

# Response to public consultation

**EC targeted consultation on OTC derivatives identifier for public transparency purposes**



## Responses to consultation questions

### 1. Response to question 1

1. The first question in the EC consultation is the following:
  - *“For reporting reference data of in-scope OTC derivatives for the purpose of public transparency which option do you prefer? Option 1: mandating UPI plus additional identifying reference data; Option 2: mandating ISIN and requiring a change to the ISIN attributes to include the above-mentioned two additional product attributes ‘Term of Contract’ and ‘Forward Starting Term’.”*
2. **ESMA’s preferred option is Option 2 for the reasons explained in the following paragraphs of section 1.1, 1.2 and 1.3.**

#### 1.1 Comparability of transparency data

3. Under the mandate for the delegated acts being consulted, the Commission shall specify the identifying reference data to be used with regards to in-scope derivatives for the purposes of the transparency requirements set out in Articles 8a(1a), 10 and 21. As explained in more details in section 5 of this response, ESMA has assessed for which types of in-scope OTC derivatives, the current ISIN solution is sub-optimal for the purpose of transparency and concluded that a different solution would be justified only for a sub-set of these derivatives: Interest Rates Swaps. Therefore, this response considers the trade transparency information which is meaningful to publish in order to be able to compare the pricing of Interest Rates Swaps with the same risk profile.
4. Interest-rate swaps with identical tenors are typically considered as having the same risk profile irrespective of the expiry date of the contract. For example, a 5-year swap traded today, and a 5-year swap traded tomorrow, have the same risk profile even as their expiry dates are different. Therefore, the existence of the expiry date as an ISIN attribute prevents the aggregation of contracts with the same risk profile. Furthermore, for interest rate swaps, it is understood that an important element is the moment when the swap starts, when it is not a spot start contract but a forward start contract. As the forward start date is not reflected in the ISIN, there are cases where a forward starting interest rate swap will have the same ISIN as a spot interest rate swap<sup>1</sup>, therefore option 2 of the CP envisages the replacement of the “expiry date” attribute with the “forward term” in the ISIN to address this problem. The same problem arises if the UPI is used to identify these instruments,

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<sup>1</sup> These cases are outlined in ESMA Q&A 1 of section 16 (Interest Rate Swaps reporting) of the [MiFIR data reporting Q&As](#).

therefore, option 1 of the CP envisages that the “contract Term” and “forward term” data elements are reported to FIRDS in separate fields alongside the UPI.

5. Concerning the two options outlined in the CP to ensure that Interest Rates Swaps with the same risk profile are properly identified, ESMA understands that the two alternatives put forward in the CP address this need. With this in mind, ESMA has compared the preferred option based on two critical criteria: a) ensuring high quality reference data to be used for transparency and b) minimise the compliance burden by reducing operational challenges and facilitating integrated reporting. Section 1.2 below provides an assessment of the first criterion while the section 1.3 of this response assesses the second one.

## 1.2 Criterion (a): quality of reference data for transparency

6. Concerning the impact of option 1 on data quality, a basic principle of sound data management consists of relying on a common reference data source containing all instrument attributes that form part of a unique instrument ID, i.e., the unique identification of the instrument can be established by linking the instrument ID with the instrument attributes contained in the reference data library<sup>2</sup> (RDL). The FIRDS was set up based on this principle to ensure data quality and consistency. For this reason, the set of reference data published in FIRDS for each ISIN is identical to the reference data attributes linked to the ISIN (ANNA DSB RDL). Option 1 departs from this sound data management principle as it requires additional reference data elements (e.g., forward term) that are not linked to the product identifier (UPI). With this section, ESMA would like to stress that introducing changes to its existing systems is not *per se* a concern, what is concerning is that these changes imply re-designing the system in a sub-optimal manner, which has a negative impact on the quality and reliability of the information to be published.
7. Reducing the possibility of mismatches can be done by drawing as much information as possible from a common source of data populated following standardized rules and relying on a single identifier. Indeed, establishing an RDL with a single identifier facilitates the aggregation of data by enabling this aggregation using a single data point (i.e., the unique product identifier) rather than having to aggregate multiple data points separately and thus multiplying the risk for mismatches and errors. As a result, the ensuing data quality and consistency are also greater. In the context of option 1, the aggregation would not be made at the level of a single data point (i.e., the UPI) with which information in an RDL can be retrieved. Indeed, the RDL based on UPIs (ANNA DSB RDL) does not include the data points added to the ‘UPI plus’ and as such, the aggregation of data in option 1 would need to be done on multiple data points (i.e., UPI and the additional fields) leading to an increase in the possibility of inconsistent data. In the context of option 2, the aggregation would be done using a single data point (i.e., the OTC ISIN) and retrieving the other data points through

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<sup>2</sup> This is notably a principle that follows from and is facilitated by the concept of a reference data library (“RDL”) that the Commission’s consultation paper outlines in its introduction: “[an RDL] contains all product attributes that form part of a unique product identifier, meaning that the identity of a unique product can be established by linking the unique product identifier [...] with the product attributes contained in the RDL.”

an RDL (i.e., FIRDS) using this single data point, thus reducing the possibility of having mismatching data.

