LEADING TREASURY PROFESSIONALS

GIVING DIRECTION

BRIEFING NOTE:

EUROPEAN REGULATION OF OTC DERIVATIVES

Implications for non-financial companies

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Executive summary

1. After 3 years of drafting, negotiation and legislative process the European Markets and Infrastructure Regulation (EMIR)[1] came into force as binding law within the European Union on 16th August 2012, although certain of its requirements came into effect after a period of delay to allow time for some of the Level 2 details to be agreed and approved.

2. The objective of EMIR is to reduce the risks posed to financial systems from the vast web of Over the Counter (OTC) derivative transactions and the contingent large credit exposures that may arise as a consequence. The Regulation achieves this object by three significant requirements for:

   - Central clearing and margining of standardised OTC derivatives
   - Reporting of all derivative transactions to a trade repository
   - Risk mitigation measures for all non cleared derivatives including collateral exchange and confirmation and reconciliation procedures

3. As a consequence of the key role being played by the firms providing central clearing (Central Counter Parties or CCPs) there are further requirements around their structures and procedures.

4. Most non-financial companies whose derivative activity is largely undertaken for hedging purposes are expected to be outside the requirement to put OTC derivative transactions through central clearing and hence will not be obliged to put up margin to cover the daily mark to market valuation of their derivatives. However companies may nonetheless want to consider reducing their risk on their counterparty bank by signing a Credit Support Annex and exchanging bilateral collateral. This will also reduce the counterparty's contingent credit risk so that the company can obtain more favourable pricing for the derivatives. Equally there may be commercial pressures from counterparties that seek to negotiate for the provision of margin or collateral as they are unwilling to carry so much risk on the company[2].

5. All non-financial counterparties (NFCs)[3] of whatever size and whether using derivatives for hedging or otherwise will become subject to the requirements around prompt exchange of confirmations. After a phasing in period confirmations will be required within 2

[1] See Footnote 7, below for legislative text

[2] The credit risk on the client company will require prudential capital of the bank. Early drafts of the IVth European Capital Requirement Directive required banks to hold *extra* capital against un-margined derivatives as a way of discouraging banks entering into such transactions. Following representations from the treasurer community and others agreement was reached between the European Parliament and European Council in March 2013 that for transactions with NFCs banks would not be required to hold additional capital against CVA (Credit Valuation Adjustment) risk.

[3] A non-financial counterparty is defined as an undertaking established in the Union (which in effect means the EEA) that is not a financial counterparty (EMIR Art 2.9). Financial counterparties are broadly speaking regulated entities such as credit institutions, insurance undertakings, pension institutions, AIFM funds etc.

business days of transacting. With this in mind companies should be reviewing the adequacy of their processes and procedures.

6. All NFCs of whatever size and whether using derivatives for hedging or otherwise will become subject to the requirement to report all transactions to a central database run by a registered trade repository. Trade reporting must be done no later than the next working day after execution. The reporting obligation applies to all transactions outstanding at 16th August 2012 and any transactions done since then, but with extended timescales allowed for this backloading. After allowing time for the trade repositories to be registered by ESMA, the start date for reporting was set as 12 February 2014.

7. Reporting of transactions can be delegated to the counterparty if they offer such a service, or to a third party provider. Of particular relevance in terms of the processes that companies need to have in place, is the fact that all intra-group derivatives – including those between a European Economic Area (EEA) company and a group company outside the EEA –also need to be reported. Companies need to ensure that they are already capturing sufficient data fields on intra-group transactions (and have done since 16th August 2012) so as to be able to fulfil their reporting obligations.

8. Pension funds are treated as Financial Counterparties (FCs) and therefore are subject to the Regulation in full (including faster confirmations), irrespective of size, but they benefit from a 3 year delay to the clearing obligation. Property companies that are subject to the Alternative Investment Fund managers (AIFM) directive are also classified as FCs.

The definition of the derivatives that are within the scope of EMIR is taken from the MiFID.[4] Generally this means that foreign exchange forwards are within scope save that within the UK FCA guidance means that FX forwards done for commercial purposes are not derivatives for EMIR purposes.[5] There is a possibility this interpretation may change.[6]

[4] Markets and Financial Instruments Directive (MiFID), points (4) to (10) of Section C of Annex I as implemented by articles 38 and 39 of Regulation 1287/2006.

[5] http://www.fca.org.uk/firms/markets/international-markets/emir/emir-library and select "Domestic legislation and FCA guidance" and scroll down to "Perimeter guidance on the types of derivative covered by EMIR"

[6] In February 2014 ESMA requested that the European Commission clarify the definition of an FX forward and whether it is within the scope of EMIR given the variation in practice between member states. http://www.esma.europa.eu/system/files/2014-184_letter_to_commissioner_barnier_-_classification_of_financal_instruments.pdf

A preliminary response from the Commission is at http://www.esma.europa.eu/system/files/ares2014513399_ec_response_on_classification_of_financial_instruments.pdf

Introduction

9. In the aftermath of the 2008 financial crisis, the G20 Summit in Pittsburgh in September 2009 resolved to take measures to reduce risk in the financial system and in particular to minimise the risk of contagion from OTC derivative markets, stating that:

> *"All standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end 2012 at latest. OTC derivative contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements."*

10. Individual regulatory authorities set about the process of building regulations to achieve the G20 objective. For the US and the EU, this resulted in certain provisions within the Dodd Frank Act and the EU's European Markets and Infrastructure Regulation (EMIR)[7], respectively.

11. This Note focuses on the EU where, after 3 years of drafting, negotiation and legislative process, EMIR came into force as binding law within the EU on 16th August 2012, although certain of its requirements came into effect after a period of delay to allow time for some of the Level 2 details (standards and interpretations required to make the Regulation effective) to be agreed and approved. The emphasis throughout this Note is on the implications for non-financial counterparties based in the EEA.

12. The European Securities and Markets Authority (ESMA) is responsible for drafting the Level 2 legislation, or Regulatory Technical Standards (RTS), which provide the more detailed specifications of the regulation. The start dates for the various EMIR obligations were largely dependent on the drafting and approval of these RTS and on subsequent regulatory approvals granted by ESMA. RTS covering the areas most relevant to NFCs entered into force on 15th March 2013.[8]

13. The objective of EMIR is to reduce the risks posed to financial systems from the vast web of OTC derivative transactions and the large credit exposures that can exist as a consequence. The Regulation achieves this objective by three significant requirements for:

    - Central clearing and margining of standardised OTC derivatives (Expected start date late2014)
    - Reporting of all derivative transactions to a trade repository (Start date 12 February 2014)
    - Risk mitigation measures for all non-cleared derivatives including confirmation procedures (start date 15 March 2013); reconciliation and

[7] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF

[8] http://europa.eu/rapid/press-release_IP-12-1419_en.htm?locale=en

http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2013:052:SOM:EN:HTML

dispute procedures (start date 15 September 2013); and collateral exchange (for NFCs over the clearing threshold only, with an expected start date of late 2015)

EMIR will apply to all OTC derivatives even when an EEA company is trading with a non-EEA firm.

14. In addition because of the important roles of the firms providing central clearing and of the trade repositories, there are specific rules to manage and reduce their riskiness and to ensure that their operating procedures are safe and fair. These are outside the scope of this Briefing Note.

