



European Securities and
Markets Authority

Anlage 1

Reply form for the Addendum Consultation Paper on MiFID II/MiFIR



23 December 2015

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Addendum Consultation Paper on MiFID II/MiFIR, 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_CP_TR_ORK_CS_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.

Responses are most helpful:

- if they respond to the question stated;
- contain a clear rationale, including on any related costs and benefits; and
- describe any alternatives that ESMA should consider

Naming protocol

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_CP_TR_ORK_CS_NAMEOFCOMPANY_NAMEOFDOCUMENT.

E.g. if the respondent were XXXX, the name of the reply form would be:

ESMA_CP_TR_ORK_CS_XXXX_REPLYFORM or

ESMA_CP_TR_ORK_CS_XXXX_ANNEX1

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Deadline

Responses must reach us by **23 March 2016**.

All contributions should be submitted online at <https://www.esma.europa.eu/> under the heading ‘Your input/Consultations’.



Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that 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 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'.



Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_TR_ORK_CS_1>

The German Banking Industry Committee (GBIC) is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdpp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks. GBIC welcomes the consultation of draft guidelines on transaction reporting, reference data, order record keeping & clock synchronisation.

<ESMA_COMMENT_CP_TR_ORK_CS_1>

Q1: Are there any other scenarios which you think should be covered?

<ESMA_QUESTION_CP_TR_ORK_CS_1>

Guidance should be added on drawing a distinction between the two trading capacities “matched principal trading” and “any other capacity”. The definition in Article 4(1)(38) of MiFID II is clear enough in itself, but further explanation is needed at least for investment firms in markets where “matched principal trading” is not an established term for a specific market practice. Ideally, the guidance should be clarified with the help of examples. Take, for instance, the following:

Example 1: Client places order, firm executes the order on a trading venue on behalf of the client (without first booking the transaction in its own books and then selling to the client OTC).

Example 2: Client places order, firm executes the order OTC with counterparty XY Bank on behalf of the client (without first booking the transaction in its own books and then selling to the client OTC).

Question: Should the reporting firm populate the trading capacity field with “matched principal” or “AOTC” in these cases?

<ESMA_QUESTION_CP_TR_ORK_CS_1>

Q2: Are there any areas in Part I covered above that require further clarity? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_2>

1. The consultation paper does not address the issue of the scope of the requirement under draft RTS 13 for ARMs to obtain authorisation. This is an issue of great practical importance, however. The German banks strongly recommend strictly limiting the requirement to the entities which firms subject to reporting requirements use to transmit reports to competent authorities. Requiring other links in the reporting chain to obtain ARM status would be totally disproportionate: a long-standing, tried and tested procedure would be given up unnecessarily.
2. The list of prefixes to surnames to be removed under section 1.1.5.1.3 needs to be exhaustive. Otherwise, it will not be possible to program reporting mechanisms. The German prefixes needing to be added to the list are as follows:
 - am,
 - auf,
 - auf dem,
 - aus der,
 - im,
 - von dem,
 - vom.

It should also be clarified that it does not matter whether the prefix is written with a capital or small letter. German prefixes to surnames normally start with a lower-case letter, but all those in ESMA's list are in upper case.

3. There are a number of discrepancies between the population of the fields in accordance with RTS 22 on the one hand and the guidelines on the other. Absolute consistency must be ensured. The following fields are inconsistent as things stand:

- Field 4: different content in the column “Content to be reported”.
- Field 5: differences in the description of the field.
- Field 33: the format “DECIMAL-18/17” is included in the guidelines, but is not mentioned in draft RTS 22.
- Field 51: the format “DECIMAL-18/17” is included in the guidelines, but is not mentioned in draft RTS 22.
- Field 61: the flag “LRGS” is missing from the guidelines, though it is included in draft RTS 22.
- Field 62: the guidelines have replaced the value “NTAV” by “UNDI”.
- Field 63: the flags “RPRI”, “DUPL”, “TNCP”, “TPAC” and “XFPH” have been added to the guidelines. The flags “NPFT”, “RFPT”, “NLIQ”, “OILQ”, “PRIC” and “ALGO”, which are included in draft RTS 22, have been omitted.
- Field 65: different content in the column “Content to be reported”.

