

Technical standards on reporting under Article 9 of EMIR

Response to ESMA's consultation paper
Review of the technical standards on reporting under Article 9 of EMIR
of 10 November 2014 (ESMA/2014/1352)

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DACSI (the Dutch Advisory Committee Securities Industry) is the principal not-for-profit association in The Netherlands for firms active in the securities industry. The association represents the interests of its members as users/clients of infrastructure providers in the field of securities, e.g. exchanges, central counterparties, central securities depositories. With 11 members, DACSI represents the vast majority of the banks active in The Netherlands, and positions the Dutch view to the market infrastructure service providers and the regulatory authorities in The Netherlands and the European Union.

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Thank you for the opportunity to comment on the consultation paper “Review of the technical standards on reporting under Article 9 of EMIR”. We hope that our contribution is helpful in achieving a more consistent and harmonised population of field and reporting of complex derivatives.

General remarks

Current practice with EMIR transaction reporting indeed requires proposals for improvement. In our observation the main problem is the large number of mismatches between the two reported sides of the same transaction.

ESMA’s proposals address a number of issues in current reporting practice. We are not sure whether most of the proposals will result in significant improvements: asking for (more) details in the data to be reported may not be the most adequate step forward. Logically, **many** of the **details** regulators would like to see are **implicit in stable data** like LEI and ISIN. We are convinced that including such underlying data in the reporting per transaction would lead to more mismatches.

Furthermore, any changes made in the reporting obligation have an impact on the industry. Every time a change is made the industry needs time and money to make the changes to their systems and implement these changes. Therefore it would be preferable to have a more in depth analysis and to amend the technical standards accordingly as this would minimise the number of times the industry would have to make these changes. A **balance** should be struck **between stabilising** the reporting **and improving** or developing it. At the moment for DACSI members the balance still is **in favour of stabilising** the report.

Many problems draw back to the essential choice of **bilateral reporting**. We are convinced that material gains can be achieved by reviewing this principle and by identifying those situations where unilateral reporting leads to better results at lower costs (for both transacting parties and for regulators).

We propose **unilateral reporting** in the following situations:

- **Exchange Traded Derivatives (ETDs)** (where millions of contracts are concerned each day); we propose the ‘client leg’ for ETDs is exempted from the reporting obligation because:
 - In the global regulations (i.e. Dodd Frank Act) ETD trades are exempt from reporting;eis on OTC trades.
 - Under MiFID I Exchange Traded Derivatives have to be reported to the National Competent Authority (NCA) by the Investment Firms/ Banks, under EMIR this is a double reporting (indirectly) to the NCA but via the chain of Trade Repositories.
- **OTC Derivatives where one of the counterparties is an NFC within the EU** (where non-professionals are struggling with reporting obligations and while reporting is often conducted “on behalf” by the FC).

In both types of situations the second reporting leg does not add information or even confirmation (for ETDs this is already dealt with by the CCP).

Remarks on individual questions

I. Clarifications

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

Yes, removal would cause unwelcome complications.

We are currently using the value 'Other' in the fields 'Derivative class' and 'Derivative type' for some transactions. This value is used only in these cases where we cannot match the product with one of the other classes or types. Taking away the possibility 'Other' would require a complete review of our product reference data, which would be a long and cumbersome process.

We also suggest not asking counterparties to report various attribute data that can also be derived from the mandatory identifiers. Asking this would increase the probability of mismatches without increasing the quality of the categorization process.

We would therefore propose to be allowed to leave the fields 'Derivative class' and 'Derivative type' empty in case an ISIN or All code is used as product identifier.

We suggest ESMA to reconsider the real benefit of removing the category and the unintended consequences of increasing the potential for incorrect classification by the two parties. In certain circumstances, such as structured/exotic transactions "other" is actually the correct classification. On the same issue, we assume that the portion of "other" is presumably a little one digit percentage only, so the regulators/industry shouldn't invest too much time & effort into ironing out each and every tiny issue. The original target was achieving transparency over the exposure per product class/group and not building up a (confirmation) matching platform.

Also, if the other category is removed we believe that additional derivative classes should be introduced. We think that at least "Bond" and "Index" should be contained in the list.

