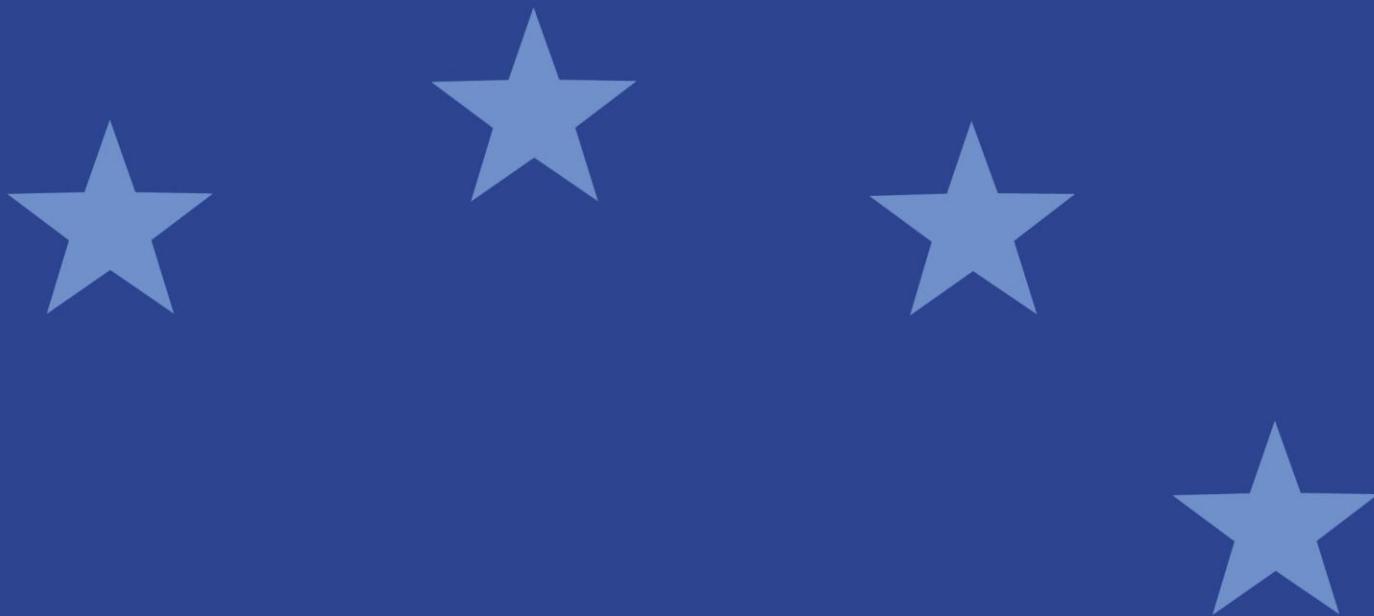


# Final Report

**Peer review into supervisory actions aiming at enhancing the quality of data reported under EMIR**



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## List of Terms and Acronyms

AG	Assessment Group
AMF	Autoriteit Financiële Markten
AMF	Autorité des Marchés Financiers
Art.	Article
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht
BoS	Board of Supervisors
CBol	Central Bank of Ireland
CCP	Central Counterparty
CP	Counterparty
DQR	Data Quality Review
DQAP	Data Quality Action Plan
EEA	European Economic Area
ESA	European Supervisory Authority
ESMA	European Securities and Markets Authority
ESMA Regulation	Regulation (EU) 2010/1095 of the European Parliament and of the Council of 24 November 2010
EU	European Union
FCA	Financial Conduct Authority
Methodology	ESMA Peer Review Methodology (ESMA42-111-4661)
MS	Member State
NCA	National Competent Authority
OTC	Over the Counter
Q&As	Questions and Answers
SMSG	Securities and Markets Stakeholders Group
TR	Trade Repository

## 1 Background

1. Since 12 February 2014, all counterparties established in the European Union by virtue of the European Market Infrastructure Regulation (EMIR) have been required to report details of any derivative contract they have concluded, modified or terminated, to a registered Trade Repository (TR).
2. These reporting obligations are extensive in that they apply to all derivative transactions (both over the counter and exchange-traded and cleared and non-cleared) of all asset classes. All derivative contracts should be reported to one of the seven registered TRs supervised by ESMA. Reporting can either be made directly by a counterparty to a TR or delegated using a reporting submitting entity as agent of a counterparty. The reporting requirements were amended by Commission Delegated Regulation (EU) 2017/104 which came into effect on 1 November 2017.
3. One of the many objectives of EMIR is to aim to reduce and identify systemic and counterparty risk, and help prevent future financial system collapse by providing regulators with accurate, up-to-date and meaningful information on risk from derivatives positions by requiring all derivatives to be reported to a TR.
4. This objective is achieved when high quality data is reported by counterparties to TRs. To assist with the objective of improving the quality of data reported under EMIR, in 2014 ESMA launched the Data Quality Action Plan (DQAP). The DQAP aims at improving quality and usability of data that is reported to and by the TRs through specific targeted objectives set for NCAs and ESMA. It is a useful supervisory tool, which enables the NCAs to compare the specific data quality indicators computed for their supervised entities with the ones of the counterparties based in other jurisdictions. Furthermore, it allows to identify cross-border issues which might point to a need for more comprehensive common guidance. Each NCA selects different reporting counterparties for the testing of data quality indicators related to rejection rates, reconciliation related attributes (including accuracy, consistency and also timeliness), and counterparties for testing the overall accuracy and completeness of reporting.
5. While progress has been made with the DQAP, difficulties remain. Therefore, the Board of Supervisors (BoS) decided through the Supervisory Convergence Work Programme for 2018 to conduct a peer review on supervisory actions aiming at enhancing the quality of data reported under EMIR.
6. ESMA itself has an important role to play in improving data quality. This derives from the fact that it is both a regulatory body and direct supervisor of TRs. While it is not a Peer under Article 30 of Regulation 1095/2010, it was decided to include ESMA within the exercise as only common efforts by ESMA and the NCAs can achieve an efficiently functioning reporting framework in the EU.

7. This is a targeted peer review. This means that the BoS decided to assess a selection of NCAs. The selection is based on two objective criteria namely the (i) the data quality of outstanding derivative contracts as expressed by the share of non-compliant reports under the reporting requirements in force during the review period, and (ii) the significance of the derivative market size of the jurisdiction assessed through the number of outstanding positions.
8. Based on information reported by TRs to ESMA in June 2018, the top six jurisdictions in terms of both sets of criteria, in descending order were: UK, CY, NL, DE, IE and FR. As noted above ESMA is also included in its role as direct supervisor of TRs.
9. It is acknowledged that EMIR is one of the first post financial-crisis pieces of legislation and introduced to fill a regulatory gap, amongst others, with the oversight of over-the-counter derivative (OTC) and exchange-traded derivative (ETD) contracts. It introduced a new reporting regime with a significant numbers of fields to be reported.
10. Therefore, one of the important expectations of this peer review is that NCAs have identified and developed an appropriate supervisory model based on the underlying jurisdiction's size, scale and complexity to ensure that counterparties adhere to all their reporting obligations under EMIR and comply with this complex reporting regime.
11. The peer review assessed NCAs in the following areas: NCAs' general supervisory approach to EMIR data quality, integration of EMIR into NCAs' overall supervisory approach, NCAs' access, assessment and analysis of data.
12. Similar to the approach taken for NCAs the peer review assessed ESMA in the following areas: ESMA's supervisory approach to EMIR data quality, integration of EMIR into ESMA's overall supervisory approach, ESMA's access, assessment and analysis of data held by TRs in order to perform supervision of TRs.
13. The peer review is fully aware of the complexity of the reporting regime and of the difficulties that counterparties and TRs, on one side, and NCAs and ESMA, on the other side, are facing to respectively implement and carry out appropriate supervision of EMIR data quality. The peer review is fully aware that the supervision of EMIR data quality is a journey not a destination and it believes that at this stage NCAs are likely to be at the intermediate stage of data quality supervision of EMIR. Therefore, this peer review report sets out several potential short term and long-term supervisory actions that should be considered further to improve the quality of data reported under EMIR. These initiatives are explored within Chapter 3 of this report. This peer review report highlights these actions as relevant for all NCAs and not just the six NCAs assessed within this exercise.

## Process of the Peer Review

14. The Assessment Group (AG) developed a self-assessment questionnaire<sup>1</sup> to be completed by the six NCAs and a separate questionnaire for ESMA to complete. The AG consulted the Supervisory Convergence Standing Committee (SCSC) on the two questionnaires. Both questionnaires overlap but discuss different areas due to the different roles and tasks NCAs and ESMA perform. To complement the analysis of the answers to the questionnaires provided by the NCAs and ESMA, the AG carried out on-site visits to all six NCAs and ESMA.
15. The questionnaire completed by the six NCAs and the questionnaire completed by ESMA are in the annex of this report.
16. Before the on-site visits, the six NCAs and ESMA were asked to provide background information on policies and procedures relating to supervisory actions to enhance the quality of data reported under EMIR, details on the size of the respective derivatives market in their jurisdiction, evidence of a basic supervisory framework in place, organisational charts, internal documentation relevant to the NCAs participation in the Data Quality Review for 2017 and 2018, logs of correspondence between NCA and counterparties, details of interactions with other NCAs or third parties on EMIR data quality.
17. During the onsite visit programme, the peer review met with stakeholders in each country that was visited. This outreach exercise was facilitated by each Authority visited for which the peer review is thankful. In total the peer review met 13 stakeholders. Three central banks, one TR, one significant international NFC, seven financial counterparties: four G-SIBs, two investment firms and one investment fund. The peer review also met a CCP. This outreach to stakeholders was undertaken in order to complement the exercise and to understand more about the practical effects of reporting under EMIR and importantly to understand the outreach and level of interaction with and between the relevant Authority.
18. The period under review is from 1 January 2017 to 31 December 2018.

## Assessment criteria

19. It is important to highlight that in terms of responsibilities under EMIR, while the reporting obligations fall on counterparties and TRs, EMIR provides NCAs with latitude on how to supervise counterparties. Therefore, the expectations in terms of supervisory actions to enhance the quality of data under EMIR were set out upfront in the questionnaire<sup>2</sup>. These expectations were based on the peer review's expertise and practical experience of supervision of EMIR provisions and knowledge of the objectives set in the Level 1 and 2 provisions of EMIR and their corresponding RTSs and ITSs in ensuring that the quality of data is complete, accurate, consistent and not duplicated.

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<sup>1</sup> Cf. Annex 2.

<sup>2</sup> The questionnaires are contained in Annex 2 of this report.

20. A summary table of NCAs and ESMA's compliance level per topic is set out in the executive findings section of this report.
21. The approach taken by the peer review in reaching an assessment of compliance in each topic is as follows: each assessment area contains a number of individual assessment criteria. The peer review assessed each individual criteria against the benchmark of whether the individual supervisory action is satisfactory, sufficient, insufficient or deficient.
22. Deficient in this context means the NCA is only adhering to ESMA's DQR and performing limited additional checks, insufficient means the NCA is doing more than the DQR but not doing enough to meet the peer review's expectations in relation to EMIR data quality, sufficient means the NCA is broadly meeting the peer review's expectations in relation to EMIR data quality and satisfactory means the NCA is meeting the peer review's expectations in respect of EMIR data quality.
23. Thereafter, the peer review made a qualitative assessment using these four categories as an input into determining whether an NCA is likely to be fully meeting the peer review's expectations, broadly meeting the peer review's expectations, partially meeting the peer review's expectations or not meeting the peer review's expectations.
24. It is worth noting that if, as a result of the assessment of the sufficiency of the supervisory actions the approach of an NCA is deemed to be either deficient or insufficient in a given category then it will be considered as "not meeting the peer review's expectations". In case an NCA is considered to be sufficient and insufficient on a similar number of areas, then it will be considered as "partially meeting the peer review's expectations". Moreover, if an NCA is considered as predominantly sufficient, with no or one insufficient or deficient, then it will be rated as "broadly meeting the peer review's expectations". If it is assessed as predominantly satisfactory then it will be considered as "fully meeting the peer review's expectations". The above grades are also weighted as per their relevance in a given group of assessment criteria. Within the first assessment area – NCAs supervisory approach to EMIR data quality – the peer review took a holistic approach to the various interpretations by the six NCAs to supervising EMIR data quality. For more details on these equivalences, please refer to the tables in the Executive Summary.
25. If an NCA is assessed as "not meeting the peer review's expectations" that does not correlate to the authority being in breach of EMIR. It means that based on the peer review's experience, expertise and knowledge the NCA did not meet the supervisory expectations of the peer review. Similarly, if an NCA is determined as "fully meeting the peer review's expectations" in an area that does not mean that an NCA is undertaking every supervisory action needed to enhance the quality of data reported under EMIR. It means that the NCA fully meets the AG's expectation in this area based on the AG's experience, expertise and knowledge. However, all NCAs should review at appropriate intervals their supervisory approach towards EMIR data quality and modify, enhance and calibrate when needed.



