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| 08 July 2021 | ESMA74-362-2087 |

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| Reply form for the Consultation Paper on the Guidelines on reporting under EMIR |
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| Date: 08 July 2021 |

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Section 9 in the Consultation Paper on the Guidelines on reporting under EMIR published on the ESMA website.

*Instructions*

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

* use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
* do not remove the tags of type <ESMA\_QUESTION\_REPO\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
* if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.
* if you wish to provide comments on the validation rules and/or reconciliation tolerances for the specific reporting fields, please use for that purpose the additional response form in excel format.

Responses are most helpful:

* if they respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

**Naming protocol**

In order to facilitate the handling of stakeholders’ responses please save your document using the following format:

ESMA\_REPO\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

e.g. if the respondent were ESMA, the name of the reply form would be:

ESMA\_REPO\_ESMA\_REPLYFORM or

ESMA\_REPO\_ANNEX1

***Deadline***

Responses must reach us by 30 September 2021.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

***Publication of responses***

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish 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 headings ‘Legal notice’ and ‘Data protection’.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | BME CLEARING, S.A.U |
| Activity | Central Counterparty |
| Are you representing an association? |[ ]
| Country/Region | Spain |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_REPO\_1>

BME CLEARING is the Spanish authorized CCP under EMIR. We appreciate the opportunity to participate in the ESMA consultation paper on EMIR REFIT reporting.

Before answering the ESMA consultation paper we would like to take this opportunity to set out some previous thoughts about EMIR reporting and this consultation paper.

1. Although BME CLEARING has a segment to clear IRS products, our volume comes mainly from ETD products. Therefore, most of our answers will be focused on ETD reporting.
2. Given that there are 2 levels of reporting under EMIR; trades (ETDs and OTCs) and positions, we would like to highlight the following:
* On the one hand, OTC derivative trades are traded and normally tend to remain in the trading books of counterparties.
* On the other hand, ETD trades are completely different due to the clearing process performed by CCPs, so that all trades end up as part of a position.

Since the main objective of EMIR REFIT reporting is to identify financial stability risks in a timely manner, we believe that EMIR REFIT reporting in relation to ETDs should focus on positions that are directly related to risk rather than on trades.

We think that, unfortunately, so far EMIR reporting has had a disappointing result, especially on reconciliation rates, compared with all the efforts the industry has placed into it.

There are several reasons that had influenced in achieving this result in EMIR reporting. We consider that one of the reasons is that EMIR reporting was too ambitious and therefore it has been very difficult to implement.

This has been widely discussed in many forums and the prevailing idea is that firms are making an effort to produce the EMIR reporting in the best possible way, but there are big differences in the interpretation of the criteria, which lead to low levels of pairing and matching.

From our point of view, a less ambitious approach would provide better results. And once the better results are achieved, the authorities could reconsider more ambitious goals in EMIR REFIT reporting. We believe that it is necessary to fix the different drawbacks that the EMIR reporting already has, rather than adding complexity.

We also would like to ask ESMA to provide comprehensive guidance; practical examples, where applicable, in order to reduce ambiguity and the need for prolonged efforts to update the Q&A. Where appropriate, ESMA may consider the use of industry workshops to garner support and feedback when preparing practical examples.

Last but not least, even that the reconciliation process has been modified in EMIR REFIT, we encourage ESMA to simplify it more, minimizing the number of fields to reconcile. Reconciliation should only apply to essential fields. Many ‘errors’ are not errors in the strict sense and very often, they are because an inconsistent interpretation of the rules between reporting entities.

<ESMA\_COMMENT\_REPO\_1>

1. **Are there any other clarifications that should be provided with regards to the transition to reporting under the revised technical standards?**

<ESMA\_QUESTION\_REPO\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_1>

1. Are there any additional aspects to be considered with regards to the eligibility to reporting of currency derivatives?

<ESMA\_QUESTION\_REPO\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_2>

1. Are there any aspects to be clarified with regards to the rest of contract types of currency derivatives? Please provide the relevant examples.

<ESMA\_QUESTION\_REPO\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_3>

1. Are there any additional aspects to be considered with regards to the eligibility for reporting of the derivatives on crypto-assets? Please provide the relevant examples.

<ESMA\_QUESTION\_REPO\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_4>

1. Are there any additional aspects to be considered with regards to the eligibility for reporting of Total Return Swaps, liquidity swaps, collateral swaps or any other uncertainty with regards to potential overlap between SFTR and EMIR? Please provide the relevant examples.

<ESMA\_QUESTION\_REPO\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_5>

1. Are there any additional aspects to be considered with regards to the eligibility for reporting of complex derivative contracts? Please provide the relevant examples.

<ESMA\_QUESTION\_REPO\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_6>

1. Are there other situations where a clarification is required whether a derivative should be reported?

<ESMA\_QUESTION\_REPO\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_7>

1. Do you agree with the above understanding?

<ESMA\_QUESTION\_REPO\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_8>

1. Are there other situations where a clarification is required whether a derivative involving a specific category of party should be reported?