Scope

15. The primary focus of EMIR is OTC derivatives as opposed to exchange traded derivatives, since the latter are already subject to central clearing (but some additional requirements such as reporting will apply). OTC derivatives encompass options, swaps, forward rate agreements, warrants, and more and take in the categories of FX, rates, commodities, equities, credit and other classes such as emissions allowances. FX spot[9] is not a derivative nor are physically settled commodity transactions not traded through a regulated exchange. FX forwards are treated as derivatives in most countries in Europe whereas under US derivative regulation they are not.

16. The definition of the derivatives that are within the scope of EMIR is taken from the MiFID.[4] Generally this means that foreign exchange forwards are within scope save that within the UK FCA guidance means that FX forwards done for commercial purposes as opposed to investment purposes are not derivatives for EMIR. There is a possibility this interpretation may change.[5]

Penalties

17. Article 12 of EMIR requires individual Member States to introduce appropriate penalty regimes. In the UK the FCA has taken powers through secondary legislation to be able to demand information and to apply penalties for infringements. Given the short timescales for implementation of some aspects of EMIR the FCA has exercised a degree of forbearance on non-compliance if the party concerned is actively progressing its implementation in good faith.[10]

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[9] In February 2014 ESMA requested that the European Commission clarify the definition of spot, there being a variation in practice between member states, with settlement periods of up to 7 days still being regarded as spot. http://www.esma.europa.eu/system/files/2014-184_letter_to_commissioner_barnier_-_classification_of_financal_instruments.pdf

[10] The FCA website http://www.fca.org.uk/firms/markets/international-markets/emir/fca-supervisory-priorities states "If there is a reason why full compliance cannot be achieved in specific circumstances, a firm should prioritise having a detailed and realistic plan to achieve compliance within the shortest timeframe possible. However, this does not prejudge our approach to any instances of non-compliance."

Central clearing and collateral

18. The concept of central clearing involves novating a bilateral derivative transaction so that a CCP stands in between the original two parties, effectively guaranteeing performance of the deal. It is only able to give that certainty by taking collateral against the credit exposure that may build up over the life of the transaction. The amount of collateral to be put up will vary with the mark-to-market valuation and this so-called variation margin must be paid across daily. In addition, to cover the risk of default in meeting a daily margin call and to cover the risk that on default there are further valuation changes before the transaction can be unwound, both parties must at the outset put up further collateral called initial margin.

19. For an NFC, an obligation to use central clearing would give rise to a need to lodge collateral in amounts that could become very large if the mark to market of derivatives outstanding becomes large and negative. For a company using derivatives for hedging, even if they stand at a loss during their life and still at a loss at maturity, the flows or value of the hedged risk at maturity will counterbalance this. However, for most companies, this need for instant liquidity, potentially in significant amounts to cover margin calls during the life of the derivative, may be very expensive. It may mean that funds are not available to support other business activity. Or it may be impossible to meet.

20. Fortunately the arguments put forward to legislators by the ACT and others were persuasive. There exists, for most non-financial companies, a major exemption that removes the obligation to clear and to put up margin. Thus, it is likely that only the largest NFC users of derivatives will be within scope of central clearing[11]. For example if all of an NFC's derivative transactions are taken out for hedging purposes (or, more formally, are "objectively measurable as reducing risks related to the commercial activity or treasury financing activity of the NFC or of that group") then that NFC will not be subject to the clearing obligation.

"Objectively measurable as reducing risks" test

21. Hedging is not a term that is specifically used in EMIR. In essence, what the regulation defines as "objectively measurable as reducing risks" is very broad in scope and likely to cover most derivatives that a treasurer would think of as hedging. Transactions qualifying as hedges in accounting terms under IFRS are automatically covered. EMIR also takes in derivatives that would not meet the tight accounting requirements. Proxy hedging, where no exactly matched instrument exists, is included as is macro or portfolio hedging. Derivatives entered into in order to offset derivatives which are no longer necessary for hedging purposes (and would have become superfluous) qualify as hedging, as will a combination of derivatives that together provide hedging. OTC derivative contracts related to employee benefits such as stock options and derivatives reducing

[11] Remember that pension funds are regarded as FCs.

risks related to the acquisition of a company by an NFC all qualify.

22. The formal definition within the draft RTS states :
"An OTC derivative contract is objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the NFC or of that group, when, whether by itself or in combination with other derivative contracts, and whether directly or through closely correlated instruments[12], it meets one of the following conditions:

(a) it covers the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the non-financial counterparty or its group owns, produces, manufactures, processes, provides, purchases, leases, sells or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business;

(b) it covers the risks arising from the potential indirect impact on the value of assets, services, inputs, products, commodities or liabilities referred to in subparagraph (a), resulting from fluctuation of interest rates, inflation rates, foreign exchange rates or credit risk;

(c) it qualifies as a hedging contract pursuant to International Financial Reporting Standards (IFRS) adopted in accordance with Article 3 of Regulation (EC) N0 1606/2002."

[12] The ESMA technical standards do not specify any test for "closely correlated" but the term is introduced under the discussion of proxy hedging and achieving the objective of risk reduction.

23. It is noteworthy that section (b) above makes no mention of covering the risks from the *fluctuation of prices* of commodities. However if for example a business has a requirement to buy cocoa and it hedges the price of one year's future purchases with a commodity derivative, section (a) manifestly covers it.

Clearing threshold test

24. For NFCs the clearing obligation only bites if the level of OTC derivatives outstanding exceeds a clearing threshold. A company in this category is being referred to as an NFC+, and a company below the threshold NFC-. In calculating the deals outstanding it is the sum of all the notional amounts of all OTC derivatives of the NFC and any other non-financial entities **within the worldwide group** to which the NFC belongs, but **excluding** any derivatives which are "objectively measurable as reducing risks related to commercial activity or treasury financing activity of the NFC or of that group" (EMIR Art 10.3), in other words excluding hedging transactions. However, all non-hedging intra-group derivatives are included in the total. Specific thresholds apply to different categories of derivatives[13]. Once the threshold is passed in any one derivative category, the clearing obligation will apply to all categories of OTC derivative, and to *all* OTC derivatives irrespective of whether they are for hedging purposes or not.

[13] See table at 26 below

25. If the threshold is passed by the group all the EEA members of the group become subject to the clearing requirement. Effectively all these group members have each become an NFC+ and will be subject to the more onerous obligations. This will also apply to intra-group derivatives, save that an exemption from clearing can be claimed for certain intra-group transactions. (See para 36 below.) The requirement for each company becoming an NFC+ to notify its competent authority (see 31 below) could give rise to multiple notifications across the group. Each competent authority may introduce procedures for combined notifications.

26. Clearing thresholds

Asset class	Clearing threshold Gross notional amount
Credit derivatives	€1 bn
Equity derivatives	€1 bn
Interest rate derivatives	€3bn
FX derivatives	€3 bn
Commodity and other derivatives	€3 bn

27. In cumulating non-hedging derivative positions for the threshold test it is the gross notional that is used so even if in exposure terms two transactions are equal and opposite they both still count. This may be an incentive to net off, novate or fully close off any off-setting deals. Some advisors hold that this concept of cumulating the gross positions also means that, for example, on a $ vs £ cross-currency swap each end of the transaction has to be converted back to Euro and then both sides added together so roughly doubling the gross amount. There remains uncertainty if this is the correct approach.

