

Energy Traders Europe Response to the ESMA Consultation on the reporting framework under EMIR for clearing activity at recognised third- country CCPs

General information about respondent

Name of the company / organisation	Energy Traders Europe
Activity	Non-financial Counterparty of OTC derivatives transactions
Are you representing an association?	☒
Country / Region	Europe

Introduction

Before responding to the individual questions set out in this consultation, we consider it important to clarify the assumptions and interpretation that underpin our responses. We respectfully request that these introductory remarks be considered when assessing each of our answers.

Our responses are provided from the perspective that Art. 7d should be interpreted and implemented in the light of its objective of enabling supervisors to understand the exposure of EU firms and EU-supervised groups to CCPs recognised under Article 25 EMIR and the systemic risks arising from reliance on such clearing infrastructure. Reporting requirements should be designed in a way that ensures regulators receive information that is meaningful, accurate and capable of supporting supervisory outcomes, while avoiding unnecessary complexity and operational burden that may not materially enhance regulatory oversight. The reporting framework under Art 7d should not be extended beyond these principles and remain aligned with the supervisory objective.

More generally, we would encourage ESMA, when developing the final framework, to place particular emphasis on the following principles:

- Wherever possible, take into account the “golden source” of the relevant information: Information required under Article 7d (such as average values cleared) is already held by an EU clearing member, or by a clearing member belonging to a group subject to consolidated supervision in the Union. The most proportionate approach to reporting in this context would be for that clearing member to act as reporting entity and report the relevant information directly. This should apply indistinctly of the jurisdiction of the client (EU client or non-EU client part of an EU group). Requiring the clearing member instead to provide the information to its client, for the client or its Union parent undertaking subsequently to aggregate and report the same information, would create an unnecessary reporting chain, increase operational burden and potentially reduce consistency and data quality. At the same time the identification of non-EU clients being part of an EU group can be integrated in the KYC reviews that are already performed regularly by clearing members nowadays. Where direct reporting by the clearing member is not possible under the applicable framework, the reporting architecture should operate as a waterfall mechanism, with the clearing member making the relevant Article 7d information available at the level of each individual client legal entity to enable the responsible reporting entity to fulfil its obligations efficiently.
- Introducing additional reporting requirements (such as those under Art. 7d) must remain proportionate and provide a clear benefit to supervisory authorities, in order not to hamper the competitiveness of EU reporting entities.
- Provide further clarification of the meaning and application of the concept of a “group subject to consolidated supervision in the Union”, particularly in relation to non-financial groups and non-EU group entities, which are for their part not subject to supervision.
- The RTS should clearly define the scope of Art. 7d, which is limited by 2 essential elements:
 - The reporting obligation in general only concerns the products for which Third Country CCPs have been recognised for clearing under Art. 25 of EMIR. This information is published and updated by ESMA here <https://www.esma.europa.eu/sites/default/files/library/third->

[country ccps recognised under emir.pdf](#) (as reflected in the Consultation Paper § 25).

- Within this scope, only products denominated in EU Currencies are subject to reporting (which aligns with ESMA's explanations regarding the methodology for calculating average values cleared, §77). The RTS should underline that the use of a DEA arrangement does not alter the qualification of an undertaking as a "client" for Article 7d purposes, where it has a contractual relationship with a clearing member enabling it to clear transactions through the CCP.

Questions

Q1 Do stakeholders agree with ESMA's assessment of data availability under existing reporting frameworks?

Energy Traders Europe welcomes the rather lean set of additional reporting fields proposed by ESMA, which in our view reflects an appropriately proportionate approach and takes account of competitiveness and simplification considerations.

We support ESMA's objective of maximising the reuse of information already available under existing reporting and supervisory frameworks. Article 7d empowers ESMA to specify the content and level of detail of the information to be reported. We also underline that any requirements extending the reporting to products or entities for which equivalent information is not already available under existing reporting frameworks should be clearly justified by reference to the supervisory and systemic-risk objectives of Article 7d.

Q2 Do stakeholders agree with ESMA's proposal to require annual reporting by the last business day of January, covering the preceding calendar year? If not, please explain your reasoning, including any operational constraints or alternative timelines.

Energy Traders Europe agrees that **annual reporting is the most proportionate approach**. However, we believe that the proposed deadline for the last business day of January doesn't provide sufficient time for reporting entities to compile, consolidate, reconcile and validate information relating to the preceding calendar year.

