



Comments

On CPMI-IOSCO's Consultative report on the harmonisation of the Unique Transaction Identifier

Register of Interest Representatives

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

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Comments on CPMI-IOSCO's Consultative report on the harmonisation of the Unique Transaction Identifier

A. Introduction and summary of key observations and concerns

The German Banking Industry Committee (GBIC) is grateful to be given the opportunity to comment on CPMI-IOSCO's Consultative report on the harmonisation of the Unique Transaction Identifier. While we appreciate the work presented by CPMI-IOSCO we have some observations which we would like to outline in the following.

The report outlines four points which it solicits input on, whereas it lacks two significant topics that we consider to be of equal importance. We therefore suggest a fifth and sixth item:

“(v) What measures would ensure that generated UTIs can be easily transmitted to the other counterparty?

(vi) How can both sides to a transaction efficiently generate an identical UTI without further interaction?”

B. Responses to the consultative questions

Question 1: Are there jurisdictional differences about what is a reportable transaction that respondents believe will cause challenges for UTI generation? Please describe the differences and challenges.

We think, it is first of all necessary to distinguish between whether a specific financial instrument qualifies as a derivative to be reported under a certain regulation and the parameters which define a reportable *transaction* as such. Under EMIR, for instance, jurisdictions differ in their assessment of bond forwards as a derivative. On the other hand, counterparties need clear guidance on what constitutes a reportable derivatives transaction. A derivatives contract may consist of one or more derivatives transactions each comprising one or more than one legs. Consequently, counterparties may apply a diverging understanding of attributable subjects to an individual UTI – one counterparty encoding the derivatives contract in its entirety with one UTI, the other counterparty reporting each single leg of each transaction separately with individual UTIs.

However, the necessary guidance in this point can only be given by the rule of law constituting the reporting obligation. Therefore, it should be noted in this context that Article 9 of EMIR, for instance, expressly relates to the *derivatives contract* whose details counterparties have to report. Therefore, we welcome that fact that CPMI-IOSCO refrains from setting forth its own concept of a reportable transaction.

Question 2: Are there further harmonisations (that could potentially be applied) to the rules that define which transactions are reportable that would reduce or eliminate the challenges around generating UTIs? In answering this question, please also describe the challenge(s) and identify the jurisdiction(s).

In our view, a harmonised concept of which transactions should be reportable could best be achieved via the UPI.

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Question 3: Do respondents agree with the proposed approach to UTI allocation for package transactions? Under what circumstances should the entire package have a single UTI?

EMIR and its Technical Standards are based on a "derivatives contract" that has to be reported to a trade repository. This concept is in line with the counterparties' intention who have agreed upon the mutual exchange of certain cash flows wrapped up in one legal confirmation.

"Strategies" or "packages" can therefore constitute an individual reportable transaction according to the motivation of the counterparties involved. If this is the case one UTI should be sufficient to cover the "strategy" the "package" as a whole since the package cannot be split up into separate trades. Any further requirements to differentiate the transaction in its components and attribute a UTI to each of these components need to be founded on a firm legal basis which lies beyond the CPMI-IOSCO working group's mandate.

Question 4: Are there other approaches to UTI allocation for package transactions that should be considered? If so, please describe.

If the rules constituting the reporting obligation leave any room for doubt, the decision as to whether a set of transactions forms a package that can be represented by a single UTI should be left to the discretion of the counterparties involved.

Question 5: Which, if any, of the options for identifying and linking components of packages do you favour and why? In particular, please consider the extent to which the options achieve traceability?

Since the internal structure of a trade might not be reflected by its components a simple, cashflow-based representation could serve as an alternative approach that might help to illustrate the structure of a trade.

Question 6: Do you see any difficulties in implementing any of the proposed options for identifying and linking components of packages? If so, please describe.

Please refer to our answer to question 5.

Question 7: Please identify and describe any alternative approaches for identifying and linking components of packages that should be considered, focusing in particular on any impact they would have on UTI generation.

No comment.

Question 8: Is the proposed division between events that should and should not require a new UTI complete and correct (please refer to the proposal described in this section and the table in Section 8)? If not, please provide other cases and explain why they should or should not lead to a new UTI being required.

Events that merely execute rights or reflect changes that are inherent to the initially agreed terms and conditions of a transaction should be reported under the transaction's original UTI that could be retained

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for these types of lifecycle events. An event which is, on the contrary, associated with a legal modification of the transaction's counterparties or economic parameters and therefore involves a separate derivatives contract on its own, must be allotted its own UTI.