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

In general, we think these clarifications are effective. However, we would like to draw ESMA's attention to some specificities:

Re par. 17: we consider that the suggested terms ("reporting counterparty" and "other counterparty") will improve the clarity of the data reports.

Re par. 22: we feel that the obligation to use the CCP settlement price in pricing cleared trades would only make sense for ETD transactions. In case of a cleared OTC contract it would not be logical to use the CCP settlement price for the pricing of the back-to-back transaction between a clearing member and its client.

Re par. 25: we note that for options and futures it makes sense to use a Buy / Sell indicator. For swap transactions it would be more logical to use Payer / Receiver. Suggestion would be to add an additional field Payer / Receiver and require this field to be populated for swap transactions. For option and future transactions the Buy / Sell field must be populated.

Alternative would be to use the Buy / Sell indicator on the level of the individual legs of a transaction.

The wording of Article 3a in respect of Table 1 Field 13 does not consider all possible scenarios, e.g. interest rate swaps (float/float).

There should be reasonable consistency between the valuations of the buyer/payer and the seller/receiver. We propose that the definition of the valuation to be provided should be the “fair value for OTC derivatives in accordance with international accounting principles.” We are also concerned that these proposals have been made with the intention to use market value for matching purposes. Paragraph 24 of the consultation indicates that this field should remain static, presumably for the purpose of harmonisation and matching purposes, but this field will vary as the contracts are valued mark to market or mark to model for the purpose of calculating variation margin. We do not believe market value should be used for reconciliation purposes.

In general, the quality of the reported data will improve significantly – while less costs will be concerned – when the client leg of ETDs is exempted from the reporting obligation (see also our General Remarks).

Settlement and delivery

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

We do not see serious difficulties, as long as the ‘replacement value’ corresponds to the usual methodologies of calculating a **mark-to-model** valuation.

Reporting of **mark-to-market** valuation on cleared swaps would cause problems for especially smaller counterparties. For an indirect member of a CCP it can be a challenge to receive and report these valuations. It would be a great challenge for smaller counterparties and buy side users to get brokers and CCPs to deliver these values to their clients. Our members have some concerns regarding the approach proposed under the second bullet point of paragraph 21 and the relevance of the information presented.

It will be challenging to report “CCP calculated” values on derivatives within T + 1. The technical standards should allow for reporting the counterparty’s own calculated market values on a daily basis.

II. Adaptations

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

DACSI thinks that quite a number of issues should be solved in order to let the adaptations have a positive effect.

Re par. 28: a time interval (timestamp), perceived as acceptable, may be defined in such fields, to reduce reconciliation issues, since some of the differences arise in the reporting done by both parties, due to deviations of minutes, or even

seconds, in the data reported. Furthermore, more precision is required with regard to the time zone to which a time or timestamp refers: any ambiguity in this respect can lead to unnecessary mismatches.

Re par. 29: it is of utmost importance that it remains possible to identify the 'Other Counterparty' by another identifier than an LEI, even if the other counterparty is eligible for an LEI. It is our experience that numerous clients (mostly SME corporates) do not obtain an LEI. Although this could be reason not to enter into any new transactions with these clients, the fact remains that these clients have existing transactions with a remaining maturity of up to multiple decades. If it is no longer possible to use any other means than an LEI to identify the counterparties, the consequence will be that the transactions of these clients will no longer be reported at all.

The same applies to the Beneficiary field. Transactions (mostly ETD) executed under 'Lastgeving' are primarily induced trades resulting out of a 'real' transaction between a clearing member and a CCP. The Dutch NCA has stated that these induced trades with clients that classify as Retail Client under MiFID need not be reported separately, provided that the client is mentioned as Beneficiary to the trade with the Clearing Member or CCP. This statement prevents tens of thousands of retail clients in the Netherlands having to report and therefore having to apply for an LEI. Making the LEI the only allowed way to identify a beneficiary, would require these retail clients to apply for an LEI after all, which they simply won't do.

Re par. 30: it would be our suggestion not to ask counterparties to report various attribute data that can also be derived from the mandatory identifiers. This would only increase the probability of mismatches.

- We would therefore strongly advise that only a Corporate Sector of the Reporting Counterparty would need to be provided in case the Reporting Counterparty could not be identified with an LEI.
- We would advise that Local Operating Units capture the corporate sector information by requiring participants to provide this information with the annual revision of their LEI.

