Brussels, 1 July 2020
TC

EACB Answer to ESMA consultation paper on Technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT

July 2020

The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4,050 locally operating banks and 58,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 210 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 79 million members and 749,000 employees and have a total average market share of about 20%.

For further details, please visit www.eacb.coop

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels
Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop

Introduction

The EACB welcomes the opportunity to reply to this consultation paper, particularly with respect to the proposals under Section 4 – Reporting of which our detailed answers can be found in the below sections.

Our key messages with respect to this consultation are that:

(i) **Our members are weary of the detailed technical requirements in Section 4 (and the paper in general) which will lead to an extensive analysis in the detection and implementation of such proposed changes.** We wish to highlight that this is in complete contradiction of what a REFIT under the Better Regulation Agenda is meant to be – a regulatory change that should lead to reduced costs. Automation to comply with current regulation has already been up and running, but the new proposals and the suggestion of more precise interpretations will only lead to higher project costs and implementation efforts;

(ii) **The paper provides for changes in the mandatory delegated reporting by FCs on behalf of NFCs, of which draft RTS was meant to be delivered by ESMA to the European Commission by 18 June 2020. Considering the delayed timeline, these details come far too late to be able to act accordingly and have no legal status.** Implementation of the EMIR REFIT has thus been carried out under different logic. For example, ESMA states in the consultation that parties require written procedures or agreements covering mandatory delegated reporting arrangements. However, several banks have decided to terminate delegated reporting agreements with their clients because it becomes mandatory for the FC to report on behalf of its NFC- clients. This approach on mandatory delegated reporting is contrary to the relief EMIR Refit is intended to provide. By way of example, it should be sufficient for FCs to inform their clients that it becomes mandatory to perform delegated reporting and that the client is required to provide the relevant data or inform them of a upcoming change to NFC+, rather than requiring setting up new written agreements; and

(iii) **The proposed draft RTS is detailed yet still unclear of what the proposals would entail in practice.** It would be more useful for market participants, for example, if elements of the current regulation such as the Delta could be better shown, which makes impact assessment and implementation much easier.

Responses to consultation questions

Question 2: Do you agree with the proposals set out in this section? If not, please clarify your concerns and propose alternative solutions.

Reference is made to paragraph 15, page 15 of the consultation paper with respect to LEI codes. It is understood that all clients are responsible to deliver a valid LEI because without it correct reporting is just not possible. However, in practice it is possible to have clients who have derivatives to hedge real estate finance, without a chamber of commerce registration. Such clients cannot obtain an LEI, yet financing through a derivative hedge is the best opportunity for them. This leads to reporting problems that cannot be solved. We thus advocate for the possibility to identify an internal client code in situations where it is not possible to obtain an LEI code.

Question 8: Which errors or omissions in reporting should, in your view, be notified to the competent authorities? Do you see any major challenges with such notifications to be provided to the competent authorities? If yes, please clarify your concerns.

The EACB does not support the introduction under EMIR of a similar reporting requirement as the one stipulated in Article 15 (2) of MiFIR. The political intention of MiFID II beyond transparency made it possible to provide for such requirement in Level II regulation. However, EMIR at Level I does not provide for such obligation to report errors or omissions to the NCAs. As per Article 10(1) of Regulation (EU) 1095/2010 on the proposal of Level II text by ESMA: "Regulatory technical standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be delimited by the legislative acts on which they are based." Therefore, ESMA's proposal in this context goes beyond their power under Level II. Any such change would have to be regulated under Level I which would go beyond the recent EMIR REFIT.

Question 11: Do you agree with the proposed technical format, ISO 20022, as the format for reporting? If not, what other reporting format would you propose and what would be the benefits of the alternative approach?

The ISO20022 format has already been established for Article 26 MiFiR Reporting and the upcoming SFTR reporting. Therefore, its use for EMIR could be important in ensuring harmonisation of securities market regulation and comparibility. However, the currently XML reporting is a totally different structure and format to ISO 20022 and changing it would undoubtedly lead to high costs and would require a lengthy implementation period mainly due to the IT changes, with minimal benefits for the reporting entity. In addition, such change would entail a review of most of the reporting fields currently under EMIR. Therefore, we would not advocate for such change without a detailed cost-benefit analysis to determine the advantage of such move.

Question 12: Do you foresee any difficulties related to reporting using an ISO 20022 technical format that uses XML? If yes, please elaborate.

Please refer to our answer to Question 11.

Question 13: Do you expect difficulties with the proposed allocation of responsibility for generating the UTI?