8. In addition, multiple trading venues and designated publication entities will be reporting reference data on the same instrument. However, as per current FIRDS set up aligned to the due data management practices, only one set of reference data is published for a given instrument, even if multiple entities are reporting it. The publishable entry is determined on the basis of the most relevant trading venue, which should be considered the authoritative source of data for that instrument, i.e., for any single instrument ID there might be just one entry containing all relevant instrument attributes associated with the given ID. This data management principle and, by extension FIRDS system, will no longer work under option 1 whereby different reporting entities might report different “forward terms” (i.e., instrument attributes) for the same UPI.
9. By analogy, ESMA’s experience with the current EMIR framework illustrates concretely the point that data quality and consistency will decrease as the number of reported data points to be matched increases. Indeed, the current framework relies on counterparties sending separately a report including all reference parameters of a contract to a trade repository. EMIR data from June 2023 shows that the rate of consistent reporting between both counterparties’ submissions to a trade repository was higher with less data points. Indeed, the consistency rate of the three key data elements (IDs of each counterparty and the ID of the derivative traded) was significantly higher (88%) than the rate of consistent reporting when other data, including reference data, provided in the reports (e.g., asset class, contract type, underlying etc..) was also added to the comparison (63%).
10. Following from the above, **maintaining the OTC ISIN as the instrument identifier while revising some of its attributes (option 2) would lead to greater quality and consistency of transparency data in comparison to a switch to the UPI combined with additional reference data attributes to be published alongside it (option 1)**. Indeed, while option 2 detailed in the consultation paper would see the change of some attributes of the OTC ISIN, these changes would happen within the ISO standard and would result in only one data point – instrument ID – having to be reported and reconciled. On the contrary, option 1 would lead to more than one data point having to be reconciled (i.e., the ‘UPI plus’ and the additional reference fields) leading to comparatively lesser quality and consistency for transparency data.

### 1.3 Criterion (b): compliance burden and integrated reporting

11. Since 2013, in view of MiFID II implementation, the scope of ISO 6166 ISIN standard coverage was substantially extended to cover all financial instruments within the revised MiFID II framework, which was extended in the wake of the financial crisis to improve oversight and transparency of the OTC

derivatives market<sup>3</sup>. This process involved lengthy consultation with industry experts<sup>4</sup> to ensure that the appropriate reference data elements to identify OTC derivative contracts were embedded in the reference data accompanying the ISIN code. It is within this context that ESMA mandated the use of ISINs in MiFIR reporting requirements. Since then, ISINs have been used as the main identifier for financial instruments under MiFIR. All currently employed reporting systems as well as surveillance tools and data mining techniques of NCAs are based on the ISINs. These systems are interlinked with the ones of market participants subject to the respective reporting obligations (e.g., trading venues, investment firms, ARMs, APAs), which equally rely on OTC ISINs to ensure compliance with these obligations as well as the transparency requirements under MiFIR.

12. In addition, the choice of identifier has an impact on the consistency with the EMIR reporting regime, which was recently revised following EMIR REFIT. Notably, starting from 29 April 2024 the EMIR counterparties will be required to report ISINs in order to identify all derivatives that are currently traded on RM, MTF, OTF and SIs<sup>5</sup> under MiFIR. Only the remaining derivatives will need to be identified with the UPI. This approach was chosen following to the feedback received in the consultation which clearly supported the use of ISIN for MiFIR instruments.
13. Since option 1 envisages the replacement of the OTC ISIN for a subset of in-scope derivatives, it will require re-designing the existing IT systems and processes under MFIDII/MiFIR. This will be the case whether those are operated by the market participants for compliance purposes, centrally operated by ESMA or run locally by NCAs for their own internal surveillance activities. In addition, the changes introduced by option 1 will have an impact on EMIR reporting, notably there will no longer be an alignment between MiFIR and EMIR REFIT in terms of scope of products covered by ISIN. Both these aspects are further developed in section 4 of this response.
14. Furthermore, ESMA emphasises that the inconsistent use of identifiers for all these reporting frameworks would be highly detrimental to achieving interoperability between different systems and datasets. The consistent use of the same identifier is instrumental for both the regulators and the industry to move away from a regime-specific, siloed, and non-harmonised approach, towards a more holistic and consistent approach to data. The end goal being to allow entities to report the same information in the same way, no matter which regulation they need to comply with. Such an approach is the cornerstone of both the EC and ESMA data strategies<sup>6</sup> and can contribute to significantly reduce the compliance burden that market players face. With the above objective in mind, the revised

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<sup>3</sup> In line with PITTSBURGH SUMMIT declaration, available at: [1 \(oecd.org\)](https://www.oecd.org/)

<sup>4</sup> In accordance with the ISO governance and processes, a study group was formed to work on the extension of ISINs to OTC derivatives and is now established as permanent product committee comprising a balanced group of experts to oversee the allocation of ISIN to OTC derivative instruments. More details are available here: [Product Committee \(PC\) - DSB \(anna-dsb.com\)](https://anna-dsb.com/) and here: [Product Committee 2021-23 Members - DSB \(anna-dsb.com\)](https://anna-dsb.com/)

<sup>5</sup> For instruments traded on systematic internalisers, these are derivatives subject to the current reporting obligation only if their underlying is traded on a trading venue.