28. On cumulating non-hedging intra-group derivatives between a subsidiary and the central treasury for example, the grossing up concept means that the deal in the subsidiary and the deal at the centre must each be included thus giving a further doubling up .

29. For any derivative where the notional amount is expressed in a currency other than Euros the amount will need to be converted to Euro at the rate ruling when the test is performed.

30. Note that exchange traded derivatives do not count towards threshold. It is only non-hedging OTC derivatives that are counted. If it is not within the hedging exemptions, even if an OTC derivative is collateralised or novated across into central clearing and margining it still counts towards the threshold.

31. **Timings.** Once the clearing threshold for the group is exceeded, the NFC

a) must “immediately notify ESMA and the competent authority”[14];

b) becomes “subject to the clearing obligation for future contracts if the

[14] FCA notifications: http://www.fca.org.uk/firms/markets/international-markets/emir/emir-notifications-and-exemptions

ESMA notifications: http://www.esma.europa.eu/page/European-Market-Infrastructure-Regulation-EMIR

rolling average position over 30 days exceeds the threshold"; and

c) must "clear all future contracts within four months of becoming subject to the clearing obligation".

Curiously the notifications must be made immediately even though it may turn out that at the end of the 30 days the rolling average has not crossed the threshold so that the NFC has not in fact become an NFC+.

32. An NFC that has become subject to the clearing obligation can cease to be subject to it if it can demonstrate to its competent authority "that its rolling average position over 30 working days does not exceed the clearing threshold".

33. Because of the need to register approved CCPs and to determine what sorts of derivatives are clearing eligible the requirement for central clearing is not expected to be in force until late 2014. The RTS for clearing are expected to include a 3 year phase in for NFC+. Pension schemes are classed as FCs but will be able to claim an exemption from clearing until August 2015, extendable to August 2018.

34. If the clearing obligation applies, it is nonetheless possible that no CCP will accept the transaction for clearing. In such a case the parties are required to mark to market (or mark to model) on a daily basis the value of outstanding contracts, and to exchange timely, accurate and appropriately segregated collateral. The technical standards for this bilateral exchange of collateral have not yet been finalised by ESMA, but proposals and a consultation have been issued.[15] At a global level by the Basel Committee on Banking Supervision and IOSCO published its policy framework "Margin requirements for non-centrally cleared derivatives" in September 2013.[16] The obligations for bilateral collateral are expected not expected to start until late 2015. It is likely that there will be mandatory haircuts for non-cash collateral, that gross initial margin will have to be exchanged and that de-minimis collateral levels for collateral provision or adjustment will be permitted but with limits. Any requirement for bilateral collateral is expected to apply only to FCs and NFC+.

NFC representations

35. Any bank dealing with a non-financial counterparty will need to know whether it is an NFC or NFC+, since the company's status will impact whether clearing is required. It will be necessary to amend ISDA agreements to include representations from non-financial counterparties (NFC) as to their status under EMIR. For those active enough to fall into the NFC+ group the ISDA agreement will need to add in provisions covering the obligation to submit deals for central clearing, and, up for debate,

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[15] Draft regulatory standards on risk-mitigation techniques for OTC derivative contracts not cleared by a CCP: http://www.esma.europa.eu/system/files/jc_cp_2014_03_cp_on_risk_mitigation_for_otc_derivatives.pdf

[16] http://www.iosco.org/library/pubdocs/pdf/IOSCOPD423.pdf

whether any pricing adjustment is needed if a non cleared deal subsequently has to be cleared. ISDA has published the 'ISDA 2013 EMIR NFC Representation Protocol' which provides the mechanism to amend all existing agreements.[17] The protocol will make any misrepresentations as to status an Additional Termination Event, but not an Event of Default.

Intra-group exemption from clearing

36. If an NFC's group has crossed the clearing threshold and become subject to the clearing obligation this will in the first instance also apply to intra-group derivatives, as will the bilateral collateral requirement where there is no willing CCP for the derivative concerned. But there exemptions. Intra-group derivatives between entities within the same Member State are not subject to clearing or collateral as long as there is no current or foreseen practical or legal impediment to the transfer of funds or repayment of liabilities between the two counterparties. For intra-group transactions between parties in different Member States an exemption exists for intra group derivatives subject to certain conditions – see 37 below.

37. In relation to an NFC, an intra-group transaction for the purposes of this exemption is an OTC derivative contract entered into with another counterparty which is part of the same group provided that both counterparties are actually included in the same accounts consolidation on a full basis and they are subject to an appropriate centralised risk evaluation, measurement and control procedures (see 38 below) and that counterparty is established in the Union (= EEA) or, if it is established in a third country, the Commission has adopted an implementing act under Article 13(2) in respect of that third country[18], namely that the Commission has declared that non EEA country's legal and supervisory framework as equivalent.

38. As part of the application for an intra-group exemption the NFC will need to demonstrate to the competent authority that:

    a) adequate risk management procedures exist between the counterparties, namely that they "are adequately sound, robust and consistent with the level of complexity of the derivative transaction" and that

    b) there is no current or foreseen practical or legal impediment to the transfer of funds or repayment of liabilities between the two counterparties.

    The exemption from bilateral collateral is valid immediately on notification to the competent authority although the authority then has a 3 month period to deny the exemption. For exemption from the clearing obligation the notification should be made 30 calendar days before the use of the exemption. The RTS specify additional information to be included in the notification[19] and individual

[17] http://www2.isda.org/functional-areas/protocol-management/protocol/11

[18] Article 3 of EMIR

[19] The application or notification shall be in writing and shall include:

(a) the legal counterparties to the transactions including their identifiers in accordance with Article 3 of

competent authorities are introducing suitable application forms. There exist

certain public disclosure requirements when the intra-group exemption applies[20].

Regulation (EU) No 1247/2012 [Commission regulation endorsing draft implementing technical standards on format of reporting to trade repositories];

(b) the corporate relationship between the counterparties;

(c) details of the supporting contractual relationships between the parties;

(d) the category of intra-group transaction met by the counterparties as determined by Article 3 paragraphs 1 and 2 of Regulation (EU) N0 648/2012;

(e) details of the transactions for which the counterparty is seeking the exemption, including:

(i) the asset class of OTC derivative contracts;

(ii) the type of OTC derivative contracts;

(iii) the type of underlyings;

(iv) the notional and settlement currencies;

(v) the range of contract tenors;

(vi) the settlement type;

(vii) the anticipated size, volumes and frequency of OTC derivative contracts per annum.

2. As part of its application or notification to the relevant competent authority a counterparty shall also submit supporting information evidencing that the conditions of Article 11 paragraphs 6 to 10 of Regulation (EU) N0 648/2012 are fulfilled. The supporting documents shall include copies of documented risk management procedures, historical transaction information, copies of the relevant contracts between the parties and may include a legal opinion upon request from the competent authority.

