EuropeanIssuers

aisbl - ivzw
Rue Belliard 4-6
B-1040 BRUSSELS

Tel : +32 (0)2 289 25 70
Fax : +32 (0)2 502 15 60

info@europeanissuers.eu
www.europeanissuers.eu

RESPONSE TO EC CONSULTATION ON FITNESS CHECK ON SUPERVISORY REPORTING

14 March 2018

INTRODUCTION

We very much welcome the Commission's fitness check of the EU reporting requirements in the financial sector to analyse the shortfalls associated with supervisory reporting, taking a horizontal approach. We agree it is important to look at whether the requirements are meeting their objectives, to analyse the consistency of regulatory frameworks, and measure the cost and burden of the reporting obligations to see whether they are reasonable and proportionate.

Nevertheless, we are concerned that this fitness check, similarly to the EU cumulative impact assessment on financial services legislation performed in 2015, seems to focus mainly on the financial sector. Meanwhile, there is a strong need for a fitness check and/or a wholistic evaluation of the cumulative impact of financial and other legislation impacting non-financial companies as users of financial markets.

To achieve stronger and more liquid capital markets fuelling growth and jobs in Europe, we need proportionate and consistent regulatory approach which does not overburden companies that otherwise may look for financing elsewhere. Since 2008 financial crisis, we have witnessed a 'regulatory tsunami'. While financial companies have been the primarily targets of the new more stringent rules, a lot of it has spilled over onto non-financial companies. Despite the change of the regulatory approach since 2015, there are many new regulatory obligations on listed non-financial companies, some of them still in the pipeline.

Therefore, to promote capital markets and ensure a Better Regulation approach, we believe it is necessary to take a holistic view and conduct a fitness check and/or a cumulative impact assessment considering and evaluating all EU capital markets' rules. Such review should amongst others cover company law and corporate governance rules which non-financial companies need to comply with while entering capital markets for financing purposes.

As a starting point, we believe it would be helpful if the Commission enlarged the scope of this fitness check aimed at EU reporting requirements for supervisory practices. We would suggest that all reporting requirements EU listed companies are faced with should be considered (including EMIR, MiFID II / MiFIR, MAR, Transparency Directive, Accounting Directive, REMIT, Non-Financial Information Directive, DAC 4 implementing BEPS Action 13 on CBCR, etc.). We would also suggest conducting another fitness check exercise aimed at analysing and evaluating company law and corporate governance requirements to have a full picture of the regulatory requirements on EU listed companies.

Meanwhile, we are taking this opportunity to respond to the detailed Commission's questionnaire. We are outlining certain inconsistencies and overlaps that our members, representing EU publicly quoted companies using capital markets for financing and commercial risk management purposes, have spotted. We highlighted the areas within various EU supervisory reporting rules which in our view need streamlining and/or clarifying.

We are thankful for the consideration given to our proposals and we remain at disposal to discuss further.

RESPONSES TO THE QUESTIONNAIRE

SECTION 1: ASSESSING WHETHER THE SUPERVISORY REPORTING REQUIREMENTS ARE FIT-FOR-PURPOSE

The primary objective of supervisory reporting requirements is to provide supervisory authorities with the necessary data for them to monitor systemic risk in the markets, with the aim of safeguarding the stability of the financial system and ensuring investor protection. In order to be effective, this data needs to be provided rapidly and be of sufficiently high quality. Section 1 of the consultation therefore aims to assess whether existing supervisory reporting requirements – in particular in light of the fairly recent move to more granular reporting frameworks – are working as intended. In order to do so, it is necessary to assess their effectiveness, relevance, efficiency, coherence, and added value. For the purposes of this section, the above criteria are understood as follows:

- ***Effectiveness*** *– whether the supervisory reporting requirements have produced relevant and high-quality data;*
- ***Relevance*** *– whether all of the supervisory reporting requirements are necessary and appropriate for their intended objectives;*
- ***Efficiency*** *– whether the set-up of the supervisory reporting requirements is proportionate in terms of costs/burden in view of its objectives (or, for supervisors, compared to the benefit it brings);*
- ***Coherence*** *– whether the supervisory reporting requirements are consistent across the different reporting frameworks;*
- ***Added value*** *– whether supervisory reporting requirements at EU level have contributed to the achievement of the intended objectives in a better way than would have been the case if the reporting requirements were only introduced at the national level.*

Q 1.1 Taken together, to what extent have EU level supervisory reporting requirements contributed to improving the following:

i) financial stability (i.e. monitoring systemic risk)

o Very significantly

o Significantly

X Moderately

o Marginally

o Not at all

o Don’t know

Please elaborate and provide examples to justify your answer.

