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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 | European Fund and Asset Management Association (EFAMA) |
| Activity | Investment Services |
| Are you representing an association? |[x]
| Country/Region | Belgium |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_REPO\_1>

TYPE YOUR TEXT HERE

<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>

With reference to paragraph 11, an ease period on reconciliation would be welcome for the transition period.

With reference to paragraph 13, this is a welcome approach, however we would like to make sure that in addition to field 2.1 UTI, this also covers the fields 2.3 Prior UTI and 2.4 Subsequent position UTI (since, if the position is already open on Refit start date, the UTI might not be compliant to the new standards). We have included comments on the same also in the validation rule comments for the respective fields. Some clarification would then also be needed on how long ‘old type’ UTIs can be populated in fields 2.3 and 2.4.<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>

We expressly support the approach of reporting the transaction as a swap. Even in case of uncertainty about the nature of the transaction (one swap or two separate legs), the approach proposed by ESMA should lead to homogeneous reporting and remove some of the inconsistencies experienced under EMIR

<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>

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<ESMA\_QUESTION\_REPO\_6>

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

<ESMA\_QUESTION\_REPO\_7>

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<ESMA\_QUESTION\_REPO\_7>

1. Do you agree with the above understanding?

<ESMA\_QUESTION\_REPO\_8>

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<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>

Most rules relating to the reporting obligation with regards to the parties involved in the trade seem clear. However, we’re not entirely sure how an additional party potentially involved in the trade, namely a broker, needs to be taken into account for reporting purposes. The Q&A to the implementation of the Regulation (EU) No 648/2012 state “Yes” to the following question (TR Q9e): "If a broker is itself the counterparty (legal principal) to a trade, should it be reported in both the “broker” and “counterparty” fields?". On the other hand, the Final Report on technical standards states for field 1.15 (broker ID): “In the case a broker acts as intermediary for the counterparty 1 without becoming a counterparty himself, the counterparty 1 shall identify this broker by a unique code.” Thank you in advance for clarifying the requirement how to populate this particular field.

<ESMA\_QUESTION\_REPO\_9>

1. Do you agree with the above understanding?

<ESMA\_QUESTION\_REPO\_10>

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<ESMA\_QUESTION\_REPO\_10>

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

<ESMA\_QUESTION\_REPO\_11>

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<ESMA\_QUESTION\_REPO\_11>

1. Do you agree with the above understanding?

<ESMA\_QUESTION\_REPO\_12>

We’re not entirely sure whether there’s a conflict between margin notes 41 and 49 of the consultation paper. If an OTC derivative is lifted into the clearing process, would this mean a “step-in” of the clearing member or “clearing” as event type, and respectively termination or new as action type?

<ESMA\_QUESTION\_REPO\_12>

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

<ESMA\_QUESTION\_REPO\_13>

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<ESMA\_QUESTION\_REPO\_13>

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

<ESMA\_QUESTION\_REPO\_14>

With reference to point c in paragraph 65, the guidelines now state that NFC- LEI status should be 'issued' each time a derivative is concluded, however our view is that the NFC- LEI should be 'issued' also when there is a modification or correction of the report. A clear statement would be that the NFC- should maintain the LEI in 'issued' state throughout the trade lifecycle. We hope ESMA will consider this, as it would be in line with Article 9(2) of the draft ITS.

<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>

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<ESMA\_QUESTION\_REPO\_15>

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

<ESMA\_QUESTION\_REPO\_16>

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<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>

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<ESMA\_QUESTION\_REPO\_17>

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

<ESMA\_QUESTION\_REPO\_18>

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<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>

We agree with the proposal that only “margin update” and “correct” should be used to report collateral. It simplifies an already extended reporting obligation for collateral.

<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>

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<ESMA\_QUESTION\_REPO\_21>

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

<ESMA\_QUESTION\_REPO\_22>

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<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>

Conceptually, all action as well as event types are clear in terms of what they stand for. The comprehensive mapping table will also be beneficial during the preparation and implementation of reporting requirements under EMIR REFIT.

We do see significant challenges regarding the determination of applicable event types though.

First, the allocation of an action to an event type is not as clear cut as it would have to be in a scalable process. Most importantly, many institutions won’t have a clear data source to determine the appropriate event type for a particular action. Trade entry based implementation would require significant effort and cost. Any post trade approach would rely on a complex combination of data sourcing and logic. Needless to say, deriving event types based on post trade logic will most likely lead to inconsistent reporting results which in turn devalues the conclusions ESMA can draw from event type related information. We therefore appreciate any input as to how event types should be approached from a data sourcing and implementation perspective.