[20] Public disclosures include the notional aggregate amount of the OTC derivative contracts for which the intra-group exemption applies. (Art 20 regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, risk mitigation techniques for OTC derivatives contracts not cleared by a CCP) http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/121219_rts_otc_en.pdf

Reporting to a trade repository (TR)

(Applies to all derivatives, not just OTC)

Trade repositories

39. The financial crisis of 2008 revealed that the relevant supervisory and regulatory bodies did not have adequate information on the risks inherent in the derivatives markets. To address this, EMIR requires that both CCP-cleared and non-CCP-cleared derivatives must be reported to a trade repository in order to allow a comprehensive overview of the market and for assessing systemic risk. Trade repositories are organisations set up to collect and hold data on all derivatives undertaken and to make data on aggregate positions by class of derivative publicly available. ESMA, the European Securities and Markets Authority, and other regulatory bodies will have data available to them to enable them to fulfil their responsibilities.

40. Although EMIR came into law in August 2012 the infrastructure for reporting and indeed the final details of what must be reported was not in place. The Reporting Start Date of 12 February 2014 was only set once the first trade repositories were registered. However it is crucial to note that **all transactions outstanding at 16th August 2012 or entered into after that date will need to be reported.**

41. The trade repositories registered by ESMA as at March 2014[21] are:

    - DTCC Derivatives Repository Ltd.
    - Krajowy Depozyt Papierów Wartosciowych S.A. (KDPW)
    - Regis-TR S.A.
    - UnaVista Ltd
    - CME Trade Repository Ltd
    - ICE Trade Vault Europe Ltd

    As commercial organisations they will be charging fees for their services.

42. Reporting must be done no later than the next working day following the conclusion, modification or termination of a contract. Each counterparty to a trade must report to a TR but the task may be delegated to another party and that reporter need not be one of the counterparties to the transaction. When an NFC transacts with an FC, then the FC may well offer the added service of reporting on behalf of the NFC. Although reporting may be delegated the legal responsibility for reporting remains with each counterparty.

43. The reporting obligation applies to all derivatives done by any entity no matter what the size of the derivative or the size of the entity and includes intra-group derivatives too. For intra-group derivatives, even if the final data submission is out-sourced, the base data will obviously have to be captured by the NFC itself. The reporting requirement applies to all NFCs and an NFC is by definition any business in the Union (=EEA). It will need to report all its derivatives including those done with entities outside the EEA. A non-EEA entity dealing with another non EEA entity in a G20 country may ultimately be required

[21] http://www.esma.europa.eu/page/Registered-Trade-Repositories

to report under equivalent local legislation.

Legal Entity Identifier (LEI)

44. Some 85 data fields are specified to be reported and these are listed in the table in the Appendix, although for any particular transaction many of the fields will not be relevant so may be left empty. One section of the data covers the counterparties involved (counterparty data) and the other part covers the transaction specifics (common data). One critical element is the LEI (Legal Entity Identifier), a new unique reference number for each company[22]. The system for creating and allocating this number is being created on an internationally co-ordinated basis by the Financial Stability Board.

45. It is intended that Local Operating Units (LOU), operating to the global standards of the LEI Regulatory Oversight Committee[23], provide the local interface for entities seeking to register for an LEI. Because the rules and formats of the LEI are still work in progress the initial systems or pre-LEI and pre-LOU are having to be designed so that they are capable of transitioning to the final form in due course, whilst ensuring portability and mutual recognition and avoiding duplication. The term International Entity Identifier (IEE) is sometimes used interchangeably with LEI.

46. For EMIR purposes any pre-LEI issued by any of the endorsed pre-LOUs of the Global Legal Identifier System[24] is acceptable. Some of the earlier pre-LOUs include WM Datenservice in Germany, CICI Utility in the US and the London Stock Exchange in the UK. The LEI for an entity does not have to be issued by a pre-LOU based in the same country.

47. If an NFC is directly reporting, it will need to know the LEI of its counterparty.[25] If intra-group trades are to be reported then each group entity that transacts will need its own LEI.

48. Each counterparty must keep records of its derivatives for at least 5 years after the termination of the transaction.

Start dates

49. The timetable for when the reporting starts was originally planned to be phased in over time, by type of derivative. Delays in ESMA registering the first TRs put the timetable back and consequently the reporting start date for all types of derivatives was set as 12 February 2014.

50. Derivatives outstanding on 16 August 2012 and still outstanding on 12 February 2014 must be reported within 90 days of the reporting start date. Derivatives outstanding at 16 August 2012 or dealt since but not outstanding on the reporting start date must be reported within 3 years of the reporting start date. For derivatives dealt since 16 August 2012 and still outstanding on the reporting

[22] N.B.: company, not group.

[23] http://www.leiroc.org/

[24] http://www.leiroc.org/publications/gls/lou_20131003_2.pdf

[25] http://openleis.com is a useful website allowing your counterparty's LEIs to be looked up, and much more.

start date (12 Feb 2014) there has been some lack of clarity since the transition rules in the regulatory technical standards are silent on the matter. However this means that the deals in this category simply have to be reported by the normal reporting start date i.e. by 12 Feb 2014. After the reporting start date all subsequent derivatives must be reported by the next business day.

51. All transactions done by EU entities must be reported even for deals done with parties outside the EEA. Furthermore the reporting requirement will apply to absolutely all stand alone (i.e. non-embedded) derivatives, irrespective of size of entity or volumes of deals and will include intra-group transactions. Derivatives embedded within commercial contacts will not be included within the scope of EMIR although the authorities will be alert to financial derivatives dressed up as part of a commercial contract, for example a contract to supply 10 widgets but with the price indexed to the movement in FX rates on £100m over the next 3 months.

52. The reporting start date for the valuation and collateral fields (fields 17-26 of the counterparty data) was set back by 180 days to 11 August 2014.[26] But note that the daily valuations are not required to be reported for an NFC-.

Unique Trade Identifier (UTI)

53. The reporting field 8 in the common data requires a Unique Trade ID which can be up to 52 alphanumerical digits. Clearly both counterparties to a trade must use the same UTI, so the question arises as to where this reference number comes from. Sadly no official guidance was forthcoming within the regulations nor in any guidance from ESMA until 11 February, the day before the reporting start date.

54. The ESMA Questions and Answers of 11 February 2014[27] explain at TR 19 that

    "The generation and communication of the Unique Trade ID should occur at the earliest possible stage in the trade flow.

    The following order of preference could be suggested for generation and communication of the Unique Trade ID:

    - For centrally executed and cleared trades the code could be generated either:
        - by execution venue for its member or
        - at the point of clearing by the CCP for the clearing member. Subsequently, the unique Trade ID could be generated by the clearing member for its counterparty (e.g. MiFID investment firm).
    - For centrally confirmed and cleared trades - at the point of clearing by the CCP for the clearing member.

[26] ESMA Q&A TR 3(b)at http://www.esma.europa.eu/system/files/2013-1633_qa_iv_on_emir_implementation_0.pdf

[27] http://www.esma.europa.eu/system/files/2014-164_qa_vi_on_emir_implementation_-_11_february_14.pdf

- For centrally confirmed but not cleared trades – at the point of confirmation (by the confirmation platform).

- For other trades, the following hierarchy could be followed:

    - Financial counterparty generating the Unique Trade ID for their non-financial counterparty;

    - Non-financial counterparty above the clearing threshold generating the Unique Trade ID for their non-financial counterparty below the clearing threshold;

    - Within the same group of entities in case of disagreement the seller generates the Unique Trade ID."

55. For the most part this simplifies down to the Financial Counterparty providing the UTI to the NFC unless the transaction has been dealt via a dealing platform, in which case the platform generates the UTI. The important point remains that the parties to a transaction do need to agree who generates the UTI and how that is to be communicated and captured by the other party.

