



European Securities and
Markets Authority

Consultation Paper

MiFIR review report on the obligations to report transactions and reference data



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in the Annex. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **20 November 2020**.

All contributions should be submitted online at <https://www.esma.europa.eu/> under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading 'Data protection'.

Who should read this paper?

This document will be of interest to all stakeholders involved in the securities markets. It is primarily of interest to competent authorities and firms that are subject to MiFID II and MiFIR – in particular, investment firms and credit institutions performing investment services and activities and trading venues. This paper is also important for trade associations and industry bodies, institutional and retail investors and their advisers, and consumer groups, as well as any market participant because the MiFID II and MiFIR requirements seek to implement enhanced provisions to ensure the transparency and orderly running of financial markets with potential impacts for anyone engaged in the dealing with or processing of financial instruments.

Table of Contents

1 Executive Summary.....	8
2. Introduction: scope of the report.....	9
3. Entities subject to transaction reporting and arrangements for sharing reports (Article 26(1), Article 26(5) and Article 26(8) MiFIR)	10
3.1 AIFMD and UCITS firms.....	11
3.2 Reference to “members/participants/users” of Trading Venues	13
3.3 Branches of EEA entities.....	15
3.4 Arrangements for sharing reports.....	16
4. Scope of instruments subject to reporting obligations (Articles 26(2) and 27(1)).....	17
4.1 Concept of Traded on a Trading Venue (ToTV).....	20
4.2 Transaction reporting indices under Article 26(2)(c)	26
4.3 Scope of reference data: merging Article 4 of MAR into Article 27 of MiFIR	28
4.3.1 Instrument listed on a MTF	29
4.3.2 Approval of trading on an MTF or OTF	29
4.3.3 Approval of admission to trading	30
4.3.4 Instruments exclusively traded on SIs	30
4.3.5 Frequency of updates to instrument reference data (defined list)	31
4.3.6 Reference to articles on transparency requirements.....	33
4.3.7 Deletion of Article 4 MAR	33
5. Details to be reported (Article 26(3)): Trading Venue Transaction Identification; chain of transactions.....	34
6. Details to be reported: the identifiers to be used for parties (Articles 26(3) and 26(6))...36	
7. Details to be reported (Article 26(3)): a designation to identify the computer algorithms and a short sale;.....	38
7.1 Algo ID	38
7.2 Short sale indicator:.....	39
8. Details to be reported (Article 26(3)): indicators for waivers; OTC post-trade deferrals; commodity derivatives; buy-backs programs	40
8.1 Indicators for pre-trade waivers; OTC post-trade deferrals; commodity derivatives 40	
8.2 Buy backs programs.....	41
9. Obligations for Investment Firms transmitting orders (Article 26(4)).....	42
10. Entities entitled to provide transaction reports to NCAs (Article 26 (7)).....	44

11. Interaction with the reporting obligations under EMIR.....	45
11.1 Challenges of merging the two reporting regimes into one	45
11.2 Alignment of MiFIR empowerments with EMIR Refit	47
11.2.1 References to international standards	48
11.2.2 Frequency and date of the reports.....	50
11.2.3 Proposal for alignment of MiFIR empowerments with EMIR	51
12. LEI of the issuer of the financial instrument	53
13. Annex.....	55

Acronyms used

AIFMD	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010
ARM	Authorised Reporting Mechanism
BMR	Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014
CFI	Classification of Financial Instruments Code
CP	Consultation Paper
EC	European Commission
EEA	European Economic Area
EMIR	Regulation (EU) No 648/2012 of the European Parliament and the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories
EMIR Refit	Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories
ESMA	European Securities and Markets Authority
EU	European Union
EURIBOR	Euro Interbank Offered Rate
FIRDS	Financial Instruments Reference Data System
IF	Investment Firm
ISIN	International Securities Identification Number
LEI	Legal Entity Identifier
LIBOR	London Inter-bank Offered Rate
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation)
MiFID I	Directive 2004/39 of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council

	Directive 85/611/EC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC
MIFID II	Directive 2014/65/EU of the European Parliament and the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012
MTF	Multilateral trading facility
NCA	National Competent Authority
OJ	Official Journal
OTF	Organised Trading Facility
RM	Regulated market
RTS 22	Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities
RTS 23	Commission Delegated Regulation (EU) 2017/585 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities
SFTR	Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012
SI	Systematic Internaliser
SSR	Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps
ToTV	Traded on a Trading Venue
TV	Trading Venue
TVTIC	Trading venue transaction identification code
UCITS	Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings



for collective investment in transferable securities (UCITS) as regards
depository functions, remuneration policies and sanctions

UPI	Unique Product Identifier
UTC	Coordinated Universal Time
UTI	Unique Transaction Identifier

1 Executive Summary

Reasons for publication

Article 26(10) of MiFIR requires the European Commission (EC) to present a report to the European Parliament and the Council to assess the functioning of the transaction reporting regime under this Article. This consultation paper (CP) originates from the EC's mandate to ESMA, and it covers the following areas:

1. Topics related to the functioning of Article 26 of MiFIR on the transaction reporting regime as per the original EC mandate in Article 26(10) of MiFIR.
2. Topics related to the functioning of Article 27 of MiFIR on the supply of financial instruments reference data and article 4 of MAR on the notifications and list of financial instruments, which ESMA considers closely-linked to the above topics.

Contents

The first two sections of this CP cover the scope of the transaction reporting and reference data obligations. First, the scope of entities and second, the scope of financial instruments subject to the obligations. Importantly, sections 4.1 and 4.2 include proposals for a possible extension of the scope of reporting in light of the considerations made in the ESMA70-156-3329 Final Report on the transparency regime for non-equity instruments and the trading obligation for derivatives (section 4.1) and the newly introduced Benchmark Regulation (section 4.2).

Sections five, six, seven and eight cover the specific data elements that should be reported under the transaction reporting obligation that are explicitly mentioned in the level one provision under Article 26(3) of MiFIR. ESMA has assessed each of these data elements and for each of them has included proposals as to whether the data element should be maintained, removed, replaced or further clarified. Sections five, six and eight also contain proposals for four additional elements to be included in the set of details to be reported.

Section nine and ten relate to the order transmission regime and the delegation of the reporting obligation to ARMs. Section eleven covers the interaction with reporting obligations under EMIR and includes proposals to ensure further alignment between the two reporting regimes. Section twelve covers the use of the LEI of the issuer of the financial instruments for reference data reporting purposes and includes proposals to enhance the effectiveness of such obligation.

Next Steps

Based on feedback received from stakeholders, ESMA will develop the final review report. ESMA intends to submit the final report to the EC in the first quarter of 2021.

2. Introduction: scope of the report

3. This Consultation Paper (CP) covers the report to be delivered to the Commission under the following article:

Article 26(10) MiFIR

ESMA shall submit a report to the Commission on the functioning of this Article, including its interaction with the related reporting obligations under Regulation (EU) No 648/2012, and whether the content and format of transaction reports received and exchanged between competent authorities comprehensively enables monitoring of the activities of investment firms in accordance with Article 24 of this Regulation. The Commission may take steps to propose any changes, including providing for transactions to be transmitted only to a single system appointed by ESMA instead of to competent authorities. The Commission shall forward ESMA's report to the European Parliament and to the Council.

4. The deadline for delivery of this report as set in Article 26(10) of MiFIR (3 January 2019) has been modified, in agreement with the European Commission, in the context of Brexit and the Covid-19 crisis¹.
5. The transaction reporting and reference data requirements under Articles 26 and 27 of MiFIR have been introduced in the wake of the financial crisis, which revealed weaknesses in the former reporting requirements due to their narrow scope and lack of harmonization. The MiFIR reporting requirements were designed to provide national competent authorities (NCAs) with a full view of the market when conducting their market surveillance activities. To achieve this goal, Article 26 and 27 introduced a uniform and standardised reporting regime across the EU; such regime replaced the national regimes in existence under the former MiFID I and increased the scope of financial instruments to be reported. Each national supervisor in the EU receives transaction data under Article 26 of MiFIR. This data contains information about each executed transaction, which is combined with the reference data related to the instrument in which the transaction is executed that is published by ESMA under Article 27 of MiFIR². In addition to Article 27 of MiFIR, Article 4 of MAR on the notifications and list of financial instruments introduced a mirror requirement to provide instrument reference data. Given the common purpose of the two provisions, ESMA developed Level 2 rules prescribing a common set of reference data elements and standards to be reported, such rules have been implemented into one single reporting system and the reported information is published via the [FIRDS database](#) on the ESMA website.

¹ An overall planning for the MiFID II/MiFIR review reports is available on the ESMA website ([here](#)).

² The scope of Article 27 covers all instruments in scope of Article 26(2) that are traded on a trading venue or a Systematic Internaliser. For the pure OTC instruments covered by Article 26 that are not reported to FIRDS, the information is directly reported to the NCAs in each transaction report instead of being published once on ESMA website.

6. Transaction and reference data reporting under MiFID enable NCAs to monitor for abuses under the Market Abuse Regulation (MAR)³. Such data is also useful for broader market monitoring activities as referred in Article 24 of MiFIR; it provides insight into how firms and markets behave and can be used by supervisors for various purposes, including monitoring market stability, data reporting service providers activities, transparency waivers/deferrals and analysing market trends including speculation during times of uncertainty.
7. NCAs use the transaction data received in accordance with Article 26 of MiFIR in combination with the instrument reference data published under Article 27 of MiFIR and Article 4 of MAR; both data sets are essential for the purpose of market monitoring under Article 24 of MiFIR. Given the interconnection between the transaction data and the reference data, ESMA has decided to provide in this report an additional assessment of the functioning of Article 27 of MiFIR on the supply of financial instruments reference data and Article 4 of MAR on the notification and list of financial instruments.
8. An additional set of information that is used by NCAs to conduct their market monitoring activities under Article 24 of MiFIR is the order data collected in accordance with Article 25 of MiFIR. NCAs gather such data through requests to the trading venues. In this respect, ESMA considers that an assessment of such obligation has already been made within the context of the MAR review and thus a second consultation on the review of Article 25 of MiFIR is not necessary. The proposals made in [the Final Report on the MAR Review](#) should be considered when reviewing Article 25 of MiFIR [section 10.1 of the Report – ESMA70-156-2391]. In the MAR Final Report, ESMA proposes that trading venues should record and subsequently submit order book data upon the NCAs' requests in an electronic and machine-readable form and using a common XML template in accordance with the ISO 20022 methodology.

3. Entities subject to transaction reporting and arrangements for sharing reports (Article 26(1), Article 26(5) and Article 26(8) MiFIR)

Article 26(1) MiFIR

³ Recital 32 of MiFIR states that “The details of transactions in financial instruments should be reported to competent authorities to enable them to detect and investigate potential cases of market abuse, to monitor the fair and orderly functioning of markets, as well as the activities of investment firms.”)

Investment firms which execute transactions in financial instruments shall report complete and accurate details of such transactions to the competent authority as quickly as possible, and no later than the close of the following working day.

The competent authorities shall, in accordance with Article 85 of Directive 2014/65/EU, establish the necessary arrangements in order to ensure that the competent authority of the most relevant market in terms of liquidity for those financial instruments also receives that information.

The competent authorities shall make available to ESMA, upon request, any information reported in accordance with this Article.

3.1 AIFMD and UCITS firms

Analysis

9. Article 26(1) of MiFIR defines in its first paragraph the scope of entities that are subject to the transaction reporting obligation. It should be noted that any change in the scope of the entities that should be directly subject to the reporting obligation will also have an impact on the obligation for trading venues under Article 26(5) of MiFIR to “*report the details of transactions in financial instruments traded on its platform which are executed through its systems by a firm which is not subject to this Regulation (MiFIR)*”. According to Article 6(4) of AIFMD⁴, Member States may authorise external AIFMs to provide the following services:

- a. non-core services comprising:
 - i. investment advice;
 - ii. safe-keeping and administration in relation to shares or units of collective investment undertakings;
 - iii. reception and transmission of orders in relation to financial instrument.