All discrepancies are also indicated in the table in the annex.

4. The proposed conversion of letters with umlauts and the letter “ß” poses insoluble practical implementation problems (cf. section 1.1.5.1 and 1.1.5.2). The systems used by banks to collect and store client static data are normally not able to recognise letters with umlauts or the letter “ß”. When entering static data, these letters are already converted on the following basis:

Ä, ä -> Ae, ae;

Ö, ö -> Oe, oe;

Ü, ü -> Ue, ue;

ß -> ss

Once a name has been entered in this way, it is no longer possible to reconstruct the original spelling. The following examples illustrate the problem:

Client name: Dieter Möller

The proposed conversion using the consultation paper’s transliteration table would be: Dieter Moller

Name stored in static data system: Dieter Moeller

Conversion on the basis of stored static data using the consultation paper’s transliteration table: Dieter Moeller

Client name: Karin Müß

The proposed conversion using the consultation paper’s transliteration table would be: Karin Mus

Name stored in static data system: Karin Muess

Conversion on the basis of stored static data using the consultation paper’s transliteration table: Karin Muess

We would therefore suggest converting first names and surnames for reporting purposes using the method used for entering names into static data systems (Ä, ä -> Ae, ae; Ö, ö -> Oe, oe; Ü, ü -> Ue, ue; ß -> ss).

5. The method of rounding times needs to be clarified. According to the examples in sections 1.2.7.1, 1.2.7.2, 1.2.7.3, 1.3.5.1 and 3.2, the trading date time reported in field 28 is entered with time reduced to three decimal places after the second or to the nearest second (e.g. 09:10:33.124373 -> 09:10:33.124Z, 13:15:45.122469 -> 13:15:45Z). It is not clear whether rounding rules have been applied (and if so, using what method) or whether the figure has been truncated. Rounding or truncating

would produce the same result in these cases. Rounding or truncating 09:10:33.124373, for instance, produces 09:10:33.124. It would be different, however, if the original time was, for example, 13:15:45:522569; rounding to three decimal places gives 13:15:45:523; truncating at three decimal places gives 13:15:45:522. We would suggest using the truncation method. This should be specified in section 1.2.6 of the guidelines.

6. Process of switching from old MiFID I reporting regime to MiFIR transaction reporting:
We would request guidance on preparing for the transition phase between the old MiFID I transaction reporting regime and the new MiFIR transaction reporting regime. There are a number of reasons that should be considered when deciding which route to pursue. We would suggest going for a “big bang” approach, meaning switching off the old reporting systems on the last reporting date of the old regime and switching on the new reporting systems on the first reporting date of the new regime.

Our reasons are as follows. We believe regulators will have all the information they need to carry out their supervisory tasks. In the event of any investigations, bilateral conversations/requests will start and responses can still be provided.

The situation in Germany is that banks have been told by the provider that the middleware TRICE, which is used by a huge percentage of the market to send transaction reports to BaFin, will be decommissioned after the last reporting day of the old regime. If the connection needed to be kept open for reporting corrections, the banks using TRICE would have to set up a new, direct connection to BaFin. Running two systems in parallel would generate substantial costs not only for the industry but also for regulators.

7. The German Banking Industry Committee does not agree with the proposals in section 1.1.5 for ensuring that firms have correct and accurate details of the identity of clients who are natural persons. The procedure for verifying the identity of natural persons set out in draft RTS 22 is highly, and in our view unnecessarily, complex (different client identifiers for each nationality, each with up to three priority levels). ESMA disregards the fact that, as things stand, reporting firms are only required to have a fraction of the proposed client identification data in their systems. There is no requirement at present to systematically record Personal Identity Card Numbers or National Passport Numbers including their expiry date, for instance. Those firms which have not recorded the expiry dates of identity cards or passports in the absence of an obligation to do so will therefore not, as assumed in section 1.1.5, be able to monitor when the identifiers of existing clients expire.