56. Intra-group trades will also require a UTI so groups will need to invent a method of UTI generation. The ESMA Questions and Answers,[24] TR 18 may be helpful. It answers the question "*How to construct a Unique Trade ID?"*

57. ISDA had previously published a paper "Unique Trade Identifier (UTI): Generation, Communication and Matching"[28] offering a best practice approach.

58. Old deals outstanding at 16 August 2012 or executed since then do still need to be reported and therefore UTIs will be required. The parties involved will need to generate and agree retrospective UTIs.

[28] http://www2.isda.org/identifiers-and-otc-taxonomies and scroll down to a paper of 19 December 2013.

Risk mitigation – confirmations, reconciliations, disputes and bilateral collateral

59. For OTC derivatives that are not cleared, whether that is because no CCP clears that instrument or because the NFC is within the exemptions from clearing, EMIR stipulates additional risk mitigation measures.

60. All FCs *and* NFCs must have procedures and arrangements to measure, monitor and mitigate operational and counterparty credit risk, including at least:

    - timely confirmations (as soon as possible but within the timescales below and by electronic means where available);
    - and reconciliation, risk management and resolution of disputes.

Timetable for derivative confirmations (All timescales refer to days following the date of execution)			
FCs and NFCs above clearing threshold			
Credit default swaps and interest rate swaps	To 28/2/2014 2 business days	After 28/2/2014 1 business day	
Equity swaps, FX swaps, commodity swaps and other derivatives	To 31/8/2013 3 business days	To 31/8/2014 2 business days	After 31/8/2014 1 business day
NFCs below clearing threshold			
Credit default swaps and interest rate swaps	To 31/8/2013 5 business days	To 31/8/2014 3 business days	After 31/8/2014 2 business days
Equity swaps, FX swaps, commodity swaps and other derivatives	To 31/8/2013 7 business days	To 31/8/2014 4 business days	After 31/8/2014 2 business days

61. The exact details around these risk mitigation procedures are set out in the Level 2 legislation or Regulatory Technical Standards (RTS).[29] The RTS came into force on 15th March 2013.

Confirmations.

62. The term confirmation is defined in the RTS[30]. It means the documentation of the agreement of the counterparties to all the terms of an OTC derivative contract. Therefore, to comply with the confirmation requirements, the counterparties must reach a legally binding agreement to all the terms of an OTC derivative contract. The RTS implies that the confirmation process must be two way so that both parties are involved and agree. Some banks, for their own convenience work on the basis of negative affirmations – sending out confirmations and saying that they will take the transaction as confirmed unless they hear to the contrary within 48 hours. On its own this is not adequate for EMIR. Negative affirmations become two way and therefore acceptable for EMIR if both counterparties have agreed in advance to confirm by this process.

63. ISDA have drafted a Timely Confirmation Amendment Agreement[31]. This is needed because EMIR imposes an obligation for the parties to a derivative to exchange confirmations within certain timescales (e.g. the 5 day deadline for credit default and interest rate swaps has been in force since 15 March 2013), but to complete any confirmation each party is dependent on the timely action of the other party and the amendment caters for this. The ISDA wording includes the option to agree to negative affirmations. However negative affirmation is not the ideal control process so companies will have to decide if this is acceptable to them.

64. The timescales for confirmations apply to all OTC derivatives including intra-group, and started to apply from the date the Regulatory Technical Standards came into force, namely 15th March 2103.

Reconciliations.

65. To mitigate further the operational and credit risk, before entering into any contracts parties shall agree in writing the terms on which their portfolios shall be reconciled. The required frequency of reconciliation will depend on the number of contracts outstanding with each individual counterparty.

66. ISDA has published its 2013 portfolio reconciliation, dispute resolution and disclosure protocol[32] which provides a convenient method for amending all your ISDA agreements with all your banks via a single adherence letter. Many companies are using this. The downside is you have to agree to its entirety with no amendments. We understand that banks

[29] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0011:0024:EN:PDF

[30] Article 10 of Commission Delegated Regulation (EU) No 149/2013 (ESMA RTS on OTC derivatives) (link above)

[31] http://www2.isda.org/functional-areas/protocol-management/protocol/11

[32] https://www2.isda.org/functional-areas/protocol-management/protocol/15

are seeking agreement from the customers to bilateral arrangements that are very similar in structure to the ISDA protocol, but presumably there would be more scope to tailor these procedures.

67. If the customer agrees to be a receiving party under the ISDA protocol there is a presumption that the customer agrees the reconciliation if they do not reply within 5 days. For many companies performing the reconciliations will take longer than this so companies must be alert that through neglect or delay they do not inadvertently agree to position data that is wrong.

68. The requirement for a reconciliation and disputes procedure between dealing parties also applies to intra-group transactions. One route to put this in place internally would be through amending group manuals and procedures.

69. For those with a quarterly reconciliation requirement the first one shall be made before 15 December 2013 and for those on annual reconciliations the first one shall be made before 15th March 2014.[33]

70. Further risk management measures are specified in the RTS requiring FCs and NFC+s to mark to market on a daily basis unless market conditions prevent this. For these NFC+s their reconciliations should cover discrepancies in valuations.

71. An NFC- is not required to report valuations so logically it would be odd to require them to include valuations as a field to be reconciled when that field will be empty. The FCA has indicated that valuations should form part of the reconciliation even for an NFC-. However ESMA in its Questions and Answers OTC 14(e) has come up with a compromise solution, namely that "Since NFC- are not required to perform mark-to-market or mark-to-model valuation on a daily basis (as Article 11(2) of EMIR only applies to FC and NFC+), they can rely on the valuation of their counterparties or on other means."[34]

Reconciliation frequency

FCs and NFCs above clearing threshold (NFC+)	≥500 contracts Daily	51 – 499 contracts Weekly	≤50 contracts Quarterly
NFCs below clearing threshold (NFC-)	≥101 contracts Quarterly	≤100 contracts Annually	

[33] In the UK the FCA has initially exercised a degree of forbearance on enforcing the obligation to have agreed reconciliation and dispute procedures in place. However it has since set a hard deadline of 30 April 2014 for these to be set up. (http://www.fca.org.uk/firms/markets/international-markets/emir/fca-supervisory-priorities)

[34] http://www.esma.europa.eu/system/files/2014-164_qa_vi_on_emir_implementation_-_11_february_14.pdf

Portfolio compression.

72. FCs and NFCs with 500 or more outstanding OTC derivative contracts with a single counterparty must consider a portfolio compression at least twice a year. Compression requirements apply from 6 months after the date of the RTS, hence from 15 September 2013.

Bilateral collateral.

73. FCs and NFCs over the threshold that are unable to submit their OTC derivatives to central clearing must have procedures for timely, accurate and appropriately segregated exchange of collateral. This will certainly involve variation margin and will probably require initial margin but the RTS covering this have yet to be finalised by ESMA. A consultation was published in April 2014[15] with a start date expected to be set as 1 December 2015. A policy framework for this bilateral exchange of collateral has been published at the BIS / IOSCO level. (See also para 34)

74. Even if central clearing or bilateral collateral is not required by EMIR there may still be commercial pressures for derivatives to be covered by margin or collateral. This does reduce the credit risk for both parties and for the bank any secured transactions have a lower capital requirement making them commercially more attractive

Dispute procedures.

