
EACH response to the ESMA Consultation Paper on draft Guidelines for reporting under EMIR

September 2021

Introduction

The European Association of CCP Clearing Houses (EACH) represents the interests of Central Counterparties (CCPs) in Europe since 1992. CCPs are financial market infrastructures that significantly contribute to safer, more efficient and transparent global financial markets. EACH currently has 19 Members from 15 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96.

EACH appreciates the opportunity to provide feedback to the ESMA Consultation Paper ESMA74-362-1893 "Draft Guidelines for reporting under EMIR".

EACH members welcome increased guidance and kindly suggest ESMA works collaboratively with the industry to provide more extensive guidance and worked examples of reporting. In particular, we believe guidance is needed for valuation reporting considering the importance of monitoring systemic risk in the financial system. ESMA expects counterparties to report the value of the contract provided by the CCPs, but in order to harmonize the CCP valuation reporting and for regulators to achieve risk oversight, we need more extensive guidance and worked examples.

We also encourage ESMA to consider the differences between ETD and OTC reporting. We believe that for ETD risk sits at the position level, and it is in regulators' interest to focus on ETD position level reporting rather than transaction level reporting to effectively monitor systemic risk. It is also important for ESMA to consider proportionality. For instance, we strongly believe that reporting zero contract value on a daily basis when a position is netted to zero adds no value to regulators, it only put additional operational burden on reporting counterparties.

We believe a strong dialogue between regulators and market participant is essential to improve the reporting consistency under EMIR. EACH welcomes collaborations between ESMA and CCPs, and we would like to continue to engage with ESMA and other regulators.

EACH Responses

Q10. Do you agree with the above understanding?

In paragraph 30, ESMA states that derivatives within the same legal entity (e.g. between two desks or between two branches of the same entity) should not be reported under EMIR as they do not involve two counterparties. The only exception is the situation in which a Clearing Member defaults and the CCP temporarily assumes both sides of the outstanding derivative contracts.

EACH members kindly ask ESMA to clarify whether CCPs are expected to populate field 2.37 Intragroup with 'True' in the situation described above, i.e. where a Clearing Member defaults and the CCP temporarily assumes both side of the outstanding derivative contracts.

Q12. Do you agree with the above understanding?

EACH members ask ESMA to clarify paragraph 47. It states that "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, as required. As the obligation to report should be complied with by T+1 (T being the date of conclusion/modification/termination of the contract), there is no other need to send daily reports if there are no conclusion, modifications to the contract or termination." EACH Members kindly ask ESMA to clarify the wording "several days" as it leaves room for interpretation.

Q24. 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?

We agree that the linking IDs should be reported only in the reports pertaining to a given lifecycle event and should not be included in all subsequent reports submitted for a given derivative. In addition, EACH members would like to raise the following issues related to linking IDs.

Prior UTI is applicable in the event of clearing unless the derivative was concluded on a trading venue or a third-country organised trading platform and cleared by a CCP on the same day. Clarification is needed when a new derivative is concluded bilaterally, not on a trading venue, and cleared afterwards. EACH members encourage ESMA to clarify that CCPs are not required to populate the UTI of the bilateral trade in the prior UTI field for such cases. CCPs do not have any information of the UTI of the bilateral derivative and it would require extensive system developments to facilitate solutions where Clearing Members can provide the UTI of the bilateral trade to CCPs. It would also put additional operational burden on Clearing Members to provide that information to CCPs. Moreover, CCPs are not required to populate the prior UTI of the bilateral transaction in the case of CCP-cleared SFTs under SFTR. Therefore, we kindly ask ESMA to align EMIR with SFTR, and clarify that CCPs are not expected to report the prior UTI of the bilateral derivative.

We also believe that the use of subsequent position UTI is a technical challenge due to the many to one relationship between transactions and the end-of-day position, e.g. one record can be compressed into multiple positions. We are of the opinion that clarification is needed whether multiple UTIs can be populated in the linking ID fields.

Q25. 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?

We agree to leave the event type blank in the case of multiple events impacting the same position on a given day. However, there are CCPs that do not have systems able to distinguish between one or multiple events impacting the positions on a given day. For at least one CCP, 5% of the reported positions on a given day relate to only one reportable event intraday, 3% of reported positions relate to more than one reportable events intraday, and more than 90% of reported positions have no reportable event intraday (such as a change in price). We believe that the event type should be left blank when reporting positions.

