

ESMA call for evidence on comprehensive approach for the simplification of financial transaction reporting

A Eurelectric response paper

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We cover the entire industry from electricity generation and markets to distribution networks and customer issues. We also have affiliates active on several other continents and business associates from a wide variety of sectors with a direct interest in the electricity industry.

We stand for

The vision of the European power sector is to enable and sustain:

- A vibrant competitive European economy, reliably powered by clean, carbon-neutral energy
- A smart, energy efficient and truly sustainable society for all citizens of Europe

We are committed to lead a cost-effective energy transition by:

investing in clean power generation and transition-enabling solutions, to reduce emissions and actively pursue efforts to become carbon-neutral well before mid-century, taking into account different starting points and commercial availability of key transition technologies;

transforming the energy system to make it more responsive, resilient and efficient. This includes increased use of renewable energy, digitalisation, demand side response and reinforcement of grids so they can function as platforms and enablers for customers, cities and communities;

accelerating the energy transition in other economic sectors by offering competitive electricity as a transformation tool for transport, heating and industry;

embedding sustainability in all parts of our value chain and take measures to support the transformation of existing assets towards a zero carbon society;

innovating to discover the cutting-edge business models and develop the breakthrough technologies that are indispensable to allow our industry to lead this transition.

Dépôt légal:

ESMA public consultation on comprehensive approach for the simplification of financial transaction reporting

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KEY MESSAGES

- Before designing any new proposal, the rationale and objectives for requesting the current extensive amount of data should be thoroughly assessed
- Particularly, if a new reporting regime is proposed, it should be final and stable as changes are the main cost driver
- The reporting responsibilities assigned to the various parties should be always clear, ideally based on the principle that ETD-reporting responsibilities sit with trading venues/CCPs/clearing banks and OTC-reporting responsibilities sit with investment firms. Wherefore noninvestment firms would only be responsible for bilateral transactions with another one (possibly in a well-defined one-sided manner)
- In keeping with these considerations, the preference goes to Option 1a
- Option 1b should be discarded as it would risk requiring new obligations and costly system adjustments for noninvestment firms under MiFIR
- Though having a larger harmonization potential than Option 1a in the long term, Option 2a is riskier as it would bring more complexity while also undermining the clarity of reporting responsibilities
- Option 2b should also be discarded as it carries the same drawbacks of Option 2a, without in turn harmonization potential as it would disrupt the clear scope distinction between financial regulation and REMIT (which should be maintained)
- Reporting timelines should also be reviewed, for example eliminating daily reporting, to support market-surveillance needs without overburdening market participants

Call for evidence on a comprehensive approach for the simplification of financial transaction reporting

Q1: Do stakeholders agree with the description of the key challenges outlined above? Is there any other issue linked to multiple regulatory regimes with duplicative or inconsistent requirements that is not reflected in this section? Out of the 9 sources of costs identified in this section and the ones that you may add, what are the three main cost drivers in your view?

We overall agree with the challenges identified by ESMA. Before commenting on them specifically, we also highlight the overarching issue and cost driver of the extension of the data points required in transaction reporting.

Especially the current EMIR reporting framework includes a heavily granular and burdensome number of data fields, which add complexity without necessarily contributing to supervisory effectiveness. Additionally, the reporting deadline under EMIR is extremely tight, leaving limited time to validate and reconcile data, which increases the risk of errors. A more proportionate approach to data fields and reporting timeline would significantly enhance the efficiency and reliability of the reporting process.

Hence, as a prerequisite for the design and proposal of new reporting options, we call for a thorough assessment of the rationale for requesting the data currently provided by market participants. This rationale may, then, inspire the new proposal.

Against this backdrop, the three main cost-driving challenges are as follows.

Frequent regulatory changes: the considerable time and resources absorbed by the adaptation to frequently revised regulatory requirements could be mitigated by a more structural and coordinated approach. This notwithstanding, this also means that any future revision should be undertaken only upon a robust and forward-looking design so that the new regime would be stable (namely, avoiding new adjustments afterwards).

