

13th February 2015

EACH response – ESMA consultation paper ‘Review of the technical standards on reporting under Article 9 of EMIR’ – ESMA/2014/1352

1. Introduction

The European Association of CCP Clearing Houses (EACH) represents the interests of CCPs in Europe since 1992. EACH currently has 20 members from 16 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96.

EACH welcomes the opportunity to provide input in the development of the EMIR technical standards.

Below you will find the responses to the questions of the discussion paper that we believe are relevant and have an impact on CCPs. As requested, we have indicated the number of the question to which our responses refer and propose alternatives for ESMA to consider when needed.

2. Response to specific questions

Q1: Do you envisage any difficulties with removing the ‘other’ category from derivative class and type descriptions in Articles 4(3)(a) and 4(3)(b) of ITS 1247/2012? If so, what additional derivative class(es) and type(s) would need to be included? Please elaborate.

‘Other’

EACH believes that it makes sense to maintain the ‘Other’ category. EACH believes that it would be more appropriate for ESMA to analyse why reporting counterparties use this value and, from this understanding, provide further clarification about when existing categories should be used or extend the list of available values.

The ‘Other’ category could for example be useful in the case of new types of products, at the moment not yet envisaged. If this category did not exist, these products would have to be subject to the approval of the relevant trade repository (TR) and most probably to a software modification on the TR as well as on the participant’s side. That might delay the delivery time of business projects related to this type of products.

Additional clarification

EACH believes that ESMA should provide guidance about which contract type and asset class has to be chosen for products where it is not obvious, e.g. for FX Swaps: contract type SW=Swap, asset class CU= Currency.

Q2: Do you think the clarifications introduced in this section adequately reflect the derivatives market and will help improve the data quality of reports? Will the proposed changes cause significant new difficulties? Please elaborate.

Adequate implementation time frame

EACH generally appreciates the clarifications introduced. We however note that the proposed changes will cause significant implementation and testing effort.

The changes in fields are not minor but add considerable efforts due to:

- 29 new fields (+13 renamed fields),
- 19 fields with new or updated content/description/format,
- 4 deleted fields

Please see separate field list comment table (excel file).

For this reason EACH believes that changes should be well-considered and an adequate time frame for the implementation should be chosen. We suggest setting this time frame to at least 15 months following the publication of the final legislative act.

Our comments on paragraphs 21 to 24 are included in the following question.

Alternatives proposed

Paragraph 25

In relation to paragraph 25 and article 3a of Annex V an explanation of who should be the buyer of a basis swap (floating for floating) should be added.

It is felt that in certain circumstances the logic contained in Article 3a would be complex to implement and is not comprehensive enough to cover all scenarios. For example, **further clarification from ESMA would be required to understand what the buy/sell indicator should be populated with** for a Float / Float i.e. basis swap, where there is no fixed rate paid, and FRAs where the terminology used is different so does not seamlessly translate into a 'buyer' or 'seller'.

EACH would also recommend ESMA to consider an alternative approach for those products that are not 'bought' or 'sold' e.g. Interest Rate Swaps. The simplest approach would be for the relevant asset class specific fields to be augmented to include whether leg 1 is being paid or received by the reporting counterparty. Alternatively, the existing fields could be maintained with the Trade Repositories (TRs) performing an additional validation of the buy / sell field to match each specific leg and validate that both reporting counterparties agree that one side is paying and the other is receiving the same leg. EACH does not consider this to be a complex logic for TRs to implement.

In the case of Foreign Currency Swaps or Forwards, the reporting of the buy/sell indicator, as defined in Article 3a, may work in principle for Non Deliverable Forwards (NDFs) as only USD is exchanged but proves complex and ambiguous for other FX products as it requires that the users of the end data have prior knowledge and understanding of the business logic being proposed in this Article. To avoid this, **we would suggest that ESMA introduces additional**

fields such that the data is explicit as to which currency is being bought or sold or follow the alternative approaches outlined above.