Finally, we would also appreciate clarification regarding dependencies to other fields, i.e. any type of consequential population of fields based on event types. This is also related to the question whether there will also be validation rules incorporating event types, similar to the validation rules for action types.

<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>

The description of the three linking IDs makes sense from a theoretical point of view. We do see significant practical challenges though and would hence appreciate any further information regarding potential implementation approaches, as well as practical examples.

For instance:

we’re not entirely sure how multiple choices for events need to be handled in terms of priority. There may well be instances in which an action is driven by more than one event type, i.e. is this then done by choice?

Also, when defining the modification and correction technical message structures, it should be carefully considered that linking IDs are not erased by accident when left blank in subsequent reports (while at the same time enabling erasing or correcting the fields if necessary).

<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>

In line with our answers to Q23 and Q24, we welcome any instance in which the event type field can be left blank. Position level reporting only aggravates the challenge arising from having to determine an event type on a trade level to start with. Our systems, not only on the trade entry side but across the front to back value chain, currently contain little if any detail that would facilitate the determination of an event type for a specific action. As it stands, we envisage designing a method to logically derive event types based on certain criteria.

<ESMA\_QUESTION\_REPO\_25>

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

<ESMA\_QUESTION\_REPO\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_26>

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

<ESMA\_QUESTION\_REPO\_27>

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<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>

Please clarify if there is a link between MiFIR TVTIC and EMIR RTN; are these expected to be the same code? We assume from the overall wording of the draft EMIR Refit documentation that RTN is not required for trades concluded on SI, please confirm. (And, in case RTN is indeed required for SI trades, please clarify how field 2.2 is to be reconciled when two SIs trade with each other.)

<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>

Generally we agree, however the paragraph 179 needs further clarification. The current text can be interpreted in at least two ways:

1. The guidelines state that it is not required to report incorrect information if such information is identified in internal systems. Stating this seems unnecessary.
2. The guidelines state that in case a report needs to be both modified and corrected on the same day, only one report (modification) needs to be sent, and this report may include both the modifications and corrections to the report.

In either case, we would welcome some guidance on how to report both modification and correction on the same day, especially if it would happen that the message reported first is rejected by the TR.

For example, if we recognize we have reported a wrong ISIN, and need to correct this, and also at the same time the trade has been confirmed and we need to modify confirmation means from N to E, we would send two messages; first a correction for the ISIN field, and then a modification for the confirmation means field. What if, in this scenario, the CORR message is rejected by TR, but before we receive the rejecting feedback, we have also sent the MODI message and the MODI message is accepted; in this case it would look like the ISIN is modified, not corrected. Also the event dates for these two reports might be different, and in this scenario the event date for the ISIN change would not be stored in TR.

It is not feasible to first send the CORR, then wait for TR feedback before sending the MODI message, since handling times can be long and this could lead to late reporting of the latter (MODI) report.

<ESMA\_QUESTION\_REPO\_30>

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

<ESMA\_QUESTION\_REPO\_31>

Generally we agree, however clarification is required regarding one scenario: If it is possible to report corrected data in a MODI message (in addition to the modified information, cf. response to question Q30), what event date should be used in such modification message, since the event date might be different for the correction and the modification?

<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>

Firstly, the allocation of an action to an event type is not as clear cut as it would have to be in a scalable process. Most importantly, many institutions won’t have a clear data source to determine the appropriate event type for a particular action. Trade entry based implementation would require significant effort and cost. Any post trade approach would rely on a complex combination of data sourcing and logic. Needless to say, deriving event types based on post trade logic will most likely lead to inconsistent reporting results which in turn devalues the conclusions ESMA can draw from event type related information. We therefore appreciate any input as to how event types should be approached from a data sourcing and implementation perspective.

We would also appreciate clarification regarding dependencies to other fields, i.e. any type of consequential population of fields based on event types. This is also related to the question whether there will also be validation rules incorporating event types, similar to the validation rules for action types.

