



EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

FINANCIAL MARKETS

Financial markets infrastructure

INVESTMENT AND COMPANY REPORTING

Economic analysis and evaluation

CONSULTATION DOCUMENT

FITNESS CHECK ON SUPERVISORY REPORTING

Disclaimer

This document is a working document of the Commission services for consultation and does not prejudice the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

You are invited to reply by **28 February 2018** at the latest to the **online questionnaire** available on the following webpage: http://ec.europa.eu/info/consultations/finance-2017-supervisory-reportingrequirements_en

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.**

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published unless respondents indicate otherwise in the online questionnaire.

Responses authorised for publication will be published on the following webpage: http://ec.europa.eu/info/consultations/finance-2017-supervisory-reportingrequirements_en#contributions

CONTENT OF THE CONSULTATION DOCUMENT

Supervisory reporting requirements provide competent authorities with data on supervised entities (i.e. market participants) and their activities. Access to such data is essential to effectively supervise financial institutions, monitor systemic risks and ensure orderly markets, financial stability, and investor protection. EU law in this area consists of a large number of legislative acts covering a range of financial sector industries (banking, insurance, pension funds, investment services, post-trade services and investment funds, etc.) and products (loans, securities, derivatives, fund units, structured products, etc.). While the need to report to supervisory authorities is broadly acknowledged as being necessary, the financial crisis exposed some of the weaknesses of the supervisory reporting

requirements, in that they failed to provide sufficient and/or practically useful information. As a result, legislators developed a significant number of new, and for the most part more granular, reporting requirements, the scale and pace of which may have increased the cost of compliance.

In September 2015, the European Commission launched a Call for Evidence to gather feedback from all interested stakeholders on the benefits, unintended effects, consistency, and coherence of the EU regulatory framework for financial services. Supervisory reporting was one of the key challenges highlighted by the respondents. Among the main concerns of the respondents were some overlaps and inconsistencies between reporting requirements in certain pieces of financial legislation (i.e. 'reporting frameworks'), a reportedly excessive number of requirements, as well as, at times, insufficient clarity as to what needs to be reported and an insufficient use of standards. According to the respondents, this results in excessive compliance costs and complexity. On the other hand, supervisors and regulators suggested that supervisory reporting requirements do not produce data of sufficient quality to allow them to fulfil their mandates.

Moreover, respondents stressed that implementing new reporting requirements is costly, mainly due to the need to implement or adapt IT systems and due to expenditure on training and maintenance. This suggests a need to reduce the frequency of changes to supervisory reporting requirements and to allow sufficient time to implement any changes envisaged in the legislation.

Finally, respondents to the Call for Evidence mentioned that in a number of cases Member States introduced supervisory reporting requirements in addition to those in EU legislation (so-called 'gold-plating'). These issues were subsequently discussed in an Expert Group (EG) composed of all Member States which discussed barriers to capital flows in areas of national competence. The EG identified a number of such barriers and called for further work in this area, among others to address national reporting requirements imposed in addition to those in existing EU legislation, where Member States agreed in principle that double reporting requirements should be avoided.

In order to build on the results of the Call for Evidence and other consultations and reviews, the European Commission has therefore launched a Fitness Check of existing supervisory reporting requirements. As part of this assessment, the Commission is now undertaking this public consultation to seek further and more specific input from stakeholders. The consultation aims to gather evidence on the cost of compliance with existing EU level supervisory reporting requirements (in force by the end of 2016), as well as on the consistency, coherence, effectiveness, efficiency, and added value of those requirements. More specifically, it aims to collect concrete quantitative evidence on, among others, costs incurred to meet the supervisory reporting requirements, and to gather specific examples of inconsistent, redundant or duplicative supervisory reporting requirements (e.g. reporting the same information under different frameworks or to different supervisory and/or regulatory entities). The consultation seeks feedback on ways in which supervisory reporting could be simplified and streamlined in the future. Bearing this in mind, the consultation aims at improving the usability and overall consistency of the EU supervisory reporting framework in order to help authorities achieve their objectives in a more effective and efficient way.

The feedback to this consultation will support the Commission's objective of ensuring that EU reporting requirements provide supervisors and regulators with the relevant high

quality and timely information to help them to fulfil their mandates, while at the same time keeping the administrative and compliance costs and burden for firms to a minimum.

The consultation is structured along three sections reflecting the main issues and challenges that have been identified with respect to the EU supervisory reporting framework:

1. Assessing the effectiveness, efficiency, relevance, coherence, and added value of supervisory reporting requirements in place by the end of 2016;
2. Quantifying the cost of compliance with supervisory reporting requirements;
3. Identifying possible ways to simplify and streamline supervisory reporting.