Different reporting channels across frameworks: the multitude of reporting channels and logics among MiFIR, MiFID and EMIR (and SFTR in some instances) creates complexity and inefficiencies for market players. Most notably, it requires them to build and maintain multiple systems and processes to comply on all fronts. For instance, ETD reporting is branched across EMIR, MiFIR and MiFID. Position-level, required in addition to transaction-level data, should also be harmonized across channels for noninvestment firms as different trading venues require data with different format, content and transmission protocols. More fundamentally, the provision of position-level requirements seems unwarranted for noninvestment firms as position information is generally retrievable through trading venues from the underlying transactions. Though not strictly linked to the existence of different frameworks, dual-sided reporting implies another form of duplication. However, as we point out in Q22, dual-sided reporting should be revised carefully to avoid even more burden from substitute measures. Please

note that REMIT is not part of these considerations since it has its own specificities, and thus correctly deserves a separate treatment from financial regulations.

Different terminology and definitions within different reporting regimes: the more divergent the definitions are, the more complex their implementation becomes. Ideally, these definitions should be harmonized. For example, the term OTC carries different meanings under EMIR and MiFIR: under EMIR, an OTC derivative is defined in Article 2(7) as a derivative contract not executed on a regulated market (within the meaning of Article 4(1)(14) of MiFID I) or on a third-country market considered equivalent, whereby the scope of OTC also includes trades on MTFs and OTFs; under MiFIR, the term 'OTC' is used in contrast to the concept of instruments traded on a trading venue, meaning MTFs and OTFs are excluded in this case.

Q2 Do stakeholders agree with the proposed principles and related description? Is there any other aspect/principle that should be considered?

We overall agree with the proposed principles and related description.

In particular, we find balancing costs and benefits the most critical principle. In this regard, we emphasize that any additional review should be designed in a robust and forward-looking manner so as to avoid further changes after its rollout. Otherwise, the challenge of frequent regulatory changes and lack of flexibility highlighted by ESMA would be further aggravated. It would also create hardly sustainable burden for market participants, which are still undergoing cost-intensive investments as a result of recent regulatory updates (EMIR REFIT and REMIT II).

Once the above principle has been secured, any future review should be driven by the further principles of decreasing overlaps and ensuring global alignment. Duplicate reduction should focus on the existing financial reporting frameworks. Opportunities of common and standardized formats across financial reporting frameworks should also be considered.

Preserving information scope is also a valuable principle, in keeping with which we call on ESMA to limit its current review to reporting frameworks that are within its scope of activity. Reporting frameworks with very sector-specific features, such as REMIT, should not be included as they (i) can be hardly combined with other streams and (ii) do not currently exhibit reporting overlaps with other regulations.

In addition to ESMA's principle, an overarching one, especially from the perspective of noninvestment firm, should be that the reporting responsibilities be clearly defined. This can be achieved by: placing the responsibility of ETD reporting on trading venues/CCPs/clearing banks, including positions, without unnecessary involvement of the counterparties; placing the responsibility of reporting OTC transactions on investment firms when they trade with a noninvestment firm; establishing clear rules for allocating reporting responsibility in transactions between two noninvestment firms.

Q3: What are the key advantages of Option 1a and how do these benefits address the issues in section 3?

As a general premise across all options, any proposal would produce costs for all the impacted entities and should be hence cautiously assessed against the cost-benefit principle of Q2. Furthermore, we can assess any proposal accurately only once it will be further detailed, especially as to which entities are required to report the relevant information and hence held accountable for the data provided.

Specifically regarding Option 1a, we agree with the advantages highlighted by ESMA

Q4: What are the key limitations and potential risks of Option 1a? For example, do you consider the adaptation of the EMIR template to cover the data points used for market abuse surveillance as meeting the general objective of reducing the reporting burden, and why?

To avoid compromising the advantages of Option 1a, the delineation should not result in additional reporting requirements to noninvestment firms about OTC data.

Q5: What components are missing or not adequately addressed in Option 1a? Why are these elements important, and how might their inclusion change the evaluation or implementation of Option 1a?

As mentioned in Q2, it is fundamental to clarify reporting responsibilities to the different entities under the different frameworks. Specifically, reporting responsibility of ETD should be on trading venues/CCPs/clearing banks, and reporting responsibility of OTC should be principally on investment firms (hence minimized for noninvestment firms). Lack of clarity on responsibility would significantly impact the feasibility evaluation and implementation of the option at hand.