10. Pursuant to Article 6(3) of UCITS Directive⁵, Member States may authorise UCITS management companies to provide the following services:

⁴ "Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010"

⁵ Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions
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- a. management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Annex I, Section C to Directive 2004/39/EC; and
 - b. as non-core services:
 - i. investment advice concerning one or more of the instruments listed in Annex I, Section C to Directive 2004/39/EC;
 - ii. safekeeping and administration in relation to units of collective investment undertakings
11. These services correspond to the MiFID services defined under Article 4(2) of MiFID II. Should the provision of any of these services trigger the execution of a transaction, any MiFID investment firm providing such service should report transactions according to Article 26 of MiFIR. When providing these services AIFMs and UCITS management companies are subject to a number of MiFID requirements which are referred to in Article 6(4) of UCITS Directive and Article 6(6) of AIFMD. They relate to Article 2(2) (exemptions for public bodies, ESCB and ECB), Article 12 (Initial Capital endowment), Article 13 (Organisational requirements) and Article 19 (Conduct of business obligations) of MiFID I. However, the references to MiFID I in the respective directives has not been updated to reflect the requirements introduced with MiFID II and thus Article 26 of MiFIR is not included in the list of MiFID provisions which also apply to AIFMs and UCITS management companies providing the MiFID services listed above.
12. Given the above, and that AIFMs and UCITS management companies are not investment firms authorised under MiFID, these entities are not subject to the requirement to report transactions even in the cases where they perform MiFID services. Nevertheless, if the transactions executed by these entities are carried out on a trading venue, they should be reported by the trading venue as part of the obligation under Article 26(5) of MiFIR to report transactions on behalf of entities that are not subject to the MiFIR. These reports will contain the information available to the trading venue and identify the AIFM/UCITS management company as buyer/seller. However, the details of the decision-maker that is making the decision to acquire/sell the given financial instruments may not be available in the transaction report. Such information is essential for the purpose of market abuse surveillance. In addition, the information about transactions executed by these firms off venue will not at all be available to NCAs.
13. ESMA ran a survey among NCAs to understand whether specific requirements have been put in place in order to retrieve the missing information concerning the activity of AIFMs/UCITS management companies. In order to cover this regulatory gap, some jurisdictions (CZ, RO and IT) reported having introduced specific local requirements for these entities. However, in the vast majority of jurisdictions this has not been possible due to the lack of appropriate legal basis.

Proposal

14. In order to ensure data completeness for market abuse investigations and to ensure a level playing field for market participants, UCITS management companies and AIFMs providing one or more MiFID services to third parties should be subject to transaction reporting in accordance with Article 26 of MiFIR. The relevant MiFID provisions should be amended to ensure that these entities providing similar types of investment services are subject to similar regulatory standards in line with the recommendations made by ESMA in section 3 of their letter on the “Review of the Alternative Investment Fund Managers Directive”⁶. This proposal has the following merits (i) it ensures a level playing field among firms providing the same type of services as MiFID investment firms; (ii) it provides NCAs with the complete set of information needed to conduct their monitoring of trading activity on the trading venues, namely the information about the investment decision for trades involving AIFMs/UCITS firms and (iii) it provides NCAs with the relevant information needed to conduct their monitoring of the trading activity of these firms that is taking place off-venue and (iv) it allows NCAs to compare the information about on-venue transactions involving these firms with the information about off-venue transactions involving the same firms.

Q1. Do you foresee any challenges for UCITS management companies and AIF managers in providing transaction reports to NCAs? If yes, please explain and provide alternative proposals.

3.2 Reference to “members/participants/users” of Trading Venues

Article 26(5) MiFIR

The operator of a trading venue shall report details of transactions in financial instruments traded on its platform which are executed through its systems by a firm which is not subject to this Regulation in accordance with paragraphs 1 and 3.

Analysis

15. Under Article 26(5) of MiFIR Trading Venues have to submit transaction reports on transactions in financial instruments traded on their platforms which are executed through their systems by ‘firms’ that are not subject to MiFIR.

16. The reference to ‘a firm’ has proven to be problematic because there is no definition of ‘firm’ in MiFID II/MiFIR. The definition of ‘investment firm’ in MiFID II covers ‘any legal person whose regular occupation...’. Thus, a mere ‘firm’ could be considered in the broad sense to mean ‘any legal person’. However, ‘firm’ in another context could be interpreted in a narrow sense as a commercial company. This narrow interpretation

⁶ See section 3, 5th paragraph of the letter available on ESMA website: https://www.esma.europa.eu/sites/default/files/library/esma34-32-551_esma_letter_on_aifmd_review.pdf
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lead to situations where some NCAs did not receive the full set of information relating to the trading activity taking place on the trading venues under their supervision. For example, it is not sufficiently clear whether or not special cases such as state debt management offices fall under this definition. In addition, the term has been interpreted differently in different jurisdiction leading to an inconsistent set of information being reported across jurisdictions. Lastly, the term 'firm' is not consistent with the term used for the purpose of the order record keeping obligation under Article 25 of MiFIR. Under Article 25 of MiFIR, trading venues are obliged to maintain a record of all orders in financial instruments which are advertised through their systems. The records should contain the relevant data that constitute the characteristics of the order, *'including those that link an order with the executed transaction(s) that stems from that order'*. This data includes, among others, the identification of the *'member or participant which transmitted the order'*.

17. To avoid any doubts on the application of this obligation, ESMA considers that the reference to 'firm' should be replaced. ESMA considers that the term used in Article 25(3) of MiFIR is more precise and would clearly encompass any entity that executes transaction on trading venues. This approach has the following benefits: (i) it ensures that the information on the trading activity on a given EU trading venue is complete and consistent with the information provided by other trading venues and (ii) it ensures a better alignment with the order record keeping requirements under Article 25 of MiFIR, thereby allowing for a better linking of orders with the executed transactions stemming from the orders.

Proposal

18. In order to execute a transaction on a trading venue, an entity must be a *'member or participant'* of that venue. Article 25(3) of MiFIR refer to *'member or participant which transmitted the order'*. Section 6.2 of the Guidelines on transaction reporting, order record keeping and clock synchronization⁷ clarifies that this term also include *'users'* of OTFs.
19. Throughout MiFID II and MiFIR, there are several provisions which refer to the *'member or participant'* of a Trading Venue. The meaning of *'Trading Venue'* is defined in Article 4(1)(24) of MIFID II and captures regulated markets, multilateral trading facilities (MTFs) and organised trading facilities (OTFs).
20. The terms 'member' and 'participant' are generally used in the context of regulated markets and MTFs. Recital 16 of MiFID II clarifies that *'persons having access to regulated markets or MTFs are referred to as members or participants. Both terms may be used interchangeably...'*
21. However, a different terminology is used for OTFs reflecting the fact that MiFID client-facing obligations apply to OTF operators as opposed to operators of MTFs and RMs.

⁷

For example, Article 18(7) of MiFID II states that MTFs and OTFs should have ‘*at least three materially active members or users*’ whereas Article 20 contains a prohibition against an OTF executing ‘client’ orders against the proprietary capital of the OTF. In both cases, it appears that the term ‘user’ and ‘client’ are used interchangeably when referring to an OTF and that consequently they are analogous with the terms ‘member’ or ‘participant’.

22. Given that OTFs are included within the scope of the Market Abuse Regulation and given the need to apply the MiFID II/MiFIR requirements consistently across different types of Trading Venues, ESMA considers that Article 26(5) should refer to “*members or participants or users*” instead of “*firm*”, and read as follows:

*“The operator of a trading venue shall report details of transactions in financial instruments traded on its platform which are executed through its systems by **any member, participant or user** ~~a firm~~ which is not subject to this Regulation”.*

Q2. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

3.3 Branches of EEA entities

Article 26(8) MiFIR

When, in accordance with Article 35(8) of Directive 2014/65/EU, reports provided for under this Article are transmitted to the competent authority of the host Member State, it shall transmit that information to the competent authorities of the home Member State of the investment firm, unless the competent authorities of the home Member State decide that they do not want to receive that information.

Analysis

23. The level one provision in Article 26(8) seems to indicate that reports of transactions executed through a branch should be first submitted to the competent authority of the **host** members state, which in turn would transmit them to the competent authority of home member state. When developing the level two provisions on the application of transaction reporting obligations to branches of investment firms in accordance with the mandate under Article 26(9)(g) of MiFIR, ESMA considered that this process may lead to unnecessary complexities and duplicative reporting.
24. As indicated in Article 4(1)(30) of MiFID⁸, a ‘branch’ is not an independent entity, it is, by definition, a part of the parent investment firm, which is the entity that has executed

⁸ ‘branch’ means a place of business other than the head office which is a part of an investment firm, which has no legal personality and which provides investment services and/or activities and which may also perform ancillary services for which the investment firm has been authorised; all the places of business set up in the same Member State by an investment firm with headquarters in another Member State shall be regarded as a single branch;
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the transaction through its branch. On this basis, Article 14 of RTS 22 prescribes that reporting investment firms should submit the reports in relation to transactions executed through branches to the NCA of their **home** member state . More specifically, Article 14 of RTS 22 provides that: (i) where an investment firm executes a transaction, it should submit the report to the competent authority of the home Member State of the investment firm irrespective of whether or not a branch is involved, or whether the reporting firm executed the transaction through a branch in another Member State and (ii) where a transaction is executed wholly or partly through a branch of an investment firm located in another Member State, the report should be submitted only once to a single competent authority, i.e. the NCA of the home Member State of the investment firm.

25. To avoid any doubts on the application of this obligation, ESMA considers that the text in Article 26(8) should be aligned with the process described in RTS 22. This proposal has the merits of avoiding further routings of the same report among NCAs and reducing the risk of duplicative reporting.

Proposal

26. In order to ensure further clarity and consistency with RTS 22, Article 26(8) should be replaced by the following:

“An investment firm shall report transactions executed wholly or partly through its branch to the competent authority of the home Member State of the investment firm. The branch of a third country firm shall submit its transaction reports to the competent authority which authorised the branch. Where a third country firm has set up branches in more than one Member State within the Union, those branches shall define the competent authority that will receive all the transaction reports.

In order to meet the obligations set out in Article 35(8) of Directive 2014/65/EU, a copy of the reports provided for under this Article shall also be transmitted to the competent authority of the host Member States of the in the transaction involved branches“.

- Q3. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.**

3.4 Arrangements for sharing reports

Article 26(1) MiFIR

The competent authorities shall, in accordance with Article 85 of Directive 2014/65/EU, establish the necessary arrangements in order to ensure that the competent authority of the most relevant market in terms of liquidity for those financial instruments also receives that

information.

Analysis

27. In order to ensure efficient market monitoring and avoid duplicative reporting, transaction reports should be submitted only once and to a single competent authority that can route them to other relevant competent authorities. To achieve these goals, the current level one provision refers to the “arrangements in order to ensure that the competent authority of the most relevant market in terms of liquidity for those financial instruments also receives that information”. If an NCA receives a transaction report on a financial instrument, it will share the same report with the relevant NCA (RCA) for that specific financial instrument. The RCA is the NCA responsible for the supervision of the trading activity in the given financial instrument. The legal requirement is further defined in Article 16 of RTS 22 which clarifies the rules to determine the most relevant market where the financial instrument is traded, depending on the type of instrument. This provision covers the rules for transferable securities, emission allowances, UCITS, money market instruments and derivatives. The current level one text states that reports are only shared with the relevant competent authority for the financial instrument in which the reported transaction was executed. However, the supervisory needs of the NCAs have proven to be broader than that. For example, another NCA may be relevant for a transaction executed through a branch if the investment decision was made within the branch. More generally, there may be cases where an NCA has expressed an interest for receiving the information on transactions on a specific financial instrument on an ongoing basis.

Proposal

28. ESMA considers that the reference in Article 26(1) to the “*arrangements in order to ensure that the competent authority of the most relevant market in terms of liquidity for those financial instruments also receives that information*” is too narrow and does not adequately reflect the NCAs’ supervisory needs. Hence, this provision should be accompanied with a more general reference to the possibility for NCAs to share the information received under this article “*where a request has been made*” and/or “*the NCA has agreed to share the information*”.

Q4. While the arrangements referred in this section are exclusively between the national supervisors and do not have a direct impact on the market, do you have any views on the outlined proposal?

4. Scope of instruments subject to reporting obligations (Articles 26(2) and 27(1))

Article 26(2) MiFIR

The obligation laid down in paragraph 1 shall apply to:

(a) financial instruments which are admitted to trading or traded on a trading venue or for which a request for admission to trading has been made;

(b) financial instruments where the underlying is a financial instrument traded on a trading venue; and

(c) financial instruments where the underlying is an index, or a basket composed of financial instruments traded on a trading venue

The obligation shall apply to transactions in financial instruments referred to in points (a) to (c) irrespective of whether or not such transactions are carried out on the trading venue.

