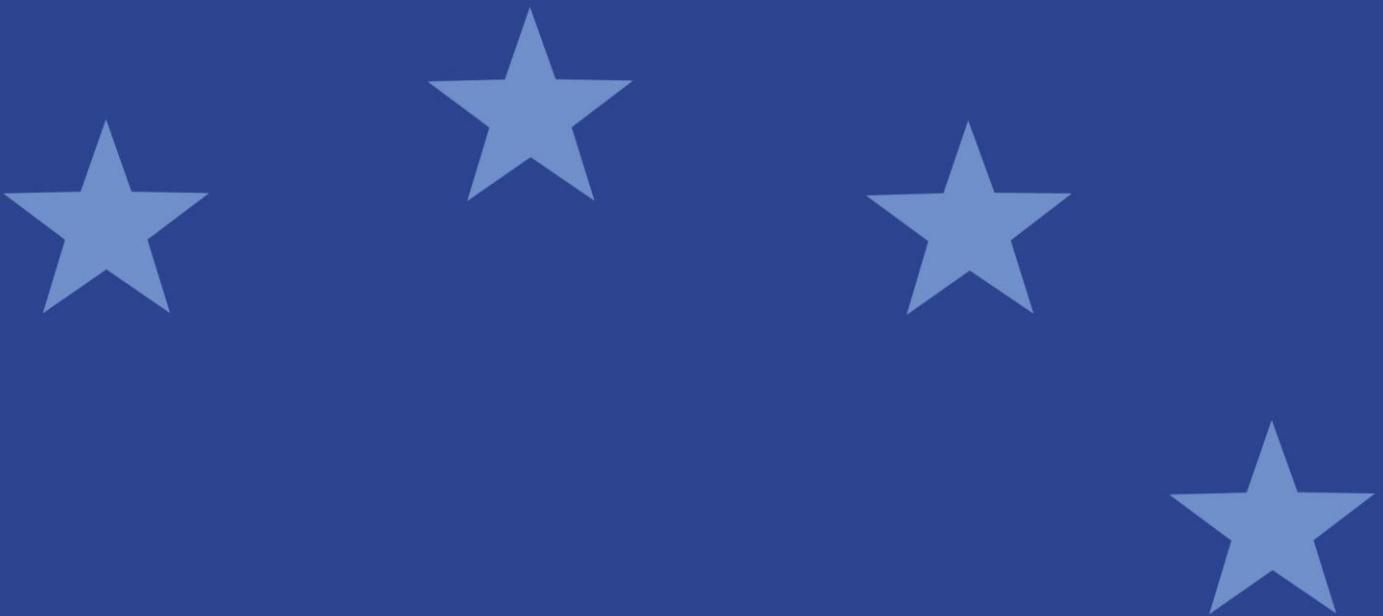




European Securities and
Markets Authority

Reply form for the Consultation Paper on the Guidelines on reporting under EMIR



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 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 under the headings 'Legal notice' and 'Data protection'.



General information about respondent

Name of the company / organisation	European Federation of Energy Traders - EFET
Activity	Other Financial service providers
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Europe

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_REPO_1>

The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent and liquid wholesale markets, unhindered by national borders or other undue obstacles. We build trust in power and gas markets across Europe, so that they may underpin a sustainable and secure energy supply and enable the transition to a carbon neutral economy. EFET currently represents more than 100 energy trading companies, active in over 27 European countries.

<ESMA_COMMENT_REPO_1>

Q1. 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>

Firstly, EFET recognizes the benefits of re-reporting all outstanding trades under the new technical standards regime. We welcome that counterparties are granted a period of 6 months, following the start date, allowed to re-report outstanding trades. We understand that during this 6-month period National Competent Authorities (NCAs) will not take supervisory actions regarding the reporting of such outstanding trades.

Furthermore, EFET welcomes the 18-month implementation period, but we want, as a general comment, to highlight that such period only supports market participants once reporting standards are fully developed, available and validation rules are published by ESMA. Prior to that, market participants do not have the opportunity to start implementing any new or updated rules, as it is in practice impossible to proceed with the required development of their reporting systems and processes.

EFET would like to point out to a practical impediment in the proposal in paragraph 12 on page 14 of the consultation paper requiring market participants to report any reportable lifecycle event in line with the revised requirements also during the transition period:

- Lifecycle events such as novations, terminations or contractual amendments are common concerning OTC commodity derivatives and occur exclusively at transaction level – as NFC- rarely report at position level.

Market participants will only be able to report lifecycle events as suggested by ESMA, where they have implemented the required changes in standards and rules into their IT systems. This process update demands time and efforts (understanding of specifications, gap analysis, implementation of changes, testing, deployment) before being rolled out either within a firm or by a third party (reporting) service provider. EFET would like to underline that market participants will be constrained by natural IT limitations where an updated system either: exists and enables expected reporting, or is in the making and reporting must occur under the older rules. Market participants are also dependant on the timely publication by the Commission of the updated RTS and by ESMA of all necessary standards, validation rules and XML schemas prior to starting to develop updated reporting systems. Hence, it does not seem reasonable, in particular for NFC- with lesser resources, to force the reporting of lifecycle events as of day one, following the revised technical standards.

- EFET also points to the dependency of smaller NFCs- firms to their external IT providers: initial implementation of the updated rules by such providers is the first step before NFCs- can import new systems into their IT landscape, then test and deploy the update. The obvious difficulty NFC- are facing is that these external IT providers are not focused on NFCs- needs or required updates to their systems, as the requirements of bigger market participants are being prioritized. EFET members have already experienced reporting obligations and major IT updates of reporting obligations close to the start date of a new requirements and found that IT support reserves are becoming very limited, and provided first to the major market players.

Due to these drawbacks, the length of the implementation period is of no significant help for smaller NFCs- as the required IT resources are always crowding close to the deadlines, especially regarding company external reporting IT support providers. There are always some updates required, after testing and pre-implementation phase because these are new processes, and rules and validations need to be developed. The dependency of the internal systems to external tools - where NFCs- are not the main client base and cannot really weigh in on development decisions and timing remains a constraint. Practically, NFCs- that are submitting only small amounts of transactions will receive their external IT support only once the main reporting submitting market participants have completed their updates.