Q26. Do you agree with the proposed clarifications concerning population of certain fields at position level?

We encourage ESMA to reconsider the population of timestamp fields at position level as stated in paragraphs 145 and 147. According to current best practice, Execution timestamp is left blank and Clearing timestamp is reported with a default timestamp of '23:59:00'. The reason for this is that positions are neither executed nor cleared. We believe that populating these timestamp fields with the date of the trade that has the most recent execution timestamp adds no value for regulators, is a technical challenge for reporting counterparties, and would likely lead to an increase in reconciliation breaks as counterparties might close out trades in different orders. We suggest that Execution timestamp and Clearing timestamp are left blank in position level reports.

If ESMA keeps the requirement of populating the Execution timestamp and Clearing timestamp with the date of the trade that has the most recent execution timestamp, i.e. similar as the field Effective date, we ask ESMA to clarify that we are only expected to populate the date and not the timestamp as this is requirements for the field Effective date.

Q27. Do you need any other clarification with regards to the position level reporting?

Reporting at position level

ESMA clarifies that the reporting at position level is generally an option, rather than a requirement, and should be agreed between the two counterparties. In the absence of agreement between the counterparties, reporting at trade level is a default way forward.

While reporting at trade level is relevant for OTC derivatives, regulators can only achieve oversight of systemic risk in the ETD market through position level reporting. EACH members believe that

the ETD risk sits at the position level, and consequently, reporting ETDs at position level should be the default way forward. This would not only eliminate the difficulties of agreeing bilaterally the level of reporting, but also help ensure that the details of the derivative contracts are reported correctly and consistent across reporting counterparties. The majority of the industry do report on position level, but in order to avoid the risk of inconsistent interpretation, ESMA is encouraged to remove the voluntary nature of reporting at position level for ETDs.

Reporting of positions when valuation becomes zero as a result of netting

In paragraph 140, ESMA explains that there are only two possible ways to proceed in the case where a position valuation becomes zero:

- a) Termination of the position and reporting of a new one using a different UTI at a later stage. No valuations are reported between the termination of the first position and the creation of the latter.
- b) Maintaining the position open and reporting a zero contract value on a daily basis.

First, we kindly remind ESMA that a position valuation can become zero as a result of a price becoming zero. In this case, the position cannot be terminated as suggested in paragraph 140. The position can only be terminated when the valuation becomes zero as a result of netting. Second, we see difficulties in reporting both of the above alternatives due to the following reasons:

- a) Using a different UTI when the position is re-opened is an operational burden and a technical challenge. CCPs believe that approach a) is suitable only if the terminated position can be re-opened with the same UTI.
- b) Sending zero contract value on a daily basis is an operational burden as many CCPs have a large volume of 0 netted positions. In addition, there are little benefits of sending daily zero contract value from a regulatory perspective, rather it only adds noise to the reporting resulting in a negative impact on oversight capabilities. We kindly encourage ESMA to remove the requirement for sending a zero contract value on a daily basis.

Position reconciliation

ESMA took note of the feedback to the CP on RTS/ITS regarding the suggestion to focus reconciliation on position level because it is where the systemic risks lie as well as the most relevant fields in the case of ETD positions because this kind of derivative is mainly reported at position level and a few fields for reconciliation purpose are needed. ESMA recalls the need to reconcile all outstanding derivatives and derivatives matured or terminated in the last 30 calendar days at both trade and position level, and states that there will be a review of the fields for reconciliation in either of the two reconciliation phases that will be established.

While EACH members still strongly believe it is in regulators' interest to focus on position level reporting rather than (not in addition to) transaction level reporting to effectively monitor systemic risk, we welcome a reconciliation review and we are ready to work with ESMA and other industry groups on this topic. A strong dialogue with regulators is essential to improve reporting

quality under EMIR and we would like to continue to engage with ESMA and other regulators. We are also positive that ESMA agreed that the last event date should be included in the reconciliation feedback at the level of each derivative as this will improve our work with reconciliation breaks.

Q33. 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).