Article 27(1) MiFIR

With regard to financial instruments admitted to trading on regulated markets or traded on MTFs or OTFs, trading venues shall provide competent authorities with identifying reference data for the purposes of transaction reporting under Article 26.

With regard to other financial instruments covered by Article 26(2) traded on its system, each systematic internaliser shall provide its competent authority with reference data relating to those financial instruments.

Identifying reference data shall be made ready for submission to the competent authority in an electronic and standardised format before trading commences in the financial instrument that it refers to. The financial instrument reference data shall be updated whenever there are changes to the data with respect to a financial instrument. Those notifications are to be transmitted by competent authorities without delay to ESMA, which shall publish them immediately on its website. ESMA shall give competent authorities access to those reference data.

Legal framework

29. Article 26(2) and Article 27(1) of MiFIR define the scope of financial instruments to be reported under the respective obligations.

30. The transaction reporting obligation covers three categories of instruments. First, any financial instrument⁹ which is subject to a request for admission to trading, which is admitted to trading or which is traded on a trading venue is reportable; the obligation applies to these financial instruments ‘... irrespective of whether or not (...) transactions are carried out on the trading venue.’. Second, financial instruments where the underlying is a financial instrument traded on a trading venue. Third, all instruments based on indices or baskets which include in their composition at least one component that is a financial instrument admitted to trading or traded on a trading venue¹⁰.
31. The reference data obligation covers financial instruments admitted to trading on a RM or traded on a MTF or an OTF. Moreover, comparable requirements apply to Systematic Internalisers for financial instruments covered by Article 26(2) of MiFIR other than those admitted to trading on regulated markets or traded on MTFs or OTFs (see figure 1 below). Financial instrument reference data plays an important role in enriching the information in transaction reports submitted by investment firms and hence supports the monitoring activity conducted by competent authorities. In addition, the financial instrument reference data facilitates the exchange of transaction reports between competent authorities. It is therefore crucial that the scope of instruments covered by this requirement is clearly defined and sufficiently broad to enable NCAs monitoring activities.
32. It should be noted that both Article 27 of MiFIR and Article 4 of MAR establish a requirement on the provision of financial instrument reference data. Both provisions are aimed at providing competent authorities with the necessary tools to fulfil their supervisory duties. Considering the common purpose of the two provisions and the common reference data elements to be provided, ESMA has kept the respective level 2 rules aligned to the maximum extent feasible, the rules are implemented into one single reporting system and the information received is published via the [FIRDS database](#) on ESMA website.

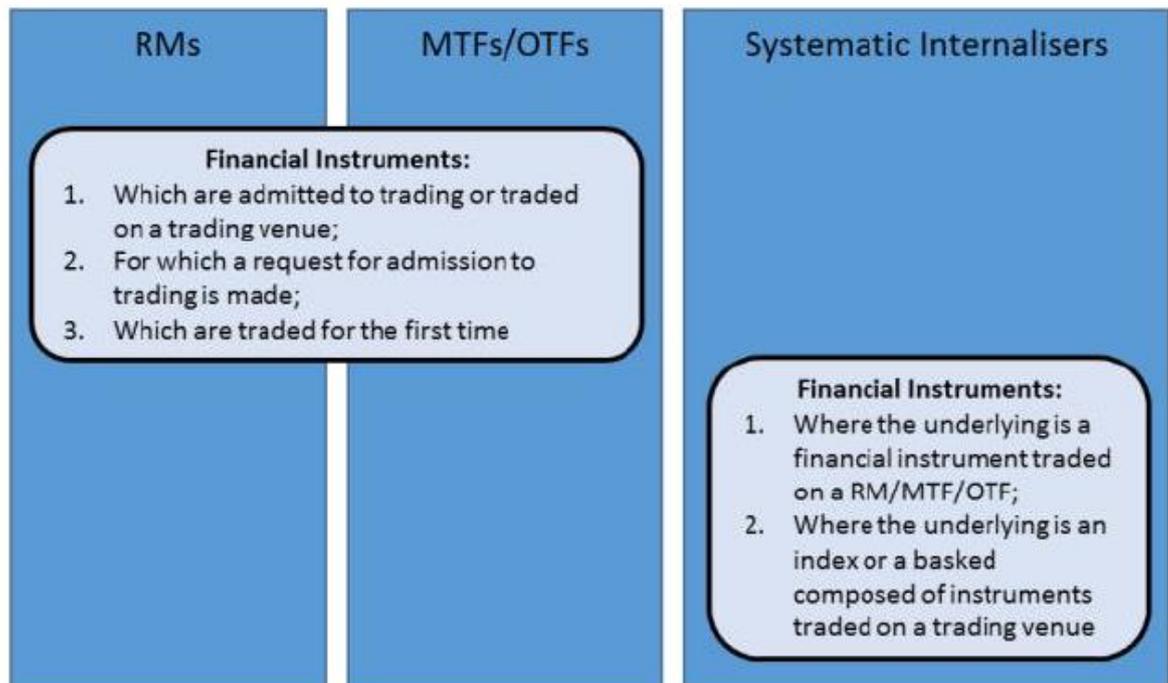
Figure 1¹¹ - scope of instrument reference data

⁹ as defined in Annex I Section C of Directive 2014/65/EU (MiFID II)

¹⁰ The general principles to apply to the last two categories of instruments were further clarified in section 5.32 of the [ESMA Guidelines on transaction reporting](#).

¹¹ Source: FIRDS reference data reporting instructions available on [ESMA website](#).

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4.1 Concept of Traded on a Trading Venue (ToTV)

Analysis

33. The concept of “traded on a trading venue” (ToTV) is an important notion in Level 1 included in various provisions of MiFIDII/MiFIR. References to ToTV can be found to define the scope of the transparency regime¹²; the trading obligation for shares and derivatives¹³ and the reference data and transaction reporting obligations that are covered in this CP. It is worth outlining that a similar concept is also mentioned in Article 2(3) of MAR, which defines the scope of the regulation¹⁴. The concept of ToTV is not further defined in Level 1 and was not required by the legislators to be further defined or elaborated in Level 2, neither in the context of transparency nor for transaction reporting purposes.

34. Article 26 of MiFIR uses the concept of ToTV to determine part of the scope of instruments subject to transaction reporting. In particular, financial instruments that are ‘traded on a trading venue’ in accordance with Article 26(2)(a) are subject to the requirements irrespective of whether or not the transaction for the given instrument was executed on a trading venue. While the concept of ‘traded on a trading venue’ seems

¹² Articles 3, 6, 8, 10, 11, 14, 18, 20 and 21 of MiFIR;

¹³ Articles 23 and 32 of MiFIR

¹⁴ Article 2(3) of MAR states “This Regulation applies to any transaction, order or behaviour concerning any financial instrument as referred to in paragraphs 1 and 2, irrespective of whether or not such transaction, order or behaviour takes place on a trading venue”.

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to be self-explanatory for instruments that are centrally issued and that are fully standardised, such as shares and bonds as well as exchange traded derivatives, it is less straightforward for OTC derivatives. Given that bilateral derivatives are not standardised, each time two parties enter into a contract, such contract might be slightly different from the otherwise similar one entered into by two other counterparties. For this reason, it becomes challenging to determine when a bilateral derivative that was traded OTC is different or is the same as another one traded on a trading venue.

35. In May 2017 ESMA issued an opinion¹⁵ further specifying the concept of ToTV for OTC-derivatives. The ESMA opinion is based on a narrow interpretation of the concept of ToTV by clarifying that only OTC derivatives sharing the same reference data details as the derivatives traded on a trading venue should be considered ToTV. The notion of “same reference data details” should be understood as the OTC-derivatives sharing the same values as the ones reported to the Financial Instruments Reference Data System (FIRDS) in accordance with the fields of RTS 23 for derivatives admitted to trading or traded on a trading venue, except for the venue related fields (5-11). Hence, OTC-derivatives not sharing the same reference data as instruments reported to FIRDS, including the same ISIN, would not be considered ToTV.
36. ESMA considers that an initial assessment of the ToTV concept has already been made within the context of the CP on the MiFIR review of the non-equity transparency regime¹⁶ and thus this section of the CP should be read in conjunction with the considerations made in the relevant section of the CP on the non-equity transparency regime; a second consultation on the proposals made therein is not necessary.
37. The responses received during the consultation on the review of the non-equity transparency regime indicated a clear split of views between trading venues and proprietary traders on the one hand and banks and SIs on the other hand. The latter supporting the status quo while the former agreeing with ESMA’s outlined concern that only a very limited proportion of OTC derivative trading is currently subject to transparency and reference data reporting.
38. Respondents who supported an extension of the transparency and reporting obligations to a larger portion of OTC derivatives did not necessarily support the idea of expanding the TOTV concept with many respondents highlighting that such an expansion would (i) introduce additional complexity and (ii) increase arbitrage opportunities for market participants and SIs to design products avoiding post-trade transparency. They instead indicated a preference for an option that would remove the TOTV concept for derivatives altogether and apply transparency and transaction reporting to all OTC trades (option 3). This option has however been discarded by ESMA as it would bring also bespoke derivative contracts into scope. Imposing

¹⁵ ESMA Opinion OTC derivatives traded on a trading venue (ESMA70-156-117), 22 May 2017, accessible at: https://www.esma.europa.eu/sites/default/files/library/esma70-156-117_mifir_opinion_on_totv.pdf

¹⁶ See section 3.2.2.3. of the CP available on ESMA website: <https://www.esma.europa.eu/press-news/consultations/consultation-paper-mifir-review-report-transparency-non-equity-tod>
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transparency on those non-standardised derivatives might not only represent an unnecessary burden for reporting entities but it might, more generally, introduce reporting noise for other participants rather than meaningful transparency¹⁷.

39. Further to the assessment of the scope of the reference data and transaction reporting obligations and taking into consideration the outcome of the consultation on the review of the non-equity transparency regime (see paragraphs 37-38 above)¹⁸, ESMA decided to consult on an additional proposal that departs from the ToTV concept altogether and is based on a different criterion to define which OTC instruments should be brought into the scope of the relevant transparency and reporting obligations. All the considerations and related analysis made in the relevant section of the CP on the non-equity transparency regime also apply to this additional proposal.
40. While elaborating this new proposal, ESMA has considered the following: (i) respondents who supported an increase in transparency noted that such an increase would have the benefit of ensuring a level playing field between trading venues and SIs; (ii) one respondent to the consultation suggested, as an alternative option, that OTC derivative transactions involving a firm that is an SI in the relevant sub-asset class should be subject to post-trade transparency.

Proposal

41. Taking the above into account, ESMA is reflecting on several options to increase the scope of (i) reference data reporting, (ii) transaction reporting and (iii) transparency by including derivative instruments traded through an SI.
42. Such an extension means that derivative instruments that are exclusively traded through SI systems would have to be reported under Article 26 and 27 of MiFIR and made transparent. In particular, for the purpose of transaction reporting under Article 26, this type of off-venue transactions in derivatives instruments would need to be reported also when they relate to instruments where the underlying is not traded on a trading venue. These transactions would fall within the scope of the obligation in addition to the pure OTC transactions in instruments where the underlying is traded on a trading venue or where the underlying is an index, or a basket composed of instruments traded on a trading venue as envisaged in the current Article 26(2)(b) and (c) of MiFIR. In this respect, it should be noted that transaction reporting data is collected to enable NCAs to fulfill their general obligation to uphold the integrity of markets under Article 24 of MiFIR.