The proposed changes regarding Notional Amount lead to a number of questions:

- Please confirm that the distinction between 'Original notional' and 'Actual notional' only concerns OTC derivatives. For ETD a change in notional will either be the result of a transaction or of a Corporate Action, both of which would be reported separately.
- How should a transaction be reported for which an amortization scheme was already agreed upon at the conclusion of the contract? It is our view that a change in notional that was agreed upon at the conclusion of the contract is not a modification of the contract that should be reported. We would not be able to report such an 'event' as there is no trigger to ignite a report.

We propose to make it possible to report any amortisation scheme to the trade repository as part of the Common Data and that the trade repository would then be able to display the correct 'Actual value' based on this scheme.

Re par. 33: it should be noted that if the LEI code is used to identify the counterparty, it should not be necessary to identify the country, since this information is already included in the LEI. However, if the LEI is not used, the country of the counterparty should be reported.

Re par. 34: we see challenges when client transactions are novated from one counterparty to another seen from a bank perspective. Obtaining the original notional would be difficult, specifically in Equity based products, and further difficulty when lifecycle events are factored in as the original value is not stored. The transaction will be booked with the actual notional when novated and the original notional will not always be known to transferee. It seems necessary to supply a solution for the case when the original notional is not known to a reporting counterparty (and thus the report submitting counterparty). This would mean a new challenge for IT systems as we believe that trading systems are not yet capable to capture a former "original notional" which stems from previous novation(s) having no relation to the current trade details/payment schedule.

Re par. 35: it would be our suggestion not to ask counterparties to report various attribute data that can also be derived from the mandatory identifiers. This only increases the chance of mismatches.

Since we do not see how two different venues could issue two different instruments with the same All code, we do not see why the MIC code of the issuing venue should be included.

We see complications in the proposal to populate the field Clearing Obligation with “Yes” if and only if the contract belongs to a class of OTC derivatives that has been declared subject to the clearing obligation and both counterparties to the contract are subject to the clearing obligation. It would require capturing additional data in our systems that would be relevant for only the 6 month period during which a distinction is made between Financial Counterparties with and without more than € 8 billion in non-centrally cleared derivatives. During this 6 month period we intend to let our financial clients make a written representation that they do not exceed this threshold. Now it would be required to capture this information in our systems. Outside this 6 month period the information can be derived from the fields ‘Nature of the reporting counterparty’ and ‘Clearing threshold’. Meanwhile, it is very likely that the amended RTS will not take effect until after this 6 month period.

Re par. 36: the “report tracking number” has big operational consequences. There are big operational challenges with the exchange of the UTI and many big banks are not able to generate the UTI even though it is part of the contract that they should provide the UTI. Therefore adding the exchange of a RTN code will only delay the time when the EMIR reporting is working as intended. At the same time this connection between client and counterparties transactions in the systems causes a major impact on firms which also would have to be maintained for existing trades if introduced. EBF members feel that usage has not been clearly articulated. Placing this in table two makes it extremely difficult, and it would be beneficial to move this to table one. A vertical ID should be added to tie in multiple legs.

Re par. 38: we agree that this kind of information should be subject to a common format, applicable to all parties. The ESMA consultation should reference fields 36, 37 and 38.

Re par. 39: the clarifications regarding “action type” are unclear. It is difficult to interpret the correct definition and use of the various options. The document gives an example of a termination, and this explanation shows the exact amount of difficulty and consideration the codes behind the reports. There is uncertainty how to use different codes and therefore ESMA should be very specific when defining all the action types.

Re par. 39/40: we believe that further clarification is needed, considering that the option “cancel” suggests that the transaction was either incorrectly reported or did not take place. Therefore, an option different from “cancel” should exist for transactions that have already reached maturity.

With respect to options, the following items should be clarified:

- (i) The maturity date of an operation does not represent a life cycle event, and thus should not be reported, considering that this information is included in the initial report.
- (ii) Considering that this possibility is stated in the initial report, should the exercise of American/Bermudan option before the maturity date, be considered a life cycle event subject to report? Further clarity is required on what is reportable.