75. When concluding uncleared OTC derivative contracts with each other, financial counterparties and non-financial counterparties shall have agreed detailed procedures and processes in relation to:

    (a) the identification, recording, and monitoring of disputes relating to the recognition or valuation of the contract and to the exchange of collateral between counterparties. Those procedures shall at least record the length of time for which the dispute remains outstanding, the counterparty and the amount which is disputed;

    (b) the resolution of disputes in a timely manner with a specific process for those disputes that are not resolved within five business days.
    Counterparties may agree up front that discrepancies that amount to a value below a pre-defined threshold do not count as disputes.

76. Financial counterparties shall report to their competent authority any disputes between counterparties relating to an OTC derivative contract, its valuation or the exchange of collateral for an amount or a value higher than EUR 15 million and outstanding for at least 15 business days. The requirements around dispute procedures apply from 6 months after the date of the RTS, hence from 15 September 2013.

77. In Germany under an Act approved by the Bundestag in December 2012, non-financial counterparties will be obliged to have their compliance with clearing and risk management obligations under EMIR verified and certified by appropriate auditors, if during a financial year they entered into more than 100 OTC derivatives, or concluded OTC derivatives the notional value of which exceeds EUR 100 million.

Appendix 1: Details to be reported

From Regulatory Technical Standards No 148/203 of 19th December 2012 and No 1247/2012 of 19th December 2012 [35]

	Table 1 - Counterparty Data		
	FIELD	**FORMAT**	**EXPLANATION OF DETAILS TO BE REPORTED**
	Parties to the contract		
1	Reporting timestamp	ISO 8601 date format / UTC time format.	Date and time of reporting to the trade repository.
2	Counterparty ID	Legal Entity Identifier (LEI) (20 alphanumerical digits), interim entity identifier (20 alphanumerical digits), BIC[36] (11 alphanumerical digits) or a client code (50 alphanumerical digits).	Unique code identifying the reporting counterparty. In case of an individual, a client code shall be used.
3	ID of the other Counterparty	Legal Entity Identifier (LEI) (20 alphanumerical digits), interim entity identifier (20 alphanumerical digits), BIC (11 alphanumerical digits) or a client code (50 alphanumerical digits).	Unique code identifying the other counterparty of the contract. This field shall be filled from the perspective of the reporting counterparty. In case of an individual, a client code shall be used.
4	Name of the counterparty	100 alphanumerical digits or blank in case of coverage by Legal Entity Identifier (LEI).	Corporate name of the reporting counterparty. This field can be left blank in case the counterparty ID already contains this information.
5	Domicile of the counterparty	500 alphanumerical digits or blank in case of coverage by Legal Entity Identifier (LEI).	Information on the registered office, consisting of full address, city and country of the reporting counterparty. This field can be left blank in case the counterparty ID already contains this information.
6	Corporate sector of the counterparty	Taxonomy: A=Assurance undertaking authorised in accordance with Directive 2002/83/EC; C=Credit institution authorised in accordance with Directive 2006/48/EC;	Nature of the reporting counterparty's company activities (bank, insurance company, etc.). This field can be left blank in case the counterparty ID already contains this information.

[35] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0001:0010:EN:PDF and http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:352:0020:0029:EN:PDF

[36] BIC = Business Identifier Code in accordance with ISO 9362

		F=Investment firm in accordance with Directive 2004/39/EC; I=Insurance undertaking authorised in accordance with Directive 73/239/EEC; L=Alternative investment fund managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU; O=Institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC; R=Reinsurance undertaking authorised in accordance with Directive 2005/68/EC; U=UCITS and its management company, authorised in accordance with Directive 2009/65/EC; or blank in case of coverage by Legal Entity Identifier (LEI) or in case of non-financial counterparties.	
7	Financial or non-financial nature of the counterparty	F=Financial Counterparty, N=Non-Financial Counterparty.	Indicate if the reporting counterparty is a financial or non-financial counterparty in accordance with Article 2(8,9)of Regulation (EU) No 648/2012.
8	Broker ID	Legal Entity Identifier (LEI) (20 alphanumerical digits), interim entity identifier (20 alphanumerical digits), BIC (11 alphanumerical digits) or a client code (50 alphanumerical digits).	In case a broker acts as intermediary for the reporting counterparty without becoming a counterparty, the reporting counterparty shall identify this broker by a unique code. In case of an individual, a client code shall be used.
9	Reporting entity ID	Legal Entity Identifier (LEI) (20 alphanumerical digits), interim entity identifier (20 alphanumerical digits), BIC (11 alphanumerical digits) or a client code (50 alphanumerical digits).	In case the reporting counterparty has delegated the submission of the report to a third party or to the other counterparty, this entity has to be identified in this field by a unique code. Otherwise this field shall be left blank. In case of an individual, a client code shall be used, as assigned by the legal entity used by the individual counterparty to execute the trade.
10	Clearing member ID	Legal Entity Identifier (LEI) (20 alphanumerical digits), interim entity identifier (20 alphanumerical digits), BIC (11 alphanumerical digits) or a client code (50 alphanumerical digits).	In case the reporting counterparty is not a clearing member, its clearing member shall be identified in this field by a unique code. In case of an individual, a client code, as assigned by the CCP, shall be used.
11	Beneficiary ID	Legal Entity Identifier (LEI) (20 alphanumerical digits),	The party subject to the rights and obligations arising from the contract.

		interim entity identifier (20 alphanumerical digits), BIC (11 alphanumerical digits) or a client code (50 alphanumerical digits).	Where the transaction is executed via a structure, such as a trust or fund, representing a number of beneficiaries, the beneficiary should be identified as that structure. If the beneficiary of the contract is not a counterparty to this contract, the reporting counterparty has to identify this beneficiary by a unique code or, in case of individuals, by a client code as assigned by the legal entity used by the individual.
12	Trading capacity	P=Principal, A=Agent.	Identifies whether the reporting counterparty has concluded the contract as principal on own account (on own behalf or behalf of a client) or as agent for the account of and on behalf of a client.
13	Counterparty side	B=Buyer, S=Seller.	Identifies whether the contract was a buy or a sell. In the case of an interest rate derivative contract, the buy side will represent the payer of leg 1 and the sell side will be the payer of leg 2.
14	Trade with non-EEA counterparty	Y=Yes, N=No.	Indicates whether the other counterparty is domiciled outside the EEA.
15	Directly linked to commercial activity or treasury financing	Y=Yes, N=No.	Information on whether the contract is objectively measurable as directly linked to the reporting counterparty's commercial or treasury financing activity, as referred to in Art. 10(3) of Regulation (EU) No 648/2012. This field shall be left blank in case the reporting counterparty is a financial counterparty, as referred to in Art. 2 (8) Regulation (EU) No 648/2012.
16	Clearing threshold	Y=Above, N=Below.	Information on whether the reporting counterparty is above the clearing threshold as referred to in Art. 10(3) of Regulation (EU) No 648/2012. This field shall be left blank in case the reporting counterparty is a financial counterparty, as referred to in Art. 2 (8) Regulation (EU) No 648/2012.
17	Mark to market value of contract	Up to 20 numerical digits in the format xxxx,yyyyy.	Mark to market valuation of the contract, or mark to model valuation where applicable under Article 11(2) of Regulation (EC) No 648/2012.
18	Currency of mark to market value of the contract	ISO 4217 Currency Code, 3 alphabetical digits.	The currency used for the mark to market valuation of the contract, or mark to model valuation where