¹⁷ See paragraph 239 of section 3.2.3.2 of the ESMA MiFID II MiFIR review report available on ESMA website (ESMA70-156-3329): https://www.esma.europa.eu/sites/default/files/library/esma70-156-3329_mifid_ii_mifir_review_report_on_the_transparency_regime_for_non-equity_instruments.pdf

¹⁸ See section 3.2.3.2 of the ESMA MiFID II MiFIR review report available on ESMA website (ESMA70-156-3329): https://www.esma.europa.eu/sites/default/files/library/esma70-156-3329_mifid_ii_mifir_review_report_on_the_transparency_regime_for_non-equity_instruments.pdf

43. ESMA preliminary considers that this approach based on an extension of the scope to instruments traded by SIs presents several benefits. First, it increases the scope of public and regulatory transparency on instruments that are actively traded without bringing pure bespoke OTC transactions into the scope. Second, it does not seem to imply major system updates for market participants and regulators as SIs are supposed to have already systems in place to report both transactions and reference data. Third, it ensures a better alignment of the scope of instruments reported to the ESMA Financial Instrument Reference Data System and the instruments subject to transparency requirements, which facilitates the monitoring of the quality of the data reported and published.
44. When reflecting on the details of the SI approach and considering how it will apply in practice, ESMA evaluated the following aspects:
- a) Scope of SIs to be covered: should it cover only the ones subject to the mandatory regime¹⁹ (i.e. IF qualifies as SI as it exceeds the relevant threshold for the given derivative) or should it cover all SIs including the ones that opted-in the regime on a voluntary basis (voluntary SIs).
 - b) Scope of transactions to be covered: should it cover only the ones executed by an Investment firm acting in its SI capacity for the given instrument or should it cover any derivative executed by the investment firm belonging to the same derivatives asset class (or sub-class) in which the investment firm qualifies as SI by exceeding the relevant thresholds or by having opted-in the regime.
45. With respect to the first aspect (a), ESMA's preliminary view is that the regime should cover all SI including the voluntary SIs. Excluding the voluntary SIs would have the effect of introducing a two-tier regime, which would introduce additional complexities into the transparency, reference data and transaction reporting as well as the Systematic Internaliser regimes. However, ESMA acknowledges that such an approach may disincentivise firms from opting into the SI regime and would welcome proposals for further adjustments in order to address any potential drawbacks arising from this side-effect.
45. With respect to the second aspect (b), ESMA is considering three alternative options:
- Option 1:** reporting obligations are extended beyond derivatives for which the IF qualifies as SI. SIs in one derivative or class of derivatives (*e.g. fixed-to-float 'cross-currency' USD-EUR10 Yrs swaps*) would have to report quotes and transactions undertaken in any derivatives belonging to the same derivatives sub-asset class regardless of whether the IF is acting in its SI capacity or not (*e.g. all fixed-to-float*

¹⁹ The SI regime requires investment firms to assess whether they are SIs in a specific instrument (for equity, bonds, ETCs and ETNs and SFPs) or for a (sub-) class of instruments (for derivatives, securitised derivatives and emission allowances) on a quarterly basis based on data from the previous six months. For each specific instrument/sub-class, an investment firm is required to compare the trading it undertakes on its own account compared to the total volume and number of transactions executed in the European Union (EU). If the investment firm exceeds the relative thresholds determined in the Commission Delegated Regulation (EU) No 2017/565 it will be deemed an SI and will have to fulfil the SI-specific obligations.
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cross-currency swaps, regardless of currencies and maturities, executed by the IF but not other interest rate derivatives). This option may be the easiest to implement and supervise since the reporting rules apply at a less granular level similar to the current approach under the reference data reporting regime. But it would bring more transactions into the scope than the other options.

Option 2: reporting obligations cover all transactions in derivatives or class of derivatives (e.g. *fixed-to-float 'cross-currency' USD-EUR10 Yrs swaps*) for which the IF qualifies as SI regardless of whether the IF is acting in its SI capacity or not (e.g. *all Fixed-to-Float 'cross-currency' USD-EUR 10 Yrs swaps executed by the IF but not any other interest rate derivative*). This option may be easier to implement than option 3 as it will not be necessary to check whether an investment firm is acting in its SI capacity on a transaction basis. It would bring more transactions into the scope than option 3 but less than option 1.

Option 3: reporting obligations cover all transactions in derivatives or class of derivatives (e.g. *fixed-to-float 'cross-currency' USD-EUR10 Yrs swaps*) for which the IF qualifies as SI and the IF is executing the transaction in its SI capacity (e.g. *only Fixed-to-Float 'cross-currency' USD-EUR 10 Yrs swaps executed by the IF when acting in an SI capacity*). This option may be more difficult to implement as it will be necessary to check whether an investment firm is acting in its SI capacity on a transaction basis. It would bring less transactions into the scope than the other options.

46. Practical examples of how each of the above options will apply are outlined in the table below:

	Description	Derivatives for which the IF qualifies as SI	Derivatives reported by the IF
Option 1	SI in one derivative (or class of derivatives) would have to report quotes and transactions undertaken in any derivatives belonging to the same derivatives sub-asset class.	Fixed-to-Float 'cross-currency' USD-EUR 10 Yrs swaps	All fixed-to-float cross-currency swaps (regardless of currencies and maturities) executed by the IF but not other IRD (e.g. bond options)
Option 2	SI in one derivative (or class of derivatives) would have to report quotes and transactions undertaken in this derivative (or class of derivatives).	Fixed-to-Float 'cross-currency' USD-EUR 10 Yrs swaps	All Fixed-to-Float 'cross-currency' USD-EUR 10 Yrs swaps executed by the IF but not any other IRD derivatives (e.g. Fixed-to-Float 'cross-currency' JPY-EUR 2 Yrs swaps)
Option 3	SI in one derivative (or class of derivatives) would have to report quotes and transactions undertaken in this derivative (or class of derivatives) and when acting in an SI capacity	Fixed-to-Float 'cross-currency' USD-EUR 10 Yrs swaps	Only Fixed-to-Float 'cross-currency' USD-EUR 10 Yrs swaps executed by the IF when acting in an SI capacity (and not, e.g., when trading at their own initiative).

Q5. Do you envisage any challenges in increasing the scope of transparency, transaction and reference data reporting to include derivative instruments traded through an SI as an alternative to the expanded ToTV concept? Please justify your position and if you disagree please suggest alternatives.

Q6. Do you agree that the extension should include all Systematic Internalisers regardless of whether they are SI on a mandatory or voluntary basis? Please justify your position.

Q7. Do you envisage any challenges with the approach described in paragraphs 45-46 on the scope of transactions to be covered by the extension? Please justify your position and indicate your preferred option for SIs under the mandatory regime explaining for which reasons. If you disagree with all of the outlined options, please suggest alternatives.

4.2 Transaction reporting indices under Article 26(2)(c)

Analysis

47. Article 26(2)(c) of MiFIR states that “*financial instruments where the underlying is an index or a basket composed of financial instruments traded on a trading venue*” should be reported. ESMA considered that it was unclear whether the text “*composed of financial instruments traded on a trading venue*” only refers to baskets or it also refers to indices. Consequently, a clarification was included in the [ESMA Guidelines](#) stating that the text “*composed of financial instruments traded on a trading venue*” in Article 26(2)(c) of MiFIR should be read as referring to both an index and a basket. According to the Guidelines, it is sufficient that one component is a financial instrument traded on a trading venue to trigger the obligation to report transactions.
48. Despite the clarifications provided in the Guidelines, ESMA considers that the text of this provision does not provide NCAs with the precise set of information needed for the purpose of market monitoring under Article 24 of MiFIR because MiFIR does not provide any definition or clarification of the term “index” referred to in Article 26(2)(c).
49. In the absence of a clear definition of “index”, IFs report internally elaborated indices with limited or no underlying information (value and composition, among others) available to the public. This results in a situation where NCAs cannot understand the transaction based on the related report and are obliged to request further details to the executing IF. ESMA is of the view that these internally elaborated indices should not be in scope of transaction reporting.
50. Considering the above, ESMA concluded that, the current definition of “index” provided under Article 3(1) of the BMR²⁰ is more precise and appropriate in order to define the scope of transaction reporting. This definition only covers indices whose figures are published or made available to the public and are regularly determined, hence such definition should be used to better define the scope of Article 26(2)(c) of MiFIR. Among the indices covered by Article 3(1) of the BMR, ESMA considers that only the ones that are also “benchmarks” as defined in Article 3(3) of the BMR should be covered²¹. In this respect, ESMA considers that the proposal made in ESMA’s response to the EC consultation on the review of BMR to provide a central ESMA register that will include

²⁰ According to Article 3(1), “index” means any figure: (a) that is published or made available to the public; (b) that is regularly determined: (i) entirely or partially by the application of a formula or any other method of calculation, or by an assessment; and (ii) on the basis of the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates, quotes and committed quotes, or other values or surveys.

Link to the relevant Regulation available here <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1011>.

²¹ According to article 3(3), ‘benchmark’ means any index by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial instrument, is determined, or an index that is used to measure the performance of an investment fund with the purpose of tracking the return of such index or of defining the asset allocation of a portfolio or of computing the performance fees.

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information at benchmark level, if accepted, will further enhance the clarity on the scope of the reporting obligation in relation to benchmarks²².

51. While the reference to the Benchmark definition of the BMR would inevitably reduce the scope of indices that would be subject to the reporting obligation, ESMA believes that this CP is also an opportunity to reflect on the merits of expanding the scope of instruments with an underlying benchmark a that should be reported under the transaction reporting requirements. In particular, ESMA is considering whether the scope of instruments to be reported under Article 26(2)(c) of MiFIR should also include those that are not composed of financial instruments traded on a trading venue.
52. In this respect, it is worth outlining that Article 26(2)(c) only covers instruments traded off-venue, including the ones traded through a Systematic Internaliser. Article 26(2)(a) will remain unchanged as its scope is already rather broad and also include benchmarks that are not referring to financial instruments traded on a trading venue (e.g. rates/FX/commodities).

Proposal

53. When reflecting on the modification of the scope of benchmarks to be reported, ESMA considered the following options:
 - 1) All instruments traded off-venue where the underlying is a Benchmark as defined under the BMR should be in scope of Article 26(2)(c) of MiFIR. Under this option, additional instruments will be brought into the scope of reporting. These are all OTC instruments where the underlying is a benchmarks that is not composed of financial instruments regardless of whether they are traded purely OTC or via an SI; for example, stock exchange indices as well as money market indices and risks free rates (EURIBOR, LIBOR etc.). Especially in the context of the LIBOR transition, ESMA considers that there may be merits to capture all transactions in financial instruments based on alternative risk-free rates (RFR, e.g. SOFR, EuroSTR, SONIA). This option has the benefits of including all OTC transactions in these financial instruments and is simpler to implement than option 2. However, it will significantly extend the scope of transaction reporting to instruments that may neither be relevant for market abuse surveillance purposes nor subject to the BMR as the BMR does not apply to instruments that are purely traded OTC²³.
 - 2) As per the current regime, all instruments traded off-venue where the underlying is a Benchmark composed of financial instruments traded on a trading venue should be in scope of Article 26(2)(c) of MiFIR. In addition to that, only some instruments where the underlying is a Benchmark that is **not** composed of financial instruments

²² Section 5 of the ESMA response available here: <https://www.esma.europa.eu/press-news/esma-news/esma-responds-european-commission-consultation-benchmark-regulation-review>.

²³ The BMR applies to instruments traded off-venue via an SI and not to the instruments that are pure OTC. See Art. 3(1) 16 of the BMR. Link to the relevant Regulation available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1011>.
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traded on a trading venue should be brought into the scope of reporting. These are the instruments where the underlying is a benchmark composed of financial instruments traded through an SI and benchmarks on crypto assets. This more targeted extension has the benefit of fully aligning the scope of transaction reporting to the BMR, which also applies to financial instruments traded via a systematic internaliser without bringing additional instruments that are not covered by the BMR into the scope. However, it may be more complex to implement as it requires reporting entities to check the composition of the benchmark.

- 3) Only the instruments traded off-venue where the underlying is a Benchmark composed of financial instruments traded on a trading venue should be in scope of Article 26(2)(c) of MiFIR. No additional instruments should be brought into the scope of the reporting obligation. Under this option, the *status quo* is maintained, thus regulators will not receive information on some instruments that are covered by the BMR because the current scope of reporting excludes instruments traded via SIs that are based on benchmarks not composed of financial instruments.

Q8. Do you foresee any challenges with the proposal to replace the reference to the term “index” in Article 26(2)(c) with the term “benchmark” as defined under the BMR? If yes, please explain and provide alternative proposals.

Q9. Which of the three options described do you consider the most appropriate? Please explain for which reasons and specify the advantages and disadvantages of the outlined options. If you disagree with all of the outlined please suggest alternatives.

4.3 Scope of reference data: merging Article 4 of MAR into Article 27 of MiFIR

54. When reviewing Article 27 of MiFIR, ESMA has also considered the requirements under Article 4 of MAR. Given the common purpose of the two provisions, ESMA developed Level 2 rules prescribing a common set of reference data elements and standards to be reported, such rules have been implemented into one single reporting system and the reported information is published via the FIRDS database on ESMA website.

55. Despite the full alignment of the Level 2 provisions and their implementation into one single system a few discrepancies between the respective Level 1 texts remain and have created confusions among market participants around the scope of the reporting obligation. Some of these differences are currently addressed only at the level of ESMA RTS 23 and related Q&As²⁴.