<sup>6</sup> [EC data strategy](https://ec.europa.eu/economy_finance/)

Article 26 of MiFIR includes a mandate for ESMA to develop a report assessing the feasibility of more integration in transaction reporting to (a) reduce requirements that are inconsistent with EMIR/SFTR reporting as well as (b) improve data standardisation and efficient sharing and use of data reported within any Union reporting framework. The question on the use of the appropriate instrument identifier is a key pre-condition for the development of a more integrated system.

15. In this context, the proposal in option 1 defeats the purpose of the above-mentioned report as it creates inconsistencies with the recently revised reporting requirements under EMIR REFIT, i.e., entities that are subject to both the reference data reporting obligation under MiFIR and derivatives reporting obligation under EMIR, would need to use different identifiers to report certain OTC derivatives depending on the regulatory regime. Moreover, as option 2 relies on a more granular identifier, i.e., the revised ISIN, it will be easier to re-use such identifier for other reporting purposes because it will always be possible to derive the less granular UPI from the ISIN. Notably, UPI and ISIN are part of the same hierarchical model, i.e., they are designed to be complementary whilst having different levels of granularity. The level of granularity depends on the number of attributes behind the code to support aggregation for different data uses. Even in the case ISIN is revised under option 2, it will still contain more attributes than UPI, therefore each UPI would still correspond to several ISINs. This means that it will always be possible to derive a UPI from ISINs but not the other way round.
16. For all these reasons, **Option 2, by being based on a revision of ISIN, which can be reused for the purpose of transaction reporting, is already supported within FIRDS, and is aligned to EMIR reporting, appears the most adequate to meet the co-legislators' objective while still easing compliance burdens for reporting entities and ensuring further integration of reporting flows.**

## 2. Response to question 2

17. The second question in the consultation paper is structured as follows:

*If you prefer option 1:*

- a) *Do you agree with the proposal to mandate additional identifying reference data alongside the UPI (ISO 4914), such as 'Term of Contract' and 'Forward Term of Contract' for interest rate derivatives.*
- b) *Do you foresee any challenges and / or cost impacts in terms of system changes required to provide ESMA with the UPI plus certain additional identifying reference data, instead of only reporting a unique product identifier?*

18. **ESMA preferred option is Option 2, therefore ESMA is not responding to this question. However please note that section 4 includes an assessment of the operational challenges and cost impacts in terms of system changes also for the implementation of this solution, to further support ESMA's preference for Option 2.**

### 3. Response to question 3a

19. The question in the EC consultation is the following:

- *If you prefer option 2,*
  - a) *“Do you agree that modifying the ISIN by replacing the ‘Expiry Date’ attribute with the ‘Forward Term of Contract’ for OTC derivative types which have daily ISINs (e.g., interest rate derivatives) addresses the problems identified with the use of the ISIN for the purposes of public transparency reporting?”*

20. **Yes. With respect to the removal of the “expiry date”, refer to section 1.1 of the response to question 1 above. Please also consider our response to question 4 emphasising that questions concerning the modification of the ISIN attributes should be assessed in consultation with the relevant industry experts in accordance with the ISO governance.**

### 4. Response to questions 2b and 3b:

21. The questions in the EC consultation are the following:

- *Question 2b: if you prefer option 1, do you foresee any challenges and / or cost impacts in terms of system changes required to provide ESMA with the UPI plus certain additional identifying reference data, instead of only reporting a unique product identifier.*
- *Question 3b: if you prefer option 2, do you foresee any challenges and / or cost impacts in terms of system changes required to provide ESMA with the modified ISIN, instead of the existing ISIN?*

22. The following sub-sections provide an overview of the IT systems and processes impacted by the changes proposed under option 1 compared to option 2 and the interdependencies among all these systems. ESMA would like to emphasise that this is a preliminary analysis conducted within the limited timeframe given for the response to this consultation. Therefore, there might be additional aspects of the systems impacted that might not have been reflected in this first analysis.