Q3: What difficulties do you anticipate with the approaches for the population of the mark to market valuation described in paragraphs 21 or 19 respectively? Please elaborate and specify for each type of contract what would be the most practical and industry consistent way to populate this field in line with either of the approaches set out in paragraphs 21 and 23.

Agreement with ESMA's proposal

We agree that mark-to-market value requires clarification.

Alternatives suggested to ESMA's proposals

Paragraph 22

From our point of view also **for options the option value is the replacement cost**. The value of the contract should always be the current replacement cost of the contract at the time of valuation. This should not pose any challenges since that is what market participants need to monitor regularly.

Paragraph 23

EACH believes that **the economic value should be the one to use**, as it is the concept used in portfolio reconciliation and insolvency proceedings. However, in order to accurately calculate the economic value, EACH suggests that ESMA discusses the different possibilities with an **industry working group**.

If the above approach was not possible, as a **second best alternative** we would suggest the following formula:

- Futures and OTC asset classes operating a futures-style bookkeeping model:
[Settlement Price * Contract Value Factor * Net Quantity]
- OTC (Rates and FX): Net Present Value (NPV) We feel this most closely aligns with par

Table 1 Field 17

From our point of view, the **details to be reported in the explanation of Table 1 Field 17 are unclear** as they again state 'mark to market valuation' against the description of the field 'value of contract' or the explanation in paragraph 21 (market price and replacement cost).

Collateral portfolio code should be alphanumerical. We welcome the change in this sense in annex V.

Paragraph 24

EACH believes that paragraph 24 is unclear as it currently stands. We presume that the conclusion is that any Variation Margin (VM) paid out is not part of the actual replacement value and therefore should not be part of the calculated Mark-to-Market value. We agree with this approach. In order to avoid confusion, **EACH would welcome a clarification in this line**.

Q4: Do you think the adaptations illustrated in this section adequately reflect the derivatives market and will help improve the data quality of reports? Will the proposed changes cause significant new difficulties? Please elaborate.

Alternatives suggested to ESMA's proposals

Paragraph 29

A lot of the clients of EACH members' clients who delegate reporting to the latter do not have LEI's, so enforcing it will be challenging.

In relation to paragraph 29 where it is stated that "it is proposed to delete the possibility of using a client code' and 'there is no need to provide the possibility of using less robust identifiers like BICs or Interim Entity Identifiers any longer and therefore there are proposed to be deleted as well". ESMA must acknowledge that there is a retail business in the derivatives exchanges, where individual or small firms do trade standard derivatives as futures and options. To this kind of entities the reporting obligation set in EMIR can impose significant additional costs; in the approach proposed they would have to obtain a LEI, which has an annual cost, the reporting costs, etc. In our opinion, ESMA should simplify all the reporting obligations for this retail side of the business. Their counterparties (typically their non-clearing members or clearing members) should report their trades against them but this kind of entities shouldn't have a reporting obligation. Currently individual persons do not have reporting obligation **but we would like ESMA to consider that small firms should not have reporting obligation either**. In any case, client codes should be used for individuals and small firms.

Paragraph 33

We agree Paragraph 33 but only in conjunction with the inclusion of the new field.

Paragraph 34

Original notional - EACH would like **to clarify that the 'original notional' mentioned in paragraph 34 can only apply to OTC products and not to exchange-traded derivatives**, where transactions are netted (compressed) daily and a position changes with every trade and does not have an original notional.

Notional schedule - Furthermore for OTC products already at the time of the conclusion of the contract the notional schedule is known. Therefore **we believe it would be better to report the notional schedule according to ISDA standards**, i.e. a list of Dates and the notional amount valid from that respective dates in case of contracts where the notional changes over time. This way it is not necessary to update the report with every new date arising and the information already known at the start is fully available to regulators.

Paragraph 35

EACH **suggests increasing the field size of Table 2 Field 2 to be consistent with the field size for the AII code under MIFID reporting** thereby allowing the AII code (which is the MIC + Exchange Product ID + Derivative type + Put/Call identifier + Expiry date + Strike price) reported under MIFID to be reported in Table 2, Field 2.