²⁴ ESMA Q&A 20 on “defined list”; ESMA Q&A 21 on “FIRDS Fields 8-11”. https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-56_qas_mifir_data_reporting.pdf
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4.3.1 Instrument listed on a MTF

56. Article 27 of MiFIR refers to “*financial instruments admitted to trading on regulated markets or traded on MTFs or OTFs*”. Conversely, Article 4 of MAR refers to admission to trading also in relation to MTFs. The rationale for this reference in MAR is clarified in recital 8 of that regulation: “*In the case of certain types of MTFs which, like regulated markets, help companies to raise equity finance, the prohibition against market abuse also applies where a request for admission to trading on such a market has been made. The scope of this Regulation should therefore include financial instruments for which an application for admission to trading on an MTF has been made. This should improve investor protection, preserve the integrity of markets and ensure that market abuse of such instruments is clearly prohibited*”.
57. This reference indicates a very clear intention on the part of the co-legislators to ensure that, where there has been a request for admission to trading from an issuer, MAR should apply, even where the request for admission is on an MTF. Otherwise there is a risk that market manipulation/insider dealing would occur just before an IPO, and that this would adversely impact confidence in the IPO market and therefore companies’ ability to raise capital.
58. Given that the instrument reference data is used in relation to any market abuse investigation, ESMA considers it crucial that reference data is provided where there has been a request for admission to trading on an MTF. Otherwise, NCAs will miss the information they need in order to monitor cases of market abuse.

Proposal:

59. ESMA recommends amending the text of Article 27(1) of MiFIR to reflect the wording used in Article 4 of MAR. Such wording would be consistent with the text used in the related RTS 23 (fields 8, 9, 10 and 11 of RTS 23), where the fields related to “admission to trading” generally refer to “trading venues” and not only Regulated Markets.
60. The text of the amended Article 27 should read as follows:

*With regard to financial instruments admitted to trading **or traded on a trading venue**, trading venues shall provide competent authorities with identifying reference data for the purposes of transaction reporting under Article 26.*

Q10. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

4.3.2 Approval of trading on an MTF or OTF

61. For financial instruments that are only traded on an MTF, Article 27 of MiFIR currently focuses on the actual trading in the financial instrument on the MTF. However, Article 17 of MAR already refers to the date of the issuer's consent to trading, which can also

take place before the actual trading ("... issuers who have approved trading of their financial instruments on an MTF or an OTF"). Article 27 of MiFIR should be amended in such a way that the focus is on the issuer's earlier consent to trading on this MTF. Such wording would be consistent with the text used in the related RTS 23, where the field 9 refers to the "date and time the issuer has **approved** admission to trading or **trading** in its financial instruments on a trading venue".

Proposal:

62. The text of the amended Article 27 should read as follows:

*"With regard to financial instruments admitted to trading or traded on a trading venue (see above, 4.3.1.) **or where the issuer has approved trading of the issued instrument**, trading venues shall provide competent authorities with identifying reference data for the purposes of transaction reporting under Article 26."*

Q11. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

4.3.3 Approval of admission to trading

63. While Article 4 of MAR stipulates that financial instruments must be reported as soon as an application for admission to a regulated market has been made, the reporting obligation under Article 27 of MiFIR only applies as soon as the financial instrument is admitted to or tradable on a trading venue. The wording of Article 27 MiFIR should be aligned with Article 4 MAR. The approach under MAR is preferable because it ensures consistency with both field 9 of RTS 23 and the transaction reporting requirement under Article 26 MiFIR, which refers to transactions taking place in instruments that are not yet admitted to trading, but for which a request for admission has been made.

Proposal:

64. The text of the amended Article 27 should read as follows:

*"With regard to financial instruments admitted to trading or traded on a trading venue (see above, 4.3.1) **or where the issuer has approved trading of the issued instrument (see above, 4.3.2) or where a request for admission to trading on a trading venue has been made**, trading venues shall provide competent authorities with identifying reference data for the purposes of transaction reporting under Article 26."*

Q12. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

4.3.4 Instruments exclusively traded on SIs

65. In Section 4.1 above, ESMA's preliminary view is that the obligation to send reference data should be extended to derivatives executed on an SI regardless of whether these

instruments are covered by the current Article 26(2) of MiFIR or whether they are already reported by a TV or not. .

Proposal:

66. Considering the proposal in Section 4.1, the text of the amended Article 27 should read as follows:

*With regard to financial instruments admitted to trading or traded on a trading venue **or systematic internaliser** or where the issuer has approved trading of the issued instrument or where a request for admission to trading on a trading venue has been made, trading venues and SIs shall provide competent authorities with identifying reference data for the purposes of transaction reporting under Article 26.*

Q13. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

4.3.5 Frequency of updates to instrument reference data (defined list)

Analysis

67. While the obligations on the submission to the competent authorities are the same under both MAR and MiFIR, the two provisions diverge when specifying the frequency and reasons for such submissions. Article 27 of MiFIR stipulates that a complete report of all financial instruments must be submitted every day. According to Article 4 of MAR, however, a report is required only in two cases: 1) when a financial instrument is first admitted to or traded on a trading venue and 2) when it is no longer tradable on that venue. Although these differences are currently harmonised with a uniform reporting system, it would be desirable for the two reporting requirements to be aligned in order to prevent misunderstandings among the market participants concerned.

68. The frequency and reasons for submission are specified in RTS 23 and related Q&As 21²⁵ on “defined list of instruments” and 4 on termination dates (section 5 of the Q&As on MiFIR data reporting)²⁶. The current rules identify two regimes, which are dependent on the Trading Venue or SI trading model: 1) TV/SI operating on the basis of a defined list of instruments should send data every day for the instrument they have on the list (concept of “listing” is applicable to them) and 2) TV/SI operating on the basis of an undefined list of instruments should send data only where orders or quotes are placed, or the first trade occurs²⁷ and when the instrument ceases to be traded or expires (concept of “listing” does not apply).

²⁵ ESMA70-1861941480-56 “Questions and Answers on MiFIR data reporting”, last updated on 8 July 2020, available at: https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-56_qas_mifir_data_reporting.pdf

²⁶ Ibid.

²⁷ Section 7.2, paragraph 11, p. 380 of the Final Report on draft Regulatory and Implementing Technical Standards MiFID II/MiFIR (ESMA/2015/1464), published on 28 September 2015 on ESMA website:

69. As already clarified by ESMA in the Final Report accompanying RTS 23, the “defined list” approach applies to all cases “where the relevant details pertaining to the financial instrument concerned referred to in Table 3 of the Annex to RTS 23 are definable before the start of the trading day”. While in the case of “undefined list”, some of the basic characteristics of the instruments that are tradable on the TV/SI might be defined in advance but most of the characteristics are only defined upon submission of the order/quote. Requiring these venues to report reference data on all financial instruments that are potentially tradable every day would be disproportionate, hence the requirement to only report when an order/quote is placed. If the following day there is no order/quote, then the operator should not report reference data. However, these TV/SI are still expected to terminate the instruments for which they reported reference data when such instruments cease to be traded or expires (Q&A 4, section 5).

70. Experience has shown that TV/SI that follow this second approach often report the instrument for the first time and do not make any further changes to this instrument even when the characteristics of the instrument change (e.g. CFI, FISN) or the instrument ceases from trading. As a consequence, many instruments remain in the ESMA FIRDS database even if they are no longer tradable because the TV/SI has not terminated the FIRDS entry.

Proposal:

71. The problem identified in the above paragraphs could be avoided if all TVs and SIs were obliged to send a daily file, since in this case they would have to actively reflect whether all of their FIRDS entries are still correct or need to be changed. At present, this is the regime applicable to Trading Venues operating on the basis of a defined list of instruments, which send reference data every day for the instruments they have on the list. In order to ensure a level playing field among market operators, ESMA considers that the requirement of daily submission should be extended to the TVs and SIs that do not operate on the basis of a defined list. To achieve this while accommodating the inability of obtaining all relevant details pertaining to the financial instrument concerned before the start of trading, these trading venues and SIs should be required to submit a daily file upon the first submission of an order or quote in the given instrument and up until the instrument ceases to be traded.

Q14. Did you experience any difficulties with the application of the defined list concept? If yes, please explain.

Q15. Do you foresee any challenges with the approach as outlined in the above proposal? If yes, please explain and provide alternative proposals.

4.3.6 Reference to articles on transparency requirements

Analysis

72. Reference data submitted under Article 27 of MiFIR is also used for the purpose of the transparency requirements under Articles 3, 6, 8, 10, 11, 14, 18, 20 and 21 of MiFIR. In particular, the reference data is used for the purpose of the transparency calculations displayed on the ESMA website through the Financial Instruments Transparency System (FITRS). The current text of the Article 27 of MiFIR states that reference data should be provided to regulators for the purpose of transaction reporting under Article 26 of MiFIR. ESMA considers that Article 27 of MiFIR should also state that this data is provided for the purpose of transparency under the relevant provisions in MiFIR.

Proposal

73. The full text of the amended Article 27 should read as follows:

*With regard to financial instruments admitted to trading or traded on a trading venue or Systematic Internaliser or where the issuer has approved trading of the issued instrument or where a request for admission to trading has been made, trading venues and SIs shall provide competent authorities with identifying reference data for the purposes of transaction reporting under Article 26 **and the transparency requirements under Articles 3, 6, 8, 10, 11, 14, 18, 20 and 21 of MiFIR.***

Q16. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

4.3.7 Deletion of Article 4 MAR

74. Article 4 of MAR should be repealed and all additional requirements foreseen under this Article should be brought under Article 27 of MiFIR as proposed in sections 4.3.1–4.3.5 above. Article 4 of MAR should be replaced with a reference to the amended Article 27 of MiFIR. Accordingly, Article 27 of MiFIR will contain all provisions relevant for both regimes, so that for future revisions only one provision will need to be changed and there will not be an issue of synchronising timelines of such changes as it is currently the case for MAR and MiFIR review that take place under different timelines.

Q17. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

5. Details to be reported (Article 26(3)): Trading Venue Transaction Identification; chain of transactions.

Article 26(3) MiFIR

With regard to financial instruments admitted to trading on regulated markets or traded on The reports shall, in particular, include details of the names and numbers of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, means of identifying the investment firms concerned, and a designation to identify a short sale as defined in Article 2(1)(b) of Regulation (EU) No 236/2012 in respect of any shares and sovereign debt within the scope of Articles 12, 13 and 17 of that Regulation. For transactions not carried out on a trading venue, the reports shall include a designation identifying the types of transactions in accordance with the measures to be adopted pursuant to Article 20(3)(a) and Article 21(5)(a). For commodity derivatives, the reports shall indicate whether the transaction reduces risk in an objectively measurable way in accordance with Article 57 of Directive 2014/65/EU.

Analysis

75. With regards the TVTIC, ESMA proposes that the TVTIC should not be limited to transactions executed on a trading venue, the obligation related to the TVTIC should also apply to transactions executed by a Systematic Internaliser. Second, it should be clarified in Level 1 that TVTICs should be generated by the market operator (or IF in case of transactions executed by a SI) and the same code should be assigned to both sides of the trade. This requirement is currently reflected in ESMA RTS 22 (field 3) and RTS 24 (article 12)²⁸.

76. Secondly, ESMA sees merit in linking both sides of a transaction where the INTERNAL code is used, since it would allow matching the venue executions with their client

²⁸ Field 3 of RTS 22 prescribes that: a) it should be up to 52 alphanumeric characters and b) generated by the trading venue and c) disseminated to both the buyer and the seller in accordance with article 12 of RTS 24. Article 12 of RTS 24 prescribes that: a) the TVTIC should be maintained for each transaction resulting from the full or partial execution of an order; b) it should be unique, consistent and persistent per MIC and per trading day; c) its component should not disclose the identity of the counterparties.

allocations. For this purpose it is proposed to include a new code (similar to the complex code ID) that the IF has to generate, which enables NCAs to identify the market legs that pertain to the client legs when grouping orders. For example, for two executions of 100 + 500 allocated to three clients 150+200+250, the five reports should contain the same unique INTERNAL ID CODE = abc)

77. Finally, ESMA considers important to have a separate code that would enable regulators to link all transactions pertaining to the same transaction chain. All counterparties included in such a transaction chain must make sure to transmit the code to its direct counterparty. This implies that, even transaction reports where field 36 is populated with XOFF, but relating to a transaction executed on a trading venue or a SI should include this code.