26. The AG has also replicated this same methodology in its approach to assessing ESMA's supervisory actions regarding its role as supervisor of TRs in enhancing the quality of data reported under EMIR.

## 2 Executive summary

27. The peer review presents a mixed picture of the six NCAs in each of the assessment areas. The peer review identifies that some NCAs have progressed further in terms of supervisory actions that aim to enhance the quality of data reported under EMIR. The peer review identifies and highlights in Chapter 3 the importance of having appropriate resources both in terms of IT and human capabilities. These are important resources to have in order for NCAs to bring their supervisory efforts to the expected level and ultimately to enhance the quality of data reported under EMIR.
28. While acknowledging that NCAs and ESMA must define a supervisory approach that is appropriate for the scale, size and complexity of the underlying markets they supervise, it is worth noting that the NCAs under review were selected notably due to the significance of the derivatives market size of their jurisdictions. It is also clear that NCAs and ESMA should be exceeding the DQR as this exercise is a one size fits all approach exercise that can be undertaken irrespective of whether NCAs supervise 100 counterparties or 10,000 counterparties in their domestic market. Additionally, the DQR is an exercise based on a limited sample of counterparties that is undertaken once a year.
29. The peer review identifies three NCAs [FR, IE, and NL] that are broadly meeting the peer review's expectations for NCAs regarding overall supervisory approaches to EMIR data quality. In addition to participating in the DQR these three NCAs either undertook onsite inspections [FR], thematic reviews [IE] or developed an internal methodology [NL] for data quality breaches by counterparties.
30. By contrast the peer review identifies three NCAs [CY, DE and UK] that appear to be at an earlier stage of the supervisory lifecycle in terms of supervising EMIR data quality. The peer review identifies one NCA [CY] participating in the DQR for the first time in 2018 and two NCAs [DE, UK], which while participating in the DQR in 2017 and 2018 only marginally exceed the DQR. The peer review identifies BaFin focusing its actions by undertaking basic data quality checks, following up on breaches identified by external auditors and undertaking occasional analysis of data quality. While positive developments, the peer review assessed the data quality checks to be less developed compared to some of its peers. The FCA took enforcement action against a counterparty in 2017. The peer review assesses this positively. Nevertheless, the FCA is identified as relying on the DQR as a large focus of its supervisory actions.
31. In terms of integration of EMIR into an NCA's overall supervisory approach the peer review identifies two NCAs [FR, IE] as fully meeting the peer review's expectation. One NCA broadly meeting [NL], one NCA partially meeting [DE] and two NCA's not meeting with the peer review's expectations [CY, UK]. The peer review identifies frequent use of EMIR data by the CBol and strong senior management engagement on EMIR issues including data quality. The AFM and AMF also make good use of the data. By contrast, the peer review identifies infrequent and irregular use of the data by BaFin and the FCA. However, within the BaFin the peer

review identifies senior management engagement on EMIR related issues. The peer review identifies in relation to CySEC an inadequate use of the data during the review period.

32. In respect of data access, analysis and assessment, the peer review identifies one NCA [NL] fully meeting the peer review's expectations, one NCA broadly meeting [IE], two NCAs [DE, FR] partially meeting and two NCAs not meeting with the peer review's expectations. The AFM has a comprehensive and ongoing approach to data quality checks. It applies 89 internal checks to detect data quality issues and uses a dashboard as a complementary tool to checking data quality. The CBoI accesses EMIR data on a daily basis and trade state reports are loaded to its internal database daily too. The AMF focuses most of its analysis on OTC trades and less so on ETDs under EMIR. The peer review identified BaFin as likely needing to recalibrate its quarterly assessment exercise to using a more diverse range of datasets and undertaking more complex data queries, while CySEC and the FCA were identified as performing a material amount of its analysis relating to the parameters of the DQR. The peer review considers the DQR important. However, NCAs should be exceeding the parameters of the DQR based on the size, scale and sophistication of the derivatives markets they supervise. Both the BaFin and the FCA supervise complex and important derivative markets while CySEC supervises a large number of CFD firms.
33. The peer review also examined the more detailed and focused aspects of data quality supervision by focusing on the intensity of supervision, the frequency of the data quality checks undertaken, the comprehensiveness of an NCA's approach to sampling.
34. The peer review assessed ESMA as broadly meeting the peer review's expectations in terms of its overall supervisory approach and integration of EMIR data within its organisation. It also identifies ESMA as fully meeting the peer review's expectations in terms of accessing and analysing EMIR data. ESMA has a sophisticated and intelligible dashboard which through a wide variety of filters enables a detailed analysis and visualisation of data.
35. It is envisaged that a follow-up review will occur in two years' time. Therefore, if an NCA or ESMA has been identified by the peer review as being less than fully meeting the peer review's expectations they should focus supervisory energy and resource into these areas of EMIR data quality supervision.

## **Recommendations for NCAs in the short and long term**

36. The peer review acknowledges and appreciates that supervising the EMIR data quality requirements is a complex and difficult task not least because of the granular nature of the 126 reporting fields that require the submission by counterparties of detailed content in a specific format. The peer review is also fully aware that the reporting requirements changed on 1 November 2017 and therefore adding a further layer of intricacy to the task. This peer review was undertaken as there was a concern that the quality of data under EMIR may not be as

high as would be expected. In that respect, the peer review confirms that there is room for improving data reporting under EMIR and NCAs' supervisory actions in this area.

37. Therefore, the peer review has considered a number of relative short term and long-term proposals that may assist all NCAs and not just the six that were included in this targeted peer review exercise in enhancing the quality of data under EMIR. These suggestions are explored in greater depth within Chapter 3. The suggestions are preliminary and are for NCAs and ESMA to explore in further detail through primarily the Data Standing Committee.

**Table 1: Outcome of assessment by the peer review of the six NCAs in respect of EMIR data quality supervision**

NCA	NCA's supervisory approach to EMIR data quality	Integration of EMIR into NCA's overall supervisory approach	NCA's assessment and analysis of data
AFM	Green	Green	Green
AMF	Green	Green	Yellow
BaFin	Yellow	Yellow	Yellow
CBol	Green	Green	Green
CySEC	Yellow	Red	Red
FCA	Yellow	Red	Red

**Table 2: Outcome of assessment by the peer review of ESMA in respect of EMIR data quality supervision**

	ESMA's supervisory approach to EMIR data quality	Integration of EMIR data into ESMA's overall approach	ESMA's access, assessment and analysis of data held by TRs in order to perform supervision of TRs
ESMA	Green	Green	Green

Fully meeting the peer review's expectations <sup>3</sup>  
 Broadly meeting the peer review's expectations  
 Partially meeting the peer review's expectations  
 Not meeting the peer review's expectations<sup>4</sup>



**Table 3: Table of good practices**

Topic	Good Practices identified by the Assessment Group in relation to NCAs
Internal Supervisory model	Developing an internal scoring model that assigns a risk rating to EMIR reporting breaches. Once a threshold is reached supervisory action is triggered.
	Using other data sources to complement supervisory actions. E.g. comparing EMIR data and MiFIR data to identify cases of non-reporting under EMIR
	Introducing an interactive dashboard to analyse key fields and identify areas of poor data quality and making the dashboard accessible to all members of staff. This dashboard provides in an intelligible format a visual display of data and data quality of the market, including the asset class and type of contract (ETD or OTC) and the status of a CP's compliance with EMIR.
	Establishing a procedure so that a CP who is also an authorised entity cannot revoke their licence until all outstanding data quality issues are resolved.
	Establishing a dedicated data driven supervision team e.g. a team that handles EMIR, MiFIR and SFTR to identify commonalities, opportunities and synergies for approaches to data driven supervision
	Undertaking on-site inspections to assess counterparties compliance with EMIR, including identifying data quality issues
Supervisory engagement	Requiring non-financial counterparties to submit an annual return regarding their degree of compliance with EMIR
	Dedicating a specific section of an NCA's website to EMIR and providing external stakeholders with an email address to answer any questions or queries from stakeholders.
	Requiring counterparties to nominate a dedicated person responsible for EMIR related issues

<sup>3</sup> The authority that is assessed under this category should still consider extending and enhancing its supervisory actions to adapt them to the evolving marketplace, although it has fully met the expectations of the peer review

<sup>4</sup> The authority that is assessed under this category has undertaken certain supervisory actions which however fell short the expectations of the peer review taking into account the size, complexity and sophistication of the marketplace. There is an urgency to implement a more robust data quality supervision.

Use of the data	Using EMIR data to develop policy positions, identify the main derivative counterparties in an NCA's jurisdiction, using the data to analyse the systemic risk nature of counterparties e.g. related Brexit exposures
External engagement	Organising conferences, industry roundtables, publishing circulars and letters to industry and using these mediums to highlight data quality issues and areas of supervisory focus for NCAs

Topic	Good Practices identified by the Assessment Group in relation to ESMA
Internal Supervisory model	ESMA uses a sophisticated Data Quality Dashboard which through a wide variety of filters enables a detailed analysis and visualisation of data. The Dashboard is designed for a broader group of ESMA staff.
	ESMA has very a comprehensive approach as regards to the supervision of TR's outsourcing arrangements. For example, it provided one TR with robust challenge during the review period when it proposed to change its IT architecture and challenged the outsourcing arrangement when it considered that data quality was at risk. In particular, ESMA met with representatives of TRs' service providers and agreed with the service provider on a specific action plan to improve data quality, which was monitored in the context of ongoing engagement with the entity. ESMA insisted on TRs' having more detailed and challenging service level targets as regards, software development, incident reporting and remediation. In several cases, ESMA challenged the allocation of resources and prioritisation of data quality fixes by service providers.

### 3 Supervisory and policy recommendations to improve EMIR data quality

38. This peer review has provided the AG with a unique perspective on the different supervisory approaches taken by the six NCAs and ESMA to the supervision of EMIR data quality. It is also acknowledged that NCAs are at very different stages of their supervisory journey regarding the supervision of EMIR data quality as evidenced by the AG's varying assessment of the six NCAs and ESMA.
39. The peer review further acknowledges and appreciates that EMIR derivatives data is a complex dataset and consequently it requires a distinct and comprehensive approach to its supervision. Therefore, it is important to state that in order to prioritise EMIR data quality supervision, Authorities need to have the appropriate tools both in terms of human resources and IT capabilities.
40. The peer review outlines possible short- and long-term initiatives that could be considered by NCAs and ESMA to overall improve the quality of data reported under EMIR. It is expected that these initiatives will be explored further within one or more ESMA groups.
41. The peer review recognises that the derivatives market in each jurisdiction is different in terms of size, scale and complexity. Therefore, it will be for relevant ESMA groups and committees (such as the Data Standing Committee) to determine the specific and best way forward. However, these fora may wish to consider the following possible initiatives identified by the peer review.