<ESMA\_QUESTION\_REPO\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_9>

1. Do you agree with the above understanding?

<ESMA\_QUESTION\_REPO\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_10>

1. Are there other specific scenarios where a clarification is required?

<ESMA\_QUESTION\_REPO\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_11>

1. Do you agree with the above understanding?

<ESMA\_QUESTION\_REPO\_12>

Regarding paragraph 47, it says “…. *Where no contracts are concluded, modified or terminated during several days, no reports are expected apart from updates to valuations or collateral on outstanding derivatives*….”, we encourage ESMA to explicitly quantify the term "several days" so that it is not open to subjectivity and is standardised throughout the industry.

<ESMA\_QUESTION\_REPO\_12>

1. Are there any other clarifications required with regards to the IGT exemption from reporting?

<ESMA\_QUESTION\_REPO\_13>

We are pleased to hear that ESMA is working on some exemption in EMIR REFIT reporting.

In our view, we understand that it would be more beneficial if at a first stage ESMA would focus on the big players in EMIR reporting and at a later stage, extend it to the rest.

<ESMA\_QUESTION\_REPO\_13>

1. Are there any other clarifications required for the handling of derivatives between NFC- and FC?

<ESMA\_QUESTION\_REPO\_14>

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<ESMA\_QUESTION\_REPO\_14>

1. Are the current illustrative examples providing clarity and / are there other examples that should be incorporated in the guidelines?

<ESMA\_QUESTION\_REPO\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_15>

1. Are there any other clarifications required for the reporting obligation related to CCPs?

<ESMA\_QUESTION\_REPO\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_16>

1. Are there any other clarifications required for the reporting obligation related to Investment Funds i.e. UCITS, AIF and IORP that, in accordance with national law, does not have legal personality?

<ESMA\_QUESTION\_REPO\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_17>

1. Do you see any other challenges with the delegation of reporting which should be addressed?

<ESMA\_QUESTION\_REPO\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_18>

1. Do you agree that only action types ‘Margin Update’ and ‘Correct’ should be used to report collateral?

<ESMA\_QUESTION\_REPO\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_19>

1. Are there any other clarifications required with regards to the use of the action types in general (other than specific aspects covered in the sections below)?

<ESMA\_QUESTION\_REPO\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_20>

1. Do you agree with the sequences proposed? Please detail the reasons for your response.

<ESMA\_QUESTION\_REPO\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_21>

1. Are there any specific scenarios in which the expected sequence of action types is unclear?

<ESMA\_QUESTION\_REPO\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_22>

1. Are any further clarifications needed with regards to the action type - event type combinations or their applicability?

<ESMA\_QUESTION\_REPO\_23>

We suggest that thorough examples are given. In many cases the explanation of Table 5 is too short and therefore it can lead to misunderstanding.

|  |  |  |  |
| --- | --- | --- | --- |
| **Action Type** | **Event** | **Type Applicability** | **Our comment** |
| New | Clearing | When a derivative with a new UTI is created for the first time due to a Clearing event. | Could this be an OTC trade that is sent to clearing? What would be the difference with New/Trade? |
| New | Step-in | When a derivative or position with a new UTI is created for the first time due to a Step-in event.  | In which scenarios has to be use Step-in event type? Please provide some examples.  |
| Terminate | Clearing | When a derivative with an existing UTI is terminated due to a Clearing event. This is used for terminating alpha trades. | This is a good explanation. |

It is difficult to confirm whether this list is complete without more detailed guidance on when each category should be used, and exactly which events fall into each category. A full list of applicable events for each event type and worked examples would be very useful.

There is also some clarification needed when CCPs use the Clearing event and if Clearing is intended to include all cleared transactions including OTC transactions which were previously bilaterally agreed among counterparties and subsequently cleared. In the second case we should use Step-in event type?.

We would also like to stress out that table 4 on paragraph 117, when Event Type = ‘PTRR’ does not match with the validation rules as shown below. Can you please confirm?:

* TABLE 4:



* VALIDATION RULES:



<ESMA\_QUESTION\_REPO\_23>

1. Is it clear when the linking IDs should be used, and in which reports they should be provided? Do you agree that the linking IDs should be reported only in the reports pertaining to a given lifecycle events and should not be included in all subsequent reports submitted for a given derivative? Are any further clarifications on linking IDs required?

<ESMA\_QUESTION\_REPO\_24>

We welcome that linking IDs shall only be reported pertaining to a given lifecycle events.

However, we ask ESMA to reconsider the population of the PRIOR UTI and SUSBSEQUENT POSITION UTI fields in the following cases:

1. PRIOR UTI in a new cleared derivative at trade level resulting from clearing of a bilateral derivative on the same day or after.

As indicated in Table 54 of the draft Guidelines, the PRIOR UTI of the bilateral trade shall be populated.

What is the purpose of doing so? We believe that this requirement will only increase the burden of EMIR REFIT not only for CCPs in particular, but also for Clearing Members in general, given that the latter will have to provide this information to CCPs in order to comply with this requirement.