23. **ESMA considers that option 1 brings significantly higher challenges than option 2 for the reasons highlighted in the following paragraphs.**



## 4.1 MiFIR systems (FIRDS, FITRS and TREM)

24. In accordance with Art. 27 of MiFIR and Art.4 of MAR requirements, the reporting entities submit reference data for the relevant financial instruments to ESMA for daily publication in the FIRDS<sup>7</sup>. The data received are validated and the quality of the information is assessed on an ongoing basis to verify their completeness, consistency, and accurateness. The same instrument can be traded or admitted to trading on several venues, however the information reported for the same ISIN needs to reflect strictly the same values/instrument characteristics even if reported by different trading venues/SIs (MIC). Therefore, the FIRDS system identifies and publishes the consistent reference data record for a given instrument selecting a specific ISIN-MIC combination, among the other active records submitted on the same instrument, and across the different venues. The identified ISIN-MIC record is the main driver to assess the consistency of reference data attributes provided by the different venues on the same instrument, and to promptly detect the data quality issues to be fixed.
25. The same ISIN-MIC record is used to validate the information reported in the Financial Instruments Transparency System<sup>8</sup> (i.e., FITRS) for the same ISIN, as some of the transparency data received are checked to verify that they hold strictly the same values of the information of the FIRDS's reference database. In case of any difference, the FITRS system rejects the submitted record. The same relevant ISIN-MIC record is used to filter the data for the purposes of the transparency and Double-Volume Cap calculations under Article 5 of MiFIR<sup>9</sup>.
26. To validate and route the transaction data reports among NCAs according to Art. 26 of MiFIR for the purpose of market integrity monitoring, the reference data in the FIRDS system is needed to ensure the use of the same valid information for each instrument. In detail, the relevant ISIN code for each financial instrument (and the instrument underlying in case of a derivative) must be consistently present and valid in the FIRDS's latest instrument reference data. If this is not the case, NCAs cannot receive the transactions and therefore cannot use the information needed for their mandates in terms of market abuse monitoring.
27. In light of the current data flow set up and interconnected processes, option 1 proposed in the EC consultation, to introduce a new identifier (UPI) and a set of additional reference data attributes that are not linked to that identifier (i.e., contract term and forward term) will require a redesign of all these flows and processes for some OTC derivative instruments

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<sup>7</sup> [https://registers.esma.europa.eu/publication/searchRegister?core=esma\\_registers\\_firds](https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_firds)

<sup>8</sup> [ESMA Registers \(europa.eu\)](https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_fitrs)

<sup>9</sup> [Double Volume Cap Mechanism \(europa.eu\)](https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_double_volume_cap)

while maintaining the same ones for other financial instruments. This option would significantly complicate the processes described above.

28. The proposal of developing and implementing an alternative unique product identifier may raise challenges in terms of consistency between the transaction and transparency requirements and related regimes. Finally, the historical market data consolidation might be affected and would require a major implementation process for ESMA. In this context, ESMA performed an assessment of the in-scope derivative instruments that are currently being reported to FIRDS and are therefore impacted by this change because they are subject to ISIN requirements. The number of active instruments concerning the in-scope derivatives reported to ESMA as of 7 December 2023 amounted to approximately 1 million. All these instruments will remain in the systems until termination and it will not be possible to reconcile the historical data on these instruments with the new data reported under the option 1. This will exacerbate the reporting burden for entities that will necessitate changes in their systems to create different data flows depending on the identifier adopted.
29. On the contrary, Option 2 would maintain the current logic and changes would be provided upfront to the identifier, without the need to redesign the systems relying on this identifier. The changes stemming from option 2, would also have impact on reporting, however the implications will be limited to a short time period and can be addressed within the current system design. In particular, if certain attributes used for the determination of a unique instrument and consequent assignment of ISIN are modified, it is expected that from that point in time certain derivatives will start to be identified with a distinct ISIN. In this context, there will be a need to ensure that the 'old' and 'new' ISINs can be appropriately mapped. While this mapping will need to be managed and will impose an additional burden on the users of both MiFIR and EMIR data, unlike for Option 1, the impact is expected to be limited in time as all new derivatives will be using only the 'new' ISINs. From the market participants perspective, the complexity of this option is significantly lower than option 2 due to its transitional nature and the fact that it does not require significant system changes.

## 4.2 EMIR REFIT

30. EMIR REFIT mandated ESMA to develop ITS specifying data standards and formats for the information to be reported. Furthermore, the mandate required explicitly to include in the data standards at least LEIs, UTIs and ISINs as well as to consider international developments and standards agreed upon at Union or global level<sup>10</sup>. Based on that mandate, and as described in more detail in the Final Report<sup>11</sup>, ESMA consulted on requiring ISINs for the derivatives that were already required to be identified with ISIN

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<sup>10</sup> the internationally agreed guidance on the UPI, as the ISO standard for the UPI did not exist at that point in time

<sup>11</sup> See section 4.2.3.1 of the [Final Report on the technical standards on reporting, data quality, data access and registration of TRs under EMIR REFIT](#)

under MiFIR. Furthermore, ESMA asked if UPI should only be used to identify the remaining derivatives or all derivatives in scope of EMIR reporting.