Paragraph 36

We would rather **propose to rename "Transaction Reference Number" to "Unique execution number" instead of "Report tracking number"** because report tracking number would leave the impression that it is unique per record reported. However the purpose is to have the same number for report records belonging to the same execution.

Paragraph 37

In our opinion we **would encourage ESMA to promote the endorsement of a UPI across Europe** rather than deleting the mentions to the UPI as proposed in this paragraph.

Paragraph 39

We see the **need to be able to cancel a contract even on the day of maturity** as this can happen before end of day and is different to the contract maturing at the end of the maturity day.

Paragraph 40

EACH **disagrees with the requirement to report early terminations as cancels** in paragraph 40. These are terminations, not cancels. We would suggest the netting of OTC IRS as an example of early termination.

Q5: Do you think the introduction of new values and fields adequately reflect the derivatives market and will help improve the data quality of reports? Will the proposed changes cause significant new difficulties? Please elaborate.

Agreement with ESMA's proposals

Paragraph 43

We welcome the idea of identifying whether a report is of a trade or of a position.

Paragraphs 47 and 48

We presume that those fields are optional and can be left empty (e.g. there is no CFI/UIP for OTC products). We **would appreciate if ESMA could confirm this understanding**.

Alternatives suggested to ESMA's proposals

As a general note, EACH would like to stress that the implementation of the reporting obligation has increased the reporting requirements significantly and has therefore supposed a significant cost increase for the industry. In addition, there is a consensus that there is still much to do in order to provide meaningful information. Any improvement will be welcome, but we would encourage regulators to check in depth with the industry that any eventual proposed change is really an improvement in order to reach a consensus on how some fields should be filled-in. EACH believes that focus should be on improving data quality with existing reporting fields, and it is therefore crucial to ensure that there is an adequate cost-benefit analysis.

EACH believes that the requirement to report margin numbers to trade repositories is not consistent with the current record keeping requirements under Article 29 of EMIR. In order to

ensure consistency, **we suggest that competent authorities and other stakeholders obtain the information related to margin requirements in line with EMIR Level 1 text.**

Paragraph 45

We **do not see the need to identify the country of the main residence of the other counterparty.** For all relevant counterparties this information should be provided in the LEI.

Paragraph 52

The collateral held by a CCP is not always identical to the margin requirement. This could be a result of excess margin being held on account (either voluntarily or through additional collateralisation of large positions or stress-test calculations) or through the calculation of uncollateralised margin credit (e.g. NLV or option premium). Therefore **EACH believes that asking for different forms of margin instead of collateral adds unnecessary complexity without adding additional value.**

Furthermore, we are of the opinion that VM which is paid out does not reflect collateral as it cannot be used in the case of default. Therefore **the inclusion of paid out VM in the collateral value would overstate available collateral and would not fit the replacement value** of the contract.

We **do not see any additional value in providing the collateral received as this information can already be extracted from the posted collateral.** Regulators should rather ensure that posted collateral is reported correctly than having both sides to report the same number.

We also believe that **the initial margin field as described in Paragraph 52 would not represent the collateral collected by the CCP from the Clearing Member but would reflect the IM requirement for the trade.** EACH believes that this would provide a skewed view to regulators because the IM value does not reflect the collateral held by the CCP and could not identify overcollateralization through the posting of client excess for instance, which would be available in case of Clearing Member default.

Paragraphs 55

EACH believes that the current proposal for defining responsibilities for UTI generation is ambiguous as it states that for centrally executed and cleared trade the entity responsible for generating the UTI can be either the CCP or the execution venue. In line with the amendment to Article 2(1) and to eliminate any uncertainty with respect to the generating party for all centrally-cleared trades, **EACH proposes that for centrally executed and cleared trades the unique trade identifier shall be generated at the point of clearing by the CCP for the clearing member.**

Q6: In your view, which of the reportable fields should permit for negative values as per paragraph 40? Please explain.