Q6: What are the key advantages of Option 1b and how do these benefits address the issues in section 3?

While generally understanding the key advantages highlighted by ESMA, we see this option more complex and with less advantages than Option 1a, and is hence outranked by it.

Q7: What are the key limitations and potential risks of Option 1b?

Besides being more complex, Option 1b also has a less clear rationale than Option 1a, which is more consistent with inner EMIR focus on OTC derivatives.

Furthermore, it would lead to new burden and costs for noninvestment firms, which would have to devise new processes and systems to adapt OTC reporting from EMIR to MiFIR.

Q8: What components are missing or not adequately addressed in Option 1b? Why are these elements important, and how might their inclusion change the evaluation or implementation of Option 1b?

As previously highlighted, it is most important to clarify the reporting responsibilities. In Option 1b, we see the risk that noninvestment firms become subject to new obligations under MiFIR.

Q9: What are the key advantages of Option 2a and how do these benefits address the issues in section 3?

We agree with ESMA that Option 2a may, potentially, foster simplification and harmonization eventually. However, this potential crucially depends on clear and proportionate reporting responsibilities.

In keeping with previous considerations, even more relevant here, it is recommended that responsibilities of ETD and OTC are kept with trading venues/CCPs/clearing banks and investment firms, respectively.

It should be also noted that, while the advantages of Option 2a are potential, it implies a real implementation effort. Therefore, if further pursued by ESMA, this option should be designed with particular caution and forward-looking approach.

Q10: What are the key limitations and potential risks of Option 2a?

Limitations are related to clarity on the reporting responsibilities of noninvestment firms with respect to ETD and OTC derivatives, which should not be increased with respect to the current frameworks.

Risks are related to potential modifications to the existing reporting obligations and infrastructures for noninvestment firms, which could lead to a disproportionate implementation strain.

Q11: What components are missing or not adequately addressed in Option 2a? Why are these elements important, and how might their inclusion change the evaluation or implementation of Option 2a?

In general, again, the clarification of the exact reporting responsibilities for the various parties will be crucial.

About Option 2a, the proposal to merge current reporting systems should be designed in a way that (i) does not require new data from noninvestment firms and (i) does not result in data gaps, which would be addressed afterwards with new changes, requirements and costs for market participants.

To achieve that, the centralized data hub should use EMIR's extensive amount of information. Such scope is already a tight barrier against data gaps as it was updated in 2024 bringing the total of fields to 204.

Along with the new fields, the ISO 20022 standard was adopted, meaning that all EMIR reports must now be submitted using a standardized XML structure. Additionally, the Unique Product Identifier was introduced as a new mandatory identifier for derivative products. This is an example of a profound adjustment of reporting systems undergone by market participants, which should be leveraged, not rehauled.

Q12. What are the key advantages of Option 2b and how do these benefits address the issues in section 3? What regimes should be included in such an option beyond EMIR, MIFIR and SFTR?

Option 2b appears to be largely the most complicated. It also poses concerns of unwarranted scope overlap between clearly defined frameworks. Also based on the considerations in Q13, we deem it should be deprioritized by ESMA.

Q13. What are the key limitations and potential risks of Option 2b?

Option 2b would entail very high complexity and implementation costs. Furthermore, financial markets and wholesale energy markets have their own specificities, as demonstrated by the fact that they have separate sectorial regulations under their respective sectorial regulators. Where therefore see risks in aggregating information of a very broad and differentiated nature. This would result in excessively wide and confusing reporting content, especially as REMIT requires six different tables about the various types of wholesale energy products (which cover not only gas and power commodities, but also the related capacity and storage contracts). On one hand, these tables are instrumental for National Regulatory Authorities and ACER to carry out market surveillance. On the other hand, they have little overlap with financial regulation due to the structural differences between financial markets and wholesale energy markets. While REMIT and MAR may have the same objectives, the markets to which they apply

are profoundly different and must therefore be read and interpreted accordingly. In this case, merging would lead to complexity instead of simplification.