We are also concerned about novations; Action types for novations in Table 11 are not in line with paragraph 41 of the guidelines, with the technical details regarding the field Prior UTI, with the novation reporting examples in section 7, or with paragraph 548 of the guidelines. For full novation, we would assume that remaining party reports 'Terminate + Step-in' for the old UTI (similarly as the Step out counterparty) and 'New + Step-in' with a new UTI (similarly as the Step in counterparty). If, for full novation, remaining party would send a Modify message, they would need to modify the LEI of the other counterparty, and we are under the impression that this is not allowed. For partial termination, we would assume that remaining party reports 'Modify + Step-in' according to the table (modifying the notional, most likely), but also 'New + Step-in' to match the report submitted by the Step in counterparty.

If action types for full and partial novations remain as is in Table 11, further examples of the full scenarios are really required, since the examples in section 7 do not cover the action types for novations described in Table 11.

<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>

TYPE YOUR TEXT HERE

<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>

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<ESMA\_QUESTION\_REPO\_34>

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

<ESMA\_QUESTION\_REPO\_35>

We acknowledge the intended alignment between SFTR and EMIR, as well as the intended process should the counterparty responsible for the generation of the UTI fail to do so. We would appreciate clarification, potentially in the form of recommendations, as to how long we, as reporting counterparty, should wait for the UTI to be generated by the other counterparty before generating one ourselves. We regularly generate UTIs, only to be provided with one at a later stage, complicating our overall reporting process. Any ESMA guidance in this respect, beyond the UTI generation waterfall, would be 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>

As it stands, the representation of instruments seems to be granular enough to allow clear mapping for reporting purposes.

<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>

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<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>

An NFC- might have derivatives with several FCs, each of them reporting on behalf of the NFC-. If such NFC- undergoes a corporate event, are all the FCs required to notify the TR, and are all FCs also required to pay the TRs fee related to the procedure? FCs (with contractual relationship with the TR) might have a procedure to charge the costs from the NFC-, and in this case the NFC- would then face this cost from several FCs.

The TRs requirements (especially with regard to ITS Art.8(2)e) related to LEI updates should be proportionate; in case for example the original merger documentation is in a language foreign to the TR, costs to acquire an authorised translation can be high. Such costs will not be faced by those entities whose native language is accepted by the TR. EU counterparties should be able to provide documentation in their native language without discrimination. The TR should bear the cost of translation.

<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>

Is there any prioritization between the fields 2.7 (ISIN), 2.8 (UPI) and 2.9 (CFI)? OR shall each field be populated as and when available?

<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>

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<ESMA\_QUESTION\_REPO\_42>

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

<ESMA\_QUESTION\_REPO\_43>

Yes, clarification is required regarding the RTS definition of field 2.18 Identifier of the basket’s constituents: "In case of custom baskets composed, among others, of financial instruments traded in a trading venue, only financial instruments traded in a trading venue shall be specified." This seems to imply that non-ToTV instruments should be removed from the reporting of a basket. While we recognise that this is in line with MiFIR requirements, it does not seem to be in line with the purpose of EMIR. Such approach would mean that the NCAs and ESMA are not getting a holistic view of the derivative contract. Fields 2.14 and 2.18 should be in line when it comes to what types of ISINs can be reported, and 2.14 does not include a limitation to only specify instruments traded in a trading venue.

<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>

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<ESMA\_QUESTION\_REPO\_46>

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

<ESMA\_QUESTION\_REPO\_47>

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<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>

Different methodologies for the determination of delta lead to different outcomes. Hence, we consider this to be a challenging field, particularly regarding reconciliation.

<ESMA\_QUESTION\_REPO\_48>

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

<ESMA\_QUESTION\_REPO\_49>

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<ESMA\_QUESTION\_REPO\_49>

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

<ESMA\_QUESTION\_REPO\_50>

Please confirm that in case only one of the counterparties is a SI, both should populate that SI MIC (except in the case where the non-SI counterparty does not know it is trading with a SI).

<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>

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<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>

As with linking IDs, we wish to note that when defining the modification and correction technical message structures, it should be carefully considered that other payment fields are not erased by accident when left blank in subsequent reports (while at the same time enabling erasing or correcting the fields if necessary).

<ESMA\_QUESTION\_REPO\_55>

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

<ESMA\_QUESTION\_REPO\_56>

It is hard to see any reason to define Effective date any differently for cash-settled commodity derivatives than the definition in RTS: "Unadjusted date at which obligations under the OTC derivative transaction come into effect [...]." Even though many commodity derivatives include a start date for the covered time period, to my understanding this start date is not the same as effective date. For example, in case collateral is exchanged among the counterparties of a cash-settled commodity derivative, typically the collateral obligations come into effect immediately after execution, thus making it clear that execution date is effective date for cash-settled commodity derivatives also. Whether the derivative is collateralized or not should not affect the general logic for effective date for cash-settled commodity derivatives.

