. TRs should also make the position available to authorities on that day. All calculations should be updated on each business day according to the guidelines.*

This guidance, despite some explanations in p. 53-55, is completely unclear. There is not explanation on what is trade state **of the same day.** It seems to be technically impossible to calculate position on the effective date of the position as the position is usually reported the following day after effective date. Then TR need time to close the day and have time to perform calculations. It basically means, that positions effective on day T, will be made accessible to authorities on day T+2. More detailed explanation is needed in this guidance.

<ESMA\_QUESTION\_EMIR\_5>

: Do you agree with Guideline 9 and the use of the ISO 20022 XML template and these standards for TRs providing access to positions? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_6>

As much as we agree that XML files are currently widely used, our experience coming from contacts with authorities shown that only some authorities are ready to deal with this format. We strongly recommend that once it is chosen, ESMA makes sure that all authorities can use it for analyses purposes. This is just to avoid the situation where TRs are requested to deliver position reports in other formats, because it is very costly manual work.

One of the difficulties for using ISO XML files that TRs produce for TRACE is the complexity of the schema. We believe the schemas used for position calculation should be made as simple as possible, to allow users analyzing theta in commonly used software like MX Excel.

<ESMA\_QUESTION\_EMIR\_6>

: Do you agree TRs making four reports available as described in Guideline 10 is the most effective way to ensure authorities receive information that can be used to achieve the objectives of position calculations? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_7>

No comments.

<ESMA\_QUESTION\_EMIR\_7>

: Please can you provide estimates of the potential monetary costs for a TR producing the sets, in accordance with all the specificities that are proposed in this paper? Please can you elaborate on the reasons for you answer.

<ESMA\_QUESTION\_EMIR\_8>

No comments.

<ESMA\_QUESTION\_EMIR\_8>

: Do you agree with the Guideline 11 for ensuring that historical errors are remediated in future? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_9>

*Guideline 11: When TRs provide access to erroneous data to an authority, the next time the TR makes data available, the previously erroneous data should be corrected.*

In our opinion, more guidance is needed in this matter. For example, how to understand “next time the TR makes data available”. We understand that the reports will be created daily and when error happens, it usually will take some time to fix it, and much more time to fix historical data. What is more, TRs need some guideline on how long to keep and maintain reports. From our perspective, reports older than one month will not be of use for authorities, as they mainly serve risk assessment purposes.

<ESMA\_QUESTION\_EMIR\_9>

: Do you see a need for any additional Guidelines to ensure that historical errors are remediated in future data made available by TRs? For example in relation to the maintenance by TRs of records of historical position sets.

<ESMA\_QUESTION\_EMIR\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_EMIR\_10>

: Do you agree with this method proposed in Guideline 12, designed to ensure that derivatives in different currencies do not lead to authorities receiving inconsistent data that is arduous to analyse. Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_11>

*Guideline 12 states: The value of the position should be converted to Euros by the TR by using the relevant foreign exchange rate published on the ECB website at 17:00 CET on the day to which the calculation refers.*

We understand that “*the day to which the calculation refers”* canmean two dates: first, simply the day on which the position is effective, second: the date when the calculation is carried out. We understand that foreign exchange rate used for calculations should be the one published as reference rate for that day. TRs should not be obliged to follow what was publish on ECB sites in specified time (17.00 UTC) as internal processes might not allow for that. It is also possible that ECB publishing process will fail and the data will be published an hour later. We recommend to delete 17.00 UTC from guidance and use “reference exchange rate” instead.

Furthermore, reference rates published by ECB do not include all currencies being used in reports sent to TRs. We would appreciate which rate shall be used for those currencies.

<ESMA\_QUESTION\_EMIR\_11>

: Do you agree with the approach in Guideline 13 for how TRs should treat abnormal values in the derivative data they receive when producing calculations? Are there any potential methods you see as appropriate for detecting outliers in a consistent manner? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_12>

We do not agree with proposed approach. We believe identification of outliers demands much more complex, statistically proven method that proposed median and 4 standard deviation. Outliers will not only be dependent on asset class but also on the market, contract type but most of all participant activity.

Using proposed “simplified” and statistically incorrect method will cause more inaccuracy in calculations. The below table shows the % of sample within standard deviations from **MEAN.**

It basically means, that taking 4 standard deviations from **MEAN** we treat c.a. 7% of values as outliers.