For the **following fields negative values should be allowed:**

- 1.17 Value of contract
- 2.16 Price / rate
- 2.19 + 2.20 Notionals

2.22 Quantity

2.23 Up-front payment

When reporting NPV for OTC Cleared IRS for example in Table 1 Field 17 (Mark to Market), looking across both sides of the swap, by definition one side carries a positive NPV and the other side a negative NPV.

Q7: Do you anticipate any difficulties with populating the corporate sector of the reporting counterparty field for non-financials as described in paragraph 42? Please elaborate.

Paragraph 46

The clients of EACH members have many smaller private clients which delegate to them. It would be difficult to find an appropriate sector or sectors for them.

In our view **only non-financials covered by the clearing obligation should report their corporate sector (paragraph 46).**

Q8: Do you envisage any difficulties with the approach described in paragraph 45 for the identification of indices and baskets? Please elaborate and specify what would be the most practical and industry consistent way to identify indices and baskets.

N.B. – Although question 8 above refers to paragraph 45, we understand this is a typo and would like to clarify that our response refers to the subject of identification of indices and baskets included in paragraph 49.

This should only apply to OTC products since ETD products are standard products where the composition is known from the exchange reference data as public information. Sending the same product master data with every transaction/position for standard ETD products would also be redundant and lead to possible inconsistencies.

For the products to which this applies, **EACH believes that any basket should have its proper code to be reported in the trade repository layout.** The basket composition need to be managed outside of the trade layout.

Q9: Do you think the introduction of the dedicated section on Credit Derivatives will allow to adequately reflect details of the relevant contracts? Please elaborate.

EACH members **agree in principle with the proposal but would be interested in reviewing the suggested Table 2 fields before it is adopted.** Any new fields for credit derivatives should be **conforming to ISDA standards** and to reporting under the Dodd-Frank-Act.

Q10: The current approach to reporting means that strategies such as straddles cannot usually be reported on a single report but instead have to be decomposed and reported as multiple derivative contracts. This is believed to cause difficulties reconciling the reports with firms' internal systems and also difficulties in reporting valuations where the market price may reflect the strategy rather than the individual components. Would it be valuable to allow for strategies to be reported directly as single reports? If so, how should this be achieved? For example, would additional values in the Option Type field (Current Table 2 Field 55) achieve this or would other changes also be needed? What sorts of strategies could and should be identified in this sort of way?

From a CCP perspective, **EACH sees no benefit in allowing strategies to be reported directly as single reports, although we do not oppose to an optional reporting** where sufficient information is available.

From an ETD perspective, we strongly disagree with the idea to allow strategies to be reported directly as single reports. Medium-big option player's positions will be composed of complex positions which will be very different of a straddle, butterfly, etc. In ETDs the price used to value a position will be provided by the CCP which do not provide the EOD price of a strategy but of every different option.

In addition, **the current approach to report strategies as separate contracts for all legs is the standard approach in the internal systems.** The valuation is anyway the sum of the value of all legs. Trying to fit any possible strategy into an EMIR reporting record would require a lot of new fields and would never provide as good a representation as the separate reporting of the legs.

We would recommend **the reporting of each derivative contract contained within a strategy to be flagged as such** rather than synthetically reporting this as a single line.

Q11: Do you think that clarifying notional in the following way would add clarity and would be sufficient to report the main types of derivatives:

56. In the case of swaps, futures and forwards traded in monetary units, original notional shall be defined as the reference amount from which contractual payments are determined in derivatives markets;

57. In the case of options, contracts for difference and commodity derivatives designated in units such as barrels or tons, original notional shall be defined as the resulting amount of the derivative's underlying assets at the applicable price at the date of conclusion of the contract;

58. In the case of contracts where the notional is calculated using the price of the underlying asset and the price will only be available at the time of settlement, the original notional shall be defined by using the end of day settlement price of the underlying asset at the date of conclusion of the contract;

59. In the case of contracts where the notional, due to the characteristics of the contract, varies over time, the original notional shall be the one valid on the date of conclusion of the contract.