In addition, the unclarity about the reporting responsibilities on ETD and OTC would have to be sorted out in a way that does not result in new requirements for noninvestment firms.

We therefore call on ESMA to focus on the potential overlaps and reporting-responsibilities clarifications within financial regulation. From the point of view of the reporting parties, REMIT does not pose any problem in terms of reporting overlaps, as it clearly establishes the principle that information on any transaction already reported under EMIR must be retrieved by ACER directly from the TRs, without further actions required by market participants.

Q14. What components are missing or not adequately addressed in Option 2b? Why are these elements important, and how might their inclusion change the evaluation or implementation of Option 2b?

While Option 2b should be discarded based on the reply to Q13, one element that may be considered in the design of a new option is the alignment of MiFIR and EMIR reporting deadlines with those of nonstandard contracts under REMIT.

Q15. Which of the two main options (1. "Removal of duplication in current frameworks" or 2. "Report Once") and related sub-options identified do you believe should be prioritised, and why?

Although Option 2a might potentially lead to higher harmonization in the long term, its remarkable complexity and implementation costs make it less preferable than Option 1a.

Hence, Option 1a should be prioritized, as it would reduce overlapping information with an acceptable workload.

Suboptions (b) should be discarded in both options 1 and 2, as they are outranked due to both their higher complexity and risks.

Q16. Are there any additional options that should be considered on top of option 1 and 2? For example, do you identify other potential intermediate solutions, combinations of elements from the identified options, or phased approaches? If so, what are their main characteristics, the reasons for considering them, and the key advantages they would bring?

Option 1a is satisfactory already.

Q17. Should the reporting channels, and flows be modified to ensure consistent reporting, and if so, how? Under which option/s do you consider these changes should be implemented?

Option 1a is preferred as it would make reporting more consistent, without introducing new requirements to noninvestment firms. This should be maintained in any design of reporting flows.

Q18. In this regard, and based on the current order book requirements for trading venues and the availability of information, what are the advantages and disadvantages of transferring the reporting of on-venue transactions under MiFIR and EMIR to trading venues?

Having trading venues responsible for ETD reporting is the most efficient solution, as they possess the best information to perform accurate reporting for ETD operations. Limiting the number of entities responsible for reporting to a unique subject also streamlines the whole process and reduces complexity.

Q19. Additionally, what are your views on enhancing ESMA role as data hub by developing a framework where entities would report consistent and harmonised data directly to ESMA? Should this option consider direct reporting to ESMA coupled with EU and national authorities' access to the centrally held data, eliminating multiple submissions?

While a centralization of reporting data may lead to increased harmonization, we deem it fundamental that it would be designed paying attention to risky drawbacks.

The centralized data hub should be managed by regulators post-collection, aiming not to introduce additional data requirement to reporting parties (which, especially after the recent EMIR review, are very extensive) and in any case minimize the implementation and operational costs of any new system.

Moreover, the centralization should not involve other frameworks than financial regulation (eg, not involve REMIT), or the benefits of harmonization would be compromised by the infeasible merger of markets with structurally different logics.

Q20. In the case of centralisation of reporting, please expand on the advantages and disadvantages as well as the implementation challenges and opportunities? Under this scenario, what additional elements should be considered (i.e. operational aspect, technical implementation, etc.)

The potential benefits and the open challenges of data centralization have been covered in Q19.

Q21. Do you consider that other technologies (e.g. DLT and smart contracts) should be considered as a way to simplify the reporting process?

In principle, Distributed Ledger Technology (DLT) and smart contracts have the potential to streamline the reporting process, particularly from the perspective of developers and IT infrastructure. They can enhance automation, data integrity, and back-end transparency.

However, from the end-user's point of view, especially in the energy sector, the reporting processes implemented by companies are already highly automated, with minimal human intervention in the actual data reporting. Introducing DLT would primarily impact the underlying software architecture and data handling processes, rather than the user interface or overall user experience. As a result, while technology could offer backend improvements, the visible changes for users would likely be limited.