In addition, while CCPs are not required to populate the PRIOR UTI of the bilateral transaction for CCP-cleared SFTs under SFTR, it does not make sense for CCPs to have this obligation under EMIR REFIT. We therefore ask ESMA to align EMIR with SFTR and clarify that CCPs are not expected to report the PRIOR UTI of the bilateral derivative. We strongly believe that this will be beneficial and avoid the confusion of doing it in different ways depending on the reporting concerned.

1. As regards the SUBSEQUENT POSITION field, we believe that it could be a technical challenge given that a trade can be compressed into multiple positions. Clarification is needed on whether multiple UTIs can be populated in the linking ID fields.

<ESMA\_QUESTION\_REPO\_24>

1. Do you agree with the ESMA´s approach related to leaving the Event type blank in the case of multiple events impacting the same position on a given day? How often multiple events/single events impact the same position on a given day? Have you assessed the single versus multiple events impacting positions on a given day? Do you have systems or methods to distinguish between one or multiple events impacting the positions on a given day?

<ESMA\_QUESTION\_REPO\_25>

BME CLEARING agrees with the approach related to leaving the Event type blank in the case of multiple events impacting the same position on a given day.

It is uncommon at BME CLEARING for several events to impact the position on a same day, although our systems are already set up to identify all the events impacting the position on a same day.

However, we believe that implementing the reporting of these events only worsens the EMIR REFIT situation for all counterparties in the industry. We therefore fully agree with ESMA’s approach.

<ESMA\_QUESTION\_REPO\_25>

1. Do you agree with the proposed clarifications concerning population of certain fields at position level?

<ESMA\_QUESTION\_REPO\_26>

As regards position-level reporting, changes have been added to some fields that are currently reported differently, in accordance with best practice.

In particular, we refer to the introduction of the timestamp fields referred to in paragraphs 145 and 147. Nowadays these fields area reported as follows:

* + the execution timestamp is left blank, and
	+ the clearing timestamp is populated by default as '23:59:00'

because these items are neither executed nor cleared.

When we refer to position-level reporting, these fields do not provide additional information to the authorities, so we believe it would be advisable to reconsider these changes to avoid a major technical challenge of the reporting counterparties to find trade with the most recent execution timestamp comprising that position, as well as to avoid an increase in the number of reconciliation breaks due to the fact that counterparties could close out trades on different orders.

Our suggestion would then be to leave both, the execution and clearing timestamp fields blank in position-level reporting.

<ESMA\_QUESTION\_REPO\_26>

1. Do you need any other clarification with regards to the position level reporting?

<ESMA\_QUESTION\_REPO\_27>

In relation to paragraph 130 which states “*ESMA clarifies that the reporting at position level should be agreed between the two counterparties*”, we strongly believe that ETDs reporting should be done at both, trade and at position levels.

As noted in some other responses to this consultation paper, we believe that the main objective of EMIR reporting is to identify financial stability risks. We also believe that due to the netting process that CCPs perform, ETD trades are not significant to the risk assessment and hence, in an ideal world, they should not be reported under EMIR.

However, on the other hand, ETD position is relevant in order to assess the risk of any CCP or FC holding positions in a CCP. Therefore, we recommend that the RTS sets that ETD reporting should be done at least at a position level.

Furthermore, returning to paragraph 130, “*the reporting at position level should be agreed between the two counterparties*.”, we would like to highlight that due to the large number of Clearing Members per CCP it is not practical to agree bilaterally with all clearing participants in advance and create a reporting logic bespoke to hundreds of bilateral agreements with individual clearing participants. This would also create an inconsistent reporting framework that would make CCPs unable to provide consistent guidance to Clearing Members on their reporting policies. It is not feasible to come to an agreement among this large number of counterparties so it would be preferable for ESMA to clarify its preference on when additional position level reporting is appropriate or not and to provide examples. As stated previously, good guidance should be the basis of EMIR reporting.

<ESMA\_QUESTION\_REPO\_27>

1. Are there any other aspects that should be clarified with regards to reporting of on-venue derivatives?

<ESMA\_QUESTION\_REPO\_28>

One of the main reasons for non-reconciliation of transactions that we have been observing during EMIR reporting is precisely the interpretation that can be made of paragraph 170 *‘....lifecycle events on ETD reports is not mandatory...*’ , since the reporting of life cycle events occurring during the day is left as optional.

As an example, let's assume a give-up on the same day as the trading date of the original transaction.

Counterparty A may have decided to report only the information at the EoD in the state that it is in at that point, while counterparty B has decided to report all intraday transactions.

Because of this different approach to the rule, being optional and even though both reports are made in accordance with the rule, they produce a large number of unmatched trades.

We therefore kindly ask that instead of leaving it as non-mandatory, it should be specified that it is not allowed under EMIR REFIT.

Regarding the remarks in paragraph 169, do they apply to the CCP's activity?