These IT-resources constraints can be explained by the following practicable example: Question 95 from EMIR consultation from March 2020 was asking whether delivery interval times for energy derivatives shall be presented in UTC time or in local time (as defined for REMIT reporting). While such clarification of how timestamps shall be presented are most welcome, they require IT data mappings, as the internal company source IT system will display the delivery time fields in a pre-determined manner. The targeted



reporting data presentation can be achieved through mapping (local time mapped to UTC time or vice versa) within the company internal IT system or mapping withing the company external IT support providers system.

Market participants can only start working on their data mappings (if needed), once the external IT support provider defined their approach, which on their side can only be started once the detailed data schemata indicating how the fields shall be presented in future are published. Accordingly, to reach the - in principle straightforward - target of presenting the data in the required time format several interim clarifications between the IT system providers (company internal data IT provider and reporting data IT provider) are usually still necessary and the market participants internal IT system (as the source system) is the one that is dependent on the interim clarifications from the reporting IT providers. In most cases these pre-clarifications are needed before market participants can even distinguish, if adjustments on internal company IT level are required or not.

As a conclusion:

1. On their already existing outstanding bilateral OTC transactions with other NFCs-, some lifecycle events will occur beyond market participants' control. **Therefore, we urge ESMA to extend the 180 days transition period to lifecycle events on bilateral OTC transactions between NFCs-.**

Finally, to avoid reconciliation breaks, **we welcome the decision to keep the UTI on outstanding derivatives unchanged** when outstanding trades are transitioned to the new RTS/ITS format and recommend ESMA to make this mandatory for reporting parties.

<ESMA_QUESTION_REPO_1>

Q2. Are there any additional aspects to be considered with regards to the eligibility to reporting of currency derivatives?

<ESMA_QUESTION_REPO_2>

EFET is wondering how do bank holidays affect the eligibility of reporting, and how exactly are bank holidays and good business days defined in the matter of FX derivative reporting.

Furthermore, does the T+3 rule also hold when there are bank holidays for at least one of the currencies in the days between T and T+3? For example: Execution on Day T, T+2 and T+3 are relevant bank holidays for at least one currency and settlement on T+4. Is this a reportable transaction or not?

When reporting for so-called cross currencies (e.g. EUR/YEN), does the US holiday schedule have an impact on the eligibility under EMIR reporting?

<ESMA_QUESTION_REPO_2>

Q3. 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>

Q4. 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>



Q5. 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>

Q6. 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>

ESMA seems to indicate in paragraph 26 that an option on a future is classified as a complex contract which requires double reporting. EFET would like to underline that this is not the perception in practice, neither is this legally sustainable.

An option is a contract that gives a party the right, but not the obligation to buy or sell a determined commodity at an agreed-upon price and date. Such party may exercise its right to buy or sell the defined product, by a certain contractually defined date. Where the party exercises the option, the resulting contract is the one initially agreed upon between the parties: the purchase or sell, at a certain date, of a certain commodity at a certain price.

From a legal perspective, the option (including the so-called “underlying future”) is a promise made by a *promisor* and accepted by a *promisee* and the exercise thereof is not a termination. Under EMIR, options are confirmed once. They are only accounted for once in the reconciliation processes and exercised options do not count as 2 transactions.

In addition, all information pertaining to an option, including the underlying elements and exercise is already available to regulators and ESMA as market participants will complete the relevant reporting fields hereto. EFET hence does not see any direct benefit in a double reporting exercise.

Furthermore: on page 36, under *Action types and event types combinations*, the suggestion reads: “116. Counterparties should report, where applicable, the relevant ‘Event Type’, as specified in the field 152 of Table 2 in the [RTS]: event type f: Exercise: The exercise of an option or a swaption by one counterparty of the transaction, fully or partially.”

Such statement – which reflects current understanding of market participants - is in contradiction with ESMA recommendation on complex contacts.

We would hence appreciate further clarifications with regard to the precise reporting requirements. Altogether, in line with practice and legal understanding, EFET would suggest defining “Complex contracts” differently for the purpose of reporting, and not as options.

<ESMA_QUESTION_REPO_6>

Q7. Are there other situations where a clarification is required whether a derivative should be reported?

<ESMA_QUESTION_REPO_7>

EFET would in particular ask for clarification on certain types, such as weather derivatives (security/hedge against extreme weather conditions, like high/low temperature or strong winds for power generation assets), and derivatives related to VER (Voluntary Emission Reduction) or Green Gas Certificate Schemes.

In addition to the question above, EFET recommends classifying those contracts as not EMIR relevant. These trades are very difficult to report and therefore cause a lot of manual effort and alignment between counterparties. Those derivatives are very exotic and the traded volume has no relevant impact on the financial market stability.

<ESMA_QUESTION_REPO_7>



Q8. Do you agree with the above understanding?

<ESMA_QUESTION_REPO_8>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_8>

Q9. Are there other situations where a clarification is required whether a derivative involving a specific category of party should be reported?

<ESMA_QUESTION_REPO_9>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_9>

Q10. Do you agree with the above understanding?

<ESMA_QUESTION_REPO_10>
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<ESMA_QUESTION_REPO_10>

Q11. Are there other specific scenarios where a clarification is required?

<ESMA_QUESTION_REPO_11>
EFET agrees with the above understanding in principle.

With regards to paragraph 40 on reportability in specific scenarios, it is assumed that market participants have the ability to control the avoidance of duplicate reporting, in particular in scenarios involving (trade repository) TR porting. EFET would like to remind of its response to the TSTR Consultation Paper from June 2020. We provided an amount of detailed information therein, setting out the practical difficulties NFCs- are encountering with TR porting. We can only reiterate our statements and underline that these difficulties between TRs put the process outside of our control.

For example, some TRs are using slightly different data standards, which hinder immediate portability and require additional time, hence making it impossible for counterparties to implement immediate corrective actions. The compliance of market participants with ESMA's requirements on avoidance of duplicate transaction reporting is dependent on the TRs full and seamless implementation of porting processes, including enabling the porting of partial transactions only (and not of complete portfolios). Until that point, it can seem disproportionate to hold report submitting counterparties responsible for disruptions and duplicate reporting in particular in cases of change of TR or change of delegation.