We welcome the mapping between business events and the corresponding action types and event types. However, we consider that two other events require clarification:

- a) Change in price (field 2.17 Price / rate – amended to 2.48 price in EMIR Refit) for position level reports. This field is normally populated with the end-of-day settlement price for position level reports, which could be different from one day to another. CCPs suggest that such events should be reported with action type 'MODI' and leave the event type blank.
- b) Clarification is needed for cascading, i.e. when the open position in a series are transformed into open positions in one or more other series. Cascaded derivatives will normally span the same delivery period as the original series, e.g. by a year series being transformed to four quarter series spanning the same year. Our suggestion is to terminate the original contract with action type 'TERM' and the new contracts will be reported with action type 'NEWT'. However, it is not clear which event type to use, we believe that none of the event types seem applicable for cascading.

Q37. Are there any other clarifications required with regard to the determination of the counterparty side (other than specific aspects covered in other sections)?

Paragraph 212 states that “when a position is the result of netting of the position to 0, if the counterparty 1 concluded a contract which requires the population of field Direction and was the seller in the derivative concluded at trade level, the counterparty 1 should report Seller in the Direction field. The other counterparty, in the same scenario, should report Buyer in the Direction field as it was the Buyer in the derivative concluded at trade level that resulted in the netting of the position.”

The counterparty side for positions that are netted to 0 often leads to reconciliation breaks as counterparties might book or close down positions in different orders. The above approach adds complexity to the reporting with little benefits for regulators. The value zero is mathematically neither positive nor negative, therefore it is problematic assigning what is effectively a sign in the form of side for netted positions where the quantity by definition is zero. We consider that the current suggestion for the derivation of the side is error-prone and it would be better to embrace the non-sided property of the value. We kindly ask ESMA to remove the reconciliation of the

counterparty side field when netting a position to 0. Alternatively, this field could be left blank when a position is netted to 0.

Q41. Do you require any further clarification on the use of UPI, ISIN or CFI for derivatives?

EACH members support the use of global standards and identifiers. However, clarification is needed for the use of UPI. For instance, is UPI only applicable to OTC and how are we expected to report an instrument where ISIN and UPI are not available? Further, as the UPI system is not yet fully in place and market participants have little experience of using UPI, we believe that there is a need for relaxed validation rules.

Q43. Do you require any further clarification on the reporting of details of the underlying?

When the underlying is an index, ESMA expects CCPs and counterparties to report both a unique identification (ISIN when available) and the full name of the underlying index as assigned by the index provider. We question whether reporting the name of the underlying is useful for regulators when there is an ISIN available as regulators are able to identify the underlying with the ISIN. Reporting the name of the underlying index is redundant and will only lead to noise and reconciliation issues when an ISIN is available. This is also associated with a cost for reporting counterparties. We therefore encourage ESMA to change the condition for field 2.16 Name of the underlying index, we believe it should only be populated when an ISIN is not available in field 2.14 Underlying identification.

Q47. Are there any other aspects in reporting of valuations that should be clarified?

There are different interpretations by CCPs of the current guidance on valuation and different legal contractual agreements which result in different valuation approaches across CCPs. One challenge is that the current guidance states what should not be included in the valuation calculation but does not positively state what should be included in valuation calculations. Worked example calculations for the differing contract types (settle-to-market and collateralise-to-market) as well as for different ETD and OTC products is needed to harmonise the CCP valuation methodologies and facilitate aggregation of comparable CCP valuation data for regulators.

In general, there are two ways how to deal with market price exposure:

- Collateralized to Market Model (CTM)
- Settle to Market Model (STM)

Collateralized to Market Model (CTM)

CTM transactions are subject to a daily collateralization by way of provisioning of variation margin. Any such payment of variation margin has no direct influence on the outstanding exposure of the transaction, rather, the exposure is mitigated by the collateral provided, and legally, any such delivery of variation margin gives rise to a corresponding redelivery claim.

A cleared CTM derivative generally requires the counterparty to periodically transfer to the CCP (or vice versa) collateral with value equal to the cumulative MTM of the derivative contract. Since the variation margin reflects the cumulative MTM of the derivative contract, several CCPs report the variation margin as the value of the contract. It is the core function of a CCP to eliminate risk via margin requirements, and the variation margin should always correspond to the exposure of the contract. If ESMA does not expect CCPs to report the full variation margin, we encourage ESMA to give clear guidance and provide examples of how the total value of a CTM derivative should be valued.