#### **Short-term initiatives**

##### **A. Revising the Data Quality Action Plan – (ESMA and NCAs)**

42. The Data Quality Action Plan is a major project that was launched in September 2014. It is an annual exercise that aims to improve the quality and usability of data that is reported to and by the trade repositories.
43. While the quality of data reported through the DQR and, in general, the data made available to authorities has steadily improved over the last number of years, the outcome of this peer review reveals that there is more work to do. The first main point is that most of the authorities circumscribe their actions to the DQR only. The next DQR exercise will commence in 2020. Therefore, leveraging on the work done so far, ESMA, in conjunction with NCAs, should consider to extending and intensifying the data quality checks (i) over a wider set of counterparties – the DQR currently is based on a selection by NCAs of 5-15 counterparties, (ii) by applying

higher frequency of reviews and (iii) by applying greater sophistication of the relevant data validation, e.g. per contract type, asset class, action type, etc. This is closely linked also to point C below as the successful extension of DQR requires an increased level of support, including dedication of resources, by NCAs' senior management. The peer review expects that any changes to the DQAP will require additional human resources.

## **B. Characteristics of appropriate data quality supervision under EMIR (NCAs)**

44. The peer review identifies that appropriate data quality supervision should be understood as an approach by an NCA to data quality that is regular, pro-active, thorough, comprehensive, advanced and well established. More precisely,

- **Regular** means actions that are not ad hoc or impromptu but repeated with a certain frequency;
- **Proactive** means targeted actions triggered by an NCA's own analysis and not merely a reaction from a counterparty self-reporting a breach (nevertheless NCAs should react to reported incident but this in itself is not enough);
- **Thorough and comprehensive** meaning supervision that should cover all the data quality characteristics identified in this peer review (accuracy, completeness, consistency, timeliness, duplication);
- **advanced** means actions undertaken with the appropriate tools;
- **well established** meaning actions that are based on a clear methodology/structured approach approved by senior management.

45. The peer review identifies that NCAs should have regard to the above characteristics when reviewing and possibly revising their supervisory approaches to EMIR data quality supervision.

## **C. Senior management oversight – (NCAs)**

46. The peer review identified from both the responses to the self-assessment questionnaires and during the on-site visits the importance of senior management engagement relating to EMIR, including EMIR data quality. Senior management sets the tone and direction of any organisation and therefore their involvement, interaction and direction are very important in order to make real and substantive changes to the supervisory efforts spent on enhancing the quality of data reported by counterparties.

47. The peer review viewed positively the interaction between the team responsible for EMIR and senior management within one NCA [IE]. This interaction was independent of preparation at

the BoS for the annual DQR exercise. The interaction on EMIR was not just on data quality issues but on a wide range of issues e.g. the clearing obligation, or information on developments relating to EMIR2.0<sup>5</sup>.

48. Therefore, it is recommended that the team within an NCA responsible for EMIR could provide updates to senior management on a regular basis on all facets relating to EMIR including data quality issues. This information may for example be wrapped up and incorporated into any regular briefing from the various teams within an NCA to senior management. The information reported to senior management could for example include: number of reporting counterparties, number of NFCs, quality of accuracy, completeness, consistency, timeliness and non-duplication of reporting using as benchmarks the metrics set out in this report.

#### **D. Using EMIR data as part of an NCA's overall supervisory approach (NCAs)**

49. The peer review identified that some of the six NCAs make regular and recurring use of the data source. Regular and recurring use of EMIR data will improve its quality as any outliers and inconsistencies will be identified and rectified. The peer review identified the following areas where the dataset could potentially be incorporated into an NCA's supervisory approach. The peer review suggests that NCAs may wish to consider setting up a workshop within one of the existing ESMA fora on the many and wide-ranging uses of EMIR data identified in the non-exhaustive list below. The workshop could also be an opportunity for NCAs to exchange their experience on the supervision of EMIR data quality.

- EMIR data can be used as part of an NCAs approach to multi-asset class market abuse surveillance, including commodity derivatives supervision.
- EMIR data can be used to review the consistency of authorisation applications for the ancillary trading exemption under MiFID II.
- EMIR data can be used to cross-check the level of derivative exposure on a per issuer basis.
- EMIR data is relevant when reviewing high-profile disclosure within a prospectus. The information could be used to prompt an issuer to disclose important information regarding its derivative activities. This may assist investors in having all necessary information material to an investor in order to make an informed investment decision.
- The information has been used by one NCA as part of a deep dive. The peer review identified that an NCA used the information to identify that a fund was using an entity from the same Group as its Depositary as a counterparty to trades. This brought into

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<sup>5</sup> The aim of EMIR CCP (EMIR 2.0) is to enhance the oversight of European CCPs and address non-EU country issues.

question whether the fund was adhering correctly to the “connected party” requirements set out in national legislation. The NCA raised the issue with the fund who subsequently amended their procedures to ensure any “connected party” transactions such as this were adhering to the legislative requirements.

- Importantly, EMIR data is used for the identification of the main counterparties in derivatives markets as well as to analyse the systemic risk of CCPs. It is also used to identify Brexit related exposures. It can also be used as an important input for financial stability purposes.
- EMIR data can also be used as an important quantitative input when preparing policy positions and policy papers. Policy positions and papers benefit from both qualitative and quantitative analysis. However, quantitative information can be difficult to source. However, EMIR data has been used in the past by NCAs when determining the leverage ratio that could apply to CFDs traded by retail clients. It is recommended that this data source is advertised and marketed to policy colleagues within NCAs to ensure that they are comfortable with using the data source for policy thinking and analysis.

### **Longer term initiatives**

#### **E. Providing training to NCA staff (ESMA)**

50. The training of NCA staff is considered to be a true convergence tool establishing a common ground to share experiences among NCAs and to learn from one and another. ESMA in conjunction with NCAs have previously provided training to NCA staff on legislative provisions, for example in 2017 on MiFID II, before the legislation came into effect, as well as on the use of projects such as TRACE. In similar vein, ESMA could organise workshops between supervisors, that going forward, could include also training on how to improve supervision of EMIR data quality.

#### **F. Supervisory briefing on supervising and enforcing (EMIR) data quality – (ESMA)**

51. To bolster and improve convergence in this area, ESMA may produce a supervisory briefing for NCAs on ways to more effectively supervise and enforce EMIR data quality. The output of the supervisory briefing may also be considered as an input for the new ESMA supervisory handbook.

#### **G. Project delegation (ESMA)**

52. As a possible longer-term initiative to be considered together with other competing priorities, NCAs and ESMA could explore the delegation to ESMA (within a framework of a Delegated Project) some tasks related to EMIR data processing.

#### **H. Appropriate data analysis tools (NCAs)**

53. EMIR has 126 reporting fields. The supervision of these reporting fields requires sophisticated data analysis tools including a dashboard to analyse the very large amounts of data that are needed to be ingested under EMIR. Some of the six NCAs during the onsite visits demonstrated to the peer review the various data analytical tools used to detect poor data quality. The peer review is encouraged by NCAs use of a data quality dashboard. Two NCAs [FR and NL] built dashboards that feed into the NCAs risk-based-approach to supervision. These dashboards are used to undertake an analysis of the reporting by counterparties of each firm and identify discrepancies. DSC, could for example, explore whether the dashboards already used by these two NCAs could be replicated by NCAs that do not have data quality dashboards. The AFM and AMF could share their relative experiences in this regard to ensure that NCAs without data quality dashboards have a number of building blocks and possible ideas to consider.

## 4 Overview

54. The ESMA Supervisory Convergence Work Programme 2018 provided that a peer review into supervisory actions aiming at enhancing the quality of data reported under EMIR was to be initiated in order to assess NCAs against the objectives set in the Level 1 and 2 provisions of EMIR and their corresponding RTSs and ITSs in ensuring that the quality of data is complete, accurate, consistent and not duplicated.
55. This peer review was conducted in accordance with Article 30 Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 (ESMA Regulation) and the ESMA Peer Review Methodology (ESMA42-111-4611) (Methodology).
56. In accordance with ESMA Regulation and the Methodology, the peer review is required to assess the independence of NCAs and their capacity to achieve high quality supervisory outcomes, including the adequacy of their resources and governance arrangements, with particular regard to the effective application of the RTS and ITS and of the legal texts falling within the remit of ESMA, and the capacity of NCAs to respond to market developments; the degree of convergence reached in the application of Union law and in supervisory practice and the extent to which the supervisory practice achieves the objectives set out in Union law, including the determination of good practices developed by some NCAs which might be of benefit for other NCAs to adopt and the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where those provisions have not been complied with.
57. In accordance with the Methodology, the peer review was carried out by an independent group of experts, the AG. The mandate identifies the experts that were named as members of the AG.
58. This peer review is a targeted one. The reasons for this approach are mainly twofold. The peer review sought to make the most significant impact on those NCAs that supervise the largest derivatives marketplace in the Union. Therefore, the AG selected six NCAs using two objective sets of criteria namely at given date in 2018, the data quality of outstanding derivative contracts as expressed by the share of incompliant reports under the reporting requirements in force during the review period and the significance of the derivative market size of the jurisdiction assessed through the number of outstanding positions.
59. Regarding the market size, assessed by the above criteria, and taking into account also the number of outstanding derivative contracts of the EU market under the reporting requirements in force during the review period, the top 6 jurisdictions in descending order are: UK, CY, NL, DE, IE, FR.

60. The six NCAs identified in the mandate were required to submit their answers to a self-assessment questionnaire<sup>6</sup> and were subsequently visited on-site by members of the AG.
61. Following approval of the mandate in November 2018, the AG based on its experience, knowledge and expertise devised supervisory expectations in which to assess the six NCAs and ESMA against. These supervisory expectations were included within the questionnaire for NCAs and ESMA to complete. The AG consulted with SCSC on the questionnaires in November 2018. Thereafter, the questionnaires were sent to NCAs and ESMA on 30 November 2018. The AG provided the NCAs and ESMA with a deadline of 16 January 2019 to provide responses.

**Table 4: Country codes and acronyms of NCAs assessed in the peer review**

Country Code	Country	Competent Authority	Acronym
CY	Cyprus	Επιτροπή Κεφαλαιαγοράς	CySEC
DE	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht	BaFin
FR	France	Autorité des Marchés Financiers	AMF
IE	Ireland	Central Bank of Ireland	CBol
NL	Netherlands	Autoriteit Financiële Markten	AFM
UK	United Kingdom	Financial Conduct Authority	FCA

62. The period under review covers the period from 1 January 2017 to 31 December 2018.
63. In order to ensure a clear structure of the report and a comprehensive assessment of compliance by the NCAs, the report structures the assessment of the NCAs in the following areas: (i) NCAs' supervisory approach to EMIR data quality, (ii) Integration of EMIR into NCAs overall supervisory approach, (iii) NCAs' access, assessment and analysis of data.
64. Compliance by the six NCAs in these areas is assessed against the peer review's experience, knowledge and expertise of the objectives set in the Level 1 and 2 provisions of EMIR and their corresponding RTSs and ITSs in ensuring that the quality of data is complete, accurate, consistent and not duplicated. The provisions NCAs are assessed against are: Article 9(1),

<sup>6</sup> Cf. Annex 2.

11(2) of 648/2012<sup>7</sup>, Articles 1, 2, 3, 4 of 1247/2012<sup>8</sup>, Articles 1(1), 2(2), 3(1)(2)(3), 3(5) of 148/2013.

#### **Observations on supervision by NCAs of EMIR Q&A 40**

65. The peer review did not assess NCAs against their level of compliance with Q&As. Q&As are out of scope of the peer review assessment. However, the peer review identifies that there is limited supervision of EMIR Q&A<sup>9</sup> by NCAs. This Q&A describes what in practice should happen if there is a change in the LEI due to merger or acquisition.
66. The peer review only identifies one NCA [NL] that checks external sources such as the news to investigate whether an LEI has been correctly updated after a merger.
67. NCAs are reminded that as a form of good practice and in order to ensure supervisory convergence they should apply ESMA Q&As into an NCA's supervisory approach. This is because one of the objectives of Q&As is to build a common supervisory culture and consistent supervisory practices by ensuring uniform procedures and consistent approaches through the EU. If an NCA foresees possible difficulties in applying a Q&A, it should give early heads up to ESMA - as a good practice – and explain the reasons for the difficulty. Such discussions should ideally happen when the draft Q&A is still in the discussion phase in the standing committees.