ESMA should specify their reference to 'EARLY' termination in paragraph 47 (reaching scheduled maturity date is clarified in paragraphs 112 and 184):

"Where no contracts are concluded, modified or early terminated during several days, no reports are expected apart from updates to valuations or collateral on outstanding derivatives, as required."

<ESMA_QUESTION_REPO_11>

Q12. Do you agree with the above understanding?

<ESMA_QUESTION_REPO_12>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_12>

Q13. Are there any other clarifications required with regards to the IGT exemption from reporting?

<ESMA_QUESTION_REPO_13>

EFET would like to point out to certain contradictions in the definition of an “intragroup transaction” (IGT) that lead to legal uncertainty and increased risk of non-compliance. In the ESMA QA, on the EMIR IG Reporting exemption, the Commission mentioned that:

“The exemption contained in Article 9(1) of EMIR does not cover intragroup transactions for which the parent undertaking is established in a third country, even if the transaction occurs between two counterparties which are both established in the EU. This conclusion is based on the following elements: The definition of parent undertaking refers to an undertaking governed by the law of a Member State and nothing in EMIR indicates a will to modify that reference. [...]”

On the other side, EMIR, for all purposes, defines group (and “intragroup transactions”) in Art. 3.1 which states that an IGT is: *“a transaction entered into with another counterparty which is part of the same consolidated group and subject to centralized risk control [...] or where the counterparty is in a third country, that the commission has provided equivalence under art. 13.2.”*

ESMA finally confirms in its QA OTC answer 3(d) that: *“the Group to which the EU NFC belongs includes subsidiaries, sisters and parent companies **wherever** the ultimate parent company is established”.*

These differences on the meaning of “intragroup transactions” depending on the context cause confusion and legal uncertainty. The discrepancy also continues to cause significant IT and operational cost burden on reporting entities to support the level of single sided reporting. We encourage ESMA to provide clarity on the definitions to apply in all contexts and subsequently, if necessary, clean up the QA document to eliminate contradictions.

Furthermore, ESMA should specify reference to all OUTSTANDING (on the date when the intragroup exemption starts to be valid) derivatives (paragraph 61) requiring Action type ‘Error’ for which the reporting exemption is valid. It is our position that all trades that have not reached the maturity date are defined as outstanding and open payments after maturity date have no influence on the status outstanding/non-outstanding.

<ESMA_QUESTION_REPO_13>

Q14. Are there any other clarifications required for the handling of derivatives between NFC- and FC?

<ESMA_QUESTION_REPO_14>

This question covers 2 different cases from an NFC perspective:

1) The single sided reporting by FCs introduced by EMIR Refit, where the FC and NFC are counterparties to a transaction and the FC has the obligation to report.

The objective of single sided reporting is to reduce the burden faced by an NFC- when executing EMIR-reportable derivative contracts, but there are remaining areas of concern for NFC- market participants. The principle that financial counterparties shall be solely responsible, and legally liable, for reporting on behalf of both counterparties *applies to OTC contracts only* and is leading to some FCs deciding to carve out their ETD business in order to report on behalf of their NFC- clients.

Furthermore, after the EMIR REFIT, smaller NFC- might no longer have any own reporting obligations as these will have been either delegated to their counterparties, or shifted to FCs by regulation. In this case, the NFC- does not retain any capacity to report itself.

For NFCs- that have existing OTC transactions in place with FCs that are not established in the Union, the change in allocation of responsibility to the FC does not apply, and the NFC- remains responsible and legally liable for its reporting (even so at the time of conclusion of the transaction the FC was established in the EU). How NFC- should deal with such situations where EU FC subsequently becomes a non-EU FC (through events such as Brexit) remains unclear and complex. ESMA should be aware that a transaction reporting exercise between TRs – even though it may seem streamlined from a regulator’s perspective - is costly in terms of time and efforts that are required from market participants (see in this regards the details provided in EFET’s answer to the 2020 TSTR Consultation). The conditions set out in EMIR Refit for non-

EU FCs to be liable for reporting in the EU are very restrictive in terms of equivalence and regulatory co-operation, and the relief provided to NFC- remains theoretical.

2) The reporting of ETDs occurs normally through the clearing banks. The bank simply offers a clearing and reporting service to the NFC and the responsibility to report remains with the market participants.

As stated several times in this consultation, counterparties *cannot* assume that all options and futures traded on venue are ETDs. In the context of a withdrawal of regulatory equivalence, especially Futures and Options executed on newly non-equivalent third country exchange might be considered OTC derivatives. Historically, clearing banks have reported such contracts as ETD trades rather than OTC derivatives, and rightly so (for example on ICE Futures Europe).

Practically, an ETD contract becomes an OTC contract, since the venue classification changed into a third country exchange, because equivalence is withdrawn or because the EMIR amendments are not incorporated and transposed into EEA countries national laws. Potentially, the same could happen in the opposite direction: a different venue classification leading to an OTC contract becoming an ETD transaction. These consequences on allocation of responsibilities and reporting details, based on venue classification only, will create additional room for inconsistencies.

3) Practical consequences of inconsistencies for market participants.

Market participants must be able to determine in advance and with certainty the scope of their obligations in terms of regulatory reporting and these responsibilities vary whether they trade with FCs or not, and whether the commodities are traded as ETDs or OTC derivatives. We are unsure of the nature of the expected reporting action, or whether any such action is expected regarding the treatment of futures and options which were executed post-Brexit on a UK non-equivalent market and were reported as ETD. Applying OTC derivatives reporting rules *a posteriori* is not a workable solution: a hurdle for instance would be a possibly required switch from ISIN to UPI codes for ETDs that are becoming OTC derivatives under the conditions described above.

Inconsistent interpretation of the rules within the industry, especially when third country exchange and/or FCs are involved, will increase the potential for over and/or under reporting and enhance the burden faced by an NFC-.