Another reason why firms will not always be able to ensure the accuracy of information about the identity of natural persons is that compliance is not up to them alone. In many respects, they depend on the cooperation of the client. What is more, they are not always in a position to check whether clients provide information in line with the requirements. The first priority identifier under draft RTS 22 for German nationals, for instance, is the personal identity card number. Under Article 6(2) of draft RTS 22, this number has to be used as the basis for identifying the client if the client has a personal identity

card. The firm cannot verify whether the client has a personal identity card or not, however, since German citizens are permitted by law to identify themselves using any recognised form of identification (such as a passport).

Nor can the possibility of other errors be excluded, given that a totally new and complex identification system has been created for transaction reporting on top of the numerous existing European and national identification requirements (under the anti-money laundering regime, for example). The sheer scale of the task also needs to be taken into account. According to statistics published by Deutsche Bundesbank in November 2015, private individuals hold over 16.3 million securities accounts at banks in Germany and a further 6.1 million at asset management companies and other financial institutions. To this must be added several million further cases since the requirement to identify natural persons applies to decision makers, too.

<ESMA_QUESTION_CP_TR_ORK_CS_2>

Q3: Are there any other situations on reportable transactions or exclusions from transactions where you require further clarity?

<ESMA_QUESTION_CP_TR_ORK_CS_3>

1. The German banks are highly critical of the envisaged requirement to report securities financing transactions between financial institutions and central banks. The proposed requirement flies in the face of Recital 12 of Regulation (EU) 2015/2365, which states that transactions with members of the European System of Central Banks (ESCB) should be exempt from the obligation to report SFTs to trade repositories. Recital 12 of the SFT Regulation goes on to say: "However, in order to ensure that regulators and supervisors obtain a proper overview of the risks linked to SFTs concluded by the entities they regulate or supervise, the relevant authorities and the members of the ESCB should cooperate closely. Such cooperation should enable regulators and supervisors to fulfil their respective responsibilities and mandates. Such cooperation should be confidential, and conditional on a justified request from the relevant competent authorities, and should only be provided with a view to enabling those authorities to fulfil their respective responsibilities having due regard to the principles and requirements of the independence of central banks and the performance by them of their functions as monetary authorities, including the performance of monetary, foreign exchange and financial stability policy operations which members of the ESCB are legally empowered to pursue. The members of the ESCB should be able to refuse to provide information where the transactions are entered into by them in the performance of their functions as monetary authorities. They should notify the requesting authority of any such refusal together with the justification therefor."

For this reason, these SFTs should also be exempt from the reporting requirement under Article 26 of MiFIR.

2. The requirement under 1.1.6.2 to report transfers of financial instruments between funds or portfolios is too general. It needs to be fleshed out in more detail.

<ESMA_QUESTION_CP_TR_ORK_CS_3>

Q4: Are there any specific areas covered by the mechanics section where you require further clarity? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_4>
No.
<ESMA_QUESTION_CP_TR_ORK_CS_4>

Q5: Do you require further clarity on the content of Article 1 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_5>
No.
<ESMA_QUESTION_CP_TR_ORK_CS_5>

Q6: Do you require further clarity on the content of Article 2 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_6>
No.
<ESMA_QUESTION_CP_TR_ORK_CS_6>

Q7: Do you require further clarity on the content of Article 3 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_7>
No.
<ESMA_QUESTION_CP_TR_ORK_CS_7>

Q8: Do you require further clarity on the content of Article 4 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_8>
No.
<ESMA_QUESTION_CP_TR_ORK_CS_8>

Q9: Do you require further clarity on the content of Article 5 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_9>
No.
<ESMA_QUESTION_CP_TR_ORK_CS_9>

Q10: Do you require further clarity on the content of Article 6 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_10>
No.
<ESMA_QUESTION_CP_TR_ORK_CS_10>

Q11: Do you require further clarity on the content of Article 7 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_11>
No,
<ESMA_QUESTION_CP_TR_ORK_CS_11>

Q12: Do you require further clarity on the content of Article 8 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_12>
No,
<ESMA_QUESTION_CP_TR_ORK_CS_12>

Q13: Do you require further clarity on the content of Article 9 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_13>

No.