Financial stability, safeguarded, amongst others, through monitoring systemic risk, alongside market integrity and transparency, is one of the main regulatory objectives of supervisory reporting. In response to question 1.5 we provide a complete overview of the factors cross-cutting the objectives of supervisory reporting on financial derivatives.

In our view, so far, EU supervisory reporting requirements have had a marginal effect on financial stability. The main factors explaining it are:

1. Unclear definition of indicators and analysis for systemic risk monitoring

Requirements for financial derivatives reporting were structured before key indicators were clarified and before analysis was performed to ensure the systemic risk monitoring aiming at financial stability. As a result, the requested dataset for financial derivatives has been 'inflated' to cover all potential uses while the relevance is low. To increase relevance and effectiveness of supervisory reporting, it is important to define up-front a set of standardised indicators, analysis and reports that Authorities shall use for systemic risk monitoring. Such analysis/reports sets would allow to focus and streamline data requested for supervisory reporting. For instance, to determine the level of market risk of a company on a specific market, the net open position during trading hours and at market closure are more than enough, and therefore building the same information from a long list of single trades in unnecessary.

2. Lack of relevance of intra-group transactions

A significant part of data currently reported has no relevance in view of financial stability. For instance, internal transactions, especially the ones used by the NFCs for centralising treasury or commodity hedging functions within large international groups, are not useful for monitoring the systemic risk.

Firstly, because there is no risk of a counterparty defaulting on internal exposures, and secondly, as they have neither influence nor impact on external markets. In theory, the only use may be to perform a reverse engineering on the global position of a large international Financial Counterparty (FC) with a relevant presence in financial markets and which is not subject to a financial regulation framework considered equivalent by the EU. But in practice, it would be extremely difficult to perform such a reverse engineering calculation based on a bottom up contract-by-contract analysis and on the information, which is incomplete and fragmented.

Internal transactions' reporting results in a disproportionate cost/burden on the entire system while aiming at marginal cases and rendering questionable results and added value.

Therefore, in the context of the ongoing negotiations on the Commission proposal on EMIR REFIT, we believe it is important to exempt all NFCs from intra-group transactions' reporting obligation.

3. Efficiency and effectiveness negatively impacted by the double-sided reporting

At present, the main financial derivatives' reporting requirements (e.g. EMIR and REMIT), aimed at financial stability, are based on a double-sided approach, whereby both counterparties are obliged to report their own leg of the transaction to the relevant repository. Notwithstanding the possibility to delegate this activity (but unfortunately not the legal responsibility), the double-sided reporting has heavy impact on both efficiency and effectiveness of supervisory reporting. Duplication of the information flows obliges the Trade Repositories/Authorities to reconcile the two legs of a transaction in parallel with the Counterparties' Back Offices that are already performing compulsory confirmation and reconciliation activities also after having sent the data. As a result, a large range of counterparties with neither impact on systemic risk nor on financial stability (such as Non-Financial Counterparties using derivatives for hedging purposes), are directly involved in supervisory reporting.

We strongly believe that a shift towards a single-sided reporting with only one counterparty reporting would be beneficial not only to Non-Financial Counterparties, but to other market participants and the financial system overall. Single-sided reporting could be achieved by including all the relevant information in standard contractual forms used for OTC contracts and in standard fiches used in electronic platforms trading. Once contractual forms/fiches contain all the requested information by both Counterparties, the reporting can be done by one Counterparty. This would result in reducing the 'noise' in the system and significantly improving the quality of data for supervisors. Other major international jurisdictions (US, Canada, Switzerland) operate today based on such a single-sided reporting regime for companies hedging for commercial purposes.

For further reference, please see also our positions on the Commission's proposal on EMIR REFIT.

ii) market integrity (i.e. surveillance of market abuse and orderly functioning of the markets)

- o Very significantly
- o Significantly
- X Moderately
- o Marginally
- o Not at all
- o Don't know

Please elaborate and provide examples to justify your answer.

There is no evidence whether the MAR has contributed to market integrity and to what extent, also due to its recent application. Below we comment separately on the general MAR disclosure requirements (1), and on the specific reporting activity on financial instruments, i.e. MAR Suspicious Transactions and Orders Reporting (STOR) (2).

1. General MAR disclosure requirements

It could be argued that including benchmarks and other instruments in the scope of the market abuse rules have increased market integrity. On the other hand, the "old" MAD regime had already harmonised key elements: the prohibition of insider trading and market manipulation. It is questionable whether MAR, compared to MAD, has contributed to market integrity, while they resulted in significant new burdens on non-financial companies.

MAR significantly increased bureaucracy for listed companies. Main burdens relate to disclosure of inside information, drawing and updating lists of persons closely associated with PDMRs and of insider lists, and managers' transactions' notifications. Companies struggle with regulatory uncertainty due to diverging application and / or absent guidelines. MAR provisions led to flooding of the market with information which is not relevant for investors and in some cases unnecessarily influencing the share price. Provisions on managers' transactions risk confusing investors and seem to reduce the market integrity.