Does this imply that in the case where a Clearing Member that delegates reporting to the CCP, the latter as the submitting entity on behalf of this Clearing Member does not need to submit any report on the value of the collateral as well as any subsequent modification or termination of the concluded derivative contract when the process of collateralisation takes place through direct arrangements between the client and the Clearing Member?

Clarification would be welcome.

Finally, it would be desirable that it is explicitly stated in the Guidelines whether there is a link between the Trading Venue Transaction Identification Code (TVTIC) under MiFIR and the Report Tracking number under EMIR. Basically, whether they will be the same.

<ESMA\_QUESTION\_REPO\_28>

1. Do you agree with the proposal for reporting conclusion of derivatives? Please detail the reasons for your response

<ESMA\_QUESTION\_REPO\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_29>

1. Do you agree with the proposal for reporting modifications and corrections to derivatives? Please detail the reasons for your response.

<ESMA\_QUESTION\_REPO\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_30>

1. Do you agree with the specification of the ‘Event date’ for different action types?

<ESMA\_QUESTION\_REPO\_31>

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<ESMA\_QUESTION\_REPO\_31>

1. Do you agree with the interpretation of the business events and the suggested action and event types?

<ESMA\_QUESTION\_REPO\_32>

We agree with the interpretation of the business events and the suggested action and event types but as we mentioned in Q23, we still need a clarification about the use of Step-in Event type and in which cases it could be use.

<ESMA\_QUESTION\_REPO\_32>

1. Are there other business events that would require clarification? If so, please describe the nature of such events and explain how in your view they should be reported under EMIR (i.e. which action type and event type should be used).

<ESMA\_QUESTION\_REPO\_33>

We miss a description about cascading, currently in EMIR:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Category | Business Event | Detail | Reportable? | Action Type | Event Type | Comment |
| Cascade | A Cascade is the breakdown of a Position in a smaller level (for example, the breakdown of an annual Contract in quarterly Contracts).  | EoD position | Yes | New |  |  |
| Closing EoD position | Yes | Position component |  |  |
| Opening trades new position | Yes | Position component |  |  |
| EoD Position | Yes | New |  |  |

<ESMA\_QUESTION\_REPO\_33>

1. Which approach do you prefer to determine the entity with the soonest reporting deadline? Please clarify the advantages and challenges related to each of the approaches.

<ESMA\_QUESTION\_REPO\_34>

We believe that the second approach -following the sun- will be easier to implement for determining the entity with the soonest reporting deadline.

We consider that having a static ordering of jurisdictions based on time zones makes more sense than the first approach where time zones are not taken into account.

<ESMA\_QUESTION\_REPO\_34>

1. Are there any other aspects that need to be clarified on UTI generation?

<ESMA\_QUESTION\_REPO\_35>

Being BME CLEARING a CCP, it is clear that we are the entity which will generate the UTI. The waterfall approach determining the entity responsible for the generation of the UTI is clear for CCPs.

In the existing regulatory guidance, it is also crystal clear that CCPs are responsible for providing position UTIs to clearing participants.

However, Clearing Members may have a different view and request further consideration and guidance from ESMA to generate a consistent industry-wide view on what constitutes the reportable position vis-à-vis the Clearing Member.

For example, while a CCP may report a position at account level, a clearing firm may report positions at Treasury desk level. A firm may have several desks holding positions in a house account (i.e., 5 different portfolios).

From this point of view, to ensure successful position level pairing and matching, guidance on the level of position aggregation across CMs and CCPs would be much appreciated.

<ESMA\_QUESTION\_REPO\_35>

1. Are there any other types of contracts for which the determination of the counterparty side needs more clarity?

<ESMA\_QUESTION\_REPO\_36>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_36>

1. Are there any other clarifications required with regard to the determination of the counterparty side (other than specific aspects covered in other sections)?

<ESMA\_QUESTION\_REPO\_37>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_37>

1. Are there any other clarifications requested with regards to the identification of counterparties?

<ESMA\_QUESTION\_REPO\_38>

BME Clearing provides a Third Party reporting service whereby Members may delegate either the reporting of the trades which the Clearing Members must report with respect to trades of Clearing Members against the CCP and we also offer the reporting of trades which the Members must report with respect to trades of Members against their clients, and we have faced many times difficulties with not renewed LEIs in the case of NFCs.

There are many minor NFCs that have the obligation to report. These NFCs need to have a LEI and they need to renew its LEI yearly. It is relatively common that this type of companies does not renew their LEIs in due time and therefore, its reporting is stopped for 5 to 10 days (this is the time it takes to renew the LEI in Spain).

In our opinion, the LEIs for NFCs (especially for the small ones) should be renewed for 3 to 5 years. This would alleviate this issue.