			applicable under Article 11(2) of Regulation (EC) No 648/2012.
19	Valuation date	ISO 8601 date format.	Date of the last mark to market or mark to model valuation.
20	Valuation time	UTC time format.	Time of the last mark to market or mark to model valuation.
21	Valuation type	M=mark to market / O=mark to model.	Indicate whether valuation was performed mark to market or mark to model.
22	Collateralisation	U=uncollateralised, PC= partially collateralised, OC=one way collateralised or FC- fully collateralised.	Whether collateralisation was performed.
23	Collateral portfolio	Y=Yes, N=No.	Whether the collateralisation was performed on a portfolio basis. Portfolio means the collateral calculated on the basis of net positions resulting from a set of contracts, rather than per trade.
24	Collateral portfolio code	Up to 10 numerical digits.	If collateral is reported on a portfolio basis, the portfolio should be identified by a unique code determined by the reporting counterparty.
25	Value of the collateral	Specify the value the total amount of collateral posted; up to 20 numerical digits in the format xxxx,yyyyy.	Value of the collateral posted by the reporting counterparty to the other counterparty. Where collateral is posted on a portfolio basis, this field should include the value of all collateral posted for the portfolio.
26	Currency of the collateral value	Specify the currency of field 25; ISO 4217 Currency Code, 3 alphabetical digits.	Specify the value of the collateral for field 25.

Note: NFCs below the clearing threshold do not need to report valuations

Table 2 -Common Data

	FIELD	**FORMAT**	**APPLICABLE TYPES OF DERIVATIVE CONTRACT**	**EXPLANATION OF DETAILS TO BE REPORTED**
	Section 2a - Contract type		**All contracts**	
1	Taxonomy used	Identify the taxonomy used: U=Product Identifier [endorsed in Europe] I=ISIN/AII + CFI E=Interim taxonomy		The contract shall be identified by using a product identifier.
2	Product ID 1	For taxonomy = U: Product Identifier (UPI),		The contract shall be identified by using a product identifier.

		to be defined For taxonomy = I: ISIN or AII, 12 digits alphanumerical code For taxonomy = E: Derivative class: CO=Commodity CR=Credit CU=Currency EQ=Equity IR=Interest Rate OT= Other		
3	Product ID 2	For taxonomy = U: Blank For taxonomy = I: CFI, 6 characters alphabetical code For taxonomy = E: Derivative type: CD= Contracts for difference FR= Forward rate agreements FU= Futures FW=Forwards OP=Option SW=Swap OT= Other		The contract shall be identified by using a product identifier.
4	Underlying	ISIN (12 alphanumerical digits); LEI (20 alphanumerical digits); Interim entity identifier (20 alphanumerical digits); UPI (to be defined); B= Basket; I=Index.		The underlying shall be identified by using a unique identifier for this underlying. In case of baskets or indices, an indication for this basket or index shall be used where a unique identifier does not exist.
5	Notional currency 1	ISO 4217 Currency Code, 3 alphabetical digits.		The currency of the notional amount. In the case of an interest rate derivative contract, this will be the notional currency of leg 1.
6	Notional currency 2	ISO 4217 Currency Code, 3 alphabetical digits.		The currency of the notional amount. In the case of an interest rate derivative contract, this will be the notional currency of leg 2.
7	Deliverable currency	ISO 4217 Currency		The currency to be delivered.
	Section 2b - Details on the transaction		**All contracts**	
8	Trade ID	Up to 52 alphanumerical digits.		A Unique Trade ID agreed at the European level, which is provided by the reporting counterparty. If

				there is no unique trade ID in place, a unique code should be generated and agreed with the other counterparty.
9	Transaction reference number	An alphanumeric field up to 40 characters		A unique identification number for the transaction provided by the reporting entity or a third party reporting on its behalf.
10	Venue of execution	ISO 10383 Market Identifier Code (MIC), 4 digits alphabetical. Where relevant, XOFF for listed derivatives that are traded off-exchange or XXXX for OTC derivatives.		The venue of execution shall be identified by a unique code for this venue. In case of a contract concluded OTC, it has to be identified whether the respective instrument is admitted to trading but traded OTC or not admitted to trading and traded OTC.
11	Compression	Y = if the contract results from compression; N= if the contract does not result from compression.		Identify whether the contract results from a compression exercise.
12	Price / rate	Up to 20 numerical digits in the format xxxx,yyyyy.		The price per derivative excluding, where applicable, commission and accrued interest.
13	Price notation	E.g. ISO 4217 Currency Code, 3 alphabetical digits, percentage.		The manner in which the price is expressed.
14	Notional amount	Up to 20 numerical digits in the format xxxx,yyyyy.		Original value of the contract.
15	Price multiplier	Up to 10 numerical digits.		The number of units of the financial instrument which are contained in a trading lot; for example, the number of derivatives represented by one contract.
16	Quantity	Up to 10 numerical digits.		Number of contracts included in the report, where more than one derivative contract is reported.
17	Up-front payment	Up to 10 numerical digits in the format xxxx,yyyyy for payments made by the reporting counterparty and in the format xxxx,yyyyy for payments received by the reporting counterparty.		Amount of any up-front payment the reporting counterparty made or received.
18	Delivery type	C=Cash, P=Physical, O=Optional for counterparty.		Indicates whether the contract is settled physically or in cash.
19	Execution timestamp	ISO 8601 date format / UTC time format.		As defined in Article 1 (2).

20	Effective date	ISO 8601 date format.		Date when obligations under the contract come into effect.
21	Maturity date	ISO 8601 date format.		Original date of expiry of the reported contract. An early termination shall not be reported in this field.
22	Termination date	ISO 8601 date format.		Termination date of the reported contract. If not different from maturity date, this field shall be left blank.
23	Settlement date	ISO 8601 date format.		Date of settlement of the underlying. If more than one, further fields may be used (e.g. 23A, 123B, 23C…).
24	Master Agreement type	Free Text, field of up to 50 characters, identifying the name of the Master Agreement used, if any.		Reference to the name of the relevant master agreement, if used for the reported contract (e.g. ISDA Master Agreement; Master Power Purchase and Sale Agreement; International ForEx Master Agreement; European Master Agreement or any local Master Agreements).
25	Master Agreement version	Year, xxxx.		Reference to the year of the master agreement version used for the reported trade, if applicable (e.g. 1992, 2002, ...).
	Section 2c - Risk mitigation / Reporting		**All contracts**	
26	Confirmation timestamp	ISO 8601 date format, UTC time format.		Date and time of the confirmation, as defined under Regulation (EC) the 149/2013 [Commission delegated regulation endorsing draft regulatory technical standards on OTC Derivatives] indicating time zone in which the confirmation has taken place.
27	Confirmation means	Y=Non-electronically confirmed, N=Non-confirmed, E=Electronically confirmed.		Whether the contract was electronically confirmed, non-electronically confirmed or remains unconfirmed.
	Section 2d - Clearing		**All contracts**	
28	Clearing obligation	Y=Yes, N=No.		Indicates, whether the reported contract is subject to the clearing obligation under Regulation (EU) No 648/2012.
29	Cleared	Y=Yes, N=No.		Indicates, whether clearing has taken place.
30	Clearing timestamp	ISO 8601 date format / UTC time format.		Time and date when clearing took place.