Arrangements between an NFC- and an FC are usually capturing future transactions only and might not capture already existing derivatives. Furthermore, it cannot be expected that all possible future developments regarding an EU country or a third country classification can be captured through contractual arrangements between an NFC- and an FC. Therefore, we would like to point out the importance of a unified, consistent approach when determining: (i) what is in or out of scope for mandatory FC reporting, (ii) the applicable guidance for reporting transactions entered into as ETD transactions and that have become OTC derivatives including in terms of reporting lifecycle events, and (iii) applicable guidance for reporting transactions entered into on exchanges that have not been granted EU equivalence in general.

The objective on single sided reporting is reducing the burden faced by an NFC- when executing EMIR-reportable derivative contracts. To reach that goal, FCs need to have granted access to the original report of transactions (especially when NFCs- are involved) in order to eliminate potential issues, also for future categorization.

This requirement is key, considering that the status of a transaction classified as OTC or ETD can change, and bearing in mind that the majority of NFCs- report their ETD transactions by delegation reporting through their clearing banks only. Market participants are, in most cases, not in the position to take over such data transfer to their FCs on behalf of their clearing bank, for example in case of missing reporting data access that would prevent the FC to report modifications or termination and the liability of the FC.

A potential solution would be that the reporting obligation of ETDs are transferred from the NFC- to the Clearing Bank or the CCP (in case no Clearing Bank is involved) irrespectively whether the third country



regulated market is recognised or not. NFCs- do not need to distinguish between changing rules and classifications with a streamlined process for all market participants.

<ESMA_QUESTION_REPO_14>

Q15. Are the current illustrative examples providing clarity and / are there other examples that should be incorporated in the guidelines?

<ESMA_QUESTION_REPO_15>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_REPO_15>

Q16. Are there any other clarifications required for the reporting obligation related to CCPs?

<ESMA_QUESTION_REPO_16>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_REPO_16>

Q17. Are there any other clarifications required for the reporting obligation related to Investment Funds i.e. UCITS, AIF and IORP that, in accordance with national law, does not have legal personality?

<ESMA_QUESTION_REPO_17>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_REPO_17>

Q18. Do you see any other challenges with the delegation of reporting which should be addressed?

<ESMA_QUESTION_REPO_18>

ESMA should clarify in paragraph 85 that the counterparties and CCPs that are subject to the reporting obligation may delegate any task (individually and separately) related to the reporting of data to a report submitting entity (rather than generally referring to the "reporting obligation", paragraph 85: "*EMIR stipulates in Article 9(1f) that the counterparties and CCPs that are subject to the reporting obligation may delegate that reporting obligation*").

<ESMA_QUESTION_REPO_18>

Q19. Do you agree that only action types 'Margin Update' and 'Correct' should be used to report collateral?

<ESMA_QUESTION_REPO_19>

EFET recommends the use of correct wording in paragraph 101: "Margin Update" rather than "Market Update".

<ESMA_QUESTION_REPO_19>

Q20. 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>

EFET welcomes the additional information and would seek for additional clarification that action type "Correction" is the exception and only in use for earlier incorrect information, while "Modify" is used for all other amendments not based on an earlier incorrect information.

<ESMA_QUESTION_REPO_20>

Q21. Do you agree with the sequences proposed? Please detail the reasons for your response.



<ESMA_QUESTION_REPO_21>

EFET does not agree with the requirement to report in sequence all missing lifecycle events in order of event, as this will be onerous (from operational and IT cost perspective) on reporting counterparties and trading systems to store multiple versions of the trade. We believe it should be sufficient to report the latest lifecycle event and trade version as of the time of reporting.

The requirement to synchronise non-outstanding trades (either previously terminated or errored) with a new UTI between two counterparties adds significant operational overhead and likely to require counterparties to contact each other and synchronise actions before reporting. This could lead to additional delays in reporting timelines. This should be left at the discretion of reporting counterparties to determine whether to reach out to the other counterparty.

Additionally, please clarify paragraph 112 in more detail ("*Reaching the scheduled maturity date is not EMIR reportable by the counterparties and no action type applies in this case, including but not limited to "Error (EROR)" and "Terminate (TERM)" due to inconsistent interpretation of counterparties*). It is our position that all trades that have not reached the maturity date are defined as outstanding and open payments after maturity date have no influence on the status outstanding/non-outstanding.

<ESMA_QUESTION_REPO_21>

Q22. Are there any specific scenarios in which the expected sequence of action types is unclear?

<ESMA_QUESTION_REPO_22>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_REPO_22>

Q23. Are any further clarifications needed with regards to the action type - event type combinations or their applicability?

<ESMA_QUESTION_REPO_23>

EFET would like to ask for examples for the 2 "Event Type": "Step-in" and "Allocation", or explain in more detail how these two differ from each other. In case of a deal novation, which type would be used?

<ESMA_QUESTION_REPO_23>

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?

<ESMA_QUESTION_REPO_24>

EFET suggests that "Linking IDs" should only be used in limited cases and should not be made mandatory to reduce the complexity posed to trading and reporting systems in providing the data. For instance, linking IDs should not be required for all lifecycle events but only in cases such as novation.

<ESMA_QUESTION_REPO_24>

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?

<ESMA_QUESTION_REPO_25>

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<ESMA_QUESTION_REPO_25>



Q26. 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>

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

<ESMA_QUESTION_REPO_27>
EFET recommends that the options under paragraph 140 on page 45 of the consultation paper, provided in the case where the position valuation becomes zero, should be reconsidered. The overview about positions become less well arranged, if zero contract values are reported daily.
<ESMA_QUESTION_REPO_27>

Q28. Are there any other aspects that should be clarified with regards to reporting of on-venue derivatives?

<ESMA_QUESTION_REPO_28>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_28>

Q29. 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>

Q30. Do you agree with the proposal for reporting modifications and corrections to derivatives? Please detail the reasons for your response.

<ESMA_QUESTION_REPO_30>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_30>

Q31. Do you agree with the specification of the 'Event date' for different action types?

<ESMA_QUESTION_REPO_31>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_31>

Q32. Do you agree with the interpretation of the business events and the suggested action and event types?