<ESMA\_QUESTION\_REPO\_38>

1. Are there any other aspects to clarify in the LEI update procedure when a counterparty undergoes a corporate action?

<ESMA\_QUESTION\_REPO\_39>

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<ESMA\_QUESTION\_REPO\_39>

1. Are there any other aspects to be considered in the procedure to update from BIC to LEI?

<ESMA\_QUESTION\_REPO\_40>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_40>

1. Do you require any further clarification on the use of UPI, ISIN or CFI for derivatives?

<ESMA\_QUESTION\_REPO\_41>

In relation to paragraph 246, we would like ESMA to specify the "CFI Dummy" that counterparties have to use when the CFI code does not exist in official sources.

If regulated through an RTS or through validation rules rather than bilaterally agreed by the counterparties , we believe that reconciliation breaks in this field will be significantly reduced.

<ESMA\_QUESTION\_REPO\_41>

1. Do you require any further clarification with regards to the reporting of fields covered by the UPI reference data? Which fields in the future should /should not be sourced exclusively from the UPI reference data rather than being reported to the TRs?

<ESMA\_QUESTION\_REPO\_42>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_42>

1. Do you require any further clarification on the reporting of details of the underlying?

<ESMA\_QUESTION\_REPO\_43>

Where the underlying of the derivative is an index, we need clarification on the purpose of reporting the name of the underlying index assigned by the index provider, where the ISIN code is available.

Again, we believe that will only lead to increased reconciliation breaks and the infrmation provided is redundant.

<ESMA\_QUESTION\_REPO\_43>

1. Is any further guidance required in relation to the population of the notional field?

<ESMA\_QUESTION\_REPO\_44>

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<ESMA\_QUESTION\_REPO\_44>

1. Is any further guidance required in relation to the population of the Total notional quantity field? How should the Total notional quantity field be populated, distinguishing between ETD and OTC and asset class?

<ESMA\_QUESTION\_REPO\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_45>

1. Are there other instances when we would expect to see a zero notional for Position Reports? Please provide examples. Are there any instances when we would expect to see a notional of zero for Trade Level Reports? Please provide examples.

<ESMA\_QUESTION\_REPO\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_46>

1. Are there any other aspects in reporting of valuations that should be clarified?

<ESMA\_QUESTION\_REPO\_47>

We fully endorse this response from EACH on behalf of the CCPs.

<ESMA\_QUESTION\_REPO\_47>

1. Are there any other aspects in reporting of delta that should be clarified? Are there instrument types (in addition to swaption) where further guidance is needed with regards to the calculation of delta?

<ESMA\_QUESTION\_REPO\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_48>

1. Are there any further clarifications required with regards to the reporting of margins?

<ESMA\_QUESTION\_REPO\_49>

We do not understand the need to report the IM/VM Posted/Received fields with a value pre and post haircut.

In our view, it does not add significant value[[1]](#footnote-2) to the report but increases the complexity of the EMIR REFIT reporting, taking into consideration the complexity already existing in the current EMIR reporting.

Also, although this is not an amendment to EMIR’s current reporting, we would like to know what is the purpose of reporting the total value of margins in those products where Variation Margin is cash-settled on a daily basis, as stated in paragraph 299 and explained in Table 18 on page 82 of the Guidelines.

We believe that including the total value of margins does not represent the real exposure of such derivative.

<ESMA\_QUESTION\_REPO\_49>

1. Are there any further clarifications required with regards to the reporting of the trading venue?

<ESMA\_QUESTION\_REPO\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_50>

1. Are there any further clarifications required with regards to the reporting of clearing?

<ESMA\_QUESTION\_REPO\_51>

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<ESMA\_QUESTION\_REPO\_51>

1. Are there any further clarifications required with regards to the reporting of confirmation timestamp and confirmation means?

<ESMA\_QUESTION\_REPO\_52>

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<ESMA\_QUESTION\_REPO\_52>

1. Are there any further clarifications required with regards to the reporting of settlement currencies?

<ESMA\_QUESTION\_REPO\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_53>

1. Are there any additional clarifications to be considered related to reporting of regular payments?

<ESMA\_QUESTION\_REPO\_54>

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<ESMA\_QUESTION\_REPO\_54>

1. Are there any further clarifications needed with regards to the reporting of other payments?

<ESMA\_QUESTION\_REPO\_55>

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<ESMA\_QUESTION\_REPO\_55>

1. How would you define effective day for novations and cash-settled commodity derivatives?

<ESMA\_QUESTION\_REPO\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_56>

1. What are reporting scenarios with regards to dates and timestamps which you would like to be clarified in the guidelines? Are there any other aspects that need to be clarified with respect to dates and timestamp fields?

<ESMA\_QUESTION\_REPO\_57>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_57>

1. Are there any other aspects that need to be clarified with respect to the derivatives on crypto assets?

<ESMA\_QUESTION\_REPO\_58>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_58>

1. Do you consider any scenarios in which more clarification on the correct population of the fields related to package transaction is needed?

<ESMA\_QUESTION\_REPO\_59>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_59>

1. Which of the proposed alternatives with regard to significance assessment method do you prefer? Should ESMA consider different metrics and thresholds for assessing the scope of notifications sent to the NCAs? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_REPO\_60>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_60>

1. Do you prefer Option 1 or Option 2 with regard to the number of affected reports notified to the NCAs? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_REPO\_61>

Our preference is Option 1 because is less tedious than Option 2.