Since effective date is matching field in reconciliation, both remaining parties of a novation should populate the same value. For the step-in party the obligations come into effect at the time of novation, therefore populating the novation date as effective date would seem logical. The original effective date has been reported in the original contract (terminated at the time of novation), and the reports are linked with the Prior UTI field, therefore all relevant data will be available to authorities.

<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>

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<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>

Regarding paragraph 356. While we understand ESMA's reasoning and the importance of a holistic view, this obligation potentially leads to major problems in reporting and reconciliation. To start, the example states that in packages eg. a spot element would need to be reported, and this means that a UTI is required for the spot element (and other elements that are not reportable). However, EMIR does not include a requirement for creating a UTI for other products than derivatives. On the other hand it is not completely clear what kinds of products these 'non-reportable other elements' could be, and whether the EMIR reporting standards are applicable to all types of products - and even if the standards could be applied, whether there is disambiguation that could give rise to reconciliation breaks. Furthermore, reporting entities and submitting entities have specifically built reporting systems and dataflows to include reportable derivatives and to not include non-reportable products. Major changes would need to be implemented in this logic to be able to process those non-reportable elements that are a part of a package, while simultaneously continuing to not report similar elements which are not part of a package. Therefore we suggest withdrawing the obligation to report non-reportable elements.

<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>

TYPE YOUR TEXT HERE

<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>

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<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_REPO\_63>

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

<ESMA\_QUESTION\_REPO\_64>

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<ESMA\_QUESTION\_REPO\_64>

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

<ESMA\_QUESTION\_REPO\_65>

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<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>

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<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>

The other payment fields do not seem applicable to this case. All in all, ESMA should carefully consider if the settlement date of the near leg is of significant value to the authorities. Many types of derivatives have several settlement dates, so it is not why other settlement dates than the final one should be reported for FX swaps if they are not required for other derivatives.

In summary, we’re not supportive of populating fields away from their original purpose which we consider to be the case here. As it stands, we don’t think the near leg should be reported using the other payment fields for example.

<ESMA\_QUESTION\_REPO\_68>

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

<ESMA\_QUESTION\_REPO\_69>

We’ve followed the historical debate about how FX forwards/swaps should be treated from a reporting perspective. That said, a variety of interpretations and ways to report continue to exist, leading to data quality and reconciliation issues. We would hence appreciate any further clarification in this respect.

<ESMA\_QUESTION\_REPO\_69>

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

<ESMA\_QUESTION\_REPO\_70>

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<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>

We support alternative 2a. While we understand that this puts the burden on the TR, it is a one-time implementation of the logic, and in the big picture it is more efficient that the few TRs implement this than that each reporting counterparty implements logic as in alternative 1.

Furthermore, alternative 1 may lead to different types of agreements with different counterparties, eventually requiring counterparties to process trade data in different manners depending on the counterparty. This type of logic may be difficult and costly to implement.

<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>

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<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>

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<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>

We have commented on the validation rules comments that it should be sufficient to report either field 2.119 or field 2.120, while currently both are required for energy derivatives. In case ESMA persists that both fields are mandatory for energy derivatives, an example of a contract where both fields indeed are populated with an EIC code would clarify the theme.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

No they should not, since the Error might be sent by mistake, and in that case removing the other side would affect the other counterparty, who has reported correctly. This type of incident will surface in reconciliation; the counterparty who has not sent an Error message sees the matching break and raises the issue with their counterparty, and the counterparties then figure out how to solve the issue (eg. assign a new UTI).

<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>

No, Field 1.14 should not be the only source for such determination. Reporting errors in this field (due to data issues or misinterpretation) would lead to erroneous exclusion or inclusion in the reconciliation process. While we recognise that reporting needs to be correct, in practice there will be errors, and having an error in one field should not have consequences as wide-reaching as these. We prefer using a wider set of fields, eg. also including GLEIF reference data for the determination.

<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>

As indicated in our introductory comment, we would find further clarification regarding reconciliation requirements not only beneficial but needed to address the challenges resulting from more stringent reconciliation requirements. This includes any pre-go-live arrangements that need to be put in place, as well as any ongoing requirement from the go-live date. Specifically, the Final Report indicates a certain relaxation of initially planned rules. Any further clarification in this respect would be much appreciated; a concise summary of all reconciliation requirements in particular would be helpful.