#### **Observations on supervision by ESMA of EMIR Q&A 40**

68. Similar to the approach for NCAs, the peer review did not include in its assessment, ESMA's supervision of Q&As. ESMA explained that based on its risk based approach, supervision on Q&A TR40, in its role as supervisor of TRs had been prioritised as an area for proactive supervisory engagement due to the high number of issues reported by NCAs after the entry into force of the Q&A.
69. ESMA is reminded that as a form of good practice and in order to ensure supervisory convergence it too should apply relevant ESMA Q&As into its supervisory approach for TRs and CRAs, when applicable.

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<sup>7</sup> As amended by 2017/105

<sup>8</sup> As amended by Articles 2, 3 and 4a of 2017/105

<sup>9</sup> [https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52\\_qa\\_on\\_emir\\_implementation.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf)

## 5 Peer Review Assessment

70. In this Section, this report identifies findings in relation to the three assessment categories. For that, the peer review applies four assessment categories. They are whether the NCA is (i) fully meeting the peer review’s expectations; (ii) broadly meeting the peer review’s expectations; (iii) partially meeting the peer review’s expectations; or (iv) not meeting the peer review’s expectations<sup>10</sup>.

### Follow-up actions

71. In accordance with the Peer Review Methodology, a follow up will take place.

72. It is envisaged that this follow-up will occur in two years’ time. Therefore, if an NCA or ESMA has been assessed by the peer review as being less than fully meeting with the peer review’s expectations then supervisory energy and resource should be spent in ensuring full compliance.

NCA	NCA's supervisory approach to EMIR data quality	Integration of EMIR into NCA's overall supervisory approach	NCA's assessment and analysis of data
AFM			
AMF			
BaFin			
CBol			
CySEC			
FCA			

<sup>10</sup> The approach taken by the peer review in reaching an assessment of compliance in each topic is as follows: each assessment area contains a number of individual assessment criteria. The peer review assessed each individual criterion against the benchmark of whether the individual supervisory action is satisfactory, sufficient, insufficient or deficient. Thereafter, the peer review made a qualitative assessment using these four categories as an input into determining whether an NCA is likely to be either “fully meeting the peer review’s expectations” or “broadly meeting the peer review’s expectations” or “partially meeting the peer review’s expectations” or “not meeting the peer review’s expectations” in an assessment area.

## Findings on NCAs' supervisory approaches to EMIR data quality

73. As the EMIR reporting requirements have been in place since February 2014, NCAs under review were expected to have developed and effectively implemented an appropriate supervisory model based on the size, scale and complexity of each NCA's market to ensure that counterparties adhere to all of their reporting obligations under EMIR.
74. The peer review explored this area in greater depth and identified six characteristics that it would assess NCAs against. They are: (i) whether an NCA have developed an appropriate supervisory model based on its jurisdiction's size, scale and complexity<sup>11</sup>, (ii) whether there are policies and procedures in place to supervise EMIR data quality, (iii) whether an NCA has taken supervisory actions over and above ESMA's DQR, (iv) whether the NCA is proactive in its supervisory approach as opposed to being reactive, (v) whether it is quantitative, qualitative and probative, and not a tick-boxing exercise. In this regard sampling should occur based on rotating criteria. The size of the sample should be designed to detect instances of misreporting and finally (vi) whether an NCA has considered some form of administrative or enforcement action during the review period.
75. The peer review recognises that each jurisdiction supervised by the six NCAs under review is different. Some jurisdictions are larger than others, some are smaller. Some of the six NCAs for example supervise a number of G-SIBs while others supervise none. The six NCAs all supervise a different number of counterparties with varying degrees of systemic impact, risk and importance.
76. However, the peer review identified some NCAs being proactive with their supervisory approaches throughout the review period [IE, FR, and NL] by undertaking thematic reviews, onsite inspections and introduced an internal scoring mechanism, *inter alia* to detect and check data quality issues.
77. One NCA [DE] undertook additional data quality checks and reviews in excess of the DQR. Notwithstanding these steps toward a proactive supervision, the peer review was concerned with the limited coverage of BaFin's own analysis of EMIR data given the overall sophistication of the German derivatives market.
78. By contrast, one NCA [CY] only significantly enhanced its supervisory approach from mid-2018 or the remaining 25% of the review period.
79. As regards enforcement action during the review period, only one NCA [UK] took enforcement action against a counterparty further to self-reported failures under EMIR and imposed a fine of £34,500,000 against a large investment bank. The amount of the fine is considered as a significant deterring factor for counterparties to submit poor data quality going forward.

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<sup>11</sup> To this regards it was considered the evolution across the review period and the degree of sophistication of the supervisory model at the end of the review period.

81. In terms of NCA's individual assessment grades the peer review assessed three NCAs as broadly meeting with the peer review's expectations during the review period. The three NCAs are [FR, IE and NL].
82. The AMF was assessed as having a satisfactory approach to developing an appropriate supervisory model through its use of on-site inspections during the review period, adopting a Digital Data Strategy and holding regular conferences and training sessions with compliance officers. The peer review identified that the AMF's engagement in terms of supervisory actions over and above the DQR was sufficient. This was evidenced through increasing the frequency of monitoring rejection statistics to every week and utilising a data quality dashboard to monitor the activities of counterparties in the French market. The peer review determined that it was sufficient in terms of being proactive in its supervisory approach through its use of a data quality dashboard and through onsite inspections. The peer review assessed the AMF as having an insufficient approach to being probative through its use of sampling EMIR data quality. The peer review identified the AMF as focusing its sample on 5-6 counterparties who represent 86% of trade reporting in France. Additionally, it also assessed the NCA supervising OTC contracts under EMIR more extensively than ETD contracts. The peer review assessed the AMF has been sufficient in its approach to enforcement action. The peer review is informed that potential enforcement action may be in progress following the on-site inspections.
83. Similarly, the peer review identified the CBol as broadly meeting with the peer review's expectations in this area under the review period. The CBol was identified as having a satisfactory and proactive approach in developing an appropriate supervisory model based on the size, scale and complexity of the Irish market through its use of thematic reviews in areas such as compliance by counterparties who operate in the investment funds and insurance sectors. It also launched an annual EMIR regulatory return and through its wide reporting of data quality issues on ESMA's Data Quality log. The peer review determined that the CBol was sufficient in terms of having in place policies and procedures relating to EMIR data quality that were developed at the end of the review period. The peer review identified it as having a sufficient approach to undertaking a periodic and rotating sampling of counterparties. However, the peer review identified the CBol as being deficient in terms of not taking enforcement action against a counterparty for EMIR reporting breaches during the review period.
84. The peer review assessed the AFM as broadly meeting with the peer review's expectation as well. It was assessed as having a satisfactory approach to developing an appropriate supervisory model for the size, scale and complexity of the Dutch market, taking supervisory actions in excess of the DQR and being proactive through its use of regular processing on a monthly basis all trade activity reports and one day per month the trade state reports. It also applies 89 internal checks to detect data quality issues<sup>12</sup>. It introduced a data quality dashboard to monitor on a continuous basis the data quality of counterparties. The peer review identified its approach to sampling as satisfactory. However, the peer review also identified that the

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<sup>12</sup> 17 checks implemented on trade activity and trade state reports are not included in ESMA's validation matrix. Twelve of these are in addition to the DQR.

AFM gravitates to one large counterparty who operates in its jurisdiction. The peer review identified the AFM as deficient in terms of having no policies and procedures in place regarding the supervision of EMIR data quality during the review period.

85. The peer review identified three NCAs [CY, DE, and UK] as partially meeting with the peer review's expectation regarding supervisory approach to EMIR data quality.
86. While CySEC's supervisory approach to EMIR data quality was assessed as partially meeting with the peer review's expectations, CySEC fell short in developing a supervisory model related to the size, scale and complexity of the Cypriot market. Similarly, CySEC's lack of proactiveness was deemed insufficient as it participated in the DQR for the first time in 2018 only. The peer review expects all NCAs to exceed the parameters of the DQR. However, the peer review identified that notwithstanding the late start in 2018 it did take ad hoc proactive measures such as undertaking a number of on-site inspections and desk-based reviews of firms' compliance with the EMIR reporting requirements. Additionally, the peer review considered it sufficient in having initiated a formal procedure during the review period to possibly take administrative or enforcement action against a CP for misreporting.
87. Similarly, BaFin's supervisory approach to EMIR data quality was assessed as partially meeting with the peer review's expectations. The peer review recognises that BaFin is engaging with the industry by hosting an EMIR reporting working group in which trade associations and representatives of individual counterparties sit and which meets periodically, the peer review assessed BaFin as having developed an insufficient supervisory model based on the size, scale and complexity of the German derivatives market and being generally reactive. It also identified that its approach to data quality sampling was insufficient.
88. The peer review understands that the BaFin's supervisory approach is based on the following structural data quality checks in addition to the DQR: (i) quarterly checks similar to the parameters of the DQR , (ii) quarterly analysis on execution date, counterparty side and asset class, (iii) follow-up on breaches identified by external auditors and (iv) occasional analysis of data quality more commonly known as thematic reviews. Notwithstanding these steps toward a proactive supervision, the peer review was concerned with the limited coverage of BaFin's own analysis of EMIR data given the overall sophistication of the German derivatives market. The peer review did assess BaFin as being deficient in terms of taking enforcement or administrative sanctions as no action was considered against a counterparty during the review period. However, the peer review did identify BaFin as having sufficient policies and procedures in place relating to data quality supervision.
89. Last, the FCA's supervisory approach to EMIR data quality was assessed as partially meeting with the peer review's expectations. It identified the FCA as having developed an insufficient supervisory approach to EMIR data quality supervision based on the size, scale and complexity of the UK's derivative market. The peer review assessed the FCA supervisory approach as predominately participating in the DQR and remedying data quality issues that are either self-reported by counterparties or identified when undertaking ad-hoc policy research.

The peer review identified that the policies and procedures in place are unlikely to provide a supervisor with the tools needed to supervise EMIR data quality. However, the FCA is recognised by the peer review as taking the largest enforcement action against a significant counterparty in 2017. For this specific sub-criterion, the peer review assessed the FCAs enforcement action as satisfactory – the highest grading when assessing a specific sub-criterion. Nevertheless, and notwithstanding this enforcement case the peer review identified the FCA’s supervisory approach as being reactive in its supervision of EMIR data quality.

### **Findings on integration of EMIR into NCAs overall supervisory approach**

90. The peer review set three supervisory expectations relating to how during the review period NCAs should have integrated EMIR into their respective supervisory frameworks. These are: (i) EMIR data should be incorporated into NCA’s overall approach for supervised firms and there should be recurring and regular use of EMIR data that is frequently shared with other departments (ii) the expectation that senior management should be involved and aware of EMIR reporting issues and overall data quality and (iii) the expectation that there should be a dedicated team or function within the NCA that supervises data quality and consequently any key person risk should be sufficiently identified and managed.
91. The peer review identified two NCAs [FR, IE] that are fully meeting with the peer review’s expectations in this area. One NCA that is broadly meeting with the peer review’s expectations in this area [ NL]. One NCA partially meeting with the peer review’s expectations [DE] and two NCAs [CY, UK] not meeting with the peer review’s expectations.
92. The peer review assessed the AMF and the CBol having satisfactory approaches in the first two expectations and both being sufficient in terms of the last expectation. The CBol has integrated the data as part of its financial stability objective, it is used as an input for thematic reviews into asset management, banking and funds supervision. The EMIR data quality team at the CBol provides regular updates to senior management on EMIR related issues including data quality. These updates are in addition to preparation for the DQR. The CBol has also established a dedicated EMIR data quality unit. Three divisions within the AMF use EMIR data, the Market Infrastructure Division which piloted the use of EMIR data following the entry into force of the EMIR regime and which is responsible for the supervision of counterparties; the Market Surveillance Division which uses EMIR data for market abuse monitoring and engages with ESMA, and the Market Intermediaries Division which has oversight of investment firms and is responsible for monitoring the reporting obligation and data quality and also attends the ESMA taskforce meetings. EMIR data is incorporated in the AMF’s supervisory process as evidenced through the use of EMIR data for market and risk analysis. In particular, EMIR data is used for the identification of the main counterparties in the French derivatives markets as well as to analyse the systemic risk of counterparties and related Brexit exposures. EMIR data was also used in the analysis of the interconnectedness of the financial system.
93. The AFM is broadly meeting with the peer review’s expectations in this area. The peer review identified the AFM as making satisfactory use of the data regularly, as part of its review of

prospectuses, for market abuse detection and checking if entities are meeting with the ancillary exemption under MiFID. The AFM has also a sufficient EMIR data quality team in place. There is also good interaction between senior management through the championing of the AFM's approach to being a data driven supervisor. However, the peer review identified the AFM as being insufficient in terms of having a structured approach to EMIR data quality through the setting of annual work plans by senior management and noted that data quality issues appear to be resolved locally and without escalation.