<ESMA_QUESTION_REPO_32>
EFET does not agree with the interpretation. Trade events (Full Novation) is EMIR reportable for the remaining party, but if the identifier LEI (Step-Out party / Step-In party) changes, Action Type Modify is incorrect (i.e. Terminate Step-Out and New Step-In required).
<ESMA_QUESTION_REPO_32>

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).



<ESMA_QUESTION_REPO_33>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_33>

Q34. 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>

There is no established market practice concerning the UTI generation and EFET welcomes the proposal for a certain harmonisation. We would nevertheless recommend not to disregard practical considerations such as:

- 1) The suggested generation flowchart attributes the responsibility of UTI generation in certain cases to the electronic confirmation platforms. What if such platforms simply do not generate UTIs as there is no hard enforceable regulatory obligation, market participants can't force such generation. What is the matching on the platform (and hence the UTI generation) only occurs after T+1, where the reporting deadline has already lapsed?
- 2) In most cases, there is no specific agreement on UTI generation between counterparties in the commodities markets: the suggested designation of the responsible counterparty is burdensome and EU entities cannot assume that the details are known and accepted by their non-EU counterparties. For commodities markets, we recommend that ESMA includes in the UTI waterfall the use of ISDA Seller vs Buyer convention as counterparties agreement method. This has proved to be an easier and clear approach to determine UTI responsibility instead of entity with the soonest reporting deadline. We recommend that the seller generates UTI in the case of OTC bilateral derivatives where no trading venues, counterparties with a different status brokerage or confirmation platforms are involved.
- 3) However, the party responsible for UTI generation is designated, its default in UTI generation should be compensated by acceptable fallbacks. The compliance of the UTI receiving counterparty should, consequently, not be jeopardised by the inaction of the UTI generating counterparty. We suggest allowing the UTI receiving counterparty to generate the UTI itself, past a certain "cut-off" time, for example 09:00 T+1, which would ensure the receiving counterparty still meets the regulatory reporting deadline.
- 4) It is important to remember that entities only have one business day to report their transactions, meaning the UTI shall be generated and exchanged within that timeframe. In most cases, confirmations have not yet been exchanged, while internal reporting (preparation) processes are already running. The counterparties have, accordingly, not yet received the relevant respective contact details and are unable (also for the sake of time for internal processes to run) to contact the other party to the transaction to discuss UTI generation.

<ESMA_QUESTION_REPO_34>

Q35. Are there any other aspects that need to be clarified on UTI generation?

<ESMA_QUESTION_REPO_35>

EFET considers that the given UTI generation flowchart may be a good and easy way in general to indicate which party has the obligation to create the UTI, under consideration of the practical reservations we expressed above. However, some points seem not practical or are still unclear:

1) For cross-jurisdictional transactions, we do not think that the sooner reporting deadline should matter when determining who is responsible for creating the UTI. This is a burden because parties need to know if their counterparties have reporting obligations and what their reporting deadlines are. This will only result in a burden for all parties.

2) Delegating the UTI creation to a TR is not practical. Parties would need to request UTIs from their TR before the reporting deadline and need to receive it back just in time to be able to report their transactions. For that, a three-way communication between the parties and the TRs would be necessary.

3) The whole waterfall approach should not be mandatory, but a helpful tool in case of dispute. Many parties have already agreed on an UTI generation convention for all existing OTC bilateral trade relationships. Switching to this flowchart would hurt data quality in those cases.

<ESMA_QUESTION_REPO_35>



Q36. Are there any other types of contracts for which the determination of the counterparty side needs more clarity?

<ESMA_QUESTION_REPO_36>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_36>

Q37. 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>

Q38. Are there any other clarifications requested with regards to the identification of counterparties?

<ESMA_QUESTION_REPO_38>
EFET expects that in cases where the counterparty status is changed from “EU” to “NON-EU”, this field needs to be updated for all outstanding derivatives affected before the end of the transition period. Please also consider our general reply to Question 14.
<ESMA_QUESTION_REPO_38>

Q39. Are there any other aspects to clarify in the LEI update procedure when a counterparty undergoes a corporate action?

<ESMA_QUESTION_REPO_39>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_39>

Q40. 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>

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

<ESMA_QUESTION_REPO_41>
EFET urges clarity on the mechanics and process for the UPI construct – this remains undefined. The expectation from ESMA for counterparties to ensure that matched CFI is reported is tedious and will result in significant overheads, unless a freely and publicly available CFI construct mechanism is accessible for OTC derivatives to ensure a match.

In the absence of such public data platform, we recommend that reporting counterparties can continue to use and report CFI data obtained from market sources (e.g. ANNA) or as derived.

<ESMA_QUESTION_REPO_41>

Q42. 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>



ESMA should give the market significant advance notice of which fields will be affected and made non-mandatory when the UPI becomes fully operational.

EFET recommends that ESMA allows a transition period to allow counterparties to continue to report the reference data affected using UPI in parallel until a switchover date.

<ESMA_QUESTION_REPO_42>

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

<ESMA_QUESTION_REPO_43>

ESMA has already clarified that in some scenarios counterparties should report the ISIN of the underlying index if it is available. EFET requires clarification in terms of "if it is available".

For example: ISIN: DE0008469008 (DAX Performance Index) is publicly available. However, some underlying ISINs might require access to a specific ISIN system / data vendor. Does the availability of underlying ISINs refer to as included in the confirmation (agreement)?

<ESMA_QUESTION_REPO_43>

Q44. Is any further guidance required in relation to the population of the notional field?

<ESMA_QUESTION_REPO_44>

EFET notes that guidance provided on general frameworks for calculation does not typically cover non-standard commodity derivatives.

The definition of a unique/uniform notional amount will remain challenging, as there are as many variants of non-standard transactions in the markets as there are market participants which all follow different trading strategies. EFET reminds of the detailed examples it provided in this regard in its answer to the TSTR Consultation in June 2020 and would welcome concrete guidance in this direction.

Contracts without fixed volume are not uncommon in the energy derivatives market. There are contracts that provide numerous possibilities of variations of transactions for which:

- 1) Notional amount calculation are complex; and
- 2) Counterparties will not be able to agree on the notional amount to be reported, as it depends on a party's view on the expected volume of this transactions and its internal risk models which cannot be disclosed as they are commercially sensitive. The current practice is to report a conservative estimate notional amount, which is periodically reviewed when the transaction is in delivery.