<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>

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<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>

It is unclear to us if all reconciliation breaks (i.e. new and prior ones) will be shown daily or only the delta compared to the previous day. At this point, it is impossible to estimate the associated cost on our side.

Also, does A mean that both sides should have valuation data reported in the last 14 calendar days to be included in reconciliation? If so, would this not exclude, reconciliation-wise, cases where one counterparty should be sending valuations but is not doing so? Also how would this work if the two counterparties report to different TRs; one TR sees that there is fresh valuations, and sends the data for inter-TR reconciliation, but the other TR does not see fresh valuations and does not send it to inter-TR process. This leads to a reconciliation break only visible to the first counterparty, is this the intent?

An interesting case to be considered, especially if alternative B is chosen, is one where NFC- has reported valuation data, even though not required to do so, but then stops sending daily valuations. At the same time the FC keeps sending daily valuations. This will lead to unnecessary reconciliation breaks, as the FC reports the latest valuation, but for NFC- the valuation would remain static maybe for years. So we would strongly recommend completely excluding NFC- from valuation reconciliation.

We would like to take this opportunity to urge ESMA to consider using a combination of fields 1.11 and 1.13 to determine whether the other counterparty is NFC-, and whether thus the valuation fields need to be reconciled. However it should be kept in mind that there may be reporting errors in these fields.

<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, mostly because alternative A is not feasible. If our bank concludes similar derivatives with many different counterparties, we need to be able to report them consistently and not have a different reporting approach depending on who the other counterparty is and what has been agreed with them, as would happen with alternative A. We understand that alternative B puts the burden on the TRs, but it does not seem too complicated to implement the logic described in paragraph 583 of the consultation.

<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>

Yes, generally agree, however the SI case could be further clarified; in a situation where one counterparty does not know that it is trading with a SI (possible scenario according to the definition of field 2.41 in draft RTS), one counterparty would populate XOFF and the other would populate their own SI MIC. Should this be considered a reconciliation break or not?

<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>

From our point of view, it is critical to receive detailed feedback from the TR. As it stands, rejection feedback often isn’t sufficient to identify and address the underlying issue. We generally consider it challenging to establish a scalable set up for the purposes of reconciliation and would therefore appreciate any efforts towards a best practice approach.

<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>

Yes, generally agree, however missing valuations report should not be created for NFC- counterparties, who have no obligation to report valuations. The report should not be created even in the case when NFC- has reported valuations and then stopped reporting valuations, resulting in a valuation dated more than 14 days earlier. If the report was created for NFC-, this would lead to unnecessary complications for the FCs, who are generally the ERRs for NFCs- and who, in practice, would be the entities processing the missing valuations reports.

<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>

Yes, generally agree, however similarly as for missing valuations report, the missing margin information report should not be created for NFC- counterparties, who have no obligation to report margin information. The report should not be created even in the case when NFC- has reported margins and then stopped reporting margins, resulting in margin information dated more than 14 days earlier. If the report was created for NFC-, this would lead to unnecessary complications for the FCs, who are the ERRs for NFCs- and who, in practice, would be the entities processing the reports.

<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>

We do support any means to identify abnormal values, including an end-of-day report. This will help us to challenge and test our reporting logic, as well as highlight any data quality issue there may be. Stating the obvious, user friendliness and ease of processing are essential in this respect.

We do not fully understand how this approach ,however, 'avoids a scenario where TRs set different threshold levels resulting in a single trade being considered to be over the threshold level by one TR, but under the threshold level by another', since there is no common method described, and there is no obligation on the TRs to find a common method or even to apply common thresholds. Could this be clarified? How do the TRs come to a mutual conclusion on the thresholds?

We urge ESMA to consider using the field 2.11 Asset Class instead of 2.9 Product classification to categorize derivatives for this purpose. While we understand that the CFI code needs to be correct, our experience is that it is easier to get the Asset Class correct, and using that field would result in higher-quality categorization.

<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>

We understand the theoretical aspect but wondered how this will be handled from a practical perspective. If action type “Revive” is used beyond the 30 day deadline, will this simply not be possible technically i.e. will it be rejected?

<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>

TYPE YOUR TEXT HERE

<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>

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<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>

TYPE YOUR TEXT HERE

<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>