94. The peer review identified the BaFin as partially meeting with the peer review's expectations in this area. While it made use of EMIR data during the review period this was on an infrequent and ad hoc basis. The peer review did not identify the same level of integratedness of EMIR data by comparison to some of its peers. The peer review was also informed that BaFin supports Deutsche Bundesbank as user of EMIR data in the German market. Based on the information gathered from the questionnaire and the discussions during the onsite visit with the relevant BaFin staff, the peer review is of the view that EMIR data use within BaFin itself during the review period was limited. However, going forward, the peer review recognises the commitment by the Unit responsible for EMIR data to act as ambassadors and to champion the use of EMIR data within the wider BaFin organisation. The peer review identified sufficient involvement by BaFin's senior management while the EMIR data unit is likely to be sufficiently resourced.
95. The peer review assessed two NCAs [CY, UK] as not meeting with the peer review's expectations in this area. The FCA informed the peer review that it commenced a pilot to use EMIR data to support its Prudential Specialist Department's Supervisory Review on specific firms in Q4 218. The peer review recognises this as a positive step. Nevertheless, the peer review was concerned with the late stage implementation of EMIR data within the FCA's general day-to-day supervisory framework. The peer review identified that during the review period EMIR data is siloed within the FCA's Markets Policy Department and not embedded more widely within the organisation. Similarly, the peer review identifies CySEC making limited use of the data during the review period. The peer review identified insufficient engagement by FCA senior management on data quality issues. The only identified area in which the FCA informed senior management of data quality issues outside of the DQR was in respect of the enforcement fine in 2017. The peer review identified CySEC similarly as having insufficient senior management involvement relating to EMIR data quality.

### **Findings on NCAs access, assessment and analysis of data**

96. The peer review set three supervisory expectations relating to NCAs' access, assessment and analysis of EMIR data during the review period. These relate to (i) NCAs onboarding to TRs and frequency of access and analysis of data, (ii) the analytical tools used by NCAs and (iii) the scope of analysis undertaken to assess and detect poor data quality.

97. The peer review assessed one NCA [NL] as fully meeting with the peer review's expectations in this area. One NCA [IE] broadly meeting, two NCAs [DE, FR] partially meeting and two NCAs [CY, DE] not meeting with the peer review's expectations.
98. The peer review identified [NL] as processing EMIR data on a daily basis. Within the AFM daily trade activity reports and one day per month trade state reports are processed on a monthly basis. It has defined 89 internal data quality checks and uses a data quality dashboard. The peer review views all these actions satisfactorily.
99. The peer review assessed [IE] as broadly meeting the peer review's expectations. The peer review viewed sufficiently that the CBol uploads trade state reports to its internal database. It uses SQL primarily as a data quality tool and it runs recurrently queries on notional, maturity date, product types asset class, valuation fields, CP IDs, trade IDs, collateral fields.
100. The peer review identified [FR] as partially meeting with the peer review's expectations in this area. The AMF evidenced sufficient access to TRs since 2015 and similarly sufficient use of the tools to run weekly excel-based rejection reports and to analyse key fields such as asset class, notional, contract value, action type and CP IDs for selected entities. However, the peer review determined that there is insufficient coverage of ETDs under EMIR and the AMF gravitates towards sampling only the 5-6 largest counterparties in the French market. These counterparties account for 86% of the market in terms of notional. The peer review also identified [DE] as partially meeting the peer review's expectations too. Its analysis consisted of undertaking additional activities in addition to the DQR, such as: (i) quarterly checks similar to the parameters of the DQR, (ii) quarterly analysis on execution date, counterparty side and asset class, (iii) follow-up breaches identified by external auditors and (iv) occasional analysis of data quality or more commonly known as thematic reviews.
101. The peer review additionally identified two NCAs [CY, UK] not meeting the peer review's expectations in this area.
102. The peer review identified CySEC only connecting to all TRs in mid-2018 and undertaking analysis of reconciliation and rejections statistics since 2018. The peer review viewed the use of the IT tools in place within CySEC as being insufficient compared to its peers. CySEC has developed its own internal IT tool for processing, ingesting and analysing data reported. This IT tool resides on a separate server and uses SAS infrastructure for mapping decrypted files into trade activity and trade state reports.
103. The peer review identified that the FCA's supervisory approach to this area of data quality supervision does not meet with the peer review's expectations. The peer review did not identify any regular and ongoing access to TRs or analysis of data quality.



## ESMA

- 104.ESMA has a unique and important role to play in improving data quality. This derives from the fact that it is both a regulatory body and supervisor of TRs. While not a Peer under the Regulation, it decided to include itself as part of this peer review exercise as only common efforts by ESMA and the NCAs can achieve an efficiently functioning reporting framework in the EU.
- 105.ESMA received a self-assessment questionnaire to complete and received an on-site visit from the peer review. The peer review assessed ESMA under the following areas: ESMA’s supervisory approach to EMIR data quality, integration of EMIR into ESMA’s overall supervisory approach, ESMA’s access, assessment and analysis of data held by TRs in order to perform supervision of TRs.
- 106.Identical to the approach adopted by the peer review for the assessment of NCAs, the peer review assessed each individual criteria against the benchmark of whether the individual supervisory action is satisfactory, sufficient, insufficient or deficient. Thereafter, the peer review made a qualitative assessment using these four categories as an input into determining whether ESMA is likely to be fully meeting the peer review’s expectations, broadly meeting the peer review’s expectations, partially meeting the peer review’s expectations or not meeting the peer review’s expectations.

### ESMA’s supervisory approach to EMIR data quality

	ESMA's supervisory approach to EMIR data quality	Integration of EMIR into ESMA's overall approach	ESMA's access, assessment and analysis of data held by TRs in order to perform supervision of TRs
ESMA			

- 107.The peer review assessed ESMA in the context of the following areas: (i) development and evolution of ESMA’s approach, (ii) whether it has effective policies and procedure in place relating to EMIR data quality supervision, (iii) whether ESMA has taken supervisory actions over and above the DQAP, (iv) the sufficiency of communication between ESMA and users of EMIR data (NCAs), (v) whether ESMA has considered some form of administrative or enforcement action during the review period.
- 108.The peer review assessed ESMA as broadly meeting with the peer review’s expectation in this area. The peer review identified ESMA as having a sufficient approach in terms of its

supervisory development and evolution, satisfactory policies and procedures in place relating to EMIR data quality supervision and taking sufficient supervisory actions over and above the DQAP. Additionally, it also considered the fine against a TR during the review period for negligently failing to provide to NCAs direct and immediate access to details of derivative contracts as sufficient. However, the peer review assessed ESMA as being insufficient in terms of its communication with NCAs and other data users. The peer review recommended to ESMA to improve the frequency and extent of its communication in order to ensure consistent actions relating to derivative reporting supervision.

### **Integration of EMIR into ESMA's overall approach**

109. The peer review assessed ESMA against the following criteria (i) the involvement of ESMA's senior management with EMIR data quality supervisory issues, (ii) the degree of inter-departmental knowledge sharing of EMIR data and (iii) the expectation that there should be a dedicated team or function within ESMA that supervises data quality.

110. The peer review assessed ESMA as broadly meeting with the peer review's expectations in this area. The peer review identified satisfactory engagement by ESMA's senior management on EMIR data quality issues during the review period. The peer review also identified sufficient sharing of EMIR data internally amongst the relevant ESMA departments and a dedicated team responsible for the supervision of EMIR data quality. In relation to the last criteria - dedicated team and function - the peer review identified that more resources dedicated to data quality supervision could be redistributed within the current pool of ESMA staff in order to further enhance TR supervision and ensure more proactiveness in the ESMA actions.

### **ESMA's access, assessment and analysis of data held by TRs in order to perform supervision of TRs**

111. The peer review assessed ESMA against the following criteria: (i) the frequency of TR access and frequency of its analysis of EMIR data, (ii) the adequacy of the IT tools in place to access and analyse TRs data and (iii) the scope of analysis undertaken by ESMA of EMIR data.

112. With reference to the above, the peer review identified ESMA as fully meeting with the peer review's expectations in this area.

113. The peer review identified as satisfactory the fact that ESMA accesses TR data on a regular basis and accesses both aggregated statistic and trade level data (Trade Activity and Trade State Report). The frequency of the access depends on the purpose and the type of activity.

114. Similarly, the peer review identified as satisfactory the analytical tools and packages that ESMA has in place. For data processing, ESMA mainly uses STATA, R and Python. For visualization of data ESMA uses Spotfire. Additionally, ESMA aggregates information into a

Data Quality Dashboard, a data quality monitoring tool, on a monthly basis. ESMA also developed two tools: C-MORE (in 2016) and C-RISK (in 2017) that show flags with regard to predefined risk across the TRs.

115. The peer review identified that the scope of analysis undertaken by ESMA as being sufficient. However, the peer review identified that ESMA focuses its analysis towards the two largest TRs under its supervision.

### **On-site visits**

116. The on-site visits to NCAs played an important role in enabling the peer review to enhance its understanding of the NCAs' supervisory approaches. In order to gain a thorough understanding, the peer review looked into supervisory practices in relation to supervisory actions to enhance the quality of data reported under EMIR.

117. The following supervisory practices and findings in relation to supervisory actions aiming at enhancing the quality of data reported under EMIR are presented chronologically in the order the on-site visits took place.

### **AFM (Netherlands)**

118. The Dutch derivatives market is large. The reporting statistics provided by this NCA describe approximately 5,700 unique Dutch reporting entities and the ingestion of approximately 200 million trade activity records. Moreover, there are approximately 2.5 million outstanding trade reports for Dutch reporting counterparties per day.

119. From the start of EMIR reporting in 2014 until April 2018, the responsibility for the supervision of EMIR reporting was divided between the NCA and the Dutch National Bank on account of the twin peaks-model. More precisely, the NCA was responsible for supervising EMIR reporting of non-financial counterparties whereas the oversight of EMIR reporting for financial counterparties was under the remit of the DNB. Since April 2018, the NCA has been supervising EMIR reporting obligations for all (Dutch) counterparties.

120. The NCA has established a dedicated team to supervise EMIR data quality and this team monitors EMIR data on a proactive and reactive basis.

121. The NCA has developed an internal scoring model for counterparties who mis-report. Shortcomings regarding EMIR data quality are assigned certain scores which are then added up. Once pre-determined scores are reached or exceeded, the NCA will initiate specific supervisory measures.

122. This NCA fully participated in ESMA's DQR during the review period but also undertook additional in-house analysis<sup>13</sup> of EMIR data quality through the selection, analysis and engagement with a selection of counterparties. This is done on a proactive as well as a reactive basis and includes not only the use of TR rejection and reconciliation statistics as quality indicators to identify "warnings", but also the regular processing on a monthly basis of all the incoming EMIR data and the application of 89 checks to all the dataset. This key gatekeeper role is effective in ensuring improvement of EMIR data quality.