Besides these observations, modifying a counterparty in a report when no novation has occurred must remain possible. Especially in situations where one person (a fund manager for instance) can represent multiple counterparties, reporting entities must be provided with a way to change the counterparty to a trade in a report without the necessity to generate a new UTI on both sides. The same applies for the various cases where a counterparty has erroneously attributed a specific transaction to a legal entity that does not qualify as the legal counterparty of that transaction. Therefore, the concept of "UTI Lock" currently applied by trade repositories under EMIR, i. e. attributing a certain UTI not to specific transaction but to a specific report, has to be dismissed.

Question 9: Different jurisdictions may have different rules (including case law) defining which events would require a new UTI to be created. Are respondents aware of any such differences? What difficulties do these differences create in the creation of UTIs? If jurisdictions' approaches to when a new UTI is required cannot be harmonised, are there other steps that could be taken to avoid double-counting of transactions reported to different TRs?

As mentioned above, Article 9 of EMIR attributes an UTI to each individual derivatives contract – be it the agreement on a new transaction or the legal modification of an existing transaction.

Question 10: Do respondents agree with the analysis of linking related transactions through lifecycle events?

Linking UTIs through lifecycle events will only be viable if a uniform UTI-concept is globally applicable. If, by contrast, a transaction is tracked in multiple jurisdictions with differing needs for UTI generation, the "previous" and "next" UTIs invariably differ between the jurisdictions which will severely impede the traceability of an UTI.

Question 11: Are there other cases to be considered in the analysis of linking related transactions through lifecycle events?

No comment.

Question 12: Are there practical difficulties that would arise from putting a successor UTI on a transaction that had been terminated? Such difficulties could arise in the reporting, the processing by the TR or the analysis by the authorities.

Adding a "successor UTI" to already reported trades appears to be extremely challenging from an operational point of view, especially in situations where no data entry for terminated transactions is available. Furthermore, implementing a "successor UTI" requirement will demand a backchannel from the reporting system to the trading system to push the information back to the trading system.

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Question 13: Can respondents suggest other ways of achieving links between reports subject to lifecycle events that meet the characteristic to provide an audit trail?

The obvious solution for a counterparty to keep track of its UTIs is to rely on the internal trade number. This internally generated number can be used by the authorities to request information on the trade. Its uniqueness is, however, only relative since it relates to a certain counterparty.

Question 14: Which of the proposed solutions to linking reports subject to lifecycle events do you favour? Do you see any difficulties in implementing any of the proposed solutions, and if so, what are they?

We would favour option (iii) because keeping a list of (all) predecessors for a trade is virtually impossible. Not all parties to a transaction will have all UTIs available. For example, a transaction could result from a novation between three counterparties. As a result all three counterparties would now need to keep track of the UTIs of transactions they were never a part of.

Question 15: Can respondents suggest UTI constructs that would achieve embedding the link information about lifecycle events into the UTI while still compliant with the authorities' desired characteristics for the UTI?

No comment.

Question 16: Are there additional issues that should be taken into account in considering the responsibility for generating UTIs?

As a fall-back position counterparties should be given the opportunity to individually agree on the responsibility for generating and providing the UTI. Their decision should have overruling power over any provision of law which obligates a different counterparty.

Question 17: Would it be beneficial if the guidance did not provide for the harmonisation of rules for the responsibility for UTI generation with respect to trades that are not cross-border? Would there be disadvantages to this approach? Does the analysis of this idea depend on which option is used for cross-border trades?

Cf. our answer to Question 16.

Question 18: Do respondents agree with the high-level assessment of the Option 1 proposal for the responsibility for generating UTIs? Please explain why or why not.

All these proposals require a data transfer between the counterparties and do not address the possibility of establishing algorithms for self-executing UTIs. We think, that further research on this topic – even with a view to section 4 – could be very helpful.

Question 19: Are there additional considerations relevant to the Option 1 proposal for the responsibility for generating UTIs? If so, please describe.

Cf. our answer to Question 19.

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Question 20: Is a problem of enforceability created if the UTI was generated by an entity outside the jurisdiction of one of the counterparties?

There should be no problems in terms of enforceability if the mandate of a third-country entity to provide the UTI can be assigned to the counterparties' contractual decision.

Question 21: What are respondents' views on the proposed Option 1 hierarchy for the responsibility for generating UTIs? Are the steps necessary and sufficient? Are they defined well-enough? Are there alternative ways of achieving Step 6?

We are of the opinion that the counterparties' agreement on the responsibility for providing the UTI should take precedence over any other provision of law and therefore be regarded as "Step 1" in the hierarchy set out in Option 1.

Question 22: Is it desirable to include the sort of flexibility represented by Steps 1–5? If so, where in the hierarchy should the flexibility be provided?

Cf. our answer to Question 21.

Question 23: Can respondents provide an alternative set of UTI generation steps for the proposed option 1 hierarchy for the responsibility for generating UTIs that meet all of the characteristics set out in Section 2?

No comment.