31. The majority of the respondents supported the proposal to report ISIN to identify the derivative instruments for which an ISIN is already required under the current MiFIR requirements, i.e., derivatives traded on RM, MTF, OTF and SIs, highlighting that this approach will facilitate the reporting under the two regimes and enhance regulators' capacity to cross check the data. Other benefits of using ISINs mentioned by the respondents were positive practical experience with using ISINs, full availability (including pre-trade availability with access to the reference data) and granularity. Half of the respondents supported the use of the UPI to identify the remaining derivatives, while a few respondents supported the use of UPI only (i.e., for all OTC derivatives) and remaining respondents suggested alternative approaches. This led ESMA to adopt the final approach under which those derivatives that are currently identified with ISINs under MiFIR would need to be identified with ISIN (only), whereas all remaining derivatives would need to be identified with UPI (only).
32. Changing the scope of derivatives to be identified currently with ISIN under MiFIR (option 1) would lead to a misalignment between the two regimes and would not allow market participants and regulators to seize the advantages stemming from a consistent approach across reporting regimes. In particular, entities that are subject to transaction reporting obligation under MiFIR and derivatives reporting obligation under EMIR, would need to use distinct identifiers to report certain OTC derivatives depending on the regulatory regime. While not impossible to implement, such inconsistencies increase the implementation costs as well as the risk of data quality issues. Furthermore, supervisors will need to implement a mapping between the identifiers used in MiFIR and EMIR to be able to perform cross-analysis of the datasets for the derivatives in question.

## 5. Response to questions 3c and 3d

33. The questions in the consultation are the following:

*Question 3: if you prefer option 2,*

- c) Please indicate for which specific types of interest rate swaps the problem of daily ISIN arises that require this remedy.*
- d) Are there other types of OTC derivatives, apart from the interest rate swaps identified in question 3 (b) and (c), for which the integration of the attribute 'Expiry Date' results in unnecessary daily ISINs and which require modification of their ISIN definition?*

34. In response to question 3(c) of the CP, ESMA would recommend applying the change envisaged under option 2 to the sub-set of Interest Rate Swaps subject to the revised transparency requirements. Notably, as shown in the examples given in the EC CP, for these interest rate swaps, the ISIN changes every day because the starting date of the contract changes every day, which means that different ISINs are assigned to economically equivalent instruments. The same daily expiry behaviour is not necessarily observed for the in-scope derivatives that are not classified as Interest Rate Swaps. In this respect, Trade Repository data analysed by ESMA in Annex B of this response shows that this daily change of ISIN is only marginally observed for the in-scope derivatives that are not Interest Rate Swaps. In addition, while ESMA does not exclude that there might be a marginal subset of in-scope Interest Rates Swaps which may not be affected by this problem, it would be sound to apply different ISIN granularities for the same type of Interest Rate Swap derivative. For this reason, ESMA did not develop more granular analysis on the specific types of interest rates swaps for which the problem of daily ISIN arises.
35. In response to question 3 (c) and (d) of the CP, **ESMA recommends that the changes proposed in the CP are limited to in-scope Interest Rates Swaps<sup>12</sup> as there appear to be no other type of in-scope derivatives for which the integration of the attribute “expiry date” would result in significant unnecessary daily ISINs.**

## 6. Response to question 4

36. The question in the consultation is the following:

*Question 4. Are there any other additional identifying reference data that are neither part of the UPI or the ISIN attributes that appear relevant to enhance the above stated aims of price transparency and price formation for in-scope OTC derivatives – interest rate derivatives and/or credit default swaps?*

37. ESMA considers that **this question should be assessed in consultation with the relevant industry experts in accordance with the ISO governance.** In this context, a permanent product committee has been set up comprising a balanced group of experts to oversee the allocation of ISINs to OTC derivative instruments<sup>13</sup>.

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<sup>12</sup> These are the Interest Rates Swaps classified as such under the ISO CFI classification and includes the following sub-categories: fixed to float, OIS, Basis. The in-scope Interest Rates Swaps include all instruments with CFI code starting with S-R-\*-\*-\* that are subject to the clearing obligation, denominated in Euro/Yen/US dollars or British pound and have the following contractual tenors 1,2,3,5,7,10,12,15,20,25,30 years.