2. Specific reporting activity on financial instruments (MAR STOR)

MAR regime has introduced the Suspicious Transactions and Orders Reporting (STOR) regime. According to recent ESMA Q&A it is also extended to non-financial companies which engage in transactions in financial instruments (e.g. use of OTC derivatives to hedge against the currency, interest rate and commodity price risks). As a result, non-financial companies had to implement new compliance mechanism despite they are the end-users and not providers of financial services.

MAR rules specify that STOR systems on financial derivatives should be proportionate to the size and price setting relevance of companies' trading activity. In absence of this exemption STOR will constitute a disproportionate burden for non-financial companies with no positive effect on market integrity, given that non-financial companies, using financial derivatives for hedging, normally do not play any role in price setting.

2.1. Importance of ex-ante transparent definition of indicators of manipulative behaviours

In contrast to EMIR reporting, indicators of manipulative behaviours for MAR STOR rules aiming at market integrity (i.e. surveillance of market abuse and manipulation and orderly functioning of the markets), have been clearly and up-front defined. They are provided in Annex I section A and B of REGULATION (EU) No 596/2014 and they have been further detailed in Annex II of Commission delegated regulation (EU) 2016/522 of 17 December 2015 They are providing a clear guidance for IT implementation and data collection.

Availability of transparent indicators of manipulative behaviours has positively contributed to ensuring market integrity, for two main reasons:

- Companies have been able to set up effective internal training on market integrity control for their Front, Middle Back Office functions, increasing awareness and commitment of their key personnel;
- Companies have been able to implement their STOR systems more efficiently, focusing on information with high relevance to pre-defined indicators for monitoring market integrity and on the specific indicators applicable to their own activities and asset classes.

2.2. Harmonisation of market surveillance model

As pointed out by our members from the energy sector, supervisory reporting of wholesale energy contracts in the scope of financial derivatives definition, aimed at market, is dealt by REMIT in different approach than in MAR:

- MAR is relying on the implementation of internal reporting system (STOR) managed by a specific compliance internal functions, analysing all trades and orders to verify compliance with MAR indicators of manipulative behaviours. Afterwards they communicate to relevant Authorities only those trades and orders that were proved to be suspicious. They also keep record of all analysed trades/orders to allow analysis by the Authorities;

- REMIT is relying on a fully centralised IT system ARIS managed directly by ACER. It collects trades and orders to check compliance with market abuse/manipulation and insider trading.

Harmonisation of market surveillance models would enhance a cooperation between ACER and ESMA on commodity financial markets and allow for synergies in IT systems, processes and qualified personnel. Given the intra-day nature of market surveillance activities and the need to compare trades and orders with specific suspicious strategies in a timely fashion, the model empowering the internal compliance function would be better.

Q 1.2 Are all of the existing supervisory reporting requirements relevant for maintaining financial stability and upholding market integrity and investor protection?

o Yes, they are all relevant

o Most of them are relevant

X Some of them are relevant

o Very few are relevant

o Don’t know

If you do not think that all of the requirements are relevant, please provide specific examples of any requirements which in your view are superfluous and explain why you believe they are not necessary.

Since perimeter and receiving entities of supervisory reporting on financial derivatives are the same, there is a significant scope for simplifying the current fragmented regime. In short, only two main streams of requirements are strictly relevant: one related to market integrity via STOR systems under MAR, and the other one related to financial stability and investor protection via transaction and position reporting under MiFID II/MiFIR.

Please refer to our response to question 1.5 for more detailed analysis

Q 1.3 Is there information that should be reported but which currently is not (i.e. there are reporting requirements that should be added)?

o Yes

X No

○ Don't know

If you answered 'Yes', please provide specific examples of reporting requirements which in your view should be added and explain why you believe they are needed.

Q 1.4 To what extent are supervisory reporting requirements across different EU level reporting frameworks coherent (e.g. in terms of scope, content, methodology, timing/frequency of submission, etc.)?

○ Fully coherent

○ Mostly coherent (a few or minor inconsistencies)

X Somewhat coherent (numerous inconsistencies)

○ Not coherent (mostly or totally inconsistent)

○ Don't know

Please provide specific examples of reporting requirements which in your view are inconsistent and explain why you believe they are inconsistent.

Please refer to our response to question 1.5 for detailed analysis

Q 1.5 To what extent is supervisory reporting in its current form efficient?

○ Very efficient

○ Quite efficient

○ Rather inefficient

X Very inefficient

○ Don't know

If you think that supervisory reporting is not fully efficient, please provide specific examples and explain why you believe it is not efficient.