Question 24: Does the proposed Option 1 hierarchy for the responsibility for generating UTIs work across different reporting jurisdictions, particularly considering differences such as single-sided and double-sided reporting?

We currently cannot see any legal impediments that would hinder Option 1 from being implemented in regimes with single-sided or double-sided reporting requirements respectively.

It might, however, be necessary to set up more detailed rules regarding the responsibility to agree upon the UTI generating party. It should be taken into account that the non-generating counterparty is highly dependent on the generating counterparty. Reporting within a certain deadline like e. g. t+1 can only be achieved if the generating counterparty communicates the correct UTI with enough lead time to the non-generating counterparty.

Question 25: Do respondents agree with the high-level assessment of the Option 2 proposal for the responsibility for generating UTIs? Please explain why or why not.

Option 2 is based on the premises that all jurisdictions involved can be reconciled with each other. Therefore, implementation of Option 2 might require a supplement in the form of a conflict of law rule.

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Question 26: What are respondents' views on the feasibility of the Option 2 proposal to the responsibility for generating UTIs? Are there particular issues for respondents that operate in more than one jurisdiction? How serious is the possible ambiguity in Option 2 and are there efficient and suitable workarounds?

Cf. our answer to Question 25. From an operational point of view counterparties might need to agree on a unison time when they domicile in different time zones.

Question 27: Are there additional considerations relevant to the Option 2 proposal for the responsibility for generating UTIs? If so, please describe.

It should be clarified what measures the non-generating counterparty can legally take in cases where the generating party fails to deliver the UTI on time or does not deliver at all.

Question 28: Is a problem of enforceability created if the UTI was generated by an entity outside the jurisdiction of one of the counterparties?

If the UTI itself matches the formal requirements the reporting counterparties have to comply with and their jurisdiction allows the external procurement of an UTI its enforceability should not present any problems.

Question 29: What are respondents' views on the possible rules for the generation of UTIs that meet the compatibility approach of Option 2? Are there any additional rules that should be considered to meet the compatibility approach?

Cf. our answer to Question 25.

Question 30: Do respondents agree with the assessment of the Option 3 approach for the responsibility for generating UTIs?

Option 3 might turn out as the most helpful approach if the generation of the UTI is kept simple. Complex generation methods could be misleading as they might induce the need to monitor the correct application of the provided algorithm.

Question 31: Are there particular challenges for authorities in monitoring compliance with any of the options for the responsibility for generating UTIs?

No comment.

Question 32: Considering all three options presented for the responsibility for generating UTIs, do respondents see other suitable solutions meeting the characteristics set out in Section 2?

No comment.

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Question 33: Which option for the responsibility for generating UTIs do you regard as preferable? Why is this? What would be the disadvantages to you if your non-preferred option was chosen?

We would advocate option 3. Promoting the ability to independently generate a UTI for any given transaction from the transaction data alone is the preferable approach. This is because it removes the need for additional coordination during counterparty changes and lifecycle events. The responsibility of generating a UTI is not a problem in need of solving if both parties are able to generate an identical UTI.

Question 34: Is the assessment about timing for UTI generation correct? Are there examples of timing requirements from authorities that are incompatible with other elements of the proposed UTI generation approach? If so, please describe them.

Given that the UTI generally constitutes a part of a specific OTC derivatives transaction's report the required timing of the UTI generation should be geared to the reporting deadline and provide the receiving counterparty with sufficient lead time.

Question 35: Do respondents agree with the proposed overall approach to UTI structure and format? If not, please suggest alternatives that meet the characteristics?

We think that an UTI only has to be relatively unique, ie between the counterparties involved in the reported derivatives transaction. An approach of absolute uniqueness appears to be disproportional given its operational complexity and the fact that every transaction can be singled out by looking at a relatively unique UTI and the counterparties using it.

Question 36: Which of these possible UTI components, if any, are important and why? Is it necessary for the UTI to have any of these components?

We welcome the approach of adding a version field / encoding scheme that indicates the UTI concept used to generate a certain UTI. Adding an ID Value on the other hand contravenes the ability of being independently able to generate a UTI from the trade information.

Question 37: Would it be useful or necessary to include check digit(s) in the UTI? Why?

From the perspective of proportionality the UTI encoding scheme should refrain from including check digits. We cannot see that the theoretical benefits of a check digit would make up for its cost of implementation.

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Question 38: Which components, if any, should be included in the UTI? Which components, if any, should be used in UTI construction but not appear in the UTI? In answering this question, consider both the components listed in the table above or suggest other components as necessary. Please explain how the particular components contribute towards meeting the characteristics set out in Section 2.

