

EMIR-Reporting-Regime should be adequately designed

Do not overburden non-financial counterparties
using derivatives in their risk management

Answers to selected questions

Q1: Do you see any other challenges with the information to be provided by NFC- to FC which should be addressed? In particular, do you foresee any challenges related to the FC being aware of the changes in the NFC status?

We agree with ESMA's analysis that the information provided by NFC- is limited and manageable. Nevertheless, in order to ensure a lean process between the FC and the NFC-, it should be clarified that information that is the rule does not have to be submitted before every transaction. Rather, NFC- should be allowed to agree with the FC that a information once submitted by the NFC- is considered valid by the FC until further notice of the NFC-. This holds for example true for the hedging status (field 1.19), which is the rule for NFC-, and which could be regarded as valid for every transaction concluded. For specific transaction exceptionally not defined as hedging under EMIR, which is not the rule, the NFC- would inform the FC separately. In the past, this procedure proved itself as efficient and well-established in the dual reporting system.

Q2: Do you agree with the proposals set out in this section? If not, please clarify your concerns and propose alternative solutions.

No, the proposals for the treatment of derivatives still outstanding before 18/06/2020 are not feasible in practice. Due to significant costs and efforts the transfer of the outstanding derivatives in question is no option for the NFC-. This applies in particular if the legacy contracts has to be transferred not to only one, but to the different trade repositories of the respective banks. If transfer is too burdensome and economically unfeasible, the NFC would have to continue to report its legacy contracts by its own. However, this would entail enormous additional costs for maintaining the interfaces to the trade repository, keeping track of modifications of the contracts and adjustments of the new reporting standards, for the monitoring of the reporting by the external auditor etc. Overall, this would contradict the aim of EMIR Refit to reduce the costs for NFC-. Therefore, ESMA should allow NFC- to stop reporting also for derivatives outstanding before 18/06/2020. As modifications/terminations of the derivatives in questions mostly depend on the agreement of both counterparties, FCs have this information available and, hence, should report them to their trade repositories. For supervisory purposes there is no information loss at all. Of course, FCs should be solely liable for the correctness of the data they provide transaction registers from their own records.

It is a main shortfall that FCs stemming from third countries are not obliged to report for the NFC-. This is one of the main reasons why the majority of our member companies will continue to carry out the reporting themselves and to stick to the “two-sided-reporting”. Equivalence decisions by the EU-Commission for the main markets (e.g. UK, US) would solve this problem. Therefore, we urge the EU-Commission to enact these equivalence decisions as soon as possible.

Q6: Do you agree with the proposals set out in this section? If not, please clarify your concerns and propose alternative solutions.

Although many NFCs have informed their FCs duly and in time that they want to continue reporting in the future, not every FC gave feedback so far been. If double reporting occurs nevertheless, proof should be sufficient for the NFC- to have communicated its decision to the FC in due time. Overall, reporting errors which might occur due to coordination difficulties between the NFC- and the FC should be treated with a sense of proportion for a certain period after the 18/06/2020.

Q8: Which errors or omissions in reporting should, in your view, be notified to the competent authorities? Do you see any major challenges with such notifications to be provided to the competent authorities? If yes, please clarify your concerns.

Yes, we see major challenges as so far that for many data fields no common and finally defined standards for the correct format does exist. Each counterparty has slightly different formats. Therefore, although the values reported are the same economically, mismatches often occur due to a use of different number formats. Errors due to the use of different formats are daily business and it is inconceivable to smooth out all differences as formats were not used commonly among all counterparties. Therefore, notification on every error or any omission stemming from a mismatch would over-stretch capacities of market participants and NCAs. It is only reasonable to notify the NCA if counterparties experience a basic problem that prevents them from submitting the reports to the transaction registers.

Q11: Do you agree with the proposed technical format, ISO 20022, as the format for reporting? If not, what other reporting format would you propose and what would be the benefits of the alternative approach?

No, as the vast majority of our member companies so far do not process the data in the XML format. Adoption of XML would mean the set up of new interfaces to the trade repositories and the implementation of new internal data processes. That

would mean additional costs and would take extra time in terms of months. Therefore, as we did not experience any problems concerning the format the question arises, why this well-established setup should be changed. As CSV is the format used commonly among our members, XML could be an option but should not be an obligation.

Q24: Do you have any comments concerning the use of ISINs as product identifiers under EMIR for the derivatives that are admitted to trading or traded on a trading venue or a systematic internaliser?

No, as we think that the use of ISINs as product identifiers works very well in practice.

Q25: Do you have any comments concerning the use of UPIs as product identifiers under EMIR? Should in your view UPI be used to identify all derivatives or only those that are not identified with ISIN under MiFIR?

UPI should be used to identify only those derivatives that are not identified with ISIN. A mandatory use of UPIs for all derivatives would lead to an additional burden for market participants, which is also noticed by ESMA. The additional benefit for market participants is not recognizable, as identification with ISINs work well in practice. On the contrary, introduction of a new identifier like UPIs would bear implementation risks and, hence, the risk of new sources of errors leading to mismatches and decreasing reporting quality.

Q28: Do you foresee any issues in relation to inclusion in the new reporting standard that the LEI of the reporting counterparty should be duly renewed and maintained according to the terms of, any of the endorsed LOUs (Local Operating Units) of the Global Legal Entity Identifier System?

We understand the analysis of ESMA in that regard, that it is necessary to have a valid LEI before entering into a trade. Although ESMA rightly states that this requirement is not part of the ITS so far, we did not experience any difficulties with that issue in the past. Uploading a report in the trade repository requires a valid LEI – otherwise the report is rejected. As described by ESMA this is common practice so far and we do not see a reason why this should not be introduced into the ITS.

Nevertheless, to renew the LEI before every trade which is entered into the trade repository could not be meant by ESMA, would not be necessary, would contradict

the purpose of the LEI to clearly identify the companies and would over-burden market participants disproportionately.

Q42: Is the proposed definition adequate? Can you think of any cases where further clarification would be needed or further problems might be expected? What would you expect to be reported as effective date when the trade is not confirmed?

So far, no definition for the effective and expiration date in the confirmation is available. Therefore, the proposed definition could be problematic. Example: In case of cash-settled commodity derivatives some market participants use as effective and expiration dates in the confirmation the start date and end date of the calculation period. Other market participants the start and end date of the delivery period of the underlying. When the effective/expiration date for EMIR reporting purposes would be defined as the effective/expiration dates as included in the confirmation, the information would be of limited value. Furthermore, in case a trade is reported before the confirmation, there would not be a common understanding of both counterparties which dates to report as effective and expiration date.

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