1. Supervisory reporting on financial derivatives

In the aftermath of the financial crisis, we have witnessed the progressive creation of many new regulatory lawyers developed on the basis of G8 guidelines. These include the following legislative acts: REMIT, EMIR, MAD II/MAR and MiFID II/MiFIR. As a result, different, not always consistent layers of supervisory reporting requirements regarding financial derivatives were formed. Despite often diverging regulatory purposes, while the information base is substantially the same, the systems, processes, formats and stakeholders are different. Therefore, there is the scope for simplification, streamlining and harmonization to achieve costs and burden reduction, especially for NFCs. The latter are end-users of financial derivatives and should be less involved in the supervisory reporting.

The following table is summarising different kinds of supervisory reporting currently required for transactions in financial derivatives:

Table 1: Supervisory reporting regimes applicable to financial derivatives

Reference regulation	Reference Authority	Perimeter of reporting	Main objective of reporting	IT Systems	Notes
EMIR	**ESMA**	Financial derivatives (all asset classes either Traded on a Trading Venue, TOTV, and Over the Counter, OTC)	Systemic risk control; Transparency.	Different Trade Repositories in competition with different IT platforms	Double side reporting (both counterparties must report their leg of the contract) Contracts have to be reported before they have been confirmed between the 2 counterparties
REMIT	**ACER**	Wholesale energy contracts (part of which became financial derivatives under new MiFID II/MiFIR definitions) and <u>relative orders</u> (power, gas, CO2 and relative storage and transmission capacity)	Market surveillance (market abuse, market manipulation, insider trading); Transparency.	Fully centralised IT system ARIS directly managed by ACER	REMIT is sharing with MAR the same regulatory objectives in term of market surveillance (market abuse, market manipulation and insider trading)
MAR	**NCAs and ESMA**	Financial derivatives and <u>relative orders</u> (all asset classes either TOTV and OTC)	Market surveillance (market abuse, market manipulation, insider trading)	STOR (IT system implemented internally by NFCs and FCs)	All trades and orders have to be internally checked by STOR but only suspicious ones have to be reported to Authorities
MIFIR **(transaction reporting)**	**NCAs and ESMA**	Financial derivatives (all asset classes either TOTV and OTC if the instrument is traded on regulated markets)	Transparency	Centralised IT system managed by NCAs and Financial Instruments Reference Data System (FIRDS) directly managed by ESMA	Transaction reports must be made to the competent authority either by the investment firm itself, an Approved Reporting Mechanism acting on its behalf or by the Trading Venue through whose system the transaction was completed. NFC not within MiFIR scope are excluded from transaction reporting, since the information on trades are already reported on their behalf[1]
MIFIR **(position reporting for position limits)**	**NCAs and ESMA**	Financial derivatives (on commodity and EUAs only)	Systemic risk control	IT platforms of Trading Venues (TVs) to NCAs	Reference Authority is defined as the one regulating the most liquid Trading Venue on a specific commodity

As highlighted in the table above, Considering the scope of financial derivatives, there is a significant overlap of supervisory reporting, with commodity derivatives being the most affected. For example, the same gas or power forward contract traded on a MTF (according to MiFIR definition under some conditions such contract is included in the scope of financial derivative) used by a Non-Financial Counterparty (NFC) for hedging its

[1] Though not directly subjected to reporting obligation, NFC are nevertheless required to provide Trading Venues with some details of their trades. This could be addressed by updating contractual forms.

exposure with a Financial Counterparty (FC) is included several times in the following supervisory reporting flows:

- 2 times by both NFC and FC to TRs for EMIR;
- 1 time by FC to NCAs System and ESMA FIRDS for MiFIR transaction reporting;
- 2 times by NFC and FC to ACER for REMIT;
- 2 times by NFC and FC to MTF platform for MiFIR position reporting;
- 2 times by NFC and FC to internal STOR system for MAR.

Consequently, a large NFC may need to implement and maintain at least 3 different systems for external reporting and 1 system for STOR internal reporting of the same forward contract.

Besides costs and burdens imposed on stakeholders, such multi-layered supervisory reporting on financial derivatives may lead to a significant risk of not being able to efficiently manage and make use of reported data. This is due to the lack of quality and standardisation of format and systems and because all information referred to the same contract is scattered amongst different systems.

2. Harmonisation of models to master the reporting database

Current supervisory reporting framework is implemented with four different models of mastering the reporting database:

1. fully centralised repository directly managed by the relevant Authority;
2. partially centralised repositories on different Trade Repositories in competition amongst themselves, accessible and subsequently aggregated by the relevant Authorities;
3. fully decentralised repositories on platforms managed by Trading Venues and Systemic Internalisers, accessible and subsequently aggregated by the relevant Authorities;
4. delegated to specific companies' internal functions that are responsible to communicate with the relevant Authorities upon necessity.