Respondents should provide their answers on the basis of the reporting frameworks which are relevant for them, and should take into consideration the costs incurred until the end of December 2016, and only for those frameworks in force at that date. Unless otherwise indicated, respondents should select only one answer per question. The consultation aims to go into greater detail into what has already been raised by stakeholders in various consultations. The objective is to gather specific evidence rather than general statements. A possibility to elaborate on a response has therefore been provided for each question. When doing so, respondents should aim to be as specific as possible and support their answers with examples as well as quantitative information. In Section 2 of the consultation, respondents are requested to be as specific as possible when quantifying their answers.

While the consultation is open to all interested parties, it is aimed primarily at stakeholders directly or indirectly involved in supervisory reporting, either on the reporting side or on the side receiving and/or processing the reported data, such as financial institutions, non-financial institutions undertaking securities or derivative transactions, central counterparties (CCPs), trade repositories, trading venues, national and EU supervisory and regulatory bodies.

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 ensure 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.

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 **Significantly**

Please elaborate and provide examples to justify your answer.

The AIFM Directive and the related implementing regulation contribute to closing a significant data gap on the activity of alternative investment funds. In economic literature it is shown that while public disclosure (i.e., to markets and/or other market participants) can potentially harness market discipline, private disclosure to regulators provide appointed authorities with the necessary information to monitor financial stability. Despite the fact that the data collection does not yet allow to build long time series, an analysis of reported data shows the potential of that data for monitoring financial stability and the build-up of systemic risk. The information made available specifically for this purpose by the AIFMD and its Level II is not consistently available under other regulatory and/or commercial data sources, in particular:

- Strategy of alternative investment funds;
- Most important instruments to check on market density;
- Exposure of AIFs by asset type;
- Disclosure of counterparty exposure and the counterparty risk dimension;
- Leverage and liquidity.

The AIFMD reporting requirements permit, for the first time, to identify these financial vehicles. Their identity is recorded in the ESMA public register of authorised entities (at least managers potentially operating cross-border and/or relevant because of their size).

Looking forward, improvements in data coverage together with availability of longer time series will give the possibility to inform both macro- and micro-prudential oversight, assess risks, market trends and analyse outliers (at entity level) strictly for supervisory purposes.

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

o **Significantly**

Please elaborate and provide examples to justify your answer.

Systemic risks may result from highly leveraged portfolio strategies. AIFMD transparency/supervisory data (see list in previous point) allow a better understanding of credit and capital accumulation processes.

AIFMs must ensure effective management of the risks associated with their activity and comply with the general principles set forth in Article 12(1, a-f) of the AIFM Directive, such as the duty of acting honestly, diligently, in the best interests of the AIFs or the investors of the AIFs they manage and the integrity of the market. However, when an AIFM, or a

group of AIFMs use leverage to the extent that it poses a substantial risk to the stability and integrity of the financial system, ESMA may issue advice to the competent NCA on remedial measures to be taken.

In this respect, the disclosure requirements under Articles 3(3)(d), 25 (and the related ESRB recommendation on leverage and liquidity in investment funds¹) and 24(1), (2) and (4) equip EU regulators with the necessary information to monitor the build-up of systemic risk by improving transparency and, ultimately, enhancing the integrity of the internal market.

- iii) investor protection (i.e. ensuring proper conduct by firms to ensure that investors are not disadvantaged/negatively impacted))

o Significantly

Please elaborate and provide examples to justify your answer.

See answer under point ii).

The analysis of the AIFMD database conducted by ESMA shows that, on one side, the investor base of European alternative funds is comprised of retail (holding 22% of EU AIFs and as high as 37% of real estate funds²), professional and institutional investors. This indicates that alternative investment funds need to be adequately robust in protecting and being accountable to their investors, especially retail investors. The reporting obligations introduced by the AIFM Directive are crucial for effective supervision, especially in the view of the awareness that the financial crisis of 2008/2009 revealed how micro-prudential risks in the alternative investment fund industry may stem from inadequate risk management and valuation procedures. In this respect, the AIFMD focus on transparency allows to gather unique standardised information, which is in turn valuable for promoting managers accountability and effective supervisory convergence.

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

Yes, all the requirements are relevant, although not all of them are used for financial stability purposes only. Many of them are used for microprudential supervision as well. It is also important to emphasize that there will be need for a global review of the template in the future, which could be carried in the context of the AIFMD review. This should be based in particular on the results of the data-analysis that most likely will show which kind of amendments might be useful for future data use.

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.

- 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

¹ <https://www.esrb.europa.eu/news/pr/date/2018/html/esrb.pr180214.en.html>

² For more on the investor breakdown, please see the ESMA Report on Trends, Risks and Vulnerabilities No. 1, 2018 (page 46): https://www.esma.europa.eu/sites/default/files/library/esma50-165-538_report_on_trends_risks_and_vulnerabilities_no.1_2018.pdf

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.