<sup>13</sup> <https://www.anna-dsb.com/product-committee/>

## 7. Additional considerations: implementation timelines

38. While not covered by the questions in the CP, ESMA would like to stress that the lead time needed to implement the changes stemming from either of the options outlined in the CP should be duly considered. As there is no indication in the CP as to when these changes would come into effect, ESMA considers that this aspect should be duly assessed in light of the impact they have on several interconnected systems. The DA being consulted is relevant for the development of several level 2 measures envisaged under the MiFIR review.
39. First, as it concerns reference data, this is currently specified in RTS 23 for the purposes of transaction reporting, and in RTS 2 for the purposes of non-equity transparency. Both these RTS will need to be revised to align them to the revised L1 provisions and the changes in both RTS will need to be implemented in two interconnected ESMA systems (see table in Annex A). The same goes for RTS 22, specifying the details of transactions that shall be reported to competent authorities, which is combined with the reference data published in FIRDS. The changes to RTS 22 will need to be implemented by NCAs in their national reporting systems as well as by ESMA in its Data Reporting Service Providers system (DRSP). Those interactions are further complicated by the fact that, while reference data stored in FIRDS shall be used for reporting and transparency, the EC will adopt the delegated acts defining the identifying reference data for in-scope derivatives for those respective purposes in separate delegated acts, and, potentially, with different application dates.
40. Second, as it regards the delivery timelines for the revision of RTS 2 on transparency for OTC-derivatives, this is set at 18 months after entry into force of the reviewed MiFIR. Transparency publications, which embed information on the same set of in-scope OTC derivatives, will also need to refer to the same identifier prescribed in the DA to ensure that the publications of quotes/trades consistently relate to the same identifier that is published in the reference data under RTS 23. Finally, RTS 22 shall also be delivered within 18 months after entry into force, while no specific term is set for the review of RTS 23. However, due to the interactions and dependencies between EC's delegated acts and those RTSs, it appears advisable to also have the review of RTS 23 completed in time for the launch of the selection procedure for the derivatives CTP.
41. Third, the DA on reference data for transparency purposes is a prerequisite for a meaningful data consolidation within the OTC derivatives CTP. With regard to consolidation of OTC derivatives transparency data, which appears to be the most relevant use case for the DA, it should be stressed that the launch of the selection procedure for the derivatives' CTP is expected no earlier than the last quarter of 2025. As the selection will need to be followed by the authorisation process, ESMA expect the derivatives CTP to become operational no earlier than Q3 2026. It follows that, while the European Commission shall adopt the delegated act object of this consultation within the three-month legal deadline set in Article 27(5) of the MiFIR review provisional agreement, there seems to be room for the Commission to consider an appropriate implementation time for reporting entities, competent authorities and ESMA to adapt their systems and comply with the new requirements.

42. All amendments to the abovementioned level 2 measures will need to be subsequently reflected into the corresponding changes to the MiFIR<sup>14</sup> systems. Crucially, to ensure a sound IT development process, those changes should be performed on the basis of a stable and complete set of legal requirements so that all relevant changes to the interconnected systems can be implemented in bulk and within the minimum due time needed for the IT implementation cycle.
43. With regards to the implementation cycle, five phases are typically observed when developing a system for data reporting/collection/publication being that at ESMA level, NCAs or market stakeholders. These are first the business requirements, then functional specifications, followed by programming, testing and deployment. These phases are sequential and the first one (business requirements) cannot be completed before the final version of all related level 2 measures specifying how the data should be reported and subsequently published are sufficiently mature and stable. The dependency with the technical standards impacts all stakeholders, i.e., market participants, NCAs and ESMA, as they all must have the complete and final set of technical standards to build their respective systems. Even if preparations could already start once all related level 2 measures are submitted to the Commission for adoption, these five sequential phases would take as a minimum 12 months to be completed. Going for a shorter timeline is unprecedented and would significantly undermine the successful delivery of the IT systems to the market.
44. For these reasons, **ESMA recommends establishing a delayed application date of the DA being consulted, to give competent authorities and market stakeholders sufficient lead time for completing the review of RTS 2, 22 and 23 as well as the necessary IT development process.**

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<sup>14</sup> See Annex A

## Annex A

**TABLE 1 OVERVIEW OF IMPACT ON MiFIR IT-SYSTEMS**

<b>Publication</b>	<b>Freq.</b>	<b>Expected change if option 1 is chosen</b>
Non-Equity transparency	Yearly	Systems must be adapted to account for the change in scope of derivatives covered (most likely only the most liquid and standardised derivatives, i.e. traded on venues or subject to the clearing obligation), resulting in smaller scope of instruments covered and also to address new deferral regime needs. In particular, the liquidity determination will be expected to be performed in a static manner. Therefore, yearly updates will no longer be needed in the future. In addition, the reference data that will be needed to support the new regime is unknown at this stage and will be assessed at the same time as the new transparency framework for derivatives is developed, in accordance with the ESMA mandate provided in point (3) of Article 11(a) of MiFIR. This includes inter alia determining for which OTC derivatives a liquid market exists and what constitutes a transaction of a medium, large and very large size in a liquid or illiquid derivative. On top of this, the change in instrument identifier for a subset of derivatives covered creates significant additional costs as it will require a profound change in the system infrastructure for transparency calculations.
Instrument reference data (FIRDS)	Daily	Systems will need to be adapted to incorporate changes, including to the XML messages, stemming from the future review of RTS 23 and from the change in the scope of L1 reference data obligations for derivatives. On top of this, the change in instrument identifier for a subset of derivatives covered creates additional costs and complexities.

Transaction reporting Ongoing  
(TREM)

Systems will need to be adapted to incorporate changes, including to the scope of data to be reported / XML messages, stemming from the future review of RTS 22 and from the change in the scope of L1 reporting obligations for derivatives. On top of this, the change in instrument identifier for a subset of derivatives covered creates additional costs and complexities.