Re par. 41: regarding the introduction of a system for correcting false data inputs we have to state that the existing cancellation and resubmitting system is inherently implemented in many IT-systems. It is thus a very natural way of correction and we argue for the option to let this system coexist with the new approach.

Re par. 42: we certainly welcome the opportunity for unilateral reporting in these cases as it will substantially reduce the number of mismatches.

In general, the quality of the reported data will improve significantly – while less costs will be concerned – when the client leg of ETDs is exempted from the reporting obligation (see also our General Remarks).

III. Introductions

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

Re par. 46: we suggest not asking counterparties to report various attribute data that can also be derived from the mandatory identifiers. This would unnecessarily increase the probability of mismatches.

- We would therefore strongly advise that only a Corporate Sector of the Reporting Counterparty would need to be provided in case the Reporting Counterparty could not be identified with an LEI.
- We would advise that Local Operating Units capture the corporate sector information by requiring participants to provide this information with the annual revision of their LEI.

Regarding the proposal to identify each element of an underlying basket:

- This is a big amendment as it requires a change in the structure of how we report data. Where we can now always identify an underlying with a single identifier, we will need to introduce nesting, with multiple levels of instrument data. If this proposed adaptation were to be finalized, counterparties should be given a considerable amount of time (> 6 Months) to prepare themselves.
- We foresee issues in the case of substitutions. Sometimes one specific share in a basket is substituted by another one. How should this be reported? As this is only a modification of the reference data, there is no event on the trade that could ignite a report to the trade repository.
- We do not immediately see how information about the contents of a basket would be of any use without the weighing of the individual elements. However, this weighing changes daily.

Re par. 50: we would suggest not asking counterparties to report various attribute data that can also be derived from the mandatory identifiers. This would increase the likelihood of mismatches.

We would therefore advise that, instead of the five proposed fields, only the ISIN code of the underlying debt instrument is reported.

Re par. 51: The proposed changes regarding Notional Amount lead to a number of questions:

- Please confirm that the distinction between 'Original notional' and 'Actual notional' only concerns OTC derivatives. For ETD a change in notional will either be the result of a transaction or of a Corporate Action, both of which would be reported separately.
- How should a transaction be reported for which an amortization scheme was already agreed upon at the conclusion of the contract? It is our view that a change in notional that was agreed upon at the conclusion of the contract is not a modification of the contract that should be reported. We would not be able to report such an 'event' as there is no trigger to ignite a report.

We propose to make it possible to report any amortization scheme to the trade repository as part of the Common Data and that the trade repository would then be able to display the correct 'Actual value' based on this scheme.

Re par. 52: We feel that the proposed approach of reporting Initial Margin and Variation Margin as stand-alone amounts does not provide an accurate representation of common market practices in collateralisation. Common practice is that clients of clearing members pay a lump sum collateral amount to their clearing member (or pledge all assets in an account to the clearing member), which the clearing member can use to debit or credit Initial Margin and Variation Margin. But since the entire lump sum amount has been paid as collateral, the actual amount of collateral paid is often higher than just the sum of Initial Margin and Variation Margin.

A second complication would be that the proposed approach would require a clearing member to report Variation Margin being paid to the client, while in reality it is nothing more than reducing the part of the total collateral paid by the client that is earmarked as Variation Margin.

Re par 53: Regarding the proposal to report collateral received as well, we are very concerned that there is an expectation that collateral paid as reported by one counterparty and collateral received as reported by the other counterparty can be matched. In a lot of cases it will not be possible to match these two amounts, for instance when a collateral portfolio also contains collateral for instruments not in scope of EMIR, such as repo's.

In general, the quality of the reported data will improve significantly – while less costs will be concerned – when the client leg of ETDs is exempted from the reporting obligation (see also our General Remarks).

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

In general no numeric value field should be restricted from being negative, as negative values simply occur as the result of transaction negotiations or of the evolution of the contract.

In particular EBF members believe that the following fields should allow for negative values:

- i. Value of Contract (T1F17)
- ii. Price / Rate (T2F16)
- iii. Up-Front Payment (T2F23)
- iv. Fixed rate of leg 1 (T2F40)
- v. Fixed rate of leg 2 (T2F41)
- vi. Forward exchange rate (T2F50)
- vii. Strike price (cap/floor rate) (T2F67)
- viii. Index factor (T2F72)

Q7: Do you anticipate any difficulties with populating the corporate sector of the reporting counterparty field for non-financials as described in paragraph 46? Please elaborate.