Even this new requirement made by ESMA still increases the burden on EMIR REFIT, if we had to choose, our choice is Option 1.

<ESMA\_QUESTION\_REPO\_61>

1. Should significance of a reporting issue under Article 9(1)(c) of the draft ITS on reporting also be assessed against a quantitative threshold or the qualitative specification only is appropriate? In case threshold should be also applied, would you agree to use the same as under Alternative A or B? Is another metric or method more appropriate for these types of issues? Please elaborate on your response.

<ESMA\_QUESTION\_REPO\_62>

We believe that a quantitative threshold would help to assess the importance of a reporting issue.

The absence of such a threshold, would lead to an increased operational burden for reporting counterparties and hence to an increase in the number of issues to be reported to NCAs.

<ESMA\_QUESTION\_REPO\_62>

1. Are there any other aspects or scenarios that need to be clarified with respect to ensuring data quality by counterparties? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_REPO\_63>

We would like to remark that regarding paragraph 364.b), in the over 6+ years of experience in EMIR reporting we have not had this type of failure. However, if that were the case, we would suggest this task to be handed over to the TRs, as they can easily monitor/control the daily flow of messages from any relevant counterparties. In the event that no messages are received, or an outlier number of messages is received from a given counterparty, the TR would contact the latter and in case an incident is confirmed, the TR would be responsible for communicating it to the relevant NCA.

Additionally, to ensure data quality, the size of reporting counterparties in terms of number of transactions reported should be considered. It is reasonable for Regulators to have a desire to be informed of significant omissions in reporting where records are not submitted to the TRs at all, although we believe that if attention were to be focused on the largest players first, this would inevitably reduce the number of reconciliation failures, and once this milestone is reached, Regulators could then focus on smaller counterparties.

Nevertheless, it is only significant omissions that would impact Regulator’s ability to monitor systematic risk. Furthermore, a notification obligation may negatively impact the administrative burden of firms that have better detective controls in place to identify omissions in the first place who already have strong relationships and do notify regulators of significant issues on a voluntary basis, while doing little to tackle the issue of omissions from other firms that do not have strong controls in place to identify the omission in the first place to be in a position to notify their NCA of the issue. Efficient controls use a risk-based approach to prioritize the identification and resolution of significant risks of EMIR compliance breaches due to omissions and many controls use thresholds which vary based on internal and external risk factors of the entity. It would be more effective if ESMA issued guidance on best practice controls to prevent or detect omissions and principles for effective prioritization of reporting risks in line with the use and aims of Regulators receiving the data.

Proposed misreporting of errors mandatory notification

For misreporting due to errors, the use of the error action type signals to Regulators the identification and rectification of errors in reporting is already in place. Therefore, we do not believe an additional obligatory notification is required as we think that it would potentially disincentive investment in effective controls to identify misreporting. However, for the purpose of identifying and rectifying misreporting, the definition of misreporting and what constitutes an error would be a useful guidance. Furthermore, we believe that not all errors are of equal significance to Regulators.

We would like to suggest that Regulators prioritize the significance of risk setting at the position level reports, instead of transaction level reports. Moreover, the categorization of fields for reconciliation and potential enhanced validation controls to identify potential errors would be very useful and effective.

To end up, in respect of rectifying historical errors, we kindly ask ESMA to provide a guidance.

Conclusion

In summary, we believe that there are more effective ways to manage risks of omissions and misreporting. The obligation of notification to Regulators, if deemed necessary by ESMA and NCAs, should be limited to significant omissions only based on materiality set by firms using a risk-based approach and good guidance from ESMA on effective controls and prioritisation principles

<ESMA\_QUESTION\_REPO\_63>

1. Are there any other aspects in reporting of IRS that should be clarified?

<ESMA\_QUESTION\_REPO\_64>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_64>

1. Are there any other aspects in reporting of swaptions that should be clarified?

<ESMA\_QUESTION\_REPO\_65>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_65>

1. Are there any other aspects in reporting of FRAs, cross-currency swaps, caps and floors or other IR derivatives that should be clarified?

<ESMA\_QUESTION\_REPO\_66>

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<ESMA\_QUESTION\_REPO\_66>

1. In the case of FX swaps, what is the rate to be used for notional amount of leg 2? Should it be the forward exchange rate of the far leg as it is in the example provided? Or the spot exchange rate of the near leg?

<ESMA\_QUESTION\_REPO\_67>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_67>

1. In the case of FX swaps, considering that the ‘Final contractual settlement date’ is not a repeatable field, should the settlement date of the near leg be reported, for example using the other payments fields?

<ESMA\_QUESTION\_REPO\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_68>

1. Do you have any questions with regarding to reporting of FX forwards?

<ESMA\_QUESTION\_REPO\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_69>

1. Do you have any questions with regarding to reporting of FX options?

<ESMA\_QUESTION\_REPO\_70>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_70>

1. What is the most appropriate way to report direction of the derivative and of the currencies involved with an objective to achieve successful reconciliation? Please detail the reasons for your response.