123. In general, the peer review found that supervisory actions are not documented in written policies and procedures, a lack of administrative or enforcement action against counterparties, there could be more involvement of senior management in the outcome of the review of EMIR data quality.

124. The peer review found some good practices employed by the AFM. These included (i) the high level of proactive supervisory actions aiming at enhancing EMIR data quality through the use of a data quality dashboard. (ii) the implementation of an internal scoring model which ensures a certain level of consistency in supervisory actions. (iii) effective technical measures in place in order to ensure the supervision of the consistency of reporting, including a cross-check on double-sided reporting. These measures include discussions on mitigation plans in case of poor data quality by counterparties or their report submitting entities as well as checks in order to ensure correctness of the reported data. (iv) sufficient measures and automatic checks in place to detect cases of late reporting. (v) good use of other data sources. For example, in order to detect cases of non-reporting, the AFM performed an analysis by comparing MiFID II with EMIR data in the summer of 2018.

### **FCA (United Kingdom)**

125. The FCA supervises a complex and sophisticated derivatives marketplace. Amongst the six NCAs visited it has three G-SIBS under its shared supervision with the UK's Prudential Regulatory Authority. The FCA informed the peer review that there are over 9,000 CPs reporting under EMIR in the UK.

126. The peer review identified the FCA's participation in the DQR during the review period as an important element of its approach to supervising the quality of data reported under EMIR. In addition to the DQR work, the FCA undertakes other ongoing supervisory oversight of its EMIR reporting regime, such as analysis of the data for policy related matters and responses to notifications from firms of reporting issues. However, supervisory approaches should have further developed since the reporting requirements came into effect in early 2014, particularly in respect of the sophisticated derivative markets such as the UK.

127. The FCA informed the peer review that it commenced a pilot to use EMIR data to support its Prudential Specialist Department's Supervisory Review and SREP on specific firms in Q4

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<sup>13</sup> 17 checks implemented on trade activity and trade state reports are not included in ESMA's validation matrix. Twelve of these are in addition to the DQR.

2018. While the peer review recognises this as a positive step the peer review was concerned with the late stage implementation of EMIR data within the FCA's general day-to-day supervisory framework.

128. Nevertheless, the peer review recognises the FCA as one of the few NCAs to take enforcement action against a firm for EMIR reporting breaches. In the peer review's view, this fine is likely to be a significant deterrent and warning to counterparties. Notwithstanding these important milestones, the peer review was quite concerned with the lack of evidence of proactive supervisory actions aimed at enhancing the quality of EMIR data beyond participation in the DQR and fixing and remedying issues that are either self-reported to the FCA or identified as ancillary to policy work undertaken.
129. The peer review noted FCA senior management's engagement with EMIR data as part of its preparation at BoS level for discussions and decisions relating to the DQR. The peer review also identified its executive board's oversight of the decision to take enforcement action against Merrill Lynch International. More engagement by the FCA's senior leadership on this important area of post-crisis legislation would be welcome, particularly in relation to receiving data quality reports on an on-going basis. This is because senior management of an NCA sets the tone and overall direction of travel for an organisation and can embed the unique characteristics and qualities EMIR presents into its overall supervisory approach.
130. Therefore, the peer review considers that in light of the sophisticated derivatives marketplace in the UK the FCA should review, revise and overhaul its current supervisory approach to EMIR data quality.
131. A number of good practices have been identified by the peer review in relation to the supervisory approach taken by the FCA regarding EMIR data quality. These are (i) the peer review identified the FCA as having an informative website that provides an overview of EMIR, how it may apply to counterparties, and the FCA's expectations of firms it regulates in respect of their EMIR compliance. (ii) it has also developed a breach notification form. This notification form is required to be sent to a dedicated email address at the FCA.
132. Going forward and beyond the period under review, the peer review takes note of ongoing work at the FCA to improve EMIR data quality, including the fact that as part of the FCA's revised data strategy, the FCA is creating enhanced data management capabilities, including a new central data quality team and tooling. These will look at all critical data sets and how their quality and management can be improved, including EMIR. The FCA is also in the process of upgrading its cloud infrastructure to receive EMIR data —using the same downstream technologies employed for MiFID/R transaction reports. This will consolidate and enhance the FCA's analytics capabilities, including checking for data quality issues.

## **CBol (Ireland)**

133. In Ireland the CBol is the sole competent authority for supervising EMIR reporting obligation. The CBol uses PRISM as its supervisory tool and includes EMIR data quality in this. The Probability Risk and Impact System (PRISM) is a risk-based tool and seeks to allocate resources efficiently and to define supervisory priorities. The peer review was made aware that the CBol supervises roughly 5,000 reporting counterparties under EMIR
134. The peer review identified the CBol's participation in the DQR during the review period as an important element of its approach to supervising the quality of data reported under EMIR. The peer review also noted that, in addition to the DQR, the CBol undertook substantial ad-hoc activity regarding the improvement of EMIR data quality and, in particular, thematic reviews on investment funds, insurance companies and pension scheme arrangements and the launch of the EMIR Regulatory Return (ERR), which is addressed to the NFCs and provides information on their degree of compliance to EMIR obligations.
135. During the review period the CBol's supervision of EMIR data quality covered a significant number of issues and its engagement towards counterparties and TRs was comprehensive. Also, the CBol engaged significantly with counterparties in monitoring the completeness of reporting and, in particular, the requirement to report daily the contract valuation.
136. However, the peer review identified areas where the coverage could be further enhanced. Examples include the monitoring of consistency and timeliness of reporting and the detection of cases of duplicated reporting. In both these cases the peer review recommends implementing a more systematic and ongoing approach.
137. Additionally, the peer review identified that the CBol monitors an incomplete dataset, which includes only the Trade State Report. It does not analyse or monitor the other recurring TRACE reports like Trade Activity and Late Reports which contain relevant information to have a complete picture of the data reported.
138. While the general outlook on the data tools is relatively good, the current system does not have embedded functionality (i.e. uses a dashboard) to regularly detect and alert the CBol of the data quality issues. To this regard the peer review understands that the CBol focuses on a selection of reporting fields, but it lacks a structured and ongoing procedure and process to assess whether counterparties are reporting all the relevant details of derivatives as specified in the Annexes of the relevant RTSs/ITSs.
139. In terms of potential improvements, the peer review has identified a number of areas. These include: (i) exhibiting a more assertive approach to taking enforcement or administrative action against counterparties who mis-report, (ii) expanding the dataset to include at least Trade Activity Reports as a base of EMIR data quality monitoring, (iii) enlarging the coverage of the fields and to putting in place a process to analyse data quality for a broader scope of EMIR fields in a structured, regular and on-going basis.

140. A number of good practices have also been identified by the peer review. These include (i) establishing the EMIR Regulatory Returns (ERR) for the purpose of assessing compliance with EMIR obligation by NFCs. This return is required on an annual basis and provide relevant information on the degree of compliance to EMIR obligation by NFCs, (ii) the CBoI has established a specific procedure for the revocation of funds which envisaged the need to report the termination of the trades before the fund is revoked by the CBoI, (iii) the CBoI conducts daily monitoring of the TRACE Trade State Reports and any issues identified with the receipt of these reports are raised with the internal IT department, ESMA or the TR, as appropriate, (iv) senior management is routinely informed of developments relating to EMIR including data quality issues. The unit responsible for supervising EMIR data quality submits annual work programme that are closely monitored to ensure that objectives are being reached and supervisory engagements are undertaken and relevant risks mitigated, (v) the CBoI published a letter to its industry in February 2019 which detailed the most important issues identified by the CBoI during data quality checks and explained appropriate actions to be taken by counterparties to ensure complete, accurate and timely reporting, (vi) the provision of training sessions in conjunction with Markets Policy Division to supervisory divisions across the CBoI on EMIR obligations and data quality.

### **BaFin (Germany)**

141. BaFin supervises a well-developed and sophisticated marketplace. According to BaFin there are approximately 16,000 counterparties who must report under EMIR and fall under its supervisory responsibility, of which approximately 12,800 are NFCs.

142. Similar to other NCAs the peer review identified the BaFin's participation in the DQR during the review period as an important element of its approach to supervising the quality of data reported under EMIR. However, NCA's supervisory approaches should have developed since the reporting requirements came into effect in early 2014 and NCAs supervising sophisticated derivative markets should be doing more than the parameters of the DQR.

143. The peer review understands that the BaFin's supervisory approach is based on the following structural data quality checks in addition to the DQR: (i) quarterly checks similar to the DQR, (ii) quarterly analysis on execution date, counterparty side and asset class, (iii) follow-up on breaches identified by external auditors and (vi) occasional analysis of data quality more commonly known as thematic reviews. Notwithstanding these steps toward a proactive supervision, the peer review was concerned with the limited coverage of BaFin's own analysis of EMIR data given the overall sophistication of the German derivatives market.

144. In the peer review's view, when selecting counterparties for the quarterly checks BaFin mainly focuses on basic indicators such as rejection and reconciliation statistics while it does not monitor on a systematic and regular basis all the relevant details of derivatives that are reported to TRs. It also relies on external audit checks to identify the missing/abnormal or incorrect values in relation to this data.

145. Based on the discussions held during the onsite visit, it is the peer review's view that the Unit responsible for the supervision of transaction reporting under MiFIR and EMIR in BaFin having undertaken a preliminary analysis of the content of the auditor reports in 2016 has not yet revised or assessed the methodologies used by external auditors or the extent of auditors' assessment or details of their assessment of compliance with the EMIR obligations. In this regard, BaFin explained that before engaging in an in-depth valuation of the auditor's methodologies, it wanted to get experience and better knowledge of the reporting system of the counterparties. In this respect, the dedicated Unit within BaFin indicated that it has now gained such experience and that it plans to engage in a special evaluation of auditors' processes and procedures and auditors' judgements in the course of 2019/2020.
146. The peer review considers the use of EMIR data for supervision or other activities at the initial stage and views positively the ongoing development of uses of EMIR data for the wider organisation. The peer review was also informed that BaFin supports Deutsche Bundesbank as user of EMIR data in the German market by performing analytics. Based on the information gathered from the questionnaire and the discussions during the onsite visit with the relevant BaFin staff, the peer review is of the view that EMIR data within BaFin itself during the review period was limited. However, going forward, the peer review recognised the commitment by the dedicated internal Unit for EMIR data quality supervision to act as ambassadors and to champion the use of EMIR data within the wider BaFin organisation.
147. In terms of potential improvement, the peer review identified a range of areas to scrutinise. These include checking data quality across a wider range of counterparties, not just a small number of counterparties selected basing on the DQR's selection criteria, exhibiting a more assertive approach to taking enforcement or administrative action against counterparties who mis-report, using EMIR data as an tool in relation to the firms under BaFin's supervision, moving to a more automated approach to data quality supervision, calibrating the quarterly review to data using more complex queries.
148. The peer review also identified a number of good practices operated by the BaFin. The identified good practices are: BaFin hosts an EMIR reporting working group in which trade associations and representatives of individual counterparties sit and which meets periodically. During these meetings, it is also discusses how data quality can be enhanced. EMIR data is currently accessible across the BaFin to all relevant staff. The peer review also identified that BaFin logs and follow-ups on findings received from external auditors on EMIR data quality issues.
149. Going forward and looking beyond the period under review, BaFin has stated that in response to the peer review's findings as well as due to its own internal strategic orientation towards a data-driven supervision, BaFin has initiated steps of an IT-driven automated process set up in addition to its current supervisory model in order to detect typical reporting errors non-manually through an extensive risk and user oriented process. In order to reach this aim, BaFin has stated that it strives to coordinate its approach with other NCAs, data users and

ESMA. BaFin is continuously progressing with specifying and advancing its checks and analyses of EMIR data, both on an ongoing and a thematic approach.

## **Cyprus (CySEC)**

150. CySEC supervises nearly 670 firms, of which 179 have reporting obligations under EMIR (excluding NFCs) and 97% of all Cypriot investment firms' clients correspond to clients trading on CFDs. Since 2014, it also supervises reporting counterparties (NFCs and investment firms and funds) under EMIR.