For variables having **MEAN** statistically different from **MEDIAN**, we can exclude more values as outliers, depending on how big the difference is.

|  |  |
| --- | --- |
| **k** | **Min. % within *k* standard deviations of mean** |
| 1 | 0,00% |
| 2 | 75,00% |
| 3 | 88,89% |
| 4 | 93,75% |
| 5 | 96,00% |
| 6 | 97,22% |
| 7 | 97,96% |
| 8 | 98,44% |
| 9 | 98,77% |
| 10 | 99,00% |

TRs should not be requested to seek and deliver sophisticated statistical methods. TRs aim is to collect and deliver high quality data. It should be regulators, in particular ESMA task to find and deliver the method that is statistically correct and proven. Having detailed specification of the method that is strictly based on statistics and improves data quality, KDPW will be happy to implement it in the calculations. In our opinion, the proposed approach will make the quality of data lower and should not be implemented under no circumstances.

<ESMA\_QUESTION\_EMIR\_12>

: Do you agree that the approach described in Guideline 14 is the most effective way to make available useful information for authorities? Are there any alternative approaches for dealing with erroneous reports which you think could help produce useful calculations? Do you think that this approach is appropriate for derivatives reported before 1 December 2014? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_13>

While we see the necessity for excluding reports with missing values in metrics, it is not necessary to exclude reports where one of dimensions is missing. It can be avoided by creating “NA” category for each of the dimensions, as those reports can add some value for other dimensions analyses. It is also worth considering some other “missing values” methods for metrics, like simple replacing with mean or median instead of excluding.

<ESMA\_QUESTION\_EMIR\_13>

: Do you agree with that the proposed Guideline 15 is the most effective way for ESMA to ensure that they can quickly access the procedures and relevant algorithms a TR follows to calculate positons? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_14>

In general we agree with the idea of keeping and maintaining position calculations procedures by TRs; however, we believe that all the procedures shall be based on high quality ESMA requirements, so that all TRs can implement them in a consistent manner. It would require high quality business requirements documents instead of several guidelines proposed in this consultation paper.

<ESMA\_QUESTION\_EMIR\_14>

: Do you foresee any difficulties with complying with these guidelines in line with the H2 2018 implementation timeframe? Please provide rationale to support and explain your answer by detailing the specific aspects of the implementation process that would impact the total implementation timeline.

<ESMA\_QUESTION\_EMIR\_15>

As mentioned earlier, the implementation of position calculation algorithms requires much more profound analysis and specification. The proposed guidelines itself do not specify the requirements enough to assess the implementation timeframes. The requirement of outliers itself, with no detailed specification from ESMA, will require very in-depth analysis. Obviously, the H2 2018 timeframe is also dependent on the publication of final version of these guidelines and requirements. It seems like the proposed guidelines is a first step rather than the document that TRs can rely on in position calculation process. Having all this in mind, H2 2018 seems to be unrealistic.

<ESMA\_QUESTION\_EMIR\_15>

: Do you agree that the metrics included in Guideline 16 are the most appropriate for quantifying the exposures of the different derivatives? Do you consider necessary and essential for the accurate assessment of exposures between counterparties to include separate metrics for positive and for negative values of fields Notional and Values of contract? Are there any other more efficient, still accurate ways to represent this? Would the dimension “Master agreement type (T2F30) be relevant in this case? Please can you elaborate on the reasons for your answers.

<ESMA\_QUESTION\_EMIR\_16>

In our opinion, the proposed metrics require some explanations or more details:

1. Number of trades used for calculating the Buy-Side position: This refers to the number of trades contained in the position set for which the Reporting Counterparty ID (T1F2) has reported “B” in the field Counterparty Side (T1F14);

As mentioned above, in comment to Q3, it needs to be specified, which reports should be included in the position. Is it all AT=N reports? Is it Level T and P reports, etc.? The rules for using termination date/effective date should be specified clearly.

1. *The notional amount shall be expressed in terms of amount and in the reported Notional Currency 1 (T2F9);*

Positions can consist of contracts having many Notional Currencies, therefore aggregating Notional amounts of position is actually summing up many values expressed in different currencies. To apply this metric properly, *Notional* Currency 1 (T2F9) should be added as a dimension or exchange rate shall be used for aggregation in one single currency.

g) *When Asset Class (T2F2) is “Credit”, then the notional amount metric should be multiplied by the Index Factor (T2F89);*

Please specify what is “the notional amount metric”, as it was not defined in the above metrics.

What is more the statement in p. g) defines new metric that shall only be used for credit derivatives and therefore it should be treated as separate metrics rather than “amendment” to the existing one.

Regarding the “Master agreement type” (T2F30) dimension, as it is one of the optional text fields reported by reporting counterparties in a various way, is seems not to add any extra value for the position calculation and certainly will cause further issues with definitions.