<ESMA\_QUESTION\_REPO\_71>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_71>

1. Do you agree with the population of the fields for NDF as illustrated in the above example? Should other pairs of NDFs be considered? Please provide complete details and examples if possible.

<ESMA\_QUESTION\_REPO\_72>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_72>

1. Do you agree with the population of the fields for CFD as illustrated in the above example? Do you require any other clarifications?

<ESMA\_QUESTION\_REPO\_73>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_73>

1. Specifically, in the case of equity swaps, portfolio equity swaps and equity CFDs how should the notional and the price be reported in the case of corporate event and in particular “free” allocations?

<ESMA\_QUESTION\_REPO\_74>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_74>

1. Are there any other clarifications required with regards to the reporting of equity derivatives?

<ESMA\_QUESTION\_REPO\_75>

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<ESMA\_QUESTION\_REPO\_75>

1. Are there any other clarifications required with regards to the reporting of credit derivatives?

<ESMA\_QUESTION\_REPO\_76>

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<ESMA\_QUESTION\_REPO\_76>

1. Are there any other aspects in reporting of commodity derivatives that should be clarified?

<ESMA\_QUESTION\_REPO\_77>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_77>

1. Do you agree with the population of the counterparty data fields? Please detail the reasons for your response and indicate the table to which your comments refer.

<ESMA\_QUESTION\_REPO\_78>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_78>

1. Is there any other use case related to the population of counterparty data which requires clarifications or examples? Please detail which one and indicate which aspect requires clarification.

<ESMA\_QUESTION\_REPO\_79>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_79>

1. Do you agree with the approach to reporting action types? Please detail the reasons for your response and include a reference to the specific table.

<ESMA\_QUESTION\_REPO\_80>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_80>

1. Are there any additional clarifications required with regard to the reporting of other payments?

<ESMA\_QUESTION\_REPO\_81>

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<ESMA\_QUESTION\_REPO\_81>

1. Do you agree with the approach to reporting margin data? Please detail the reasons for your response and include a reference to the specific table.

<ESMA\_QUESTION\_REPO\_82>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_82>

1. Which of the two approaches provide greater benefits for data reporting and data record-keeping? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_REPO\_83>

Alternative B is the one chosen by BME Clearing due to the following reasons:

1. We believe it will simplify the data reporting logic by alleviating the EMIR REFIT burden on counterparties and by involving TRs more in the day-to-day business.
2. Furthermore, we estimate that this option will reduce the number of reports processed and therefore also the number of reports stored by the EMIR REFIT agents.

<ESMA\_QUESTION\_REPO\_83>

1. In case Approach B is followed, should the TRs update the TSR when counterparties have reported lately the details of derivatives? If so, do you agree with the time limit ten years for such an update? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_REPO\_84>

We believe that approach B should be followed, and that TRs should update the trade state report when counterparties have reported lately.

<ESMA\_QUESTION\_REPO\_84>

1. Are there any fields that should be taken into account in a special way not allow change in values?

<ESMA\_QUESTION\_REPO\_85>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_85>

1. Is the guidance on treatment of action type “Revive” clear? What additional aspects should be considered? Please detail the reason for our answer.

<ESMA\_QUESTION\_REPO\_86>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_86>

1. Should the TR remove after 30 calendar days the other side of a derivative for which only one counterparty has reported “Error” and no action type ”Revive”? Please detail the reasons for your answer.

<ESMA\_QUESTION\_REPO\_87>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_87>

1. Which alternative relating to the provision of the notional schedules and other payments data would be more beneficial? Which of the two alternatives has higher costs? Please detail the reasons for your answer.

<ESMA\_QUESTION\_REPO\_88>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_88>

1. Do you agree with the described process of update of the TSR? What other aspects should be taken into account? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_REPO\_89>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_89>

1. Should only the Field 1.14 be used for determining the eligibility of derivative for reconciliation? Please detail the reasons for your response.

<ESMA\_QUESTION\_REPO\_90>

In our view, field 1.14 is already sufficient for determining the eligibility of derivative, although including the field 2.37 Intragroup could also be a good addition to find out more information on the non-reporting obligation.

<ESMA\_QUESTION\_REPO\_90>

1. Is there any additional aspect that should be clarified with regards to the derivatives subject to reconciliation? Please detail the reasons for your response.

<ESMA\_QUESTION\_REPO\_91>

With reference to reporting of ETDs, as noted in the introduction to this paper, we believe that the focus should be placed on position level reporting.

We understand that EMIR reporting is set up to enable authorities to identify financial stability risks[[2]](#footnote-3).

We believe that the reporting of transactions in ETDs does not provide information to control risk, on the one hand due to the clearing process that all CCPs perform during the day and on the other hand due to the large number of transactions in ETDs that are reported daily, resulting in noise and inefficiencies in EMIR reporting.