Please elaborate.

Paragraph 57

EACH agrees with the proposals above with the exception of 57. As stated before for Exchange Traded Derivatives a differentiation of original and actual notional does not make sense.

The above definitions for notional still leave room for ambiguity so we advise to include examples. Paragraph 60: E.g. for a Bund future we currently report as notional the following: number of contracts x multiplier x trade price. If you talk about reference amount, it might be better to just report the 100.000 EUR contract size.

Paragraph 59

We would like **to confirm that ESMA means the resulting quantity of the underlying asset** to be reported as notional.

Comments on concrete parts of the proposed RTS

Annex IV – Draft RTS – Recital (1):

So far it has been clear that if there is a bilateral trade which is then cleared, the original bilateral trade is cancelled and new cleared transactions between the CCP and its clearing members as well as between the clearing member and the customer are effected. So clearly the CCP is a counterparty of the clearing member. **We believe this section contradicts this understanding and should therefore be removed.**

Annex IV – Draft RTS – Recital (2):

It is correct to compare exposure with exchanged collateral. However, margin requirements and collateral are not the same. Posted collateral can be more or less than margin requirements and differentiating it by different margin types is not possible since collateral is posted against the total margin requirements. In addition you would also have to consider option premium margin. Furthermore requiring double reporting of collateral by both sides is doubling the effort. **Instead, correct reporting by one side should be achieved by providing clear guidance.**

Annex IV – Draft RTS – Article 1 (2):

We **do not agree to also include received collateral in addition to posted collateral.** This double reporting is not in the interest of an efficient regulation.

Annex IV – Draft RTS – Article 2:

Entry into force – We believe the industry needs to be given sufficient time between finalisation of clear unambiguous rules and the obligation to report accordingly. **For the changes envisaged a preparation time of at least 15 months is required.**

Annex V – Draft ITS – Article 1 (1) – Amendment Article 3(2) (a):

Excluding the BIC as possible counterparty identifier if there is no LEI available **is counterproductive.**

Annex V – Draft ITS – Article 1 (2) – new Article 3a:

We believe that the complex rules for the definition of counterparty side are incomplete and ineffective. We believe **it would be much easier to stick to the rule that the buyer is the payer of leg 1** and treat a report where a counterparty has reported leg A as leg 1 and leg B as leg 2 and counterparty side as "Buy" as equivalent to a report where it shows leg B as leg 1 and leg A as leg 2 and counterparty side as "Sell" and vice versa.

Annex V – Draft ITS – Article 1 (2) – new Article 3 b:

There is no agreement between counterparties to only post a certain margin as collateral. Either VM is paid out in which case exposure is reduced accordingly and therefore does not have to be collateralised and VM is not collateral; or VM is not paid out and then has to be collateralised. **We believe that the current definition is therefore unclear and incomplete.**

We request ESMA to please provide a table showing all possible combinations and how the collateralisation field should be filled. A suggested table could be:

Reporting collateral	CP posting	Other counterparty posting collateral	Collateralisation field
No		No	uncollateralised
Yes		No	one-way collateralised
No		Yes	one-way collateralised
Yes		Yes	fully collateralised

Annex V – Draft ITS – Article 1 (2) – new Article 4 c:

EACH believes it is not feasible to ask single market participants to develop a derivative product classification code which is "unique, ..., open source, scalable (?), available at reasonable cost basis, subject to an appropriate governance framework". This would be a task for the Regulatory Oversight Committee. **As long as such a code is not available it must be possible to leave the product classification empty. Therefore we believe that part 4 of the new article 4c should be removed.**

Comments to field list in Annex IV and V:

Please see separate Excel file.

We would kindly request ESMA **to clearly define on trade and position level which fields are mandatory** in what circumstances and how empty or null values can be reported.

-END-

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