We would in particular appreciate to know, if it is expected to report the notional amount reporting fields "Notional" and "Quantity" with zero or report a conservative amount, as commonly done in praxis, especially for contracts where the firm notional amount is not available up to the end of the delivery period.

EFET appreciates if ESMA can clarify the following: for financially settled contracts with a flexible volume (e.g., based on monthly produced volumes in a facility), how often should the reports be updated? Each settlement period of the contract or at the term of the contract?

<ESMA_QUESTION_REPO_44>

Q45. 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>



Q46. Are there other instances when we would expect to see a zero notional for Position Reports? Please provide examples. Are there any instances when we would expect to see a notional of zero for Trade Level Reports? Please provide examples.

<ESMA_QUESTION_REPO_46>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_46>

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

<ESMA_QUESTION_REPO_47>
EFET recommends that deals reported on T without a valuation should not appear on the Missing valuation Report.
<ESMA_QUESTION_REPO_47>

Q48. 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>
ESMA should clarify in more detail reporting of delta of derivatives with multiple legs, for example: Weather Swap (underlying constituents like temperature and solar radiation) and Oil Financials Basis Swap (underlying constituents are different indices).

In paragraph 277, ESMA only mentions options and swaptions. Therefore, EFET assumes that only those products would need to be reported with a delta value.

<ESMA_QUESTION_REPO_48>

Q49. Are there any further clarifications required with regards to the reporting of margins?

<ESMA_QUESTION_REPO_49>
ESMA should clarify that this is in line with SFTR Guidelines of March 2021 (see Table 5 on page 26, paragraph 116) regarding SFTR Collateral update reports, *i.e.* “expected” settlement (which is taken to mean contractual or intended settlement) rather than actual settlement.
<ESMA_QUESTION_REPO_49>

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

<ESMA_QUESTION_REPO_50>
EFET appreciates ESMA’s efforts to clarify that trades executed on non-equivalent third country markets should be considered OTC and should be reported as such.

However, EFET considers that some additional clarification under paragraph 311 with regards to transactions concluded on UK regulated markets should be inserted, to foresee that this classification could change in the future in case of equivalence decisions applied, and such future change of status should be kept open for UK and any other non-EU markets.

Additionally, MIC code of the trading venue need to be delivered by broker to both trading parties (deal capture). All reportable fields would even be preferred (e.g. ISIN, MIC, Broker LEI)

For further details on our position, please also refer to our reply to Question 14.

<ESMA_QUESTION_REPO_50>

Q51. Are there any further clarifications required with regards to the reporting of clearing?



<ESMA_QUESTION_REPO_51>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_51>

Q52. Are there any further clarifications required with regards to the reporting of confirmation timestamp and confirmation means?

<ESMA_QUESTION_REPO_52>
EFET would like to ask: in case of a novation and not otherwise agreed by both parties the date and time when the contract / novation agreement was executed, should be the date set as default for the "Execution timestamp"?

<ESMA_QUESTION_REPO_52>

Q53. Are there any further clarifications required with regards to the reporting of settlement currencies?

<ESMA_QUESTION_REPO_53>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_53>

Q54. Are there any additional clarifications to be considered related to reporting of regular payments?

<ESMA_QUESTION_REPO_54>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_54>

Q55. Are there any further clarifications needed with regards to the reporting of other payments?

<ESMA_QUESTION_REPO_55>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_55>

Q56. How would you define effective day for novations and cash-settled commodity derivatives?

<ESMA_QUESTION_REPO_56>
EFET considers that the effective day for novations is the day on which obligations move from one party to another. This date is usually agreed in a contract (novation agreement). For cash-settled commodity derivatives, there are several opinions in the market. We think it is correct to report the first day of the delivery period (01.11.2017 in your example from Table 21) and we think that this date should be a must-have field on all confirmations.

<ESMA_QUESTION_REPO_56>

Q57. 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>
Taking the example from Table 21 with one slight change: let's assume the last payment date is 15.04.2018, so after the last delivery date and the termination date is not explicitly given in the confirmation of this deal. EFET sees that some market participants report the last payment date, whereas others report the last delivery date. EFET's position is that all trades that have not reached the maturity date are defined as outstanding and open payments after maturity date have no influence on the status outstanding/non-outstanding.

<ESMA_QUESTION_REPO_57>

Q58. Are there any other aspects that need to be clarified with respect to the derivatives on crypto assets?

<ESMA_QUESTION_REPO_58>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_58>

Q59. 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>
EFET is of the opinion that the requirement to include non-reportable contract as part of a complex contract (e.g. spot) creates additional complexity for reporting counterparties. This will require significant changes in reporting logic and trade capture systems to manage such reporting. We recommend to only report derivatives that fall under EMIR scope, as it is currently the case.
<ESMA_QUESTION_REPO_59>

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.

<ESMA_QUESTION_REPO_60>
EFET prefers alternative A as assessment methodology, as monthly monitoring is the more efficient process than to monitor on a daily basis as set out in alternative B.

However, on all options and alternatives provided, we understand that there is currently no minimum threshold mentioned for “significance” in the consultation documentation. On page 96 under paragraph 375, the intention is expressed that systematic issues should only be captured, *“even if for a single counterparty the threshold is exceeded, and the overall picture of the RSE should be considered”*. Alternative B results in a daily or *ad-hoc* calculation requirement which would be a burden, especially to smaller counterparties, whereas the required data from Alternative A could run as a monthly background process and would only result in a one-off effort.

In our opinion, that does not necessarily lead to the conclusion that entities which are submitting only a small number of own reports (e.g. NFCs- for their commodities derivatives concluded with other NFC- entities) are excluded from this notification obligation to the authorities. Such entities are usually entity responsible for reporting (ERR) and report submitting entity (RSE) for their bilateral derivatives concluded and are (from our understanding of this chapter) generally included in the calculation principle concerning percentage from monthly/daily number of submissions.

This could lead in practice that, in certain cases, a very small number of reporting issues could require information to authorities as a result of strictly applying the percentage calculation only.