Our members note that the proposed responsibility chart does probably clarify the situation further so that both parties know in advance which entity (e.g. trading venue) will be the UTI-generating party. Members also note that in theory it would be helpful to have a UTI-generating solution since most reporting is automated and it is not typical for an exchange between counterparties to take place on the details of the trade with respect to the UTI. However, the proposal in practice comes with its challenges which cannot be overlooked such as the lengthy time required to get all the UTI reporting entities to absorb these changes into their systems and the pairing breaks that will be generated in the short term. Furthermore, such changes would entail unnecessary implementation costs considering that system updates related to the creation of the UTI have now been put into place.

Question 22: Do you expect issues around defining when you will need to use a new UTI and when the existing UTI should be used in the report? Are there specific cases that need to be dealt with?

In the case when a trade has been reported with the correct UTI and later a counterparty of the trade mistakenly submits an action ERROR to the trade repository (by human or electronic error), currently the only possible way to resolve this is if the other counterparty also submits an ERROR report and the counterparties agree for the new UTI. However, this process is impossible in practice especially in cases when the UTI has been created by electronic platform. There should be a possibility for the counterparty that has sent the ERROR message by mistake, to cancel that error message, so that the UTI will be active again.

Question 28: Do you foresee any issues in relation to inclusion in the new reporting standard that the LEI of the reporting counterparty should be duly renewed and maintained according to the terms of, any of the endorsed LOUs (Local Operating Units) of the Global Legal Entity Identifier System?

The creation of the LEI principle is generally a positive proposal. However, the yearly renewal is costly for clients and requires a lot of effort for the client and for banks, to check on validity and other factors. It is also unclear whether ESMA will check in terms of validation rules whether an NFC- enters into only one contract (LEI being duly renewed at the time of entering the derivative). If this is the case, it will not be necessary for the NFC to renew its LEI when reporting even if the life cycle events have to be reported after the LEI has obtained the status lapsed, i.e. that this will not prevent the reporting entity (FC) from correctly reporting for the NFC.

Question 30: Do you have any comments concerning ESMA approach to inclusion of CDEs into EMIR reporting requirements?

The present systems under EMIR have already been built and laid out. Therefore, it is without doubt that the introduction of a new standardised element would entail significant IT efforts

without knowing if this would entail any corresponding significant benefit for the reporting entity. Therefore, it would be useful that ESMA would carry out a thorough cost-benefit analysis in order to understand the impact of CDE reporting. It would also help if ESMA provides the Delta of its proposed CDE taxonomy compared to the present prescribed data field description.

Question 35: Is the approach to reporting Compression sufficiently clear? If not, please explain what should be further clarified or propose alternatives.

The present regulation leads to banks making the mandatory compression request to their clients every 6 months. Some of our members advise that their clients report back that they cannot and do not want to compress with reason (e.g. no breakup hedges). However, due to the rules our members have to keep making this compression request to their clients every 6 months. The end result is that clients are irritated by this unnecessary mandatory mailing. Therefore, we strongly recommend that an opt-out option is provided to clients who do not wish to receive this request every six months, or wish to receive it less frequently.

Question 55: Do you see any other challenges related to LEI updates due to mergers and acquisitions, other corporate restructuring events or where the identifier of the counterparty has to be updated from BIC (or other code) to LEI because the entity has obtained the LEI?

1. Currently the TR is requesting a deed of merger as a proof for corporate event. If the deed of merger is not written in the language which is in list of the languages that the TR approves, the counterparty requesting the LEI update needs to provide an authorised translation in one of the accepted languages (English, French, German, Italian, Spanish). This procedure is very challenging for the counterparty requesting the LEI update and is costly particularly for the small NFCs. It might also be the case where an NFC is not providing the translation and the costs fall to the FC, if the FC wishes to avoid rejections due to invalid identification. This current procedure puts the reporting entities in an unequal position when five EU Member States can provide documents in their own language yet the other EU members need to pay extra in costs and carry out extra work to provide the authorised translation. It would be most welcome if ESMA might consider that in the case when the FC is reporting on behalf on the NFC, that the TR would trust that in order to request an LEI update from the TR that the FC has validated the deed of merger and other documents related to such corporate event. The TR could use as a proof the GLEIF data to make sure the corporate event has happened; and

2. Currently, the TR demands the counterparty who is requesting the LEI update to send the original documents. However using the postal service might cause documents to disappear, which has occurred. On the other hand, using courier service adds the costs. Both methods are an extra burden to the counterparty requesting the LEI update. There should be an option to use an electronic service via the TR portal for the counterparty to provide LEI update requests, in order to avoid extra work and cost burdens, and to avoid the possibility of missing documentation during the delivery process.

Contact:

The EACB trusts that its comments will be taken into account.

For further information or questions on this paper, please contact:

- Ms Marieke van Berkel, Head of Department (marieke.vanberkel@eacb.coop)
- Ms Tamara Chetcuti, Senior Adviser, Financial markets (tamara.chetcuti@eacb.coop)