<ESMA_QUESTION_CP_TR_ORK_CS_13>

Q14: Do you require further clarity on the content of Article 10 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_14>

No.

<ESMA_QUESTION_CP_TR_ORK_CS_14>

Q15: Do you require further clarity on the content of Article 11 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_15>

No.

<ESMA_QUESTION_CP_TR_ORK_CS_15>

Q16: Do you require further clarity on the content of Article 12 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_16>

We have the following queries concerning the treatment of complex trades.

1. How should firms report life cycle events of complex trades? How should amendments to complex trades be reported?

We believe the guidelines should clarify that only the affected components need to be reported again. It would make little sense, in our view, to require fresh reporting of all components, including those remaining totally unchanged.

2. A field entitled “complex trade component ID” is envisaged in the revised reporting requirements under Article 9 of EMIR. We assume that the field will be handled in exactly the same way for both MiFID II and EMIR purposes and would appreciate clarification to this effect.

3. How should the transaction reference number field be populated for the individual legs of a complex trade?

We would suggest clarifying that each individual leg should have its own dedicated transaction reference number.

<ESMA_QUESTION_CP_TR_ORK_CS_16>

Q17: Do you require further clarity on the content of Article 13 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_17>

No.

<ESMA_QUESTION_CP_TR_ORK_CS_17>

Q18: Do you require further clarity on the content of Article 14 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_18>
No.
<ESMA_QUESTION_CP_TR_ORK_CS_18>

Q19: Do you require further clarity on the content of Article 15 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_19>
No.
<ESMA_QUESTION_CP_TR_ORK_CS_19>

Q20: Do you require further clarity on the content of Article 16 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_20>
No.
<ESMA_QUESTION_CP_TR_ORK_CS_20>

Q21: Do you require further clarity or examples for population of the fields covered in Block 1? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_21>
No.
<ESMA_QUESTION_CP_TR_ORK_CS_21>

Q22: Do you require further clarity or examples for population of the fields covered in Block 2? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_22>

The example “decision maker is a trustee for a trust” (page 45 ff.) raises the following question. Why, given that a trust has its own legal personality and LEI, should its trustees have to be identified individually in the “buyer/seller decision maker” field irrespective of the fact that not all of them were necessarily involved in making an investment decision associated with the reported transaction?

We suggest that only the LEI should have to be reported.

<ESMA_QUESTION_CP_TR_ORK_CS_22>

Q23: Do you require further clarity or examples for population of the fields covered in Block 3? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_23>

Section 1.2.3.1 describes a case where a financial instrument is bought by a husband and wife, who have a joint account. The investment decision is made by a representative. Both husband and wife are reported as buyers while the representative is identified as the decision maker.

For the sake of absolute clarity, the following example should also be included: a husband and wife with a joint account buy a financial instrument. No representative is involved. We assume that no decision maker needs to be identified in this case and that fields 12-15 will remain empty.

<ESMA_QUESTION_CP_TR_ORK_CS_23>

Q24: Do you require further clarity or examples for population of the fields covered in Block 4? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_24>

No.

<ESMA_QUESTION_CP_TR_ORK_CS_24>

Q25: Do you require further clarity or examples for population of the fields covered in Block 5? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_25>

No.

<ESMA_QUESTION_CP_TR_ORK_CS_25>

Q26: Do you require further clarity or examples for population of the fields covered in Block 7? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_26>

Please see point 5 of our reply to Q2.