Settle to Market Model (STM)

In contrast, under STM transactions, the outstanding mark to market (MTM) exposure is settled finally on a daily basis by the payment of an STM amount and thus the MTM exposure is reset to zero on a daily basis. As the STM amount is a final settlement, it consequently does not give rise to any redelivery claim. According to market practice, such STM amounts are – even though they are, strictly speaking, no margin – at least in colloquial speech referred to as variation margin as well. For transactions to which STM applies, that as soon as the STM amount in respect of a certain day is paid, any outstanding MTM exposure is settled and the MTM has therefore be reported as zero in field 17 of Table 1. Consequently, any such STM amounts paid or received would not be considered as ‘variation margin’ and thus not be reported in the fields 26 and 30 of Table 1.

The rationale of Article 9 of EMIR is to provide the competent authorities with information regarding derivative contracts to allow a proper monitoring of concentration of exposures and systemic risk. One of the key elements in this regard is the reporting of the MTM value of each contract (field 17 of Table 1 to Commission Implementing Regulation 1247/2012) which essentially displays the exposure that follows from a certain derivative contract. However, for derivative contracts under STM, as soon as the daily STM amount is paid, the MTM value is reset to zero, as the payment of the STM amount fully settles the exposure under the contract. If derivative contracts under STM were to be reported as derivative contracts under CTM for the purposes of Article 9 EMIR, the reported MTM value would deviate from the actual (and legally binding) MTM value of the derivative contracts. This eventually would harm the quality of the data reported under Article 9 EMIR and would impede a proper monitoring of risks based on such data.

Considering the importance of reporting the value of the contract for oversight of systemic risk, and the fact that counterparties should report the value provided by the CCP, we hope to continue to have a strong dialogue with ESMA regarding valuation. However, in order to harmonize CCP valuation reporting, we believe we need clear guidance and examples, which unfortunately the Guidelines currently are lacking.

Q50. Are there any further clarifications required with regards to the reporting of the trading venue?

EACH members understand that ETD contracts executed on UK regulated markets will be required to report as OTC contracts. This will have an impact on the fields 'Intragroup' and 'Clearing obligation' but also other fields. In order to ensure that the details of the derivative contracts are reported correctly, and to avoid inconsistent interpretation, we ask ESMA for examples of how to report derivatives executed on UK regulated markets as OTC. Furthermore, we would like to highlight that some TRs utilize different templates based on whether the contract is ETD or OTC, and to report ETDs executed on UK regulated markets using the OTC template will likely require time and efforts, assuming that TRs will continue to use different ETD and OTC templates once EMIR Refit goes live.

Q60. 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.

We prefer alternative A to assess significant number of reports.

Q62. 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.

EACH members believe that the significance of a reporting issue should also be assessed against a quantitative threshold. Assessing significant issues without a quantitative threshold would be an operational burden for reporting counterparties, and will likely result in a large number of reported issues to NCAs.

We agree that the same metrics can be used for assessing the quantitative threshold, where alternative A is the preferable method.

Q63. 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 clarifies in paragraph 384 that the requirement to notify misreporting should not include notifications of individual reconciliation breaks. However, in paragraph 385 c), ESMA states that

incorrect or inconsistent interpretation of the content of the fields (e.g. in dispute with the other counterparty) should be understood as a significant issue and thus be reported to NCAs.

EACH members consider the above as conflicting. We believe that inconsistent interpretation of the content of the fields is the main reason for individual reconciliation breaks. But inconsistent interpretation does not mean that we are reporting incorrect. Notifying NCAs of every inconsistent interpretation would not only result in an extremely large volume of notifications, but CCPs and counterparties would also need to report on every individual reconciliation break, which ESMA clearly states that we are not required to do (paragraph 384). In addition, we question whether this information would be useful for NCAs, in particular as this information is available in the TR reconciliation feedback. We therefore encourage ESMA to remove point c) under paragraph 385.

Q83. Which of the two approaches provide greater benefits for data reporting and data record-keeping? Please elaborate on the reasons for your response.

EACH members prefer alternative B due to reasons outlined in paragraph 544. In particular, alternative B simplifies data reporting logic for counterparties, reduces the number of reports to be processed by the counterparties, TRs and authorities, and reduces the number of reports to be stored by the counterparties, TRs and authorities.

Q84. 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.

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

Q92. 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.

EACH members welcome the approach of reconciling derivatives reported at position level for the latest event date applicable to both counterparties. We believe that the timeline for reconciliation of derivatives at position level is a step forward in improving the reconciliation process as it decreases the risk of reconciliation breaks due to counterparties report on different dates (T vs. T+1). However, we do not see the benefits of having different reconciliation approaches between

trades and positions. We therefore ask ESMA to align the trade reconciliation approach with the one for positions.