31	CCP ID	Legal Entity Identifier (LEI) (20 alphanumerical digits) or, if not available, interim entity identifier (20 alphanumerical digits) or, if not available, BIC (11 alphanumerical digits).		In case of a contract that has been cleared, the unique code for the CCP that has cleared the contract.
32	Intragroup	Y=Yes, N=No.		Indicates whether the contract was entered into as an intra-group transaction, defined in Article 3 of Regulation (EU) No 648/2012.
	Section 2e - Interest Rates		**Interest rate derivatives**	**If a UPI is reported and contains all the information below, this is not required to be reported.**
33	Fixed rate of leg 1	Numerical digits in the format xxxx,yyyyy.		An indication of the fixed rate leg 1 used, if applicable.
34	Fixed rate of leg 2	Numerical digits in the format xxxx,yyyyy.		An indication of the fixed rate leg 2 used, if applicable.
35	Fixed rate day count	Actual/365, 30B/360 or Other.		The actual number of days in the relevant fixed rate payer calculation period, if applicable.
36	Fixed leg payment frequency	An integer multiplier of a time period describing how often the counterparties exchange payments, e.g. 10D, 3M, 5Y.		Frequency of payments for the fixed rate leg, if applicable.
37	Floating rate payment frequency	An integer multiplier of a time period describing how often the counterparties exchange payments, e.g. 10D, 3M, 5Y.		Frequency of payments for the floating rate leg, if applicable.
38	Floating rate reset frequency	D= An integer multiplier of a time period describing how often the counterparties exchange payments, eg 10D, 3M,5Y.		Frequency of floating rate leg resets, if applicable.
39	Floating rate of leg 1	The name of the floating rate index, e.g. 3M Euribor.		An indication of the interest rates used which are reset at predetermined intervals by reference to a market reference rate, if applicable.
40	Floating rate of leg 2	The name of the floating rate index, e.g. 3M Euribor.		An indication of the interest rates used which are reset at predetermined intervals by reference to a market reference rate, if applicable.
	Section 2f – Foreign Exchange		**Currency derivatives**	**If a UPI is reported and contains all the information below, this is**

				not required to be reported.
41	Currency 2	ISO 4217 Currency Code, 3 alphabetical digits.		The cross currency, if different from the currency of delivery.
42	Exchange rate 1	Up to 10 numerical digits in the format xxxx,yyyyy.		The contractual rate of exchange of the currencies.
43	Forward exchange rate	Up to 10 numerical digits in the format xxxx,yyyyy.		Forward exchange rate on value date.
44	Exchange rate basis	E.g. EUR/USD or USD/EUR.		Quote base for exchange rate.
	Section 2g - Commodities	**If a UPI is reported and contains all the information below, this is not required unless to be reported according to Regulation (EU) No 1227/2011.**	**Commodity derivatives**	**If a UPI is reported and contains all the information below, this is not required unless to be reported according to Regulation (EU) No 1227/2011.**
	General			
45	Commodity base	AG=Agricultural EN=Energy FR=Freights ME=Metals IN= Index EV= Environmental EX= Exotic		Indicates the type of commodity underlying the contract.
46	Commodity details	Agricultural GO= Grains oilseeds DA= Dairy LI= Livestock FO= Forestry SO= Softs Energy OI= Oil NG = Natural gas CO= Coal EL= Electricity IE= Inter-energy Metals PR= Precious NP = Non-precious Environmental WE=Weather EM= Emissions		Details of the particular commodity beyond field 45.
	Energy			Information to be reported according to Regulation (EU) No 1227/2011, if applicable.
47	Delivery point or zone	EIC code, 16 character alphanumeric code.		Delivery points(s) of market area(s).
48	Interconnection Point	Free text, field of up to 50 characters.		Identification of the border(s) or border point(s) of a transportation contract.

49	Load type	Repeatable section of fields 50-54 to identify the product delivery profile; BL=Base Load PL=Peak Load OP=Off-Peak BH= Block Hours OT=Other		Repeatable section of fields 50-54 to identify the product delivery profile which correspond to the delivery periods of a day.
50	Delivery start date and time	ISO 8601 date format.		Start date and time of delivery.
51	Delivery end date and time	ISO 8601 date format.		End date and time of delivery.
52	Contract capacity	Free text, field of up to 50 characters.		Quantity per delivery time interval.
53	Quantity Unit	10 numerical digits in the format xxxx,yyyyy.		Daily or hourly quantity in MWh or kWh/d which corresponds to the underlying commodity.
54	Price/time interval quantities	10 numerical digits in the format xxxx,yyyyy.		If applicable, price per time interval quantities.
	Section 2h - Options		**Contracts that contain an option**	**If a UPI is reported and contains all the information below, this is not required to be reported.**
55	Option type	P=Put, C=Call.		Indicates whether the contract is a call or a put.
56	Option style (exercise)	A=American, B=Bermudan, E=European, S=Asian.		Indicates whether the option may be exercised only at a fixed date (European, and Asian style), a series of pre-specified dates (Bermudan) or at any time during the life of the contract (American style).
57	Strike price (cap/floor rate)	Up to 10 Numerical digits in the format xxxx,yyyyy.		The strike price of the option.
	Section 2i - Modifications to the contract		**All contracts**	
58	Action type	N=New M=Modify E=Error, C=Cancel, Z=Compression, V=Valuation update, O=Other.		Whether the report contains: • a derivative contract or post-trade event for the first time, in which case it will be identified as "new‟; • a modification of details of a previously reported derivative contract, in which case it will be identified as "modify‟; • a cancellation of a wrongly submitted report, in which case, it will be identified as

				“error‟; • a termination of an existing contract, in which case it will be identified as “cancel‟; • a compression of the reported contract, in which case it will be identified as “compression‟; • an update of a contract valuation, in which case it will be identified as “valuation update‟; • any other amendment to the report, in which case it will be identified as “other‟.
59	Details of action type	Free text, field of up to 50 characters.		Where field 58 is reported as “other‟ the details of such amendment should be specified here.

Appendix 2: Useful weblinks

ACT briefing note: European regulation of OTC derivatives – Implications for non-financial companies Updated May 2014	www.treasurers.org/otc
ACT EMIR – frequently asked questions for non-financial counterparties	http://www.treasurers.org/node/9406
ISDA EMIR documentation and guidance	http://www2.isda.org/emir
ESMA Questions and Answers on EMIR	http://www.esma.europa.eu/system/files/2014-297_qa_vii_on_emir_implementation_20_march_14_0.pdf
FCA main EMIR page	http://www.fca.org.uk/firms/markets/international-markets/emir
FCA links to European source legislation	http://www.fca.org.uk/firms/markets/international-markets/emir/emir-library
UTI information	http://www.treasurers.org/node/9573
Endorsed Pre-LOUs of the Interim Global Legal Entity Identifier System (i.e. approved issuers of LEIs)	http://www.leiroc.org/publications/gls/lou_20131003_2.pdf
EU registered Trade Repositories	http://www.esma.europa.eu/page/Registered-Trade-Repositories

Briefing note

European regulation of OTC derivatives

Implications for non-financial companies

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