<ESMA\_QUESTION\_EMIR\_16>

: Do you consider that the inclusion of the field Intragroup (T2F38) is required as an additional dimension? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_17>

No comments

<ESMA\_QUESTION\_EMIR\_17>

: Would a further aggregation of derivatives with position sets created using the dimensions in Guideline 18 and Guideline 19 allow authorities to achieve a useful overview of potential systemic risks that may arise in financial markets? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_18>

Guidelines 17 and 18 specify 2 sets of fields (dimensions) that shall be used to aggregate reports in position sets reports. Please explain what is the difference between them? Why are they split into these 2 sets of dimensions? We understand that these 2 sets shall be applied in different aggregations, but it is not clear when to apply each of them, or maybe both?

Guideline 19 refers to specific asset class – currency derivatives and therefore shall be moved to p. 6.3 as the dimensions defined in this guideline cannot be applied to all derivatives.<ESMA\_QUESTION\_EMIR\_18>

: Do you believe that the approach included in Guideline 20 for grouping derivatives with similar times to maturity is appropriate? Do you think that a more granular approach to the grouping of derivatives with similar time to maturity would be more useful? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_19>

No comments.

<ESMA\_QUESTION\_EMIR\_19>

: Do you agree that the dimensions included in Guideline 17 to Guideline 20 are the most appropriate for grouping derivatives into reports for analysis by authorities? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_20>

No comments.

<ESMA\_QUESTION\_EMIR\_20>

: Do you believe that Guideline 21 which defines an additional dimension for grouping IRS derivatives is appropriate? Do you believe there is an alternative way to group similar IRS? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_21>

We would appreciate some explanation on what is category ‘Other’ for Fixed rate of leg 1. The values in the table can be either populated or blank. How can TR identify what is a mistake of a counterparty’s reporting? Is NA category only assigned to mistakes in Fixed rate of leg 1? Or also other 3 fields used in the table: Fixed rate of leg 2, etc.?

<ESMA\_QUESTION\_EMIR\_21>

: Would an aggregation of credit derivatives with position sets created using the dimensions in Guideline 22 allow authorities to achieve a useful overview of potential systemic risks that may arise in financial markets? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_22>

No comments.

<ESMA\_QUESTION\_EMIR\_22>

: Do you agree that the additional dimension for grouping commodity derivatives included in Guideline 23 will create more useful information for authorities? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_23>

No comments.

<ESMA\_QUESTION\_EMIR\_23>

: Do you agree that the method described in Guideline 25 is the most effective way of determining a useful indicator when collateralisation of derivatives is performed on a portfolio basis? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_24>

In p. 114: *ESMA proposes to use the same metrics and dimensions for collateral sets as those proposed in the guidelines in this paper for Position Sets.*

Further on, in p. 7.1. there are different metrics and dimensions defined that shall be applied. Please explain which metrics shall TRs use for Collateral Sets. Same as for Position set? Those defined in p. 7.1? Both?

In guideline 25: *When collateralisation is not performed on a portfolio basis, the variables that represent the value of the collateral only apply to an individual derivative and so where possible TRs should provide an aggregation of those values in the Collateral Set.*

<ESMA\_QUESTION\_EMIR\_24>

: Do you agree that the aggregation of these values in line with Guideline 26 is the most appropriate way to provide authorities with a view of collateral positions? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_25>

Please explain what kind of aggregation should TRs apply here: median, mean, sum or other?

<ESMA\_QUESTION\_EMIR\_25>

: Do you agree with the proposed Guideline 28 for aggregating collateral sets and representing the data for authorities? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_26>

We would appreciate explanation on how to understand ‘Number of reports used for calculating the collateral set’. As mentioned in p.118: *ESMA proposes the inclusion in the guidelines the following metrics which are taken from the EMIR reporting fields*. This metric neither come from EMIR reporting field nor it is specified in any other than ‘descriptive’ method, which can be understood in many different ways, especially taking into account that some reports are ‘on trade’ basis, while other ‘on portfolio’ basis. More detailed specification is required for correct assessment and implementation.

The proposed metrics defined in p. b) to g) can only be applied for collateral reports delivered after 1st of Nov 2017. None of these fields were reported before new RTS implementation.

<ESMA\_QUESTION\_EMIR\_26>

: For the calculation of positions, is it more appropriate that the currency of the collateral is the same as the currency of the field Value of the Contract (T1F17)? In case they are not, should they all be converted to the same currency, e.g. EUR? Should, alternatively the currency of the Value of the contract and the collateral be always the currency of the notional of the derivatives? Please can you elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_27>

No comments.

<ESMA\_QUESTION\_EMIR\_27>

: Do you agree with the proposal to use the dimensions and metrics included in Guideline 29 and Guideline 31 to aggregate derivatives to provide information on specific currencies to central banks of issue? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_28>

No comments.

<ESMA\_QUESTION\_EMIR\_28>

: Do you agree that Guideline 32 includes the appropriate metrics and dimensions for calculating collateral held in specific currencies for derivatives? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_EMIR\_29>

No comments.

<ESMA\_QUESTION\_EMIR\_29>