



European Securities and Markets Authority  
103 Rue de Grenelle  
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France

19 March 2012

## **ESMA Draft Technical Standards for the Regulation of OTC Derivatives, CCPs and Trade Repositories**

Argus Media Ltd (Argus) is pleased to submit comments in response to ESMA's consultation on the above draft paper.

Argus is one of the leading EU-based independent price reporting organisations (IPROs) for international energy markets. Through our independent reporting of prevailing market prices, Argus — along with other IPROs — has for many decades worked to bring greater transparency to European and global energy markets. Our price series are used by companies for third party and internal pricing purposes, by governments as independent price references for taxation purposes, and increasingly as underlying indexes for over-the-counter (OTC) commodity derivatives. Please see the Appendix for further details on the role of Argus and other IPROs.

Argus wishes to offer comment on question 82 of ESMA's consultation report.

### **Comments on Q82: What level of aggregation should be considered for data being disclosed to the public?**

Argus notes that Article 67 of the final EMIR text, as agreed in "trialogue" negotiations between the European Council, European Parliament and European Commission, states<sup>1</sup>:

Article 67  
Transparency and data availability

1. A trade repository shall regularly, and in an easily accessible way, publish aggregate positions by class of derivatives on the contracts reported to it.

Trade repositories shall ensure that the entities referred to in paragraph 2 have direct access to the details of derivative contracts.

- 1a. A trade repository shall collect and maintain data and shall ensure that the entities referred to in paragraph 2 have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

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<sup>1</sup><http://register.consilium.europa.eu/pdf/en/12/st07/st07509.en12.pdf>

See also statement by Commissioner Michel Barnier welcoming political agreement in "trialogue" negotiations between the European Council, European Parliament and European Commission: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/90&format=HTML&aged=0&language=EN&guiLanguage=en>

#### **Argus Media Ltd**

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2. A trade repository shall make the necessary information available to the following entities to enable them to fulfil their respective responsibilities and mandates:
  - (a) ESMA;
  - (aa) the ESRB;
  - (c) the competent authority supervising CCPs accessing the trade repository;
  - (ca) the competent authority supervising the trading venues of the reported contracts;
  - (d) the relevant members of the ESCB;
  - (da) the relevant authorities of a third country that has entered into an international agreement with the Union as referred to in Article 62;
  - (db) supervisory authorities appointed under Article 4 of Directive 2004/25/EC on takeover bids;
  - (dc) the relevant Union securities and market authorities;
  - (dd) the relevant authorities of a third country that has entered into a cooperation arrangement with ESMA as referred to in Article 63a;
  - (de) the Agency for the Cooperation of Energy Regulators.
3. ESMA shall share the information necessary for the exercise of their duties with other relevant Union authorities.
4. In order to ensure consistent application of this Article, ESMA shall, after consulting the members of the ESCB, develop draft regulatory technical standards specifying the frequency and the details of the information referred to in paragraphs 1 and 2 as well as operational standards required in order to aggregate and compare data across repositories and for the entities referred to in paragraph 2 to have access to information as necessary. Those draft regulatory technical standards shall aim to ensure that the information published under paragraph 1 is not capable of identifying a party to any contract.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Argus notes that under Article 67(1), trade repositories (TRs) are required to publicly disclose “*aggregate positions by class of derivatives* on the contracts reported to it”. [Argus emphasis]

Argus further notes that there is no reference to public disclosure of any information in relation to the price of derivative transactions reported to it. Indeed Argus notes that an amendment initially inserted by the European Parliament, which would have required public dissemination of aggregated price data<sup>2</sup>, was not retained in the final EMIR text agreed in “trialogue” negotiations, demonstrating the clear intent of legislators that there should be no such requirement.

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<sup>2</sup> See paragraph 67(2)(da) at [www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-310](http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-310)

Argus therefore believes that, consistent with the final EMIR text as agreed in “trialogue” negotiations between the European Council, European Parliament and European Commission, ESMA’s technical standards on aggregation for data being disclosed by TRs to the public should deal exclusively with aggregation of positional data and make no requirement for public release of any aggregate transactional price data.

Please do not hesitate to contact me should you wish to discuss Argus’ response further.

Yours faithfully,

*Simon Smith*

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Argus Media Ltd

## **Appendix Argus — An independent price reporting organisation**

Argus is a leading EU-based independent price reporting organisation (IPRO) for global energy markets. The company provides market price information, data and market commentary for the international crude oil, petroleum products, natural gas, electricity, emissions, coal and fertiliser markets.

Argus' assessments of open-market energy prices are extensively used by governments worldwide<sup>1</sup> as independent references for taxation and other purposes, by major energy producers and consumers as price references in long-term supply contracts, and by market participants for portfolio mark-to-market, counterparty exposure management, derivatives and a wide range of investment and market analysis purposes.

Argus operates in an open, competitive and efficient marketplace of independent price reporting organisations. IPROs are long established, respected and extensively used providers of price transparency on energy markets. Other price reporting organisations include Platts, Icis (including Icis-Heren), Opus, IHS McCloskey, OMR, Kortess, APPI and Rim. Thomson Reuters, Bloomberg and Dow Jones also compete in this space.

Argus was founded in London in 1970 and has 19 offices worldwide. Its reports are available on a non-discriminatory basis to anyone subscribing.

One primary function of IPROs is to help level the playing field between participants in the energy markets by providing subscription access, on standard terms, to market price information. So Argus is committed to, and is an active proponent of, market transparency.

On a daily basis, Argus' well-trained market reporters identify prevailing prices in energy markets through the application of detailed and rigorous methodologies. These are publicly available online at [www.argusmedia.com/methodology](http://www.argusmedia.com/methodology). The company has robust governance and operates a rigorous and transparent controls framework. A global compliance officer oversees the company's compliance regime. This includes a rolling programme of audits to ensure full and continuous adherence to the company's compliance policy, which is publicly available at [www.argusmedia.com/compliance](http://www.argusmedia.com/compliance).

Further information on Argus can be found at [www.argusmedia.com](http://www.argusmedia.com).

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### <sup>1</sup> Examples:

- The UK government uses Argus prices in assessing statutory market values for non arm's length sales of North Sea crudes
- The Belgian federal government uses Argus prices in its formula to set the maximum retail values for petroleum products within Belgium
- French energy regulator CRE uses Argus prices in its official formula for GDF Suez supply costs
- Italy's electricity and gas regulator AEEG uses Argus coal and biomass prices in the supervision of variable costs of strategically important power plants
- Russia's state-controlled gas exporter Gazprom uses Argus prices for the increasing proportion of its gas sales to Europe that are indexed to spot European gas prices
- The US government's sale of crude from the Strategic Petroleum Reserve in July 2011, as part of the IEA's stock release, used Argus prices as the underlying reference for the sale
- Saudi Arabian, Kuwaiti and Iraqi state-owned oil companies use the Argus Sour Crude Index (ASCI) price as the benchmark price for all grades of crude oil sold to US customers
- The Colombian government uses Argus prices to calculate royalty payments on the country's coal exports
- The Indonesian government uses Argus prices in royalty and tax calculations for coal

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