CONSULTATION RESPONSE



Reportable information may need to be collected across multiple legal entities and clearing relationships and subsequently undergo established governance, compliance, risk management and data-validation processes. January is also already a particularly resource-intensive period for the relevant compliance, finance, operations and reporting functions due to year-end closing and annual reporting activities.

We therefore recommend moving the reporting deadline to the **last business day of March** as this supports more accurate, consistent and reliable reporting.

Given the annual and aggregated nature of the reporting, we do not consider that moving the deadline from the end of January to the end of March would materially reduce the supervisory value of the information. Conversely, the additional time would materially improve the quality and completeness of the data submitted.

Q3 Do stakeholders agree with ESMA's proposed transitional application mechanism? In particular, do stakeholders consider that the proposed arrangements provide sufficient time to prepare for the first reporting cycle while ensuring timely availability of the information?

Energy Traders Europe supports the principle of providing reporting entities with an adequate implementation period following the finalisation and entry into application of the relevant technical standards. However, we do not support the proposed requirement to include a backloading obligation, starting from 2025.

Requiring historical data subsequently to be reconstructed in the format and level of granularity prescribed by the future RTS could entail significant operational effort, manual reconciliation and data-quality challenges, particularly for groups with multiple legal entities and clearing relationships, with no perceived or established benefit.

In particular, where historical information is not already available through existing reporting or supervisory channels, ESMA should demonstrate the additional supervisory value of requiring reporting entities to reconstruct such data retrospectively. In our view, the burden associated with backloading should not be imposed unless it is clearly justified by a specific supervisory or systemic-risk need.

We would therefore recommend that the first Article 7d reporting cycle apply prospectively, following an adequate implementation period after the relevant technical

standards have been finalised and become applicable, rather than requiring reporting entities to reconstruct separate annual reports dating back to 2025.

It would also be an advantage to adopt a clear and consistent approach regarding the application of RTS: the obligations defined in the RTS should not have a retroactive effect but only be valid for the future. This aligns with the expectations regarding the RTS on the Clearing Thresholds as well.

Q4 Do stakeholders agree with ESMA's proposed approach to the categorisation of instruments for the purposes of Article 7d reporting, based on recital 17, the classes of instruments covered by T1-CCP recognition and the corresponding asset classes? If not, would stakeholders prefer the use of the ISO 10962 Classification of Financial Instruments (CFI), or another approach, to identify both the type of instrument and the associated asset class? Please explain your reasoning, including any implications in terms of data availability and reporting burden.

Energy Traders Europe broadly supports ESMA's proposed high-level categorisation. While Recital 17 provides a useful reference point, we recognise that ESMA's proposed categories reflect the actual scope of the clearing services for which third-country CCPs are recognised and, importantly, remain relatively high level.

We would also not favour the use of the ISO 10962 CFI classification as an alternative. The CFI classification appears considerably more granular than necessary for the purposes of Article 7d and could itself generate additional sourcing and mapping requirements. Moreover, as ESMA recognises, CFI codes do not cover non-financial instruments.

Q5 Do stakeholders agree with the proposed methodology for calculating average values cleared over one year, based on aggregate month-end average positions, with a breakdown by Union currency and asset class? Please explain your views, including any implications for data availability, operational feasibility or reporting burden.

Energy Traders Europe broadly agrees with ESMA's proposed methodology for calculating annual average values on the basis of 12 month-end position observations. This provides

CONSULTATION RESPONSE



a proportionate and operationally feasible approach, while avoiding the additional burden that would result from more frequent observations.

As mentioned earlier, ESMA should clarify that the reporting scope concerns contracts denominated in Union currencies only.

Q6 Do stakeholders agree that, for the purposes of Article 7d(1)(c), initial margin provides a more meaningful and proportionate indicator of exposure to recognised third country CCPs than variation margin, and with the proposal to report margins at a less granular level than average values cleared, in particular by reporting initial margin per CCP recognised under Article 25?

Energy Traders Europe agrees that initial margin provides a more meaningful and proportionate indicator than variation margin for the purposes of Article 7d(1)(c). We also support reporting initial margin at CCP level, rather than requiring a further breakdown by instrument type, asset class or currency. Such a breakdown could require artificial allocation of margin calculated at portfolio or account level without providing commensurate supervisory value.

Q7 Do stakeholders also agree with ESMA's proposal to calculate reported initial margin as the average of month end observations over the reporting year? Alternatively, would either (i) the average of quarter end observations or (ii) the reporting of quarter end observations individually provide a more proportionate and operationally feasible approach?

No answer provided.