Proposal

78. The text of the amended Article 26 of MiFIR should read as follows:

“The reports shall, in particular, include details of [...]. For transaction carried out on a trading venue and Systematic Internaliser or an organised trading platform outside of the Union, the reports shall include a designation to identify the venue where the transaction has been executed and a transaction identification code generated and disseminated by the trading venue or Systematic Internaliser.

For transaction carried out on a trading venue and Systematic Internaliser, the reports shall include a designation to link all transactions pertaining to the same execution of the financial instrument on the trading venue or Systematic Internaliser. The member or participant or user of the trading venue or Systematic Internaliser as well as all the investment firms being part of the transaction chain shall disseminate the code generated by the trading venue or SI down the transaction chain.”

Q18. Do you foresee any challenges with the approach outlined in paragraphs 75 and 76? If yes, please explain and provide alternative proposals.

Q19. Do you foresee any difficulties with the implementation of an additional code generated by the trading venue to be disseminated down the transaction chain in order to link all transactions pertaining to the same execution? If yes, please explain and provide alternative proposals.

6. Details to be reported: the identifiers to be used for parties (Articles 26(3) and 26(6)).

Article 26(3) MiFIR

The reports shall, in particular, include details of the names and numbers of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, means of identifying the investment firms concerned, and a designation to identify a short sale as defined in Article 2(1)(b) of Regulation (EU) No 236/2012 in respect of any shares and sovereign debt within the scope of Articles 12, 13 and 17 of that Regulation. For transactions not carried out on a trading venue, the reports shall include a designation identifying the types of transactions in accordance with the measures to be adopted pursuant to Article 20(3)(a) and Article 21(5)(a). For commodity derivatives, the reports shall indicate whether the transaction reduces risk in an objectively measurable way in accordance with Article 57 of Directive 2014/65/EU.

Article 26(6) MiFIR

In reporting the designation to identify the clients as required under paragraphs 3 and 4, investment firms shall use a legal entity identifier established to identify clients that are legal persons. ESMA shall develop by 3 January 2016 guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to ensure that the application of legal entity identifiers within the Union complies with international standards, in particular those established by the Financial Stability Board.

Analysis:

79. Regarding the details to report as per Article 26(3), ESMA proposes that the identification of the decision maker for clients should be explicitly mentioned in the Level 1 text. The term “client” used in Article 26(3) is considered too restrictive and should be replaced with a more general term such as “parties” to identify all

participants. This approach is consistent with the terminology used under EMIR reporting²⁹.

80. Concerning the identification of parties under Article 26(6), ESMA proposes to refer in the Level 1 text to ISO 17442 for Legal Entity Identifiers (LEIs). In accordance with the ESMA Guidelines on transaction reporting³⁰ and the European Commission FAQ on EMIR³¹ and consistent with the LEI ROC guidance³², the obligation to use the LEI applies to all entities that are eligible for the LEI regardless of their legal status and the way in which they are financed. ESMA considers that this aspect should be explicit in the level one provision referring to ISO 17442. Regarding clients that are natural persons and are not eligible for an LEI, ESMA recommends including in the Level 1 text specific reference to the use of national identifiers.

81. In addition, MiFID II introduces provisions to ensure investor protection, and more particularly requirements for investment firms when they provide services to clients. Further to Article 24 of MiFID II, clients are to be categorised in function of their financial literacy. This allows competent authorities to assess, among others, whether a financial instrument is suitable for its target market. Annex II of MiFID II sets out the criteria and the categories for clients:

- a. Professional clients
- b. Clients treated as professionals on request (and after a fitness assessment), in general or for a specific investment service, transaction or product
- c. Retail clients.

82. In order for NCAs to be able to assess suitability or identify market trends when analysing the data on transaction reporting, the client category should also be included in the details to be reported under Article 26(3), in addition to the client details already included in the reporting schema.

Proposal:

83. The text of the amended Article 26 (3) should read as follows:

*The reports shall, in particular, include details of the names and numbers of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, a designation to identify the **parties** on whose behalf the investment firm has executed that transaction, a designation to identify the person **acting as***

²⁹The fields in Table 1 of the Annex to CDR 104/2017 are grouped under the heading “parties to the contract”. See Article 9(1) of EMIR and the Annex to Commission Delegated Regulation 104/2017, where fields in Table 1 are grouped under the heading “Counterparty Data” and the sub-heading “parties to the contract”.

³⁰

³¹ Point 14 of the European Commission FAQ on EMIR from 10 July 2014, available on the EC website: https://ec.europa.eu/info/sites/info/files/emir-faqs-10072014_en.pdf.

³² ROC statement on individuals acting in a business capacity, available on the ROC website: http://www.leiroc.org/publications/qls/lou_20150930-1.pdf.
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decision maker and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, means of identifying the investment firms concerned.

84. The text of the amended Article 26 (6) should read as follows:

*In reporting the designation to identify the parties as required under paragraphs 3 and 4, investment firms shall use a **ISO 17442** legal entity identifier **code** established to identify parties that are **eligible for the LEI regardless of their legal status and the way in which they are financed** and a **national identifier** established to identify parties that are natural persons **and are not eligible for the LEI**. **Clients shall be categorised according to Article 24 of Directive 2014/65/EU.***

Q20. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

7. Details to be reported (Article 26(3)): a designation to identify the computer algorithms and a short sale;

Article 26(3) MiFIR

The reports shall, in particular, include details of [...] a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, [...] and a designation to identify a short sale as defined in Article 2(1)(b) of Regulation (EU) No 236/2012 in respect of any shares and sovereign debt within the scope of Articles 12, 13 and 17 of that Regulation.

7.1 Algo ID

Analysis

85. The field was originally designed to understand the mechanics of algorithmic trading by investment firms carrying such activities and detect potential market abuses schemes. Since the start of the MiFIR reporting regime, ESMA and competent authorities focused their supervisory activities on more critical information for the exercise of their mandate.

86. This information has proven useful by some competent authorities to monitor investment firms compliance with their authorized activities while a majority of them don't use this indicator.

Proposal

87. Since one of the key aspects of MiFIR was to take into account development of market practices such as algorithmic trading that were not covered by MiFID and the fact that supervisory priority was not given to this indicator as of today it is proposed to keep this data element.

Q21. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

7.2 Short sale indicator:

Analysis

88. The current regime requires investment firms to report whenever the beneficiary of a transaction is engaging in a short selling transaction. This identification of a short sale is based on the definition given in SSR whereby the net short position is calculated on an end of day basis while the reporting is made on a transaction by transaction basis.

89. Furthermore, as per Article 11(2) of RTS 22, the investment firm engaging in a sell order on behalf of a client shall collect on a best effort basis the information whether or not the client is short selling. This is due to the fact that the person within the client giving the order may not know in real time if the group has acquired a net short position or not.

90. Due to these limitations, competent authorities are not in a position to utilise this information in their mandates of supervision and market surveillance. However, in certain market conditions, the compliance to a short ban issued by competent authorities could be monitored with transaction data, if the reporting of this information was adjusted to the specificities of transaction reporting.

Proposal

91. ESMA is considering two options:

- a. the removal of this information from the transaction reporting considering that the definition of a short sell in the short selling regulation and its application within MiFIR transaction reporting cannot be reconciled;
- b. the definition of a new indicator more in line with the transaction reporting. Such indicator should not be based on the definition of short sale given in SSR, which applies at the position level and it should not be populated on a 'best efforts' basis. ESMA should have a mandate to define what should be considered as short sale indicator for the purpose of transaction reporting.

Q22. Which of the two approaches do you consider the most appropriate? Please explain for which reasons.

Q23. Do you foresee any challenges with the outlined approaches? If yes, please explain and provide alternative proposals.

8. Details to be reported (Article 26(3)): indicators for waivers; OTC post-trade deferrals; commodity derivatives; buy-backs programs

Article 26(3) MiFIR

The reports shall, in particular, include details of [...] a designation to identify the applicable waiver under which the trade has taken place [...].

For transactions not carried out on a trading venue, the reports shall include a designation identifying the types of transactions in accordance with the measures to be adopted pursuant to Article 20(3)(a) and Article 21(5)(a). For commodity derivatives, the reports shall indicate whether the transaction reduces risk in an objectively measurable way in accordance with Article 57 of Directive 2014/65/EU.

8.1 Indicators for pre-trade waivers; OTC post-trade deferrals; commodity derivatives

Analysis

92. The current regime requires investment firms to indicate in the report whether the transaction was executed under a pre-trade waiver. In particular, this obligation only covers the waivers applied to transactions executed on trading venues in accordance with Articles 4 and 9 of MiFIR. ESMA considers that the waivers regime also apply to transactions in non-equity instruments executed through an SI in accordance with Article 18(2) of MiFIR. Under this article, NCAs may waive the quoting obligations for SIs for illiquid non-equity instruments. However, under the current regime, if a pre-trade waiver applies to these transactions, such waiver will not be indicated in the respective transaction report.

Proposal

93. ESMA proposes to extend the scope of this obligation to the transactions in non-equity instruments executed on a Systematic Internaliser. As the quoting obligations for SIs may be waived by NCAs in accordance with Article 18(2) of MiFIR, this additional

requirement will provide NCAs with the complete set of information regarding transactions executed under a waiver from pre-trade transparency in non-equity instruments, both on-venue and on SIs.

94. Regarding the other two indicators covered by this section of the CP, ESMA considers that the respective level 1 provisions are sufficiently clear and sees no need to review these provisions.

Q24. Do you foresee any challenges with the outlined approach to pre-trade waivers? If yes, please explain and provide alternative proposals.

Q25. Have you experienced any difficulties with providing the information relating to the indicators mentioned in this section? If yes, please explain and provide proposals on how to improve the quality of the information required.

8.2 Buy backs programs

Analysis

95. Article 5(3) of MAR requires issuers to report transactions in buyback programs on their financial instruments to the competent authority of the trading venue where the financial instrument has been admitted to trading or traded. These transactions must include information specified in Article 25(1) and (2) and 26 (1), (2) and (3) of MiFIR. Issuers of financial instruments must report this information in order for their Buy-Back Programs to benefit from the exemption from certain provisions of MAR.

96. The Commission Delegated Regulation 2016/1052³³, specifying the conditions applicable to buy-back programmes and stabilisation measures, does not lay down requirements on the format for reporting those transactions, hence issuers are obliged to comply with format requirements defined at the national level. As a consequence, issuers of financial instruments that are admitted to trading or traded on trading venues in more than one country need to adapt to each of the local format requirements, which puts them at a disadvantage compared to the issuers of instruments that are not traded in more than one country. Furthermore, the lack of alignment of the format with the existing reporting obligations under Article 26 of MiFIR) increases the burden on national competent authorities as it complicates the task of comparing buyback programs reports with the related MiFIR transaction reports.

97. These transactions are, for a significant part, carried out by investment firms on behalf of the issuer. The same investment firms are subject to the transaction reporting requirements under MiFIR making the issuer's reporting obligation redundant. In order to avoid double reporting of the same information, reports submitted to NCAs in

³³ Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures
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accordance with Article 26 which contain all the required information for buy-backs reporting purposes should not need to be reported to competent authorities twice.

Proposal

98. In order to reduce the burden on NCAs as well as issuers of financial instruments traded in more than one country, ESMA proposes an additional requirement to include a designation to identify transactions in buyback programs that have been carried out by investment firms on behalf of an issuer in the transaction report in accordance with Article 26 of MiFIR .

99. With respect to the potential amendments needed to avoid double reporting under Article 5(3) of MAR, at the time of the publication of this CP, ESMA is also publishing the MAR review final report that addresses BBP transactions and the obligation of issuers to report BBP transactions under Article 5(3) of MAR. ESMA is aware that this new reporting flag should have the benefit of facilitating the identification of BBP transactions by NCAs, eventually rendering the reporting of issuers to NCAs under Article 5(3) of MAR superfluous. However, ESMA considers that it is necessary to ensure the effectiveness of this new BBP flag in the transaction reports before recommending the deletion of Article 5(3) of MAR since that effectiveness would heavily rely on the effective transmission of BBP information by investment firms. As a consequence, ESMA stands ready to reassess the necessity to maintain the reporting obligation under Article 5(3) of MAR in a context where a BBP flag would be operational in the transaction reporting regime.

100. These proposals are without prejudice to the ESMA proposals on the simplification of the scope and content of the obligation to report buy-backs programs as described in the Final report on the MAR review³⁴.

Q26. Do you foresee any challenges with this proposal? If yes, please explain and provide alternative proposals.