A harmonisation of the model might be considered in view of the specific regulatory objective. Model 3 for transparency and systemic risk control and model 4 for market surveillance may produce the best results.

3. Harmonisation of roles and responsibilities

A relevant part of the complexity and of the lack of effectiveness and efficiency of the current supervisory reporting framework regarding financial derivatives is due to a very broad scope of not specialised stakeholders engaged in reporting. Requiring a full range of NFCs, that are using financial derivatives for hedging purposes (i.e. the "Buy Side" of financial derivatives), to do supervisory reporting leads on one side to a very complex environment, where the majority of the active stakeholders is represented by companies without specific background on financial processes/standards, and on the other side to a disproportionate cost/burden allocated to companies, that are merely end-users of the financial instruments bought for legitimate risk management objectives.

We suggest the following to streamline roles and responsibilities:

- The "Buy side" shall be exempted from the obligation to report on financial derivatives. The only role of NFCs below EMIR thresholds and/or MiFIR ancillary tests should be filling in the relevant fields upon closing of a transaction OTC or TOTV. Then the transaction shall be reported by respectively TVs/CCPs and by SIs/FCs on a single sided reporting basis.

- SIs and FCs shall be responsible for reporting of OTC financial derivatives directly to the Authorities' centralised IT systems or indirectly via IT platform of the TV for the traded instrument.
- CCPs shall be responsible for reporting of standardised financial derivatives traded on Regulated Markets and centrally cleared.

Q1.6 How well are the supervisory reporting requirements adapted to developments in the fields of modern information and communication technologies (ICT) and digital processes?

○ Very well

X Fairly well

○ Not very well

○ Not at all

○ Don't know

Please elaborate and provide specific examples.

Exploring new blockchain applications

From a technological standpoint, blockchain technology is radically transforming ways to manage large databases and transactions. Blockchain is based on a "distributed general ledger" model that might simplify all main post-trade activities, including reporting.

Therefore, it would be advisable to incentivise initiatives (e.g. pilot projects) amongst the relevant stakeholders (Trade Repositories, large Trading Venues and Systematic Internalisers) aimed at scouting potential applications of blockchain also to supervisory reporting.

Q1.9 Are there any challenges in terms of processing the data, either prior to (i.e. within the reporting entity) or subsequent to (i.e. within the receiving/processing entity) it being reported?

X Yes

○ No

○ Don't know

If you answered 'yes', please elaborate and provide specific examples.

Currently the supervisory reporting timing is set without taking into consideration the standardised deal life cycle workflow that has become compulsory amongst Financial Counterparties (FCs) and Non-Financial Counterparties (NFCs) due to EMIR Risk Management Techniques (confirmation, reconciliation, dispute resolution, compression).

In consequence, transactions are currently reported to Trade Repositories before they are even confirmed between the two Counterparties. This is heavily affecting quality of the reported data as the data is reported before any material mistakes can be corrected. Moreover, the flows with the Trade Repositories (TRs) are significantly increased as mismatching deals are rejected by the TRs and re-sent by the Counterparties after the corrections. Reduction of data flow and increased effectiveness could be achieved either by:

- shifting the reporting timing after confirmation or later, or
- incentivising Trade Repositories to set up IT systems and tools for confirmation, reconciliation, dispute resolution and compression. Consequently, during the entire deal life cycle, transactions

would be managed by the Counterparty within the same repository that does the reporting, and where the reported transactions would be already confirmed and corrected.

Nevertheless, it would be important to provide for flexibility and allow NFCs that prefer to report under the timing framework currently applicable, to do so.

SECTION 2: QUANTIFYING THE COST OF COMPLIANCE WITH SUPERVISORY REPORTING REQUIREMENTS

The feedback received from stakeholders suggests that, over the past few years, the cost of implementation and compliance with supervisory reporting requirements has increased in a couple of ways. Firstly, the introduction of new reporting frameworks, and the more granular approach to reporting have increased the number and frequency of reports necessitating additional investments into IT systems and related areas such as hiring, training, updating work processes or services delivered by external contractors. Secondly, the increasing complexity of reporting has increased operational risk, including the cost of correcting errors and financial penalties or fines for not reporting in the required formats or within required deadlines. Section 2 of the consultation aims to gather concrete quantitative data concerning this compliance cost incurred by the end of 2016 for reporting frameworks in force by this date[2].

Q2.1 Is supervisory reporting in its current form unnecessarily costly for its intended purposes (i.e. ensuring financial stability, market integrity, and investor protection)?