At this point in time, the following fields are considered the most relevant:

- **LEI:**

Reporting the Legal Entity Identifier (i.e., LEI) is not mandatory under AIFMD. The Annex IV of the Implementing regulation (Commission Delegated Regulation No 231/2013) generically indicates that an AIFM should report, on behalf of the managed AIFs, the “fund identification codes, as applicable”. ESMA Guidelines indicate that “For the AIF identification code, AIFMs should provide the LEI code of the AIF or the IEI of the AIF”. In the ESMA technical guidance to the reporting, the LEI is de facto an optional element/item, so it is not possible to assess whether a missing LEI means that an AIFM and/or an AIF do not possess or do not report it.

Moreover, LEIs would be essential to monitor AIFs managed by non-European AIFMs operating under the National Private Placement Regime (NPPR). Non-European AIFMs are mandated to report to NCAs of the jurisdictions in which they are marketing their products. The absence of a unique and universal identifier impedes verifying the consistency and/or duplication of reported information in the ESMA central database, impairing supervision of potentially systemically relevant entities. Accurate treatment of the information reported by entities operating under NPPR requires LEIs.

Inconsistency with LEI requirements under EMIR

European AIFMs/AIFs must possess an LEI as required by EMIR. All entities active in any type of financial transactions in derivatives and subject to reporting obligations under EMIR are mandated to possess an LEI. The use of this unique identifier undoubtedly improves the ability of supervisors to monitor systemic risk. Moreover, it is a helpful tool to improve risk management within organisations. The possibility to combine information under AIFMD and EMIR could allow for an effective monitoring of synthetic and financial leverage. Unfortunately, this is not currently possible due to the optionality of LEI reporting under AIFMD.

Inconsistency with LEI requirements under SFTR

Similar to EMIR, under SFTR and the related implementing regulation a fund which is a counterparty in a securities financing transaction would need an LEI. Hedge funds and fixed income funds (which include many MMFs) are an example of AIFs that extensively engage in repo trades and reverse repos, which represent a borrowing source. The ability to combine information under AIFMD and SFTR would be crucial to monitor the build-up of systemic risks and counterparty risk. Unfortunately, this is not currently possible due to the optionality of LEIs reporting under AIFMD.

Other inconsistency with LEI requirements

Investment funds declared in the ESMA FIRDS system (e.g., SICAV) do possess an LEI. MiFID requires market participant to have an LEI to perform several types of activities. To which extent this translates into an indirect obligation for AIFs remains to be assessed. The information on LEI is also included in the upcoming database on MMFs to be set up under the new MMF Regulation³.

- **AuM and Leverage (Gross/Commitment) calculation**

The calculation of AuM and leverage are strictly connected.

Data quality issues affecting AuM and reported gross/commitment leverage tend to indicate that the clarity of calculation instructions could be improved. One option to

³ https://www.esma.europa.eu/sites/default/files/library/esma34-49-103_final_report_on_mmf_cp.pdf (p91 and following ones)

address this issue would be to consider a step-by-step computation, which would be beneficial to enhance data quality, consistency of the reported information and favour supervisory activity.

In addition, in the context of the AIFMD review in particular, there could be merit in specifying / adding information on leverage related issues at the level of the AIFM and/or AIF.

- **Identification of AIFs**

In the current version of the reporting template there is no item/flag to identify MMFs and ELTIFs. MMFs that are subject to AIFMD are expected to report as fixed income funds. As previously mentioned, MMFs will also be subject to the new reporting requirements under the MMF Regulation.

It is also important to emphasize that there will be need for a global review of the template in the future, which should include a review of how the AIFMD reporting template interacts with other regulatory reporting templates and which could be carried in the context of the AIFMD review. This should be based in particular on the results of the data analysis that most likely will show which kind of amendments might be useful for future data use.