We suggest not asking counterparties to report various attribute data that can also be derived from the mandatory identifiers. This would unnecessarily increase the probability of mismatches.

- We would therefore strongly advice that only a Corporate Sector of the Reporting Counterparty would need to be provided in case the Reporting Counterparty could not be identified by an LEI.
- We would advise that Local Operating Units capture the corporate sector information by requiring participants to provide this information with the annual revision of their LEI.

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

Regarding the proposal to identify each element of an underlying basket:

- This is a big amendment as it requires a change in the structure of how we report data. Where we can now always identify an underlying with a single identifier, we will need to introduce nesting, with multiple levels of instrument data. If this proposed adaptation were to be finalized, counterparties should be given a considerable amount of time (> 6 Months) to prepare themselves.
- We foresee issues in the case of substitutions. Sometimes one specific share in a basket is substituted by another one. How should this be reported? As this is only a modification of the reference data, there is no event on the trade that could ignite a report to the trade repository.

- We do not immediately see how information about the contents of a basket would be of any use without the weighing of the individual elements. However, this weighing changes daily.

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

Yes. Since currently there is no section that demands specific information with respect to credit derivatives, the introduction of a section dedicated to this class represents can be an improvement.

Nevertheless, we believe that counterparties should not be asked to report data that can be derived from the mandatory identifiers or from more stable reported data.

We would hence advise that:

- in case of an underlying (debt or other) instrument with an ISIN, only the ISIN code is to be reported instead of the five proposed fields,
- reporting the interest rate, the frequency of payment and the calculation basis, as opposed to reporting the coupon, will more adequately reflect the details of the contract, considering that in some CDS the coupon amount is not fixed.

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

This is a vital question, which relates to the technical infrastructure used by each market participant. Current reporting practice differs amongst market participants, primarily due to different trading and risk systems. A trading strategy which can be booked as a single trade by one participant may require registration of multiple trades by another participant. This is a general market condition - and a lasting issue which requires special attention and additional reporting flexibility. In general, market participants should aim at reporting trades in the same manner as they are confirmed. E.g. if a strategy is confirmed by one confirmation referencing one trade (strategy), then only one UTI should be issued for this strategy. If multiple confirmations are used, then multiple UTIs should be issued.

To enable two participants reporting the same strategy, but using a different number of trades due to differences in their technical set-up, it should be considered to use a link ID to link the trades together.

It is relevant to be allowed to report more than one value for option type and option style if the derivative contains more than one option. On the other side it will be complicated to report the strike/price field and see which strike corresponds to which option. The question is how valuable the detailed information is and what it should be used for. Another problem will also be to reconcile this information against the counterparty's report. It is obvious that different systems represent the information in different ways. In some cases even the number of options can vary.

This problem is not only related to straddles or option strategies. There is even a bigger problem how to report a swap contract with one or more embedded options, for example a swap that contains one Interest rate swap in combination with several options. That is one legal contract and one confirmation and one UTI. There are different ways to book these kinds of deals in different systems, therefore it is complicated to reconcile each field.

The possibilities regarding reports of non-plain vanilla options are severely restricted. The possibility of reporting the type of strategies abovementioned in one single report, as opposed to decomposing it in several reports of several contracts could be an improvement allowing a better representation of these strategies. However, accommodating these practices in the reporting process may imply substantial increase in the time and activities devoted to fulfilling compliance requirements. It would also be very good to report a packaged deal under one common UTI for all underlying transactions since counterparties are re-reporting the underlying in different ways (report on package level instead of component level).

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

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

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

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

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

Yes.

Additional remarks

Trade repositories currently treat mergers and acquisitions of counterparties as novations. This is not correct as in an acquisition the acquiring party simply takes over all obligations of the acquired party. This is different from a novation. In case of a merger or acquisition generally no confirmations are sent out. We would welcome guidance for trade repositories to handle mergers and acquisitions differently from novations, i.e. without the requirement of reporting a trade modification.