- X Yes
- o No, it is at an appropriate level
- o Don't know

Q2.2 To what extent have the following factors contributed to the excessive cost of supervisory reporting? Please indicate the relevance of the following factors by giving each a rating from 0 to 4 (4: contributed greatly; 0: not contributed at all).

i) Too many requirements 3

ii) Need to report under several different reporting frameworks 4

iii) Need to report to too many different entities 3

iv) Lack of interoperability between reporting frameworks and/or

between receiving/processing entities or supervisory authorities 3

v) Need to report too frequently 1

vi) Overlapping requirements 3

vii) Redundant requirements 3

viii) Inconsistent requirements 4

ix) Unclear/vague requirements 3

[2] Some of the costs incurred until the end of 2016 may have been incurred in anticipation of supervisory reporting requirements to be implemented only as of January 2017. Section 2 is not intended to cover these compliance costs. All replies should be provided on the basis of the situation at the end of December 2016 for frameworks in force at that date.

x) Insufficient use of (international) standards 2

xi) Need to introduce/update IT systems 4

xii) Need for additional human resources 4

xiii) Too many/too frequent amendments in the relevant legislation 2

xiv) Lack of a common financial language 1

xv) Insufficient use of ICT[3] 0

xvi) Insufficient level of automation of the reporting process[4] 0

xvii) Lack of (adequate) technical guidance/specifications 1

xviii) Other (please specify and provide a ranking from 0 to 4)

Q2.3 To what extent have the following types of legislative/regulatory requirements been a source of excessive compliance costs in terms of supervisory reporting? Please indicate the relevance of the following types of legislative/regulatory requirements by giving each a rating from 0 to 4 (4: very significant source of costs; 0: not at all a source of costs).

i) Supervisory reporting requirements imposed by EU Regulations and/or Directives 4

ii) Different Member State implementation of EU financial legislation, resulting in diverse national supervisory reporting requirements for the same financial entity/product 2

iii) National supervisory reporting requirements in addition to those in EU legislation for a specific financial entity/product 0

iv) Other supervisory reporting requirements in addition to those in EU legislation for a specific financial entity/product (please specify) Please elaborate and provide examples. 0

Q2.4 Does the obligation to use structured reporting (i.e. templates or forms in which specific data elements to be reported are listed) and/or predetermined data and file formats (i.e. (i) the exact way in which the individual data elements are to be encoded or (ii) the file format in which the information to be reported is exchanged/submitted) for supervisory reporting increase or decrease the compliance cost of supervisory reporting?

○ Increases the compliance cost

X Decreases the compliance cost

○ Does not impact the compliance cost

○ Don't know

Please provide specific examples to substantiate your answer.

[3] Use of ICT is understood as presenting data in an electronic format rather than on paper and/or submitting it using electronic means (e.g. by email, via an online template) rather than by post or in person.

[4] Automation is understood as reducing or even fully eliminating human intervention from the supervisory reporting process.

SECTION 3: IDENTIFYING POSSIBLE WAYS TO SIMPLIFY AND STREAMLINE SUPERVISORY REPORTING

In response to the Call for Evidence, some stakeholders expressed strong support for targeted standardisation measures to allow a more effective use of technology to streamline and – to the extent possible – automate compliance and reporting functions. This is related to the framework of 'RegTech' ('regulatory technology'), a recent initiative to address issues of regulatory compliance in the financial services sector through the use of innovative technology. However, detailed evidence on how exactly the use of ICT can help with supervisory reporting, and whether it is facilitated or hindered by the present set up of supervisory reporting requirements – is scarce. Section 3 of the consultation is therefore more forward-looking, and seeks stakeholders' views on possible future developments in supervisory reporting, in particular with regards to greater use of ICT and greater automation.

Q3.1 Please indicate which of the following could reduce the compliance cost while maintaining a sufficient level of supervisory reporting to ensure that the intended objectives are achieved. Please select all relevant answers that apply.

	Short term	Long term	Don't know
o reduction of the number of data elements	X		
o clarification of the content of the data elements			
o greater alignment of reporting requirements			
o greater standardisation/use of international standards			
o development of a common financial language			
o ensuring interoperability between reporting frameworks and/or receiving/processing entities or supervisory authorities	X		
o greater use of ICT		X	
o greater automation of the reporting process			
o other (please specify):		Blockchain applications	

Please elaborate, in particular explaining how you believe the answer(s) you selected could be achieved in practice.

Concerning the development of a common financial language (i.e. a set of harmonised definitions of the terms used in supervisory reporting):

Q3.2 To what extent would the development of a common financial language help reduce the compliance cost of supervisory reporting?

o Very significantly

- ○ Significantly
- ○ Moderately
- X Marginally
- ○ Not at all
- ○ Don't know

Please elaborate.

Q3.3 To what extent would the development of a common financial language help improve the management (i.e. reporting or processing) of supervisory data required to be reported?