Q93. From data use perspective, should the information in the TSR and in the reconciliation report be different? Please detail the reasons for your response.

We believe that the information in the TSR and in the reconciliation report should be the same. If these reports include different information the risk of ambiguity will increase. Not only would the data be consistent, but expectations and communication across market participant and regulators would be more straightforward and easier if they include the same information. EACH members therefore encourage ESMA to clarify that the information in the TSR and in the reconciliation report should be the same.

Q94. Which alternative do you prefer? What are the costs for your organisation of each alternative? Please elaborate on the reasons for your response.

ESMA confirms that reconciliation of the data on valuation will be delayed by two years. In order to prepare for the go-live of valuation reconciliation, we believe that it would be useful for CCPs and counterparties to receive reconciliation feedback on valuation data from TRs from the very start of EMIR Refit. While regulators ignore the valuation reconciliation feedback the first two years, CCPs and counterparties can use this information to identify mismatches and resolving potential issues in order to be better prepared for the actual reconciliation start date of valuation data. We ask ESMA to clarify that TRs should provide reconciliation feedback on valuation data to CCPs and counterparties from the start date of EMIR Refit reporting obligation.

Q95. Which alternative do you prefer? What are the costs for your organisation of each alternative? Please elaborate on the reasons for your response.

EACH members prefer alternative B as it would limit the existence of reconciliation breaks and facilitate their resolution.

Q98. What other aspects need to be considered with regards to the aforementioned approach to rejection feedback? Please detail the reasons for your response.

End-of-day rejection report

Clarification is needed on the information included in the end-of-day rejection report. If rejections have occurred during T+1, but resubmitted and accepted within the same day, will those

rejections be included in the end-of-day rejection report? Or will rejections only be included if they have not been resubmitted within the day?

EACH members prefer to exclude rejections that have been resubmitted and accepted within the same day in the end-of-day rejection report. Those rejection will be included in the immediate rejection report, and receiving them again in the end-of-day report is not considered useful. We rather prefer that the end-of-day report only includes rejections that have not been resubmitted and accepted within that day, this would facilitate our work of monitoring late submissions.

Rejection codes

We believe the current proposal of categories is not granular enough to be useful in investigation or analysis of rejections. Far more granular reason codes, similar to what many counterparties currently receive in rejection responses, is more useful to correct and resubmit entries. Reporting entities can analyse trends in rejection reasons over time, monitor progress in resolution of the underlying root cause of rejections and better identify new causes of rejections when the categories are more specific.

Q102. 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.

According to paragraph 629, the TRs should identify as reconciled only those derivatives for which all the reconcilable fields are within the allowed tolerances of reconciliation. Currently, the TRs apply categories 1 and 2 matching fields. Losing the distinction of categories 1 and 2 would make our work with reconciliation breaks much more difficult and risks losing focus on field prioritization. For many counterparties the records which are a perfect match on category 1 and 2 are due to delegated reporting as the data is a mirror report from the same system as opposed to a reconciliation between two counterparties with different systems. Therefore regulators may be comparing the size of reporting entities delegated reporting business by only measuring the perfect reconciliation rates as opposed to its consistency of reporting against counterparties which report independently. One of the big challenges for monitoring matching rate progress is that trade or position records with one category 1 field mismatch are equally weighted to a record with many mismatches (i.e. both are a binary unmatched status). We would propose that a percentage match or matching percentage status bands would assist CCPs and counterparties to better progress of their efforts to resolve reporting inconsistencies.

Moreover, there are only two allowable values in the category of valuation reconciliation – ‘reconciled’ and ‘not reconciled’. EACH members would like to remind ESMA that ETD trades are reported with action type ‘Position component’ and are thus considered as non-outstanding. Subsequent valuation updates are reported at position level, and not at trade level. Since there are only two allowable values in the valuation reconciliation category, and valuation is not reported for ETD trades, we assume that ETD trades will always be labelled as ‘not reconciled’ in

the category of valuation reconciliation. This would be misleading. We therefore encourage ESMA to add 'not applicable' as a value in the category of valuation reconciliation, which should be used for non-outstanding trades. Similarly, 'not applicable' would also be used when the other counterparty is not required to report valuation.