<ESMA_QUESTION_CP_TR_ORK_CS_26>

Q27: Do you require further clarity or examples for population of the fields covered in Block 8? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_27>

It should be clarified that firms are required under Article 11(2) of draft RTS 22 to determine on a “best effort basis” whether the client is selling short. Our understanding is that firms will comply with the requirement in section 1.2.8 specifying that “a firm shall request the client to disclose...” if they have suitable organisational measures in place for this purpose, such as an agreement with their client in the form of general terms and conditions.

<ESMA_QUESTION_CP_TR_ORK_CS_27>

Q28: Do you require further clarity or examples for population of the fields covered in Block 10? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_28>

1. In example 2 in section 1.2.9.1 (page 60), field 63 (OTC post-trade indicator) is populated in both reports, with both X and Y entering “LRGS”. Post-trade transparency rules only require the seller to make public the details of a transaction. We believe it would make sense to have a similar rule for transaction reporting. Otherwise, reports may differ since this is not a mandatory field.

2. Example 3 in section 1.2.9.1 (page 61) mentions liquid financial instruments. The waiver referred to in Article 4(1)(b)(ii) of MiFIR is for illiquid instruments, however. The wording in this example needs to be adjusted as follows: “The transaction is executed under a ‘negotiated transactions in illiquid financial instruments’ waiver in accordance with article 4(1)(b)(ii) of Regulation (EU/600/2014).”

<ESMA_QUESTION_CP_TR_ORK_CS_28>

Q29: Do you require further clarity or examples for population of the fields covered in Block 11? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_29>

No.

<ESMA_QUESTION_CP_TR_ORK_CS_29>

Q30: Do you require further clarity or examples for population of the fields covered in Block 12? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_30>

Section 1.2.12 only provides examples of an increase in notional and a decrease in notional. We assume that early terminations and partial terminations will not trigger a reporting requirement. Should this assumption be incorrect, ESMA needs to include examples showing exactly how early and partial terminations are to be reported. In the event of an early termination, we would then suggest reporting a decrease in notional to the value of zero.

The general question arises as to what life cycle events need to be reported and what form these reports should take.

Based on the instruction at the top of page 76 (“the original transaction report should not be cancelled”), it should be made clear that all modifications – not just those affecting the notional field – should be reported as a new transaction without making reference to the old transaction. Nor will the original reports need to be cancelled in such cases since cancellations are necessary only if an error needs to be corrected. This procedure should apply to all non-constant trade parameters (life cycle events) such as a change in notional of a swap (redemption structure), a retroactive change in maturity, an increase in the level of an interest rate cap, or changes to fixed rates for an interest-rate swap. In other words, the initially applicable parameter should be reported when the transaction is concluded and the new parameters should be reported over the life cycle of the trade.

The guidelines should also specify that, in the event of several changes occurring over the course of a day, only the status at the end of the day needs to be reported.

<ESMA_QUESTION_CP_TR_ORK_CS_30>

Q31: Do you require further clarity or examples for the scenarios in section 1.3.1? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_31>

The proposed method of reporting transfers of securities is not logical. According to the examples provided in sections 1.3.1.1 and 1.3.1.2, the depository banks with their LEI are to be reported as the counterparty to the transfer. The banks are neither buyers nor sellers, however. We believe it would make better sense to populate the fields with “INTC” instead and would suggest amending the examples accordingly.

Section 1.3.1.2 contains an example of a transfer of securities between two investment firms. It is noted on page 80 that the reported times may differ slightly. In practice, differences occur frequently and are due to the nature of the transaction. Reported times may diverge by several hours, or even several days, because the transfer from one depository to another can be time-consuming, especially if a cross-border dimension is involved. The receiving firm has no knowledge of the exact time at which the transferring party effected the transfer, or vice versa. We would therefore suggest simply noting that times may differ.

<ESMA_QUESTION_CP_TR_ORK_CS_31>

Q32: Do you require further clarity or examples for the scenarios in section 1.3.2? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_32>

No.

<ESMA_QUESTION_CP_TR_ORK_CS_32>

Q33: Do you require further clarity or examples for the scenarios in section 1.3.3? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_33>

No.