Q22. Where do you think the cost associated with dual-sided reporting is generated? What would be the cost impact of removing dual-sided reporting (e.g. substituting reconciliation requirements with other measures such as audits against internal record systems as required in the U.S. or increase interaction among counterparties and NCAs)? Do you consider that dual sided reporting may reduce the ability of reporting entities to fully control the data submitted to authorities? Do you consider that the reporting should be strictly from one side?

Dual-sided reporting is a significant source of costs for counterparties. Apart from the recent investments to reinforce reconciliation activity following EMIR REFIT, there are also significant operational costs associated with this process. Reconciliation activity can be very time-consuming as the very broad and detailed content of EMIR reporting leads to frequent discrepancies.

We therefore support in principle a revision aimed at limiting the reporting submission to one side of the transaction only, also considering no equivalent requirement exists in other jurisdictions.

In practice, however, the removal of dual-sided reporting would be effectively beneficial only if not replaced by alternative measures that eventually prove more complicated, unclear and burdensome.

Q23. Would you consider the modification of reporting frequency useful under the general objective of reducing the reporting burden, and why? What would be the specific proposals in this regard?

Yes, we would welcome an elimination of daily reporting, as it would give companies more time to report. This burden reduction would be especially justified in the recognition that it may not be essential for the regulator to receive the information as early as the next day.

Q24. Proportionality measures: How do you consider proportionality can be taken into account in the context of burden reduction in regulatory reporting? What specific measures would you propose and how would you quantify their impact?

As previously highlighted as a fundamental guiding principle, any review of the existing requirements should not result in new and disproportionate burden for reporting counterparties.

In particular, reporting responsibilities on ETD and OTC should be assigned to trading venues/CCPs/clearing banks and investment firms, respectively, with noninvestment firms possibly held responsible only for bilateral transactions with another one (ideally with one responsible party only, if this can be achieved without additional complication and obligations).

The rationalization of required reporting fields for noninvestment firms and small financial companies would also increase efficiency, provided it would be realized in a robust and forward-looking way not resulting in reintroducing requirements after the review.

Q25. Question for reporting entities under EMIR: What is the one-off cost of implementing EMIR requirements to date? This cost should include all cost lines, such as familiarisation with obligations, staff recruitment, training, legal advice, consultancy fees, project management and investment/updating in IT. Do you identify any other relevant one-off cost line?

Reporting requirements on transaction and position data inevitably imply very remarkable implementation and operational costs. Nevertheless, with regard to the options proposed by ESMA, such cost-benefit analyses (which would be costly themselves) are not deemed necessary as the response to the proposed options has been logic-driven rather than cost-driven.

Q26. Question for reporting entities under EMIR: What is your estimated average cost per transaction (on-going cost) to comply with the reporting requirements under EMIR? This cost should include not only the fees associated with reporting through Trade Repositories (which usually includes data collection and information storage) but also the total cost, including any other cost lines, such as, IT maintenance and support, training, data processing and audit fees. Do you identify any other relevant ongoing cost line?

See overarching reply to Q25.

Q27. Question for reporting entities under MiFIR: What is the one-off cost of implementing MiFIR requirements to date? This cost should include all cost lines, such as familiarisation with obligations, staff recruitment, training, legal advice, consultancy fees, project management and investment/updating in IT. Do you identify any other relevant one-off cost line?

See overarching reply to Q25.

Q28. Question for reporting entities under MiFIR: What is your estimated average cost per transaction (on-going cost) to comply with the reporting requirements under MiFIR? This cost should include not only the fees associated with reporting through Approved Reported Mechanisms but also the total cost, including any other cost lines, such as, IT maintenance and support, training, data processing and audit fees. Do you identify any other relevant ongoing cost line?

See overarching reply to Q25.

Q29. Question for reporting entities under EMIR or MiFIR: Are there other cost- factors that we should consider when estimating the cost saving over a long term horizon?

See overarching reply to Q25.

Q30. What are the anticipated investments and transition costs associated with implementing option 1a, 1b, 2a and 2b (e.g. decommissioning of legacy systems, adapting systems to new changes and future evolving requirements, etc.)? Please provide a detailed breakdown of these costs, including any one- off and ongoing expenses. What is the estimated average cost saving per transaction?

See overarching reply to Q25.