Q8 To what extent is it operationally feasible to obtain, provide and report initial margin information for the purposes of Article 7d reporting? ESMA would particularly welcome views from reporting entities, clearing members and other stakeholders involved in the reporting chain on the level of aggregation at which such information is available, the effort required to extract such information, and any associated implementation costs or operational burden.

CONSULTATION RESPONSE



Energy Traders Europe's comments are limited to commodity derivatives, which are the relevant asset class for our membership in the context of clearing at recognised third-country CCPs. From an operational perspective, the feasibility of Article 7d initial-margin reporting depends significantly on the scope definition (we explained our reading of the draft legal text in our response to question 1) and on where the relevant information is held within the clearing chain. Clearing members are generally the entities closest to the CCP and are therefore best placed to source and validate the relevant margin information. By contrast, clients may not necessarily hold the underlying CCP-level information in a form that can be readily extracted and reported for Article 7d purposes.

Accordingly, the reporting framework should follow the natural or "golden" source of the information.

We would also welcome clarification as to which initial-margin amount should be reported where the amount called by the clearing member from the client differs from the amount called by the CCP from the clearing member. ESMA should clarify whether Article 7d is intended to capture the margin amount attributable to the client at clearing-member level or the corresponding underlying CCP margin amount. Without a common methodology, reporting entities may apply different approaches, reducing comparability of the reported data.

Finally, the framework should allow the operational performance of the reporting obligation to be delegated, including within a group, while leaving the regulatory responsibility with the entity identified under Article 7d.

Q9 Do stakeholders agree with ESMA's proposal to adopt Option B (distinguishing between EU and non-EU entities within a group) as the baseline level of granularity for consolidated reporting under Article 7d(1)(b)? If not, which of the alternative options (Option A – fully consolidated reporting, or Option C – full entity-level breakdown) would stakeholders prefer, and for what reasons?

Energy Traders Europe supports Option A – fully consolidated reporting. Article 7d(1)(b) requires the Union parent undertaking of a group subject to consolidated supervision in the Union to report the relevant clearing activity on a consolidated basis. Against this

background, we consider Option A to be the most consistent approach with the Level 1 framework and with the objective of providing supervisors with an aggregate view of the group's clearing activity at CCPs recognised under Article 25.

We do not currently see a sufficiently clear supervisory rationale for requiring an additional distinction between EU and non-EU entities within the same consolidated group, as proposed under Option B. Such a breakdown would require additional mapping and allocation of clearing activity across legal entities and jurisdictions and could materially increase operational complexity, particularly for groups with multiple subsidiaries and clearing relationships, without necessarily providing commensurate additional supervisory value.

Q10 What are the operational implications and implementation costs of Options A, B and C, including data availability and any additional allocation or aggregation logic required?

Energy Traders Europe is not in a position, as an association, to provide firm-specific quantitative estimates of the implementation costs associated with Options A, B and C. Such costs will depend firstly on the overall scope of what has to be reported under Art.7d as well as secondly, on individual group structures, the number of relevant legal entities and clearing relationships, the location and accessibility of the underlying data, and the extent to which existing systems can be leveraged.

Against the broader objectives of simplification, proportionality and competitiveness, we consider Option A to be the least burdensome and most appropriate approach. This is also consistent with the consolidated approach used for the Active Account Requirement, as noted by ESMA.

Q11 Do stakeholders agree with ESMA's proposal to require reporting under Article 7d in CSV format? If not, do stakeholders consider that another format would be more appropriate? Please explain your reasoning, including any implications in terms of operational feasibility, implementation costs or data processing. In addition, ESMA would welcome evidence on whether the proposed CSV format would materially

CONSULTATION RESPONSE



reduce implementation complexity relative to alternative formats, including from the perspective of smaller reporting entities.

The suitability of the reporting format cannot be assessed in isolation from the submission mechanism and associated validation requirements. ESMA should therefore first clarify to which authority or system the information will be submitted, through which technical channel, and what validation rules will apply. This is particularly important given the potentially commercially and geopolitically sensitive nature of the information to be reported. The reporting framework should ensure appropriate standards of confidentiality, cybersecurity, data integrity and secure transmission, especially with regard to the strategic importance of the data provided.

Energy Traders Europe further considers that CSV could be an appropriate and proportionate reporting format for the relatively limited and aggregated information envisaged under Article 7d. For an annual reporting obligation of this nature, a more complex structured format such as XML may introduce additional implementation and maintenance costs without providing a clear corresponding operational or supervisory benefit.

Once the submission architecture has been defined, the reporting format should be designed around that infrastructure and should remain as simple and proportionate as possible, particularly for smaller reporting entities.

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