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| Reply form to the Consultation Paper on the amendments to certain technical standards for commodity derivatives  |
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**Responding to this paper**

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions. Comments 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.

ESMA will consider all comments received by **23 August 2023.**

**Instructions**

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

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Use this form and send your responses in Word format (**pdf documents will not be considered except for annexes**);
3. Please do not remove tags of the type <ESMA\_QUESTION \_PMPR\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
4. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
5. When you have drafted your response, name your response form according to the following convention: ESMA\_PMPR\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ‘ABCD’, the response form would be entitled ESMA\_PMPR\_ABCD\_RESPONSEFORM.
6. Upload the form containing your responses, **in Word format**, to ESMA’s website (www.esma.europa.eu under the heading “Your input – Open Consultations” -> “Consultation Paper on the amendments to certain technical standards for commodity derivatives”).

**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 publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

# This consultation paper is primarily of interest to trading venues, investment firms and non-financial counterparties trading in commodity derivatives, but responses are also sought from any other market participant including trade associations, industry bodies and investors.

**General information about respondent**

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| Name of the company / organisation | EUROPEX – Association of European Energy Exchanges |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |[x]
| Country/Region | BELGIUM |

**Questions**

1. Do you agree with ESMA’s proposal to extend the requirements to set, review and report accountability levels to trading venues trading derivatives on emission allowances? Do you have any other comments on ESMA’s proposed amendments? Please elaborate.

<ESMA\_QUESTION\_PMPR\_1>

We agree with the ESMA proposal to extend the requirements to set, review and report accountability levels to trading venues offering derivatives on emission allowances

<ESMA\_QUESTION\_PMPR\_1>

1. Do you foresee any challenges with the use of JSON format comparing to XML? Please provide estimates of the costs and benefits (short- and long term) related to potential transition to JSON?

<ESMA\_QUESTION\_PMPR\_2>

As a general consideration, we appreciate the ESMA’s ongoing efforts in consulting stakeholders on the amended technical standards in a prompt manner. We believe that the potential changes to ITS 4 must include an implementation period of at least six months from the time when these changes are adopted by the co-legislators in order to take into account the preparation of the new requirements, discussions with the project owner and transition to the project developer. This is particularly the case in case a change from XML to JSON files is required, a change which – also pointed out by ESMA in the consultation paper – requires a gradual transition to properly migrate and ensure data consistency.

The only major challenge we envisage in using the JSON format file is the time needed to execute the migration. Therefore, we believe that an implementation period of at least six months must be foreseen.

<ESMA\_QUESTION\_PMPR\_2>

1. Do you agree with the other proposals to change ITS 4? Please use the reference number in the table above to provide comments on a specific proposal. In relation to the proposed change 5, are there other units of underlying to be added to the existing list including for reporting the information on emission allowances? In relation to the proposed change 7, are there other position types that should be added to provide more granular reporting, beyond the existing (futures, options and other)? In relation to the proposed change 8, do you foresee any scenarios in which the possibility to use the National ID should be retained?

<ESMA\_QUESTION\_PMPR\_3>

1. **Add a field “Report type” in Table 1 of Annex I of ITS 4 to reflect the existence of two weekly reports, one excluding options.**

We are fine with it.

1. **Add a field “Report type” in Table 3 of Annex I of ITS 4 to reflect the existence of two weekly reports, one excluding options. This field takes the value ‘COMB’ for the report combining futures and options, and the value ‘FUTR’ for the report excluding options.**

We are fine with it.

1. **Amend the description of the field “number of positions” in Table 3 of Annex I of ITS 4 to reflect the existence of two weekly reports, as follows “If the field “Report type” is equal to ‘COMB’, option contracts shall be included in the aggregation and reported on a delta-equivalent basis. If the field “Report type” is equal to ‘FUTR’, option contracts shall not be included in the aggregation.”**

We are fine with it.

1. **Delete references to emission allowances (spot) in ITS 4**

We are fine with it.

1. **Amend the description of the field “Notation of the position quantity” in Table 3 of Annex I of ITS 4 (weekly position reports) to specify that positions in derivatives on electricity and natural gas should be expressed in units of underlying and that positions in other derivatives should be expressed in lots. In the same field, amend the format accordingly.**

We agree that harmonising the unit of reporting would be beneficial for all users of the weekly position reports. In order to easily compare weekly position reports, we believe it makes most sense to report all these contracts in MWh.

In this context, we would appreciate it if ESMA would clarify what the threshold is for publishing weekly position reports. While it is clear that in lots the threshold is 10.000, it is not clear to us what the threshold is if MWh is used. Furthermore, we would like to highlight that if one unit of measurement prevailed, there would be no need for a code.

To the question whether there are other units of underlying to be added to the existing list including for reporting the information on emission allowances, we respond that there is not other units.

1. **Amend the descriptions and formats of the fields “Position quantity” and “Notation of the position quantity” in Table 2 of Annex II of ITS 4 (daily position reports), to align with the above changes on weekly position reports.**

We refer to our response right above in questions 5.

1. **Drafting changes to fields “Position type”, “Position maturity” and “Delta equivalent position quantity” in Table 2 of Annex II of ITS 4 (daily position reports): deletion of reference to emission allowances, and deletion of code ‘EMIS’**

The proposed change 7 may create an issue that is not documented in the consultation. Today, futures based on emission allowances are categorised as Position Type “EMIS”. EMIS positions only have a position maturity of “SPOT”. With the suggested withdrawal of the EMIS category, emission allowance futures will be changed to be Position Type FUTR and will need to be reported with position maturities of SPOT (the spot month contract) and OTHR (all other contract maturities). In this case, Europex strongly recommends specifying that in emissions allowance futures the spot month of a contract is the December maturity, as the main futures contract maturity traded in emissions allowances is typically the December contract. This approach is in line with position management arrangements of exchanges, which sets separate accountability levels for the December emission allowances contract (the spot month contract) and all other contract maturities.

Without the above-described correct identification of the spot month contract in emission allowance futures, Europex does not support withdrawing the EMIS category. The incorrect classification of the spot month contract would create an artificial division that doesn’t reflect how the emission allowance futures market operates.

1. **Drafting changes to the fields “Position holder ID”, “Reporting entity ID” and “Ultimate parent ID” in Table 2 of Annex II of ITS 4 (daily position reports): clarifying when the National ID is expected to be used**

We are fine with it. To the question whether we foresee any scenarios in which the possibility to use the National ID should be retained, we do not foresee it. In this context, we believe it should only be retained for position holder and ultimate parent.

1. **Change the format requirements of daily and weekly reports (Article 3 of ITS 4) from XML to JSON**

The only major challenge we envisage in using the JSON format file is the time needed to execute the migration. Therefore, we believe that an additional period of six months must be granted.

<ESMA\_QUESTION\_PMPR\_3>

1. Do you support the draft Technical Advice related to Article 83 of CDR 2017/5654?

<ESMA\_QUESTION\_PMPR\_4>

We would appreciate it if ESMA would clarify the threshold for publishing weekly position reports, in terms of MWh for power and gas contracts, and in terms of lots for all other commodity derivative contracts. While it is clear that the latter is 10.000 lots, it is not clear to us what the threshold is if we use a different unit of measurement.

<ESMA\_QUESTION\_PMPR\_4>