The fields included in an UTI should only comprise

- Date
- Notional
- Currency 1
- Currency 2 (if applicable)
- Asset Class
- Expiry

Question 39: Should the UTI be solely a dummy code, i.e. a value that contains no embedded intelligence? Why or why not? Assuming that other data elements regarding a transaction (e.g. the identification of the counterparties, the date and time of execution etc.) will be captured by the report to the TR, is it necessary to reflect such elements in the UTI?

We think that the UTI should be designed as a dummy code as any additional transaction data will be available via the trade repository. However, counterparties should be provided with sufficient regulatory leeway if they prefer to embed certain intelligence into their UTIs for their own operational comfort.

Question 40: Should the details of how to construct the ID value be defined and, if so, what approach (e.g. UUID) should be used?

We remain sceptical, since a UUID will not remedy the problem of transmitting the UTI and assigning it to a certain trade in the sphere of the non-generating counterparty.

Question 41: How important will it be to be able to distinguish “new” UTIs from “legacy” UTIs? Assuming that the trade report includes the date and time of execution, would it be necessary to embed the indication in the UTI itself or should the indication be explicit in a separate field?

We currently see no need for embedding a specific information that allows to differentiate “new” UTIs from “legacy” ones.

Question 42: Is it necessary or practical for the UTI to include a Mint field? If so, is the use of the LEI appropriate for the Mint field in the UTI? Are there other values that could be considered for this? What issues would arise in this case? How should cases where the Mint entity doesn't have an LEI be handled?

We think that including the LEI's name space values in the UTI has proven to be a viable concept of indicating an UTI's generating entity.

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Question 43: What issues would arise from using the suffix UTI component to link the reports of components of a package?

No comment.

Question 44: Will the inclusion or not of certain components set out above in the UTI require changes to respondents' systems or other systems on which you are dependent? How much change?

No comment.

Question 45: Are there any issues in having an "intelligent" UTI? What are respondents' views on the potential solutions to these issues? Are there alternative ways of dealing with this?

If an encryption scheme produces output which is identical to the unencrypted UTI, it is trivial to generate all possible UTIs and find their encrypted UTIs. If the possible UTIs carry no intelligence, encrypting them makes no sense. If the possible UTIs carry intelligence, their encrypted versions can be used to infer the same intelligence from them. If more than one UTI maps to the same encrypted UTI, the concept of having unique UTIs has been impaired.

Question 46: Can respondents suggest algorithms that would achieve the Option 3 approach to generating the UTI?

We would suggest a string of LEI of CP1 + LEI of CP2 + Date + Time

After the required clock synchronization according to MiFID II this could be an approach from which the Option 3 could become feasible. Nevertheless, there might be some risks left such as block trades carrying the exact same date and time or multiple trades per second. It is consequently necessary to amend this approach by a further static detail.

Question 47: What are respondents' views on the lengths of the various potential components of the UTI (assuming that they are included directly in the UTI) and hence the length of the overall UTI?

No comment.

Question 48: Should the UTI be case-sensitive (allowing for upper- and lower-case characters to be regarded as distinct)? Should the UTI avoid using certain alphanumeric characters that resemble others? For example, do you think it advisable for the UTI system to avoid using the digits "0" and "1" so as to avoid confusion with the letters "O" and "I" (or vice versa)?

We welcome the approach of eliminating characters from the UTI which can be mistaken for others. The inclusion of both "O" (Oh) and "0" (Zero) characters in the LEI has shown a large potential for confusion when the information is keyed into systems manually. The letters "O" (Oh) and "I" (I) should be eliminated to remove the confusion with "l" (lowercase ell) and digits. The digits "0" (zero) and 1 (one) should be kept to allow for dates and internal reference numbers in the UTI.

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Question 49: Should other characters be allowed in the UTI beyond those proposed? If so, which ones and why do you recommend them? Could all jurisdictions and languages readily accommodate these characters?

No comment.

Question 50: Should separators between different component parts of the UTI be used? Why or why not? If so, which separators and why do you recommend them?

No comment.

Question 51: Should the length of UTI be of fixed or should only the maximum length be indicated?

For sake of flexibility and in order to minimise the counterparties' cost of adapting their systems only the maximum length should be pre-set.

Question 52: Do respondents agree with the proposed implementation approach? Is there a risk that a newly generated UTI would have the same value as an existing UTI as a result of these proposals? Is it possible to estimate the size of this risk? What problems do respondents see regarding "legacy" UTIs under this approach?

No comment.

Question 53: Are the descriptions of lifecycle events complete and sufficiently defined? In particular, are there differences between novations and assignments that are not captured in the table and which are significant for UTI generation? Are the conclusions as to when a new UTI is required correct?

We think that further guidance is needed for events in the field of corporate law like mergers or counterparties changing their legal form. In the case of a merger where one of the counterparties is going to converge it would be helpful to re-use the assigned the UTI. Some trade repositories already offer this option.

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