151. The peer review identified CySEC's participation in the DQR as an important element of its approach to supervising the quality of data reported under EMIR. The peer review set the expectation that all NCA's supervisory approaches should have developed since the reporting requirements came into effect in early 2014 and NCAs supervising sophisticated derivative markets (including those with a large CFD marketplace, such as Cyprus) should be doing more than the parameters of the DQR. The peer review identified that CySEC only started to access the TRACE HUB from mid-2018 and participated in the DQR for the first time in 2018. The peer review considers this a late start in comparison to its peers.

152. The peer review also identified that CySEC did not embed EMIR into its supervisory approach, during the period under review. Consequently, the peer review considered the use of EMIR data within CySEC for supervisory purposes during the review period to be very limited.

153. The IT tools that CySEC uses to assess data quality is likely to be currently appropriate considering stage in the EMIR data quality supervisory lifecycle. However, the peer review is of the view that the IT tool allows for a significant degree of subjectivity in determining what fields to access and analyse.

154. As noted with other NCAs, the peer review would like to see more engagement by CySEC's senior leadership on EMIR and EMIR data quality. This is because senior management of an NCA sets the tone and overall direction of travel for an organisation and can embed the unique characteristics and qualities EMIR presents into its overall supervisory approach.

155. In terms of potential improvement, the peer review identified a range of areas to scrutinise. These include exceeding the parameters of ESMA's DQR on a proactive, regular, structured and ongoing basis. Checking data checking data quality across a wider range of counterparties, not just a small number of counterparties selected basing on simple and static selection criteria, exhibiting a more assertive approach to taking enforcement or administrative action against counterparties who mis-report, using EMIR data as a supervisory tool in relation to the firms under CySEC's supervision.

156. Embedding the more granular aspects of EMIR data supervision within CySEC's supervisory approach. These include supervising the accuracy, completeness, consistency, timeliness and non-duplication of reporting under EMIR.

157. The peer review identified a good practice operated by CySEC. In January 2019, it publishing a circular advising regulated entities to nominate a person within their firm responsible for the daily monitoring of EMIR reporting.

158. Going forward and looking beyond the review period, CySEC has informed the peer review that since the middle of 2018 and during 2019, following the accessing of the TRACE HUB and the participation in the 2018 DQR, intensified its efforts in the area of the supervision of the data quality reported under EMIR with the senior management continuing to be deeply engaged in this area. In this respect CySEC has undertaken a combination of on-site inspections and desk-based reviews covering the different aspects of EMIR Data Quality going well beyond the DQR requirements. The findings of the 2018 reviews/inspections which were aimed at ensuring the adequacy of the supervised entities' policies and arrangements in place regarding EMIR reporting as well as ensuring that data reported to TRs are complete, accurate, consistent, timely and not duplicated, have been communicated to the supervised entities in early January 2019 via a Circular [C291]<sup>14</sup>. With the said Circular, supervised entities were called upon to make a full review of their EMIR reporting arrangements in order to ensure that they comply with their EMIR reporting obligations. One of the remedial actions advised by CySEC is to nominate a person within the firm responsible for the daily monitoring of EMIR reporting. Follow-up of these findings and recommendations has been included in the supervision action plan. Recently administrative sanctions have been decided by the CySEC Board against a supervised entity for not complying with its EMIR reporting obligations.

159. CySEC is currently in the process of enhancing its overall supervisory approach with emphasis, primarily being placed in further enhancing and developing the current technological infrastructure and IT tools in order to be able to enhance the analysis and storage capacity of the huge data sets received. Emphasis is also placed on three other areas:

- i. the further integration of EMIR Data in the supervisory approach including but not limited to adding further quantitative and qualitative measures to the RBS-F tool with regard to data quality,
- ii. the monitoring of the reporting obligations and data quality on a quarterly basis, ensuring a wider coverage through the use of enhanced sampling techniques,
- iii. the further development of Funds Supervision

160. Additionally, CySEC is currently working on other areas such as establishing comprehensive and detailed policies and procedures on the supervision of EMIR Data Quality on a more proactive basis, market abuse monitoring, prudential supervision monitoring and identification of systemic counterparties.

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<sup>14</sup> <https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=44739ca4-1a38-43ce-877d-8844a28a915c>

## ESMA

161. During the review period ESMA had the responsibility of supervising eight TRs: DTCC Derivatives Repository Plc, Krajowy Depozyt Papierów Wartościowych S.A. (KDPW), Regis-TR S.A., UnaVista Limited, CME Trade Repository Ltd, ICE Trade Vault Europe Ltd, Bloomberg Trade Repository Limited and NEX Abide Trade Repository AB. The latter was registered in November 2017, while Bloomberg was deregistered in March 2019.
162. ESMA was found to have a documented supervisory approach with policies and procedures of sufficient quality and to have installed a sophisticated Data Quality Dashboard in order to monitor EMIR data quality.
163. ESMA regularly accesses TR data and during the review period ESMA's supervision extends beyond the Data Quality Action Plan undertaking a number of additional investigations (including supervisory actions on TR reconciliations).
164. ESMA Supervision employs a risk-based approach where resources are allocated according to a risk assessment framework. In order to conduct its supervisory risk assessments for TRs, ESMA uses information gathered from a wide range of sources, including supervised entities, NCAs, counterparties and other stakeholders of TR data. ESMA developed its own tools to consume such information and to support the risks assessment process. The risk assessment defines the Data Quality Action Plan (DQAP) and ESMA's activities regarding data quality covering all TRs. In addition, ESMA uses a Data Quality Log to incorporate the 'user perspective' in its supervisory priorities and to increase the efficiency of the communication and cooperation with NCAs regarding data quality deficiencies.
165. The peer review found that ESMA's supervision takes a proactive approach on developing policy measures that improve data quality and noted that ESMA's current approach to supervise TRs organisational requirements is adequate and appropriate actions were undertaken in this respect during the review period where existing structures could put data quality at risk.
166. ESMA cooperates closely with the ECB and the ESRB. These three institutions have the complete picture of the derivatives market in the EU.
167. The peer review identified the following good practices as part of ESMA's approach to EMIR data quality supervision: ESMA has very a comprehensive approach as regards to the supervision of TR's outsourcing arrangements. For example, it provided one TR with robust challenge during the review period when it proposed to change its IT architecture and challenged the outsourcing arrangement when it considered that data quality was at risk. In particular, ESMA met with representatives of TRs' service providers and agreed with the service providers a specific action plan to improve data quality, which was monitored in the context of on-

going engagement with the entities. ESMA insisted on TRs' having more detailed and challenging service level targets as regards, software development, incident reporting and remediation. In several cases, ESMA challenged the allocation of resources and prioritisation of data quality fixes by service providers. ESMA uses a sophisticated Data Quality Dashboard which through a wide variety of filters enables a detailed analysis and visualisation of data. The Dashboard is designed for a broader group of ESMA staff.

168. Going forward, ESMA has stated that it agrees that more engagement with data users and NCAs is key to further improve EMIR data quality, a task shared between ESMA and NCAs. In this respect, ESMA will continue to expand the interaction and collaboration with data users and NCAs. In addition, ESMA continuously works on improving and refining its risk-based approach to TR supervision and data quality is one of its key priorities. In that context, ESMA will continue to maintain and develop tools in support of a more proactive and timely identification of data quality issues regarding EMIR data.

#### **France (AMF)**

169. The AMF supervises nearly 12,000 counterparties under EMIR. These include 3,400 financial counterparties: asset management companies, funds and other investment service providers and 8,500 NFCs.

170. As with many of the other NCAs selected for this peer review, the peer review identified the AMF's participation in the DQR during the review period as an important element of its approach to supervising the quality of data reported under EMIR. However, the peer review positively identified that the AMF complemented the DQR with other forms of supervisory actions and tools available to it during the review period such as undertaking onsite inspections regarding EMIR, including inspecting counterparties compliance with the reporting requirements.

171. The peer review noted that AMF uses an interactive data dashboard which enables the detection of deficiencies within the EMIR datasets. Using this tool, the AMF was able to undertake specific analysis on some key fields like action type, asset classes, notional and contract value.

172. The peer review also identified the AMF's senior management commitment to improving data quality by setting up the Data Driven Supervision team in May 2018. This team supervises data quality across the wide spectrum of the various reporting obligations (e.g. EMIR and MiFIR currently). The objective of this team is to identify opportunities, synergies and challenges that data quality can create.

173. Importantly, EMIR data is incorporated in the AMF's supervisory process as evidenced through its use for market and risk analysis. In particular, EMIR data is used for the identification of the main counterparties in the French derivatives markets as well as to analyse the

systemic risk of counterparties and related Brexit exposures. EMIR data is also used in the analysis of the interconnectedness of the financial system.

174. The peer review also noted that while ETD remains a significant part of the French derivatives market, the AMF heavily concentrates its efforts on OTC data leaving ETD reporting under EMIR largely unmonitored.

175. The peer review also identified a number of good practices operated by the AMF. The identified good practices are: The AMF has organised conferences and bilateral meetings with counterparties in order to enhance the knowledge of the EMIR reporting obligation and discuss entity-specific reporting related issues. The AMF has developed an interactive data dashboard. This dashboard provides in an intelligible format a visual display of data and data quality of the market, including the asset class and type of contract (ETD or OTC) and the status of a counterparties compliance with EMIR. Using this tool, the AMF can efficiently undertake specific analysis on some key fields like action type, asset classes, notional and contract value. This tool can be rolled out to all staff within its organisation.

176. Additionally, the AMF set up a specialised Data Driven Supervision unit. This team supervises data quality across the wide spectrum of the various reporting obligations (e.g. EMIR, MiFIR, CSDR). The objective of this team is to identify the opportunities, synergies and challenges that data quality can create. The AMF has used on-site thematic inspections to monitor compliance by counterparties in reporting correctly under EMIR. The onsite inspection is a formal tool available to the AMF to check and ensure compliance with regulatory requirements including EMIR reporting obligations.

177. Since the beginning of 2019, the AMF has reported that it has significantly improved its tools dedicated to the monitoring of EMIR data as a whole, not only on quality aspects but also on the monitoring of aggregated volumes and notionals as well as detailed volumes and notionals by counterparty and asset class. These monitoring tools are included in a web-based interface allowing for simultaneous browsing by several AMF supervisors and are much more user-friendly than previous tools. Second, the AMF intends to leverage on its big data platform that was launched at the beginning of 2018 to process MiFIR reporting data, in order to automate and increase the frequency of quality checks on EMIR data by incorporating this data (including on ETDs) by the end of 2019. This will also enable automated alerts based on these quality checks. Third, the creation of a specific Data Driven Supervision Unit in 2018 will help to foster the convergence of methods and procedures for the monitoring of data quality issues for both MiFIR and EMIR transaction reporting as well as the use of transaction data in supervisory activity. Fourth, in a few weeks the AMF will publish a report on findings made during on-site visits at several counterparties on their EMIR reporting practices. This report will bring to the attention of all EMIR counterparties both the failings of firms and the good practices enabling firms to ensure a satisfactory quality of reporting to TRs.

## Good practices

178. Following the analysis and the on-site visits, the peer review has identified good practices regarding supervisory practices to enhance the quality of data reported under EMIR.
179. The peer review observed that some NCAs extensively engage with counterparties through external engagement. The peer review observed that external engagement can take many forms including organising conferences, industry roundtables, publishing circulars and letters to industry and using these mediums to highlight data quality issues and areas of supervisory focus for NCAs.
180. The peer review identified one NCA as part of its data driven supervisory approach using an internal scoring model that triggers certain supervisory measures when pre-defined scores are reached or using other data sources to complement supervisory actions. E.g. comparing EMIR data and MiFIR data to identify cases of non-reporting under EMIR. The peer review also observed within these NCAs the use of an interactive, user friendly and visual display friendly dashboard to analyse key fields and identify areas of poor data quality. The peer review was particularly impressed that within one NCA this dashboard is available to all staff.
181. The peer review acknowledges that there is likely to be many NFCs who must report under EMIR within the jurisdiction and under the remit of the NCA. Reaching this audience can be difficult if NFCs are unfamiliar with financial regulation and financial supervision. In tackling this lacuna, the peer review observed that some NCAs have developed a section of their websites devoted especially to explaining EMIR and the reporting obligations that counterparties must adhere. Another NCA also requires NFCs to submit an annual return regarding their degree of compliance with EMIR.
182. The peer review was also similarly impressed by the various uses of EMIR data by NCAs. These uses merit detailed analysis and are developed in Chapter 3



## 6 Annexes

## **Annex 1 – The Mandate**

### **Mandate for a Peer Review into supervisory actions aiming at enhancing the quality of data reported under EMIR (ESMA42-111-4687)**

Updated on 26 February 2019 following ascension of Niamh Lynn to the AG.