9. Obligations for Investment Firms transmitting orders (Article 26(4))

Article 26(4) MiFIR

³⁴ Section 4.1 and 4.2 of the CP available at this link: https://www.esma.europa.eu/sites/default/files/library/mar_review_-_cp.pdf
Section 3 of the MAR Review Report (ESMA70-156-2391) available on ESMA website: https://www.esma.europa.eu/sites/default/files/library/esma70-156-2391_final_report_-_mar_review.pdf

Investment firms which transmit orders shall include in the transmission of that order all the details as specified in paragraphs 1 and 3. Instead of including the mentioned details when transmitting orders, an investment firm may choose to report the transmitted order, if it is executed, as a transaction in accordance with the requirements under paragraph 1. In that case, the transaction report by the investment firm shall state that it pertains to a transmitted order.

Analysis

101. With regard to the transmission of orders, ESMA has identified cases when investment firms interested in the transmission of orders and seeking a transmission agreement were unable to find another investment firm willing to conclude such an agreement. These investment firms, rather smaller entities, consequently established their own reporting systems, however many data quality issues were identified in the reporting due to the basic technical level of such reporting systems.
102. To ensure the quality of the reported data even in cases of less sophisticated reporting entities and alleviate the burden on these entities, ESMA proposes to introduce an obligation for the receiving investment firm to report the transaction which pertains to a transmitted order, when the transmitting investment firm requests to transmit its orders. This obligation would only apply when the receiving investment firm would not be transmitting the received orders to another investment firm.

Proposal

103. Consequently, ESMA considers that Article 26(4) of MiFIR should be amended as follows:

*“Investment firms which transmit orders shall include in the transmission of that order all the details as specified in paragraphs 1 and 3. Instead of including the mentioned details when transmitting orders, an investment firm may choose to report the transmitted order, if it is executed, as a transaction in accordance with the requirements under paragraph 1. In that case, the transaction report by the investment firm shall state that it pertains to a transmitted order. **If the investment firm chooses not to report the transmitted order and provides all the mentioned details when transmitting orders, the investment firm to which the orders are transmitted shall report the transaction in accordance with paragraph 1 unless it transmits the order to another investment firm.**”*

- Q27. Do you agree with this approach? If not, please clarify your concerns and propose alternative solutions.**

10. Entities entitled to provide transaction reports to NCAs (Article 26 (7))

Article 26(7) MiFIR

The reports shall be made to the competent authority either by the investment firm itself, an ARM acting on its behalf or by the trading venue through whose system the transaction was completed, in accordance with paragraphs 1, 3 and 9.

Investment firms shall have responsibility for the completeness, accuracy and timely submission of the reports which are submitted to the competent authority.

By way of derogation from that responsibility, where an investment firm reports details of those transactions through an ARM which is acting on its behalf or a trading venue, the investment firm shall not be responsible for failures in the completeness, accuracy or timely submission of the reports which are attributable to the ARM or trading venue. In those cases and subject to Article 66(4) of Directive 2014/65/EU the ARM or trading venue shall be responsible for those failures.

Investment firms must nevertheless take reasonable steps to verify the completeness, accuracy and timeliness of the transaction reports which were submitted on their behalf.

The home Member State shall require the trading venue, when making reports on behalf of the investment firm, to have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, to minimise the risk of data corruption and unauthorised access and to prevent information leakage maintaining the confidentiality of the data at all times. The home Member State shall require the trading venue to maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

104. ESMA considers that the provisions clarifying that the ARM/IF retain responsibility for accuracy and completeness of the data are sufficiently clear and have been effective in practice. Accordingly, ESMA sees no need to review these provisions.

Q28. Do you agree with this analysis? If not, please clarify your concerns and propose alternative solutions.

11. Interaction with the reporting obligations under EMIR

Mandate under Article 26 (10) of MiFIR

Article 26(10) of MiFIR

ESMA shall submit a report to the Commission on the functioning of this Article, including its interaction with the related reporting obligations under Regulation (EU) No 648/2012, [...].

Mandate under EMIR Refit

Article 85(3a) of EMIR

By ... [11 months after the date of entry into force of this amending Regulation], ESMA shall submit a report to the Commission. That report shall assess:

(a) the consistency of the reporting requirements for non-OTC derivatives under Regulation (EU) No 600/2014 and under Article 9 of this Regulation, both in terms of the details of the derivative contracts that are to be reported and access to data by the relevant entities and whether those requirements should be aligned; [...]

105. Given the similarity of the two mandates, ESMA decided to cover both mandates in this report.

11.1 Challenges of merging the two reporting regimes into one

Analysis

106. ESMA has already undertaken a review of the EMIR reporting requirements³⁵ and is in the process of completing a second one³⁶. The reviews have been carried out taking into consideration the need to ensure consistency with the MiFIR reporting requirements. Already following the first review in November 2015, ESMA concluded that alignment of the MiFIR and EMIR reporting regimes could only be achieved to a

³⁵ ESMA held a public consultation on the proposed amendments to the technical standards on trade reporting between 10 November 2014 and 13 February 2015. ESMA subsequently adopted the draft RTS on 5 November and submitted them to the Commission on 13 November 2015. The standards became applicable on 1 November 2017. Further details are available here: <https://www.esma.europa.eu/policy-rules/post-trading/trade-reporting>.

³⁶ Consultation Paper on Technical Standards on Reporting, Data Quality, Data Access and Registration of Trade Repositories under EMIR Refit, available on ESMA's website: <https://www.esma.europa.eu/press-news/consultations/technical-standards-reporting-data-quality-data-access-and-registration>. The consultation period ran from 26 March to 19 June 2020.
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certain extent because there are fundamental differences that impede merging the two reporting regimes into one set of requirements.

107. Indeed, the elaboration and development of any reporting regime is primarily influenced and driven by the purpose of the reporting and subsequent intended data use by regulators. MiFIR data is used by Competent Authorities to conduct their market surveillance and detect instances of market abuse while EMIR data is needed primarily for the purpose of systemic risk detection.

108. Although the alignment of the reporting requirements under the different regimes is the desired outcome when developing technical standards, certain fundamental differences are due to the different purposes of reporting and should be taken into account to avoid compromising the financial stability and market integrity objectives of the reporting obligations.

109. For example, the information related to lifecycle events concerning e.g. the clearing or compression activity of an investment firm is only relevant for systemic risk detection and is not needed for the purpose of detecting abusive behaviors. This is why MIFIR reporting does not capture post trade assignments and novations in derivative contracts where one of the parties is replaced by a third party; or contracts that arise exclusively from clearing and compression activities. For market abuse monitoring it is not necessary for competent authorities to be able to link the subsequent lifecycle events to the original transaction since competent authorities are primarily interested in the change of position at the time of the execution. Receiving information on such post-trade activities would make it more difficult for the competent authorities to conduct their market surveillance activities.

110. With these considerations in mind, ESMA has focused its efforts on harmonising the two reporting regimes to the extent it was feasible. In particular, close attention was paid to the consistency of the description of individual data elements, permissible reportable values and formats, alignment of reporting logics, methods and procedures. Such alignment will allow the reuse of existing IT systems.

111. ESMA highlights that alignment has been achieved in the following areas that are common to both reporting regimes:

- a. Identification of legal entities – LEI
- b. Identification of instruments – ISIN
- c. Classification of instruments – CFI
- d. Identification of complex trades
- e. Reporting of dates and timestamps, currencies and country codes in accordance with the respective ISO standards

- f. Usage of a common XML template in accordance with the ISO 20022 methodology (*proposed in the ongoing revision of the EMIR TS*³⁷)

112. Finally, ESMA has taken into account and contributed to the international developments of global data standards such as the global guidance regarding the definition, format and usage of key OTC derivatives data elements reported to TRs, including the Unique Transaction Identifier (UTI), the Unique Product Identifier (UPI) and other critical data elements³⁸ (see proposals to further align with newly introduced global guidance in light of the amended empowerments under EMIR Refit in section 11.2.1).

Proposal

113. While acknowledging the need to avoid duplicative reporting and reduce the burden on the reporting entities, ESMA considers that the best way to achieve these goals is by ensuring the technical alignment of data elements and reporting logics, methods and procedures. This will allow the reuse of existing IT systems. Instead, the solution envisaged in Article 26(7) of MiFIR is not optimal because in practice there will never be a case where a given report under EMIR will contain all information that is necessary for transaction reporting purposes. This is because the set of data needed for the MiFIR purposes does not perfectly coincide with the data needed for EMIR purposes. Therefore, ESMA recommends removing the following paragraph from Article 26(7) of MiFIR:

“Where transactions have been reported to a trade repository in accordance with Article 9 of Regulation (EU) No 648/2012 which is approved as an ARM and where those reports contain the details required under paragraphs 1, 3 and 9 and are transmitted to the competent authority by the trade repository within the time limit set in paragraph 1, the obligation on the investment firm laid down in paragraph 1 shall be considered to have been complied with.”

Q29. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

11.2 Alignment of MiFIR empowerments with EMIR Refit

Empowerment under Article 26(9)

Article 26(9) MiFIR

³⁷ See *supra*, footnote **Error! Bookmark not defined.**

³⁸ CPMI-IOSCO Technical Guidance on Harmonisation of critical OTC derivatives data elements (other than UTI and UPI): <https://www.bis.org/cpmi/publ/d175.pdf>, CPMI-IOSCO Technical Guidance on the Harmonisation of the Unique Product Identifier (UPI): <https://www.bis.org/cpmi/publ/d169.pdf>, CPMI-IOSCO Technical Guidance on the Harmonisation of the Unique Transaction Identifier (UTI): <https://www.bis.org/cpmi/publ/d158.pdf>,

ESMA shall develop draft regulatory technical standards to specify:

(a) data standards and formats for the information to be reported in accordance with paragraphs 1 and 3, including the methods and arrangements for reporting financial transactions and the form and content of such reports;

Empowerment under Article 27(3)

Article 27(3) MiFIR

ESMA shall develop draft regulatory technical standards to specify:

(a) data standards and formats for the financial instrument reference data in accordance with paragraph 1, including the methods and arrangements for supplying the data and any update thereto to competent authorities and transmitting it to ESMA in accordance with paragraph 1, and the form and content of such data;

(b) the technical measures that are necessary in relation to the arrangements to be made by ESMA and the competent authorities pursuant to paragraph 2.

11.2.1 References to international standards

114. Regulators across the globe have so far been collecting very similar information from market participants in their respective jurisdictions, however in many instances they required different data standards (e.g. business definitions, codes and technical formats). On the one hand, this has resulted in high compliance costs for global market participants; on the other hand, it has created challenges for authorities in understanding the information reported to them and supervising those firms. The international regulatory community has recently shown that global harmonisation of data standards is possible through the development and implementation of the ISO 17442 Legal Entity Identifier (LEI). Ensuring further consistency in legal requirements and in reporting requirements across jurisdictions would bring high benefits for both reporting entities and the regulatory community.

115. In order to further ensure consistency across various reporting requirements, it would be beneficial if the respective EU sectoral legislations on reporting explicitly referred to existing international data standards such as LEI, ISO 10962 Classification of Financial Instruments (CFI), ISO 6166 International Securities Identification Number (ISIN), and the future ones envisaged in global guidance.