## Annex B

### ESMA analysis based on EMIR data

To observe the actual trading activity in the OTC ISINs of in-scope derivatives, ESMA used the regulatory data reported under EMIR to compute the number of trades maturing on a given day, which includes information on all derivatives traded in the EEA30. This data set also includes information on third countries (e.g., UK) if they trade with EEA30 counterparties and the data set thus gives a holistic insight. For the analysis outlined here and to reflect most recent trends ESMA used trade activity data (TAR) also referred as flow data. The analysis covered the period from the 1 January 2023 till the 30 September 2023 and following two main derivative types: forward rate agreements (FRA) and credit default swaps (CDS). The scope of the analysis was limited to cover, to the extent feasible, the in-scope derivatives under the revised MiFIR for these derivative types. For CDS, the scope was limited to Single Name Corporates and 5Y CDS Indexes with underlier ITRAXX Europe or variant. For FRA, the scope was limited to contracts with underlier PLN-WIBOR, SEK-STIBOR, NOK-NIBOR, EUR-EURIBOR and variants with a 3-month reference rate term and subject to the clearing obligation<sup>15</sup>.

As shown below there is a negligible proportion of trades in non-standard dates: the spikes in the below charts indicate that a significant proportion of trading is in ISINs that tend to expire on specific standard dates; for the CDS it is nearly all trades (99.9%) while for the rest of the period there is no activity. The behavior is similar for FRAs in the sense that we can observe spikes around the key standard dates while for the rest of the period there is little activity. Therefore, even if there might be ISIN created daily for a subset of FRAs, in terms of trading

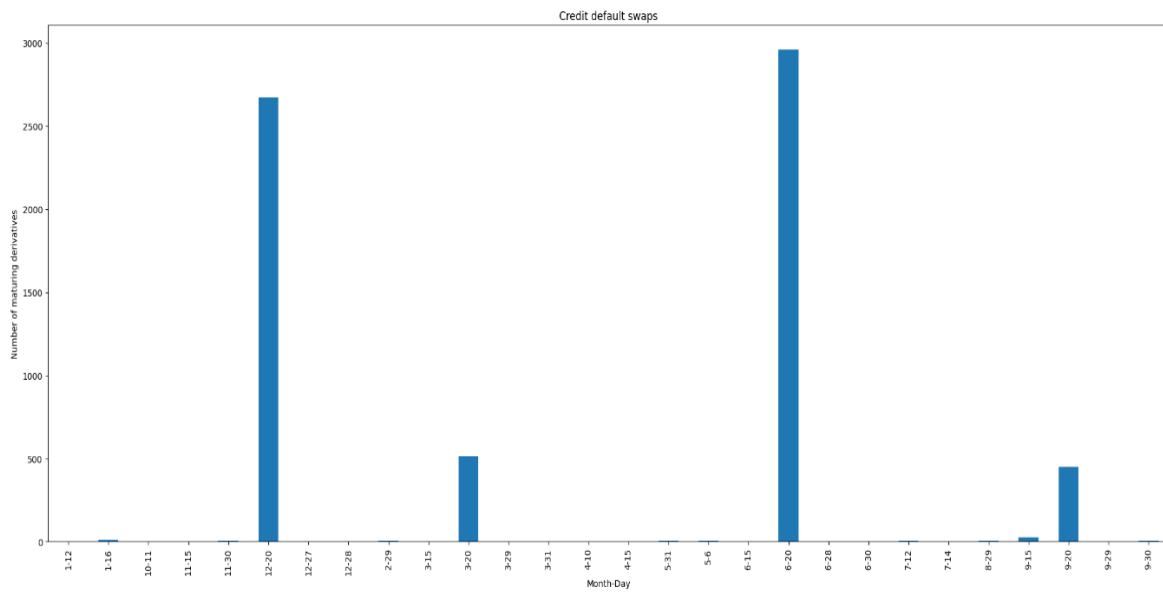
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<sup>15</sup> The filtering based on the clearing obligation was done using the clearing obligation flag that must be reported under the EMIR reporting rules.