Thus, while maintaining the mandatory nature of trade level reporting, in terms of data quality, both the industry and regulators should focus exclusively on reconciliation of position level data, as it is the latter that is clearly linked to risk.

Finally, given the large number of ETD positions reported by both CCPs and significant counterparties, it is virtually impossible to obtain a 100% accurate report that is also 100% reconciled with the other counterparties. In our view, the approach should be to continuously, gradually and steadily increase reconciliation ratios, first in terms of pairing and then in terms of matching.

<ESMA\_QUESTION\_REPO\_91>

1. From reconciliation perspective do you agree with the proposed differentiated approach for the latest state of derivatives subject to reconciliation depending on the level at which they are reported? What are the costs of having such a differentiation? Should the timeline for reconciliation of derivatives at trade level be aligned with the one for positions? Please detail the reasons for your response.

<ESMA\_QUESTION\_REPO\_92>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_92>

1. From data use perspective, should the information in the TSR and in the reconciliation report be different? Please detail the reasons for your response.

<ESMA\_QUESTION\_REPO\_93>

We see no reason why the information in the TSR and in the reconciliation report would be different.

<ESMA\_QUESTION\_REPO\_93>

1. Which alternative do you prefer? What are the costs for your organisation of each alternative? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_REPO\_94>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_94>

1. Which alternative do you prefer? What are the costs for your organisation of each alternative? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_REPO\_95>

We prefer alternative B because it is easier and cheaper for BME Clearing to implement since it is not required to send a derivative with two legs in a specific order, slightly reducing the EMIR REFIT burden for entities at the expense of the TRs.

<ESMA\_QUESTION\_REPO\_95>

1. Do you agree with the proposed approach for reconciliation of notional schedules? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_REPO\_96>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_96>

1. Do you agree with the proposed approach for reconciliation of venues and the clarification in case of SIs? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_REPO\_97>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_97>

1. What other aspects need to be considered with regards to the aforementioned approach to rejection feedback? Please detail the reasons for your response.

<ESMA\_QUESTION\_REPO\_98>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_98>

1. Do you agree with the approach outlined above with regards to the missing valuations report? Are there any other aspects that need to be considered? Please detail the reasons for your response.

<ESMA\_QUESTION\_REPO\_99>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_99>

1. Do you agree with the approach outlined above with regards to the missing margin information report? Are there any other aspects that need to be considered? Please detail the reasons for your response.

<ESMA\_QUESTION\_REPO\_100>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_100>

1. Do you agree with the approach outlined above with regards to the detection of abnormal values and the corresponding end-of-day report? Are there any other aspects that need to be considered? Please detail the reasons for your response.

<ESMA\_QUESTION\_REPO\_101>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_101>

1. Is there any additional aspect related to the provision of reconciliation feedback by TRs that should be clarified? Please detail the reasons for your response.

<ESMA\_QUESTION\_REPO\_102>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_102>

1. Is there any additional aspect related to the rejection of reports with action type “Revive” by TRs that should be clarified? Please detail the reasons for your response.

<ESMA\_QUESTION\_REPO\_103>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_103>

1. Regarding the requirements in the RTS on registration, as amended, and the RTS on data access, as amended, do you need any further specifications and/or clarification?

<ESMA\_QUESTION\_REPO\_104>

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<ESMA\_QUESTION\_REPO\_104>

1. Are there any specific aspects related to the access to data based on UPI that need to be clarified? Please detail which ones.

<ESMA\_QUESTION\_REPO\_105>

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<ESMA\_QUESTION\_REPO\_105>

1. What access rights would you like to be clarified and/or which access scenarios examples would you consider to be inserted in the guidelines? Please list them all, if appropriate.

<ESMA\_QUESTION\_REPO\_106>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_106>

1. Are there any aspects, or procedures you would like to be clarified? If yes, please describe in detail.

<ESMA\_QUESTION\_REPO\_107>

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<ESMA\_QUESTION\_REPO\_107>

1. Is there any other information that should be provided by the entity listed in Article 81(3) EMIR to facilitate the swift and timely establishment of access to data?

<ESMA\_QUESTION\_REPO\_108>

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<ESMA\_QUESTION\_REPO\_108>

1. “Providing both, pre and post haircut information would enable authorities to identify emerging risks on derivatives markets due to changes in the applied haircuts. On an aggregated basis, they could also be used to determine the weighted average level of haircuts applied per portfolio as well as its evolution over time”. [↑](#footnote-ref-2)
2. See Recital 41 of EMIR “It is important that market participants report all details regarding derivative contracts they have entered into to trade repositories. As a result, information on the risks inherent in derivatives markets will be centrally stored and easily accessible, inter alia, to ESMA, the relevant competent authorities, the European Systemic Risk Board (ESRB) and the relevant central banks of the ESCB” or Recital 43 “In order to allow for a comprehensive overview of the market and for assessing systemic risk, both CCP-cleared and non-CCP-cleared derivative contracts should be reported to trade repositories”. [↑](#footnote-ref-3)