#### **Background**

1. Regulation EU No 648/2012 the European Market Infrastructure Regulation (“EMIR”) came into effect on 15 March 2013. The mandatory reporting requirements for derivative contracts came into effect in February 2014. It obliges counterparties to report all details regarding derivative contracts they have entered into, to a trade repository.
2. The key objectives of EMIR are to lay down uniform requirements for derivative contracts and for the performance of activities of counterparties and trade repositories. Having access to EMIR data is crucial for NCAs and other relevant parties to fulfil their respective responsibilities and mandates. However, poor quality data limits the capabilities of data users to identify and respond to systemic counterparty and financial system risk.
3. Therefore, having access to high quality data on derivative contracts is a key component of the regulatory tools available to supervisors. In order to make improvements in the quality of data, ESMA and NCAs jointly launched the Data Quality Action Plan (“DQAP”) in September 2014. The DQAP is a voluntary self-assessment exercise based on annually agreed assessment criteria, undertaken by NCAs and ESMA, to improve the quality of certain aspects of data quality.
4. However, separate to this exercise, the Board of Supervisors decided through the Supervisory Convergence Work Programme for 2018 to conduct a peer review on supervisory actions aiming at enhancing the quality of data reported under EMIR. While progress has been made with the DQAP, difficulties remain. Undertaking a peer review is an additional tool available to improve data quality.
5. The peer review will assess supervisory efforts that have the objective to enhance data quality across the European Union, i.e. the overall set-up of supervision and enforcement of reporting rules.

#### **Legal basis**

6. This peer review will be conducted in accordance with Article 30 Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 (ESMA Regulation).

7. The peer review will be governed by the Peer Review Methodology (ESMA42-111-4661, the Methodology), and the guidance note in relation to onsite visits in peer reviews (ESMA/2015/RP/011).
8. As for ESMA's involvement, details are provided in paragraphs 18-21.

## Purpose

9. In line with the ESMA Regulation and the Methodology, the peer review will cover the assessment of:
  - the independence of NCAs and their capacity to achieve high quality supervisory outcomes, including the adequacy of their resources and governance arrangements, with particular regard to the effective application of the RTS and ITS and of the legal texts falling within the remit of ESMA, and the capacity of NCAs to respond to market developments;
  - the degree of convergence reached in the application of Union law and in supervisory practice and the extent to which the supervisory practice achieves the objectives set out in Union law, including the determination of good practices developed by some NCAs which might be of benefit for other NCAs to adopt;
  - the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where those provisions have not been complied with.
10. ESMA also has an important role to play in improving data quality. This derives from the fact that it is both a regulatory body and supervisor of Trade Repositories. While it is not a Peer under Article 30 of Regulation 1095/2010, it was decided to include it as only common efforts by ESMA and the NCAs can achieve an efficiently functioning reporting framework in the EU.

## Scope

11. This Peer Review will assess NCAs and ESMA against the objectives set in the Level 1 and 2 provisions of EMIR and their corresponding RTSs and ITSs in ensuring that the quality of data is complete, accurate, consistent and not duplicated.
  - The provisions to assess NCAs against are: Article 9(1), 11(2) of 648/2012<sup>15</sup>, Articles 1, 2, 3, 4 of 1247/2012<sup>16</sup>, Articles 1(1), 2(2), 3(1)(2)(3), 3(5) of 148/2013.

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<sup>15</sup> As amended by 2017/105

<sup>16</sup> As amended by Articles 2, 3 and 4a of 2017/105

- The provisions to assess ESMA against are: Article 78(4), 80(1) and 81 (2) of 648/2012, Articles 8 (b), 16 (c), 19(a)(b)(c), 23(a)(b)(c) of 150/2013, Articles 4 and 5 of 151/2013.
- To further inform the assessment, the assessment group will also consider the relevant Level 3 Q&As that relate to the provisions identified in the two bullet points above.

12. This mandate will also complement and intersect the Data Quality Action Plan, introduced in 2014. The review period will cover from 1 January 2017 to 31 December 2018 and will intersect with the DQAP for each of those years. A summary of the DQAP's objectives for these two years is provided below:

- The DQAP for 2017 had the objective of enhancing the quality of the data in a coordinated and meaningful way with actions from both NCAs and ESMA. This included ESMA Supervision's plan to continue performing re-validations according to the Level 2 validation rules in place at that time. ESMA Supervision also continued with its monitoring and follow-up activities regarding inter-TR reconciliation, public data and quality of TR reports, data quality dashboard and indicators. The DQAP for 2017 stated that NCAs would focus on the monitoring of remedial actions undertaken by the entities when their reports are rejected or when their trades are not paired or matched. The DQAP also stated that ESMA would initiate a project to assess the completeness and accuracy of the information reported through TRACE.
- For 2018, the DQAP envisaged focusing on assessing and improving the completeness, accuracy and effective use of EMIR data that is made available to authorities through the TRACE channel. Additionally, ESMA supervision envisages for 2018 to continue performing ongoing activities to detect issues and track improvements of data quality such as revalidating data in accordance to revised RTS rules, monitoring trends and finding outliers through the data quality dashboard and engaging with NCAs through the Data Quality Log. For NCAs, the focus for 2018 is to focus on more sophisticated data quality assessment measures or expanding the review to cover important data fields that were not yet analysed in detail.

## **NCA Selection**

13. The Methodology sets out how NCAs are to be selected for Peer Review.

14. Under the Methodology, the peer review can either target in whole or in part a defined set of jurisdictions chosen on the basis of objective criteria.

15. This peer review will target a select number of NCAs to be covered by the peer review from the very beginning. The selection of the NCAs will be based on the following objective criteria, which conform with Section 1 of the Methodology:
  - the data quality of outstanding derivative contracts as expressed by the share of in-compliant reports under the reporting requirements in force during the review period; and
  - the significance of the derivative market size of the jurisdiction assessed through the number of outstanding positions.
16. Regarding the market size, assessed by the above criteria, and taking into account also the number of outstanding derivative contracts of the EU market under the reporting requirements in force during the review period, the top 6 jurisdictions in descending order are: UK, CY, NL, DE, IE, FR.
17. The United Kingdom falls within the assessment criteria. The participation of the UK may need to be revisited by the BoS depending on the outcome of the negotiations, i.e. whether there is a transitional agreement between the EU and the UK.

### **ESMA's inclusion**

18. It has already been determined that ESMA will be included within the Peer Review exercise<sup>17</sup>. While not a Peer under Article 30 it will be treated as such from an operational point of view, i.e. following the same methodology, receiving and answering a questionnaire, receiving an on-site inspection and possible follow-up by the Assessment Group with ESMA's stakeholders e.g. Trade Repositories.
19. The Final Report will contain in its annexes NCA countries reports and an ESMA report which will be similar in content and style. According to the Methodology, these annexes are not published. The section of the Final Report that deals with ESMA will be in a separate part of the document. This is because the assessment standards for ESMA are different. Therefore, it is appropriate, in order to not mislead or confuse readers that the part relating to ESMA is dealt with elsewhere and within its own section. This approach will also avoid giving the incorrect impression that ESMA is a Peer and falls under Article 30 of the ESMA Regulation.
20. If ESMA Chair disagrees with the findings of the Assessment Group that relate to ESMA, he will have a similar right to NCAs to include a statement to the Final Report. These rights extend to drafting, agreeing and signing of the statement, if required.

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<sup>17</sup> However, the Final Report will clearly state that it is not a Peer under Article 30 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council and the fact its inclusion is done on a voluntary basis.

21. ESMA's inclusion in this peer review is done on an exceptional basis given the dual supervisory framework of EMIR for data reporting, where ESMA supervises TRs and NCAs supervise the entities who report to TRs and the fact that only a joint effort can ensure high quality data.

### **Operational aspects of Peer Review**

22. The Peer Review process may follow the following steps:

- at a first stage, the Assessment Group will develop a self-assessment questionnaire. This self-assessment questionnaire is to be circulated to 6 NCAs to be assessed in this peer review. A separate questionnaire will also be circulated to ESMA to complete.
- at a second stage, after thorough analysis of the answers provided to the self-assessment questionnaire, the Assessment Group will carry out on-site visits of those NCAs. It will also carry out an on-site visit of ESMA. These visits will take place in order to complement the findings from the self-assessment questionnaire with the detailed information that will be needed to gain a thorough understanding of the supervisory actions undertaken. Information may be required in advance of the on-site-visit and meetings will be arranged between the Assessment Group members and the staff of the NCA or ESMA such as the experts, supervisors, enforcers in the field, including their management. Each on-site visit shall last for one to three days.
- The Assessment Group may also gather other publicly available information.

23. The desk-based analysis during on-site visits shall consist of the review of a limited number of files related to the relevant data reporting requirements.

24. Both the NCAs and ESMA will be requested to provide working documents clarifying any issue arising as part of the peer review process. These documents will have to be provided in English, if available. When an English version of these documents is not available, a description in English will have to be provided.

25. On site visits will be undertaken by visiting teams, in line with Section 5 of the Methodology.

### **Seeking input from stakeholders**

26. Data quality is important to many external stakeholders. The Assessment Group may seek input and engagement from stakeholders such as counterparties and trade repositories. This engagement allows for a better understanding of the supervisory practices in place, seen from the practical experience and complements the views provided by NCAs and ESMA. Any such input will be governed by Annex 1 of the Methodology.

### **Review approach**

27. In accordance with the Methodology, the peer review will be carried out by an Assessment Group. The Assessment Group will be composed of the following persons, with extensive knowledge and experience in the field of supervisory convergence, supervisory actions aiming at enhancing the quality of data reported under EMIR.
28. The Assessment Group shall be co-ordinated by Carmela Borsino, Consob, Italy.
29. The Assessment Group will consist of:
  - Thomas Hoepfner (BaFin)
  - Patryk Toporowski (KNF)
  - Jochem Kimman (AFM)
  - Monica Buzea (ASF)
  - Niamh Lynn (CBol)
  - Nikolay Arnaudov (ESMA, Markets Department)
  - Sotiris Papiotis (ESMA, Supervision Department)
30. Kevin Phelan, from the Convergence Team in ESMA's Legal, Convergence and Enforcement Department, will act as Rapporteur of the Assessment Group.

### **Review Period**

31. The period under review covers the period from 1 January 2017 to 31 December 2018.

### **Methodology**

32. As well as reviewing extant policies and procedures, such as procedures on supervisory actions at enhancing the quality of data reported under EMIR, some of the tools that can be used for this peer review include, but are not limited to, interviews with NCAs' staff, access to relevant files and requests for explanations of the work carried out.
33. The obligations on professional secrecy as stipulated by Article 70 of the ESMA Regulation and subsequently by the ESMA Management Board Decision on Professional Secrecy and Confidentiality (ESMA/2011/MB/4) will apply to all members of the Assessment Group through their explicit consent to comply with those obligations.
34. As a matter of principle, all Assessment Group members should commit to actively participate in the review, including through the on-site visits. Furthermore, to perform this review within the deadline and deliver the outcome by December 2019, all NCAs must commit to cooperating with the Assessment Group and facilitating the work of the Assessment Group within the timelines set out.
35. The Coordinator, with the assistance of the Rapporteur, will work to prevent conflicts of interest arising in the Assessment