On reconciliation between TRs: this should only concern the fields that are mandatory in the reporting and not the optional ones. In addition, reconciliation should be excluded for fields that will “naturally” differ by definition: that will be valuations where they rely on mark to model, or notional values for non-standard commodity derivatives, absent any guidance from ESMA.

At paragraph 364, alternative C foresees that ERR and RSE notify their NRA of *“any significant issue resulting in reporting errors that would not cause rejection by a TR”*. From a practical perspective, do we know what causes rejection at TRs? Is there an exhaustive list available? If not, how are we supposed to perform such notification (even leaving aside the “significant issue” assessment)?



Therefore, EFET proposes that a minimum threshold of affected reporting issues for NFCs- should be additionally implemented, in order to ascertain that minor report parties are not obliged to submit notifications to the NCAs, as such reporting issues have no significance to the overall picture.

We expect that notification obligations will not be enforced before such thresholds and reporting formats to NRAs and easy, uniformly-agreed processes and standards for notification are implemented. This is essential for NFC- entities, which up to now could not create any procedures for such events with their NRAs.

<ESMA_QUESTION_REPO_60>

Q61. 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>

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.

<ESMA_QUESTION_REPO_62>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_REPO_62>

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_QUESTION_REPO_63>

EFET argues that, in order to have a common understanding of key metrics and thresholds to assess the scope of notifications, as well as reducing the burden of calculating thresholds for each ERR or RSE, ESMA should request TRs to share such monthly number of submissions (paragraph 371) and/ or daily number of submissions (paragraph 372) with ERRs or RSEs.

ESMA should propose less burdensome procedures and introduce explicit requirements only to the utmost important issues for the monitoring of systemic risks to financial stability (e.g. limit notifications to not reporting of more than 100,000 derivatives in a single month in the first two years after the start of the requirement).

It is our current understanding that ESMA is aiming to specify and update such metrics and thresholds, for example via EMIR Q&As.

<ESMA_QUESTION_REPO_63>

Q64. Are there any other aspects in reporting of IRS that should be clarified?

<ESMA_QUESTION_REPO_64>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_REPO_64>

Q65. Are there any other aspects in reporting of swaptions that should be clarified?

<ESMA_QUESTION_REPO_65>

TYPE YOUR TEXT HERE



<ESMA_QUESTION_REPO_65>

Q66. 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_66>

Q67. 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>
EFET argues that, to keep the logic in all similar cases, it would only make sense to use the forward exchange rate of the far leg. This would be analogue to, for example, fixed price commodity swaps.
<ESMA_QUESTION_REPO_67>

Q68. 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 settlement date of the near leg might often fall onto the same date as other dates given in the report, for instance, effective date. Even in Forward/Forward scenarios this would be indicated in the effective date of the respective leg.
<ESMA_QUESTION_REPO_68>

Q69. Do you have any questions with regarding to reporting of FX forwards?

<ESMA_QUESTION_REPO_69>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_69>

Q70. Do you have any questions with regarding to reporting of FX options?

<ESMA_QUESTION_REPO_70>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_70>

Q71. 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>
Counterparties will implement a default way of reporting derivatives with multiple currencies. If there is no clear guidance and counterparties are expected to have an agreement between them, then this will result in more reconciliation breaks as they will not be able to change the logic just for a small subset of counterparties that report in a different manner.

Therefore, EFET recommends that only the alphabetical order can be useful or it should not matter for the counterparties. TRs need to check currencies and their values irrespective of the leg.

<ESMA_QUESTION_REPO_71>



Q72. 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>

Q73. Do you agree with the population of the fields for CFD as illustrated in the above example? Do you require any other clarifications?

<ESMA_QUESTION_REPO_73>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_73>

Q74. Specifically, in the case of equity swaps, portfolio equity swaps and equity CFDs how should the notional and the price be reported in the case of corporate event and in particular “free” allocations?

<ESMA_QUESTION_REPO_74>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_74>

Q75. Are there any other clarifications required with regards to the reporting of equity derivatives?

<ESMA_QUESTION_REPO_75>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_75>

Q76. Are there any other clarifications required with regards to the reporting of credit derivatives?

<ESMA_QUESTION_REPO_76>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_76>

Q77. Are there any other aspects in reporting of commodity derivatives that should be clarified?

<ESMA_QUESTION_REPO_77>
EFET proposes that non-standardized OTC derivatives should be expressly exempt from the obligatory use of UPI, CFI and/or ISIN Codes for NFCs, considering the difficulties for counterparties to generate access to such codes. In this case, the use of a code provides little valuable information to supervising authorities.
<ESMA_QUESTION_REPO_77>

Q78. 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>

Q79. 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>

EFET notices new reporting requirements for each reporting counterparty: the nature, corporate sector, clearing threshold and reporting obligation of the other counterparty. This will require significant operational effort for each counterparty to exchange, capture and store more static data prior to reporting. This will also result in more IT and operations cost - to capture and maintain these data.

How does ESMA recommend that counterparties ensure timely provision of these data in advance of meeting the reporting deadline? Otherwise, we suggest that ESMA reverts to the current approach and allow each counterparty reports its own static data where the fields in question are concerned.

<ESMA_QUESTION_REPO_79>

Q80. 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>

Q81. Are there any additional clarifications required with regard to the reporting of other payments?

<ESMA_QUESTION_REPO_81>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_REPO_81>

Q82. 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>

Q83. 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>

In general, EFET opinion is that Alternative A is our favoured way forward. It gives counterparties an up-to-date view on their outstanding derivatives and helps identify issues within reporting. Most counterparties are used to this scenario and built user experience with this format.

ESMA should clarify their expectations towards TRs regarding the two alternative approaches - to construct the trade state report (TSR) for this specific scenario so as to better answer the following question:

Counterparty 1 reports Event Date of T on T, Counterparty 2 reports Event Date of T on T+1 in a fully aligned way from a reconciliation perspective (thus paired and reconciled status expected in TSR from a counterparty point of view).

<ESMA_QUESTION_REPO_83>

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.

<ESMA_QUESTION_REPO_84>

EFET considers that, in case Approach B is followed, TRs should update the TSR in line with EU and EU member states record keeping requirements, in order to keep the full audit trail.