<ESMA_QUESTION_CP_TR_ORK_CS_33>

Q34: Do you require further clarity or examples for the scenarios in section 1.3.4? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_34>

No.

<ESMA_QUESTION_CP_TR_ORK_CS_34>

Q35: Do you require further clarity or examples for the scenarios in section 1.3.5? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_35>

No.

<ESMA_QUESTION_CP_TR_ORK_CS_35>

Q36: Do you require further clarity or examples for the scenarios in sections 1.3.6 and 1.3.7? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_36>

It is not clear why firm X should populate field 29 with “DEAL” in the example in section 1.3.7 (pages 108-109). We think the correct entry should be “MTCH” or “AOTC”, not “DEAL”, and would suggest amending the example accordingly.

<ESMA_QUESTION_CP_TR_ORK_CS_36>

Q37: Do you require further clarity or examples for the scenarios in section 1.3.8? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_37>

1. The concept for reporting transmissions is not logical, in our view. Field 25 is supposed to be populated with “true” if the conditions for transmission are not met. This will inevitably give rise to erroneous entries. The conditions for transmission are not met in the example in section 1.3.7 either, yet here field 25 is populated with “false” in all four reports. The example in section 1.3.8.1 is also inconsistent, because field 25 in Z’s report is populated with “false” although the heading says that the conditions for transmission are not met.
2. We believe it would make more sense to use “true” in cases where the conditions for transmission are met and “false” for cases where the conditions are not met. We strongly recommend changing the reporting procedure accordingly.
3. The fields in the example in section 1.3.8.4 (page 133) have not been populated correctly. Field 25 (transmission of order indicator) should read “true”. Field 27 (transmitting firm ID code for the seller) should remain empty since no transmission occurs for client B.
1. The examples in sections 1.3.8.2 and 1.3.8.3 are not coherent. On page 115 it says that “a representative of Investor 1, Representative 1, decides to sell some shares of Investor 1 (...).” Further down the same page it says that “the transaction is for a commodity derivative (...).” We do not understand what kind of transaction is meant and would appreciate clarification. We assume it should be about selling shares since the report states in Field 62 that it is a short sale.

<ESMA_QUESTION_CP_TR_ORK_CS_37>

Q38: Do you require further clarity or examples for the scenario in section 1.3.9? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_38>

1. The example in section 1.3.9.1 only shows how firm X should report the transaction. For the sake of absolute clarity, we believe this example should also show firm Y’s report.
2. We believe this section should also include an example of a broker executing a transaction for a retail client.

<ESMA_QUESTION_CP_TR_ORK_CS_38>

Q39: Do you require further clarity or examples for the scenario in section 1.3.10? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_39>

We believe this section should include an example showing how fields are to be populated when DEA is involved.

The final paragraph says that the DEA provider and DEA client should both populate field 57 (investment decision with the firm) and field 59 (execution within the firm) from their own perspective. Since a DEA

provider is only acting as a provider of infrastructure, it cannot populate field 57: it does not make any decision. It should be clarified that field 57 only has to be populated by the DEA client.

<ESMA_QUESTION_CP_TR_ORK_CS_39>

Q40: Do you require further clarity or examples for the scenario in section 1.3.11? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_40>

1. The guidance on reporting give ups is too unspecific. For most scenarios, moreover, no concrete examples are provided showing how fields should be populated. It is not clear from the description of the scenarios what financial instruments are involved. Further clarification needs to be provided, as do charts. A distinction should be made between different types of instrument, such as listed derivatives, shares or bonds.
2. We would like to point out that, in the scenario described in section 1.3.11.2, firm X does not know the client and consequently cannot identify this entity.
3. If field 29 is populated with "DEAL", the validation rules require a decision maker to be identified as well. This runs counter to Article 8(1) of draft RTS 22. We therefore see a need to delete this combination from the validation rules.