116. When reviewing the EMIR technical standards on reporting³⁹, ESMA has leveraged on the opportunity of the review to align, to the extent feasible, the reporting requirements in the EU with the global guidance in order to foster the data harmonisation and facilitate the reporting to the entities that must comply also with the reporting requirements in other jurisdiction(s). In particular, ESMA has taken into account the international developments of global data standards such as the global guidance regarding the definition, format and usage of key OTC derivatives data elements reported to TRs, including the Unique Transaction Identifier (UTI), the Unique Product Identifier (UPI) and other critical data elements⁴⁰. In addition, the FSB has recently published⁴¹ a report on the governance arrangements on a Unique Product Identifier for those financial instruments traded OTC and not admitted to trading or traded on trading venues.
117. Considering all the data elements envisaged in the new global guidance, ESMA acknowledges that the specific one related to UTI was designed to work for the purpose of TR reporting as it facilitates the pairing and reconciliation process among trade repositories. Given that this function is not relevant for MiFIR reporting purposes, the guidance contains elements that are specific to TR reporting. For example, it considers post-trade events, it gives priority to CCPs when defining the UTI generation responsibility and is envisaged to work for reporting at both transaction and position level. For all these reasons and given that this data element is not foreseen under the current MiFIR reporting regime, ESMA preliminary view is that this data element should not be considered because it is not relevant for MiFIR reporting purposes.
118. However, ESMA believes that there may be merits in considering the application of the other aspects of the global guidance: the Unique Product Identifier (UPI) and other critical data elements, where relevant for MiFIR reporting. Initially developed within the context of TR reporting, some of the critical data elements are also required to be reported under MiFIR.
119. Regarding the reference to global UPI, in April 2019, the FSB designated the Derivatives Service Bureau (DSB) as the service provider for the future UPI system and decided that DSB will perform the function of the sole issuer of UPI codes as well as operator of the UPI reference data library⁴². DSB is a subsidiary of the Association of National Numbering Agencies (ANNA) and generates ISINs for derivatives reported under MiFIR. It is ESMA's understanding that the framework established for ISINs allocation to financial instruments under MiFIR can be leveraged for the purpose of

³⁹ Consultation Paper on Technical Standards on Reporting, Data Quality, Data Access and Registration of Trade Repositories under EMIR Refit, available on ESMA's website: <https://www.esma.europa.eu/press-news/consultations/technical-standards-reporting-data-quality-data-access-and-registration>

⁴⁰ CPMI-IOSCO Technical Guidance on Harmonisation of critical OTC derivatives data elements (other than UTI and UPI): <https://www.bis.org/cpmi/publ/d175.pdf>, CPMI-IOSCO Technical Guidance on the Harmonisation of the Unique Product Identifier (UPI): <https://www.bis.org/cpmi/publ/d169.pdf>, CPMI-IOSCO Technical Guidance on the Harmonisation of the Unique Transaction Identifier (UTI): <https://www.bis.org/cpmi/publ/d158.pdf>.

⁴¹ October 2019: <https://www.fsb.org/2019/10/fsb-publishes-upi-governance-arrangements/>

⁴² For further information refer to: <https://www.fsb.org/2019/05/fsb-designates-dsb-as-unique-product-identifier-upi-service-provider/>.

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assignment of UPIs for OTC derivatives. Accordingly, ESMA proposals in the review of the EMIR technical standards on reporting assume that the implementation of the UPI under EMIR could in principle be consistent with the ISIN framework⁴³. In particular, in the case of realisation of a multi-level identifier hierarchy, the more granular level already used for MiFIR reporting could be retained for the purpose of identifying derivatives that are currently reported under MiFIR (in reports submitted to TRs) in order to ensure consistency of reporting under MiFIR and EMIR.

120. Taking the above into account, ESMA preliminary view is that the UPI could be considered as an alternative of the ISIN required in the transaction and reference data reports only in the event that the scope of MiFIR reporting was extended beyond ToTV instruments traded via an SI as recommended in section 4.1 of this CP. Importantly, ESMA considers that the choice of the ID to be used should not be left to the reporting entities. In order to ensure full alignment with the EMIR reporting requirements that are currently under review, the conditions under which UPI should be used instead of ISIN should be further determined by ESMA. However, ESMA acknowledges that these views are subject to the final implementation of the UPI.

Q30. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

Q31. Are there any specific aspects relating to the ISIN granularity reported in reference data which need to be addressed? Is the current precision and granularity of ISIN appropriate or is (for certain asset classes) a different granularity more appropriate?

11.2.2 Frequency and date of the reports

121. Successful implementation of any new reporting requirements can only take place if the industry is granted sufficient time to prepare for reporting under the new rules. Moreover, the industry can work efficiently on the implementation only once all the requirements, including any technical details thereof, are finalised. Too limited timelines as well as lack of detailed guidance and technical requirements make the implementation costly, inefficient and, often, close to impossible to be finalised in a correct and timely manner. These concerns were voiced by many respondents to the EC's Fitness Check. As highlighted in the report on results of the Fitness Check⁴⁴, longer_implementation timelines, starting from the finalisation of the detailed technical requirements, would decrease the reporting burden and enable companies to better comply with the new requirements.

⁴³ See paragraph 102 of the Consultation Paper on Technical Standards on Reporting, Data Quality, Data Access and Registration of Trade Repositories under EMIR Refit, available on ESMA's website: <https://www.esma.europa.eu/press-news/consultations/technical-standards-reporting-data-quality-data-access-and-registration>.

⁴⁴ Page 9 of the document available on the EC website: https://ec.europa.eu/info/sites/info/files/2017-supervisory-reporting-requirements-summary-report_en.pdf
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122. ESMA notes that the observations made in the above report are equally applicable to MiFIR reporting. Under the current MiFIR regime, the lack of sufficient lead-time for implementation was evidenced by the fact that the application date for MiFIR was postponed by one year. ESMA's main argument for supporting the delay was the complexity of the IT system needed for the intake and processing of the significant amount of data requested under the Regulation⁴⁵.

123. Comparing with the more recent empowerment in EMIR Refit and SFTR, ESMA proposes including into the MiFIR empowerments under Article 26 and 27 also the mandate to specify:

- g. "the frequency of the reports",
- h. "the date by which financial instrument reference data and transactions are to be reported";

11.2.3 Proposal for alignment of MiFIR empowerments with EMIR

124. Considering the analysis outlined in sections 11.2.1 and 11.2.2 above, ESMA proposes to leverage on existing empowerments included in EMIR Refit and SFTR, and aims to harmonize the wording of the empowerments, especially the obligation to take into account the international developments and standards:

Article 26(9)

125. ESMA considers that Article 26(9) of MiFIR should be amended as follows:

ESMA shall develop draft regulatory technical standards to specify:

(a) *data standards and formats for the information to be reported in accordance with paragraph 1 and 3, **which shall include at least the following:***

- (i) ***global legal entity identifiers (LEIs);***
- (ii) ***international securities identification numbers (ISINs)***
- (iii) ***international classification of financial instruments (CFI)***

(b) *methods and arrangements for reporting financial transactions and the form and content of such reports;*

(c) *the date by which transactions are to be reported and the frequency of reports*

⁴⁵https://www.esma.europa.eu/sites/default/files/library/esma-2015-1513_letter_sm_to_ec_-_implementation_timeline_mifid_mifir.pdf

In developing those draft implementing technical standards, ESMA shall take into account international developments and standards agreed upon at Union or global level, and their consistency with the reporting requirements laid down in Article 4 of Regulation (EU) 2015/2365 (*) and Article 9 of Regulation (EU) No 648/2012 Article 26 of Regulation (EU) No 600/2014".

[...]

Article 27(3)

126. ESMA considers that Article 27(3) of MiFIR should be amended as follows:

ESMA shall develop draft regulatory technical standards to specify:

(a) *data standards and formats for the financial instrument reference data in accordance with paragraph 1, **which shall include at least the following:***

(i) global legal entity identifiers (LEIs);

(ii) international securities identification numbers (ISINs);

(iii) International classification of financial instruments (CFI)

(b) *methods and arrangements for supplying the data and any update thereto to competent authorities and transmitting it to ESMA in accordance with paragraph 1, and the form and content of such data;*

(c) the date by which reference data are to be reported and the frequency of reports;

(d) *technical measures that are necessary in relation to the arrangements to be made by ESMA and the competent authorities pursuant to paragraph 2.*

In developing those draft regulatory technical standards, ESMA shall take into account international developments and standards agreed upon at Union or global level, and their consistency with the reporting requirements laid down in Article 4 of Regulation (EU) 2015/2365 and Article 9 of Regulation (EU) No 648/2012.

[...]

Q32. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

12. LEI of the issuer of the financial instrument

Analysis

127. Under the MiFIR and MAR TS on reference data, trading venues are obliged to identify each issuer of a financial instrument traded on their systems with an LEI when making daily data submission to the Financial Instruments Reference data System (FIRDS).
128. The LEI of the issuer allows for a unique and persistent identification of issuers of financial instruments. This identification is important to support NCAs in their market monitoring activities. The LEI of the issuer is also needed to support ESMA work on transparency as it allows for the identification of the underlying reference entity single name CDS and the issuers of the underlying bond of interest rate derivatives.
129. Finally, the reference data in the LEI database which comes with the LEI code is essential to determine which national authority is responsible for supervising relevant instruments such as bonds and related derivatives. For these instruments, MiFID II says that the responsible supervisor should be the one where the issuer is located even if the instrument is traded elsewhere. For example, where a bond issued by a French issuer is traded in Frankfurt, the NCA receiving the transaction data (Bafin) would need to transfer it to the NCA where the issuer is located (AMF). Given that the information about the location of the issuer is only available in the LEI database, the lack of an LEI for a given financial instrument would mean that it would not be possible to establish which authority is responsible for supervising that instrument.
130. While the obligation for EU investment firms to identify their clients with the LEI is enshrined in the MiFIR Level 1 framework, this is not the case for the LEI of issuers. Similar to the requirement for clients behind transactions in financial instruments under Article 26 of MiFIR, the use of the LEI to identify the issuer of the financial instrument should also be explicitly referred in Article 27 of MiFIR.
131. In addition to the above, since the start of reference data collection in January 2018, ESMA has observed that there is a general need to identify the fund manager when collecting reference data on funds. ESMA is therefore considering the necessary legislative changes required to accommodate for the inclusion of the LEI of the fund manager in the reporting requirements as specified in RTS 23.

Proposals:

132. The text of the amended third paragraph of Article 27(1) of MiFIR should read as follows:

*Identifying reference data shall be made ready for submission to the competent authority in an electronic and standardised format before trading commences in the financial instrument that it refers to. **In reporting the designation to identify the***

issuer, trading venues and SIs shall use a legal entity identifier established to identify issuers that are legal entities. Issuers of financial instruments shall provide their legal entity identifier to the trading venues or Systematic Internalisers where their instruments are traded or admitted to trading.

Q33. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

13. Annex

Summary of questions

Q1. Do you foresee any challenges for UCITS management companies and AIF managers in providing transaction reports to NCAs? If yes, please explain and provide alternative proposals.

Q2. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

Q3. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

Q4. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

Q5. Do you envisage any challenges in increasing the scope including derivative instruments traded through an SI as an alternative to the expanded ToTV concept? Please justify your position and if you disagree please suggest alternatives.

Q6. Do you agree that the extension should include all Systematic Internalisers regardless of whether they are SI on a mandatory or voluntary basis? Please justify your position.

Q7. Do you envisage any challenges with the approach described in paragraphs 45-46 on the scope of transactions to be covered by the extension? Please justify your position and indicate your preferred option for SIs under the mandatory regime explaining for which reasons. If you disagree with all of the outlined options, please suggest alternatives.

Q8. Do you foresee any challenges with the proposal to replace the reference to the term “index” in Article 26(2)(c) with the term “benchmark” as defined under the BMR? If yes, please explain and provide alternative proposals.

Q9. Which of the three options described do you consider the most appropriate? Please explain for which reasons and specify the advantages and disadvantages of the outlined options. If you disagree with all of the outlined please suggest alternatives.

Q10. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

Q11. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

Q12. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

Q13. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

Q14. Did you experience any difficulties with the application of the defined list concept? If yes, please explain.

Q15. Do you foresee any challenges with the approach as outlined in the above proposal? If yes, please explain and provide alternative proposals.

Q16. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

Q17. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

Q18. Do you foresee any challenges with the approach outlined in paragraphs 75 and 76? If yes, please explain and provide alternative proposals.

Q19. Do you foresee any difficulties with the implementation of an additional code generated by the trading venue to be disseminated down the transaction chain in order to link all transactions pertaining to the same execution? If yes, please explain and provide alternative proposals.

Q20. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

Q21. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

Q22. Which of the two approaches do you consider the most appropriate? Please explain for which reasons.

Q23. Do you foresee any challenges with the outlined approaches? If yes, please explain and provide alternative proposals.

Q24. Do you foresee any challenges with the outlined approach to pre-trade waivers? If yes, please explain and provide alternative proposals.

Q25. Have you experienced any difficulties with providing the information relating to the indicators mentioned in this section? If yes, please explain and provide proposals on how to improve the quality of the information required.

Q26. Do you foresee any challenges with this proposal? If yes, please explain and provide alternative proposals.

Q27. Do you agree with this approach? If not, please clarify your concerns and propose alternative solutions

Q28. Do you agree with this analysis? If not, please clarify your concerns and propose alternative solutions.

Q29. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

Q30. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

Q31. Are there any specific aspects relating to the ISIN granularity reported in reference data which need to be addressed? Is the current precision and granularity of ISIN appropriate or is (for certain asset classes) a different granularity more appropriate?

Q32. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

Q33. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.