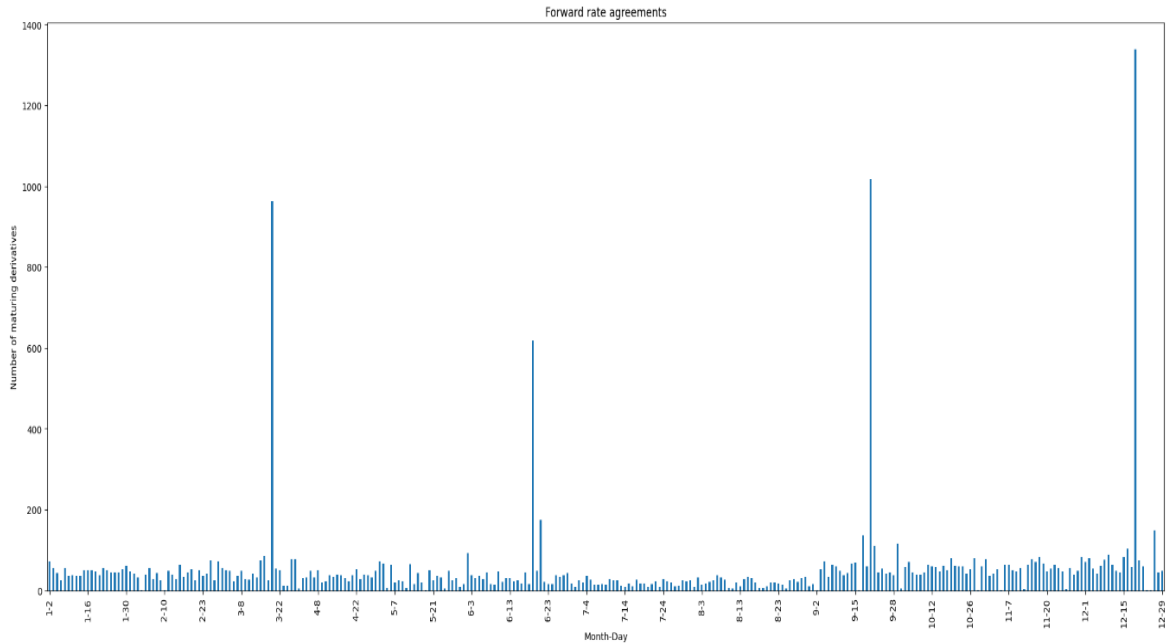


activity, this is concentrated on the standard dates (89%). This also indicates that the information about the expiry date is meaningful because it enables to distinguish between standard and non-standard expiry dates. Therefore, having the information about the few derivative contracts that are least traded, thus less liquid is relevant for analytical purposes.

### Credit default swaps (CDS)

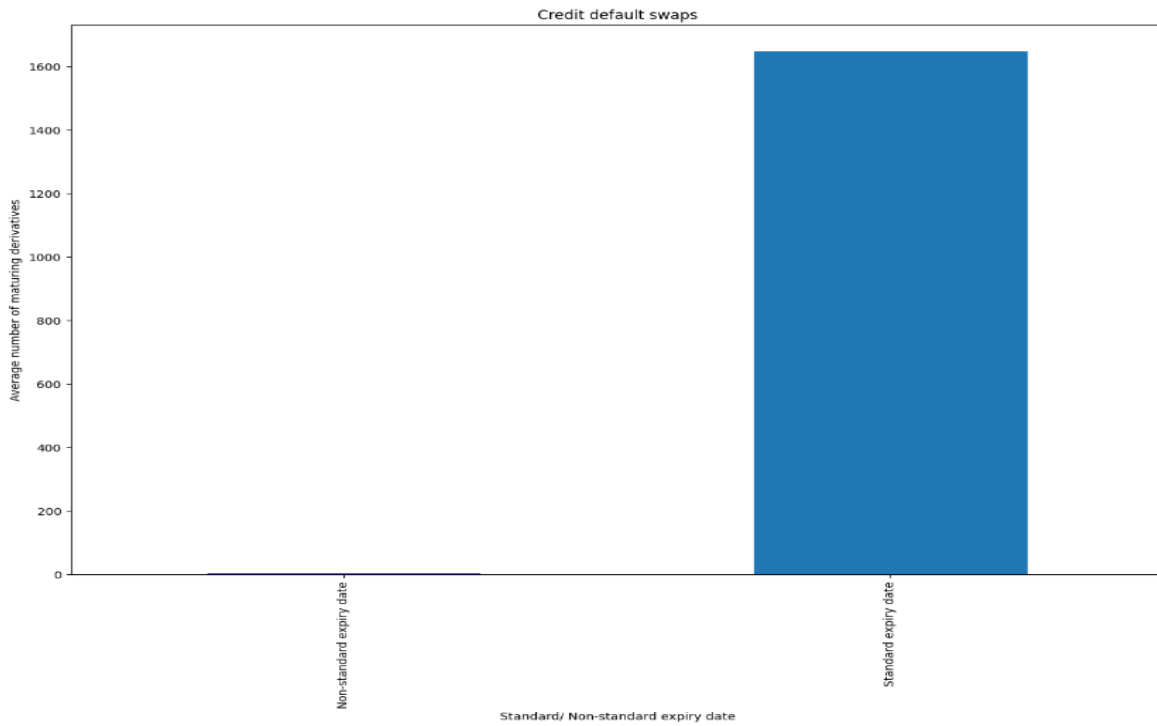


## Forward Rates Agreements (FRA)



Making an average of trading activity across all standard dates (i.e., the peaks in above charts) Vs non-standard dates (the other bars), we get the results below. The charts below indicate that even if there are many days in the period observed where ISINs can expire, when we aggregate all these days into one bucket, trading is concentrated in the ISINs that tend to expire on the standard dates.

## Credit default swaps (CDS)



## Forward Rates Agreements (FRA)