<ESMA_QUESTION_CP_TR_ORK_CS_40>

Q41: Do you require further clarity or examples for the scenarios in sections 1.3.12 and 1.3.13? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_41>

The German banks are strongly opposed to the proposed requirement to report securities financing transactions between financial institutions and central banks. This requirement flies in the face of Recital 12 of Regulation (EU) 2015/2365, which states that transactions with members of the European System of Central Banks (ESCB) should be exempted from the obligation to report SFTs to trade repositories (see also our reply to Q3).

Should the requirement to report these transactions under Article 26 of MiFIR nevertheless be retained, section 1.3.13 would need to include specific examples of reporting repos and securities lending showing, among other things, how to populate fields.

<ESMA_QUESTION_CP_TR_ORK_CS_41>

Q42: Are there any other equity or equity like instruments scenarios which require further clarification?

<ESMA_QUESTION_CP_TR_ORK_CS_42>

We see a need to include an example showing how to populate fields in a scenario where several underlying instruments are involved.

<ESMA_QUESTION_CP_TR_ORK_CS_42>

Q43: Are there any other bonds or other form of securitised debt scenarios which require further clarification?

<ESMA_QUESTION_CP_TR_ORK_CS_43>

No.

<ESMA_QUESTION_CP_TR_ORK_CS_43>

Q44: Are there any other options scenarios which require further clarification?

<ESMA_QUESTION_CP_TR_ORK_CS_44>

It should be made clear that the “strike price currency” field does not need to be populated if the strike does not take the form of a currency (e.g. with FX options, caps, floors). It should also be made clear that the “price currency” field will remain empty if it cannot logically be populated with a single currency (e.g. if currency derivatives are involved).

<ESMA_QUESTION_CP_TR_ORK_CS_44>

Q45: Are there any other contract for difference or spreadbet scenarios which require further clarification?

<ESMA_QUESTION_CP_TR_ORK_CS_45>

No.

<ESMA_QUESTION_CP_TR_ORK_CS_45>

Q46: Are there any other credit default swaps scenarios which require further clarification?

<ESMA_QUESTION_CP_TR_ORK_CS_46>

No.

<ESMA_QUESTION_CP_TR_ORK_CS_46>

Q47: Are there any other swap scenarios which require further clarification?

<ESMA_QUESTION_CP_TR_ORK_CS_47>

The guidelines should explain how to report float-to-float interest rate swaps (basis swaps) and forward rate agreements (FRAs). In particular, the question arises as to whether transactions of this kind should be split into two reports, as with equity swap contracts, or whether one report is sufficient. We would also appreciate an example clarifying which field should show the spread.

<ESMA_QUESTION_CP_TR_ORK_CS_47>

Q48: Are there any other commodities based derivatives scenarios which require further clarification?

<ESMA_QUESTION_CP_TR_ORK_CS_48>

No.

<ESMA_QUESTION_CP_TR_ORK_CS_48>

Q49: Are there any other strategy trades scenarios which require further clarification?



<ESMA_QUESTION_CP_TR_ORK_CS_49>

The guidelines should explain how to report venue-traded FX options and strategies such as straddles and strangles.

<ESMA_QUESTION_CP_TR_ORK_CS_49>

Q50: Is the difference between aggregated orders and pending allocations sufficiently clear?

<ESMA_QUESTION_CP_TR_ORK_CS_50>

No comment..

<ESMA_QUESTION_CP_TR_ORK_CS_50>

Q51: Do you require further clarity on the proposals made in sections 2.1 to 2.11? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_51>

No.

<ESMA_QUESTION_CP_TR_ORK_CS_51>

Q52: Do you agree require further clarity on the proposals made in section 2.12? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_52>

No.

<ESMA_QUESTION_CP_TR_ORK_CS_52>

Q53: Do you require further clarity on the proposals made in section 2.13? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_53>

No.