<ESMA_QUESTION_REPO_84>

Q85. 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>

Q86. 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>

Q87. 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>

EFET understands the necessity of a deadline for the "Revive" action type and agree that parties should not be able to revive very old deals. However, we think that 30 days is a too short deadline. Usually, a lot of processes run on a monthly basis, but frequently checks are performed after those 30 days on a quarterly basis.

Furthermore, we often face the situation were one of the party errors their side due to a technical error or a misunderstanding of their obligations (exiting deals that reach maturity date). It often takes longer than 30 days to sight the error and discuss it between both parties. We still do not see the necessity to remove deals that were only Errored by one of the parties.

Therefore, EFET thinks that the deadline for reviving an "Errored" report should be 90 days. We also believe that it would make a lot more sense if TRs removed derivatives only if they were errored out by both parties. Derivatives should not be removed when only one side sent an Error.

<ESMA_QUESTION_REPO_87>

Q88. 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>

Q89. 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>

Q90. 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_90>

Q91. 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>
EFET argues that ESMA should clarify the scope of data subject to reconciliation with regards to countries joining the EU to have a common understanding.

For example: if Switzerland joins the European Union as of 01/01/2025, is a derivative having Execution timestamp 31/12/2024 in scope or not of the reconciliation procedures?

<ESMA_QUESTION_REPO_91>

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.

<ESMA_QUESTION_REPO_92>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_92>

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.

<ESMA_QUESTION_REPO_93>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_93>

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_QUESTION_REPO_94>
Option A is preferred to minimise the operational overhead on reporting counterparties. Only when both sides have valuation data reported in the last 14 days, it should be included by TRs into the reconciliation reports. Including all derivatives irrespective of status means each reporting counterparty would have an additional burden and effort to manually filter trades that are not relevant for valuation reconciliation.

EFET recommends that in case an NFC- on the one side and a FC/NFC+ on the other side, the status of the valuation field should show matched or exempt for both fields. That would make the reconciliation less burdensome for FC/NFC+.

<ESMA_QUESTION_REPO_94>

Q95. 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>
EFET considers that, with no clear guidance from ESMA, it is impossible to always match the same correct legs with a counterparty, especially for parties that trade with a vast number of different counterparties.



Of these 2, we strongly prefer alternative B: that the TRs match the legs based on the direction of the leg. Moving the technical burden (signage / reporting direction) without any impact on data quality for monitoring of systemic risks to financial stability reduces the overall social costs of compliance.

Moreover, we think that there should be an Alternative C. ESMA should give a clear guidance on how to report (e.g., first leg always receive). With a given option, all counterparties and the TRs do not need to agree on anything, which reduces compliances risks and mismatching issues.
<ESMA_QUESTION_REPO_95>

Q96. 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>

Q97. Do you agree with the proposed approach for reconciliation of venues and the clarification in case of SIs? Please elaborate on the reasons for your response.

<ESMA_QUESTION_REPO_97>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_97>

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

<ESMA_QUESTION_REPO_98>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_98>

Q99. 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>

EFET agrees with most parts - only paragraph 612b might end in unwanted warning reports. We are aware of some of our members experiencing cases where counterparties (FCs) reported derivatives on behalf of an NFC-. While doing that, they also reported valuations, at least once, for the NFC-, whereas the NFC- never had the obligation to report valuations. As one of the biggest Trade Repositories is already sending out such warning reports for missing valuation reports, the NFC- received those reports on a daily basis, although they never sent anything wrong and they also took care of their responsibility to monitor what the FC has reported on behalf of the NFC-.

We think the TRs should send such missing valuation reports only if the respective party has the obligation to report valuations in the first place. This is indicated by trade reports for the derivatives (Non-Financial Counterparty and Below the Clearing Threshold).

ESMA should also consider these two points:

- 1) Who is the recipient of missing valuations report in case of reporting counterparties, ERRs and RSEs being different LEIs?
- 2) Replacement of "any outstanding derivative for which field 2.21 Valuation amount was never reported" by "any outstanding derivative post Trade Date (T+1) in scope of valuation reporting requirements for which field 2.21 Valuation amount was never reported".



Furthermore, we note that 100% matching of valuations between two counterparties in an uncleared transaction is extremely unlikely. Therefore, we expect ESMA to increase tolerances for valuation reconciliation (e.g. absolute values must be within 10% of each other).

<ESMA_QUESTION_REPO_99>

Q100. 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>

EFET would like to repeat two essential points:

- 1) Who is the recipient of missing margin information report in case of reporting counterparties, ERRs and RSEs being different LEIs?
- 2) Replacement of "*any outstanding derivative for which UTI margin report was never reported with action type 'NEWT' (or it was reported but then errored)*" by "*any outstanding derivative post Trade Date (T+1) in scope of margin reporting requirements for which UTI margin report was never reported with action type 'NEWT' (or it was reported but then errored)*".

<ESMA_QUESTION_REPO_100>

Q101. 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>

EFET recommends that ESMA should clarify the recipient of abnormal values report in case of reporting counterparties, ERRs and RSEs being different LEIs.

<ESMA_QUESTION_REPO_101>

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.

<ESMA_QUESTION_REPO_102>

EFET suggests that ESMA should clarify the recipient of reconciliation feedback by TRs in case of reporting counterparties, ERRs and RSEs being different LEIs.

Furthermore, ESMA should clarify in paragraph 629 that Reconciliation category "Reconciliation" is related to "*those derivatives for which all the reconcilable fields beyond valuation fields are within the allowed tolerances of reconciliation*".

<ESMA_QUESTION_REPO_102>

Q103. Is there any additional aspect related to the rejection of reports with action type "Revive" by TRs that should be clarified? Please detail the reasons for your response.

<ESMA_QUESTION_REPO_103>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_REPO_103>

Q104. 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>

Q105. 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_105>

Q106. What access rights would you like to be clarified and/or which access scenarios examples would you consider to be inserted in the guidelines? Please list them all, if appropriate.

<ESMA_QUESTION_REPO_106>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_106>

Q107. 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>

Q108. 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_REPO_108>