- ○ Very significantly
- X Significantly
- ○ Moderately
- ○ Marginally
- ○ Not at all
- ○ Don't know

Please elaborate.

Alignment of Trading Venues v. Over the Counter definition

The standardisation of a common financial language can play a significant role in terms of management of supervisory reporting. The possibility to produce a meaningful analysis based on reported data is strictly dependant on a better standardization of a common financial language. Lack of a common financial language is also affecting some key definitions across different EU rules, leading to problems with the proper application of those rules.

MiFID II/MiFIR contain the main formal definitions concerning financial derivatives and markets which are also referred to in other EU legislative acts. For instance, EMIR and MAR, despite their application before MiFID II/MiFIR rules already referred to definition of financial instruments and financial derivatives which were formally introduced by MiFID II/MiFIR. But alongside financial derivatives definition, MiFID II/MiFIR also introduced new formal definitions for Trading Venues and indirectly for Over The Counter (OTC) that complete the reference taxonomy for classifying financial derivatives. It is important that not only definitions of instruments, but also of the markets are aligned across different EU rules, relevant for financial derivatives namely MiFID II/MiFIR, MAD II/MAR, EMIR, REMIT.

We observe the following major inconsistencies are still present:

- the financial derivatives traded on MTFs and OTFs are considered OTC according to EMIR;
- the term “Exchange” is used in EMIR as a synonym of a Regulated Market centrally cleared by a CCP;
- the definition of Systematic Internaliser within OTC scope is absent from EMIR;
- REMIT seems to refer to the Organised Market Places (OMPs) in a scope broader than the Trading Venues.

The following table summarises current definitions' frameworks across various EU legislative acts relevant for financial derivatives. **MiFID II / MiFIR and MAR frameworks are highlighted as those which should serve as reference for other EU rules concerning financial derivatives**:

Table 2: Execution facilities and definitions across regulations

<table>
<tr><th>EXECUTION FACILITY</th><th>MIFID II /MiFIR</th><th>MAR</th><th>EMIR</th><th>REMIT</th></tr>
<tr><td>Regulated Market
(RM)</td><td rowspan="3">Trading Venue (TV)
Financial derivatives traded on such markets are also named "Traded On Trading Venues" (TOTV)</td><td rowspan="3">Trading Venue (TV)
Financial derivatives traded on such markets are also named "Traded On Trading Venues" (TOTV)</td><td>ETD
Exchange Trade Derivatives
(centrally cleared by a CCP)</td><td rowspan="3">Organised Market Place (OMP)
listed on ACER "list of Organised Market Places"</td></tr>
<tr><td>Multilateral Trading Facility
(MTF)</td><td rowspan="4">Over The Counter (OTC)
as clarified in ESMA Q&A OTC Question 1 [last update 2 October 2017]</td></tr>
<tr><td>Organised Trading Facility
(OTF)</td></tr>
<tr><td>Systematic Internaliser
(SI)</td><td rowspan="2">Over The Counter (OTC)</td><td rowspan="2">Over The Counter (OTC)</td><td rowspan="2">Over The Counter (OTC)
to be clarified whether a IT platform of a SI can qualify for ACER list of OMPs</td></tr>
<tr><td>Bilateral trade
Residual category of financial derivatives not included in categories above</td></tr>
</table>

Current inconsistencies regarding the scope of OTC and trading venues' definitions can lead to inconsistencies in analysis/statistics produced for transparency purposes in calculations for systemic risk control (e.g. EMIR threshold, MiFIR ancillary tests), and in defining the responsibilities for supervisory reporting (central role of TVs for MiFIR/MAR not aligned with the role recognised by EMIR).

Q3.4 Are there any prerequisites for the development of a common financial language?

o Yes

X No

o Don't know

If you answered 'yes', please elaborate and provide specific examples.

Q3.5 Are there any obstacles to the development of a common financial language in the short term (i.e. 2 years or less)?

o Yes

X No

o Don't know

If you answered 'yes', please elaborate and provide specific examples.

Concerning interoperability between reporting frameworks (i.e. alignment/harmonisation of the reporting requirements) and/or receiving entities (i.e. the ability of entities receiving supervisory data to share it amongst themselves in such a way that it remains legible)

Q3.6 To what extent would ensuring interoperability between reporting frameworks and/or receiving entities help reduce the compliance cost of supervisory reporting?

X Very significantly

o Significantly

o Moderately

o Marginally

o Not at all

o Don't know

Please elaborate.

Interoperability should be pursued both between the reporting frameworks (i.e. alignment/harmonisation of the reporting requirements) and between reporting frameworks and receiving entities (i.e. ability of entities receiving supervisory data to share it amongst themselves in such a way that it remains legible).