<ESMA_QUESTION_CP_TR_ORK_CS_53>

Q54: Are there any further clarifications required on the concept of 'reportable event'? If yes, please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_54>

It would be very helpful if ESMA clarified exactly what a reportable event is and provided clear examples. ESMA itself says in section 3.1 that it considers it relevant to provide examples. But the list on page 259 of the consultation paper states simply that "a 'reportable event' includes the following obligations", without indicating whether this list is exhaustive. What is more, the list does not really consist of examples of reportable events at all, but just a list of obligations to be satisfied upon the occurrence of certain events. It would be helpful if ESMA could confirm that reportable events effectively mean venue order activity and transactions as applicable to all operators of trading venues and their members or participants. For the purposes of RTS 25, this would mean that clock synchronisation requirements would not apply outside of orders, gateways and executions.

- For orders, the time recorded should be the time the order leaves the member firm gateway for submission (to the trading venue).
- For transactions or executions, the time recorded should be that of the market execution, as returned by the trading venue.

We would also suggest designing the requirements in such a way that, for “events affecting the orders”, systems have to be synchronised to within 100ms of UTC provided that the system is required to have a time-stamp granularity of 1ms. This will ensure that behaviour indicative of market abuse can be detected. Outside high frequency algorithmic trading, by contrast, it would be unreasonable to require orders to be time-stamped with a maximum divergence of 1ms. Nor would it be technically feasible since the Network Time Protocol (NTP) commonly used by normal operating systems works with an algorithm providing for a minimum divergence of 1ms. Clock synchronisation using NTP typically produces a standard divergence of between 10 and 50ms. A maximum divergence of 100ms would therefore be both appropriate and practicable.

<ESMA_QUESTION_CP_TR_ORK_CS_54>

Q55: Is it sufficiently clear at what point OTC transactions shall be time-stamped? If not, please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_55>

At the top of page 261 it says: “For transactions not executed on a trading venue (i.e. OTC transactions), RTS 22 states that the date and time in the transaction report shall be ‘when the parties agree the content of the following fields: quantity, price, currency fields 31, 34 and 44, instrument identification code, instrument classification and direct underlying instrument code, where applicable.’”

The time-stamp requirement for OTC transactions is also referenced in draft RTS 22 (annex 1, field 28: Trading date time), which says “...For transactions not executed on a trading venue the time reported shall be at least to the nearest second.”

How does ESMA expect OTC transactions to be reported to the nearest second without backdating the trade? It is not feasible to enter a trade to within one second of agreement when done manually.

Also, RTS 25 only provides guidelines for trading venues or members of trading venues. We assume this means that bilateral OTC trading is outside the scope of the accuracy requirement.

<ESMA_QUESTION_CP_TR_ORK_CS_55>

Q56: Do you require further clarity on the content of Article 4 of RTS 25? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_56>

Example 3 in section 3.2 makes reference at the top of page 263 to the granularity requirements specified in Article 50 of MiFID II and draft RTS 25. It is nevertheless not totally clear how the field is supposed to be populated since tables 1 and 2 in the annex to draft RTS 25 differentiate between trading venues on the one hand and between their members or participants on the other. Field 28 can only, however, sensibly be populated using at most the granularity of the trading venue on which the transaction was executed. If, for example, a firm used a high frequency algorithmic trading technique on a trading venue whose gateway-to-gateway latency time was more than one millisecond, the granularity levels would otherwise diverge. The trading venue would confirm the execution of the transaction to its member with millisecond-level timing accuracy while the member would have to populate field 28 with microsecond accuracy.



With this in mind, we see a need to clarify that the level of granularity used to populate field 28 cannot exceed the level of timing accuracy applicable to the trading venue and may well be lower than that. Moreover, we would like to know if ESMA intends to publish standards for monitoring and reporting that banks must adhere to with respect to the accuracy requirement, such as the frequency of checks and log/report submissions, report formats, etc.

<ESMA_QUESTION_CP_TR_ORK_CS_56>

Q57: Do you agree with the proposals made in sections 3.2 to 3.4? Please elaborate. Are there any further clarifications required?

<ESMA_QUESTION_CP_TR_ORK_CS_57>

No comment.

<ESMA_QUESTION_CP_TR_ORK_CS_57>