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.)?

o Somewhat coherent (numerous inconsistencies)

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

- *See above answer on Legal Entity Identifier (LEI). Combining information with other data sources is limited due to the optionality of LEI reporting under the AIFMD framework.*
- *The Regulation ECB/2013/38 adopted by the Governing Council of the European Central Bank (published in the Official Journal of the European Union on 7 November 2013), concerns statistics on the assets and liabilities of investment funds (IFs). Article 2 of the Regulation ECB/2013/38 clearly indicates that the actual reporting population consists of the IFs resident in the territory of the euro area Member States. Article 9 specifies instead that NCBs have to transmit aggregated information. Security level data might be required by the relevant NCB.
The Guideline ECB/2014/15 on monetary and financial statistics (published in the Official Journal of the European Union on 26 November 2014) contains provisions on the reporting by national central banks (NCBs) of statistics on the assets and liabilities of IFs to promote a consistent understanding of the statistical requirements among statisticians in NCBs for the production of harmonised IF statistics. (while the ECB's is a statistical standard, it is to be noted that it is not fully consistent with the approach followed for AIFMD reporting)*

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

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

- The reporting required under AIFMD is undoubtedly complex. In order to deal with these complexities, ESMA has issued a significant number of clarifications by way of Questions & Answers (Q&As). In total 82 Q&As have been published to date. These Q&As are in addition to the Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD. The need for this volume of Q&As and guidance highlights the challenges of interpreting the reporting obligations under AIFMD. The content and the frequency of the reporting itself depend on:

- AuM thresholds and use of leverage,
- The activity of the AIF,
- The domicile of the AIF and whether it is marketed in EU.

According to these dimensions, the reporting frequency is also subject to change. As a result, full scale data is available only on a yearly basis, i.e. at the end of the year.

- There is a strong degree of heterogeneity among the entities reporting under AIFMD, while the reporting template is unique. The impact of this heterogeneity on the reporting is twofold:

- Based on the NAV of the AIF, an AIFM is requested to indicate the type and the strategy of the managed AIF. The Annex IV of the EU Commission Delegated Regulation 231/2013 and ESMA Guidelines explicitly list 6 types and 35 non-mutually exclusive strategies among which managers can choose. This classification, together with 4 immediately identifiable AIF types (i.e., funds-of-funds, private equity, real estate, hedge funds), includes 2 different residual categories:
 - “None” of the previous types, in case the investment strategy of the AIF does not permit a predominant type to be identified;
 - “Other”, which includes clearly distinguishable investment strategies (i.e., fixed income, equity, commodity, infrastructure) and a further residual category labelled as “other”. Analyses conducted by ESMA staff show that this “other-Other” strategy account for a significant portion of total NAV.
- Due to the IT and technical aspects of the reporting and different interpretations of the Guidelines on the AIFMD database, it is often difficult to assess whether missing values/information under specific items is non-reported or not due.

- It is also important to emphasize that there will be need for a global review of the template in the future, which should include a review of how the AIFMD reporting template interacts with other regulatory reporting templates and which could be carried in the context of the AIFMD review. This should be based in particular on the results of the data analysis by ESMA and NCAs that most likely will show which kind of amendments might be useful for future data use.

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

Please elaborate and provide specific examples.

A central database is established at ESMA and it is linked to the public Register of Authorised entities. NCAs' IT systems can connect to the ESMA central repository to transmit reporting information collected from supervised entities. NCAs shall maintain the Register of Authorised entities updated. The central database has been built following ESMA Board of Supervisors decision. Coverage of the known universe (i.e., entities inscribed in the ESMA Register) is limited because the delay of several NCAs in building the IT system and implementing the agreed technical specifications/standards.

1.7 To what extent has the adoption of supervisory reporting requirements at EU level facilitated supervisory reporting in areas where previously only national requirements existed?

○ **Significantly**

Please elaborate and provide specific examples.

See answers to questions 1.1, 1.2, 1.3.

The EU-wide harmonised data collection in the AIF industry is key to the correct functioning of the EU single market and a significant step in the direction of supervisory convergence. The standardisation of the reporting obligation content facilitate the implementation of the unique supervisory framework for the activities within the Union of all AIFMs.

1.8 To what extent have options left to Member States in terms of implementing EU level supervisory reporting requirements (e.g. due to their adoption as Directives rather than Regulations) increased the compliance cost?

If you think divergent Member State implementation has increased the compliance cost, please provide specific examples of reporting frameworks or requirements where you believe this to be the case and explain your suggestions.

1.9 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?

○ **Yes**

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

- Inconsistent implementation of the technical specifications/standards agreed for the transmission of the data;

- Difficulties faced by asset managers in understanding the technical guidance, in particular the distinction between mandatory and optional fields;

- Data quality checks not always implemented or consistently implemented . Erroneous information often remain uncorrected. ESMA implements complex data treatment procedures to clean and aggregate the data. However, certain data items remain not fully usable due to formatting errors or adoption of wrong conventions, which could be further corrected via improved field descriptions and technical setups. Here are a few examples of data items affected by significant data quality issues:

- *Monthly redemptions and subscriptions;*
- *Leverage (gross and commitment);*
- *Gross and net monthly returns.*

1.10 Are there any negative environmental and/or social impacts related to supervisory reporting stemming from EU legislation?

If you answered 'yes' for either or both types of impacts, please elaborate and provide specific examples.