1. **Comments on interoperability between REMIT and EMIR reporting on energy financial derivatives based on the feedback from our member companies from energy sector**

With MiFID II/MIFIR, a definition of the derivative has been enlarged. A vast category of contracts, classified under REMIT as wholesale energy physical contracts, has become financial derivatives and therefore subject to EMIR reporting obligations. While, such contracts - whenever having power and gas as underlying - are already subject to regulatory reporting to ACER under REMIT compliance. Therefore, it is important that once such contracts become financial derivatives, and therefore need to be reported to TRs, it would be up to TR to report the information to ACER. This would ensure compliance and proper enforcement of the REMIT

Implementing Acts5. We would appreciate a clarification from ESMA or the European Commission in that respect.

Interoperability and standardization of data formats between EMIR and REMIT are also desirable. For example, EMIR and REMIT reporting formats contain the same fields (e.g. those describing delivery profile for gas and power derivatives) but with different valuation rules, leading to increased compliance and IT adjustments' costs for the Counterparties.

2. Interoperability between MiFIR and EMIR reporting on financial derivatives and thresholds calculation

MiFID II/MiFIR have provided fora new enlarged regime of transaction reporting with an extended scope of financial instruments and relative orders (including the enlarged scope of financial derivatives), and with responsibilities attributed to Investment Firms, Systematic Internaliser and operators of Trading Venues. NFCs, outside the scope of MiFIR, are excluded from transaction reporting, since the information on trades are already reported on their behalf. Transaction reports must be made to the competent authority either by the investment firm itself, an Approved Reporting Mechanism acting on its behalf, or by the Trading Venue through whose system the transaction was completed.

In the future, there is a possible significant scope of overlap between EMIR and MiFIR transaction reporting, which should be further investigated via a specific task force.

Considering that the new ancillary tests for commodity in MiFIR/MiFID II have been actually derived from EMIR's objectives, hedging exemption and compliance, it would be best to better define relationships between EMIR thresholds and MiFIR/MiFID II tests on commodity. This would simplify the thresholds and prevent redundancy of categories for commodity traders. In MiFIR/MiFID II, the ancillary tests are meant to identify NFCs with a systemic relevance on commodity financial markets. Such NFCs will have a scope of compliance including all EMIR requirements (including clearing/bilateral margining) in addition to MiFIR/MiFID II specific requirements. Thus, NFCs+, i.e. NFCs exceeding EMIR clearing thresholds for commodity, will be left as a "hybrid" category of NFCs with systemic relevance on commodity markets but with a scope of compliance limited to EMIR. It is questionable whether NFC+ category for commodity traders is still relevant for regulatory purposes, or whether EMIR and MiFID II/MiFIR threshold/ancillary calculations should be streamlined into a single calculation aimed to identify NFCs that are relevant in term of systemic risk in commodity trading, and which would have to apply for a licence.

3. Interoperability among EU equivalent regimes

For large international NFCs and FCs, equivalence and compliance substitution is key to avoid duplication of compliance. Moreover, in case of equivalence declaration, a better interoperability amongst EU equivalent regimes is of major importance to allow companies to effectively leverage their investments in IT systems, processes and qualified personnel.

In this regard, it would be important to pursue reporting standardisation that can be driven by international market players (e.g. Trade Repositories, Trading Venues and CCPs) which are currently managing different reporting services under EU equivalent reporting regimes (such as Dodd Frank reporting on financial swaps). An international supervisory reporting committee could be set up, where the representatives of the different equivalent regimes could work together pursuing the supervisory reporting alignment at international level.

Q3.7 To what extent would ensuring interoperability between reporting frameworks and/or receiving entities help improve the management (i.e. reporting or processing) of supervisory data required to be reported?

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[5] (Article 6(4) in the Commission Implementing Regulation 1348/2014 of 17 December 2014 on data reporting, implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency

X Very significantly

○ Significantly

○ Moderately

○ Marginally

○ Not at all

○ Don't know

Please elaborate.

Given the global nature of increasingly interconnected financial markets, there is no doubt that interoperability between reporting frameworks and/or receiving entities would help to significantly improve the supervisory data management (i.e. reporting or processing).

For specific examples please refer to our response to question 3.6.

Q3.21 Can you provide any practical example of improvements to data management processes that could be applied to supervisory reporting with a view to reducing the compliance cost and/or improving the management of supervisory reporting?

X Yes

○ No

If you answered 'yes', please specify and explain your suggestions.

We believe it would be helpful to agree and formalise a set of indicators for financial stability and systemic risk monitoring that would be used for supervisory purposes, as it has been done with the indicators of manipulative behaviour for market surveillance. Data reporting and processing should be focused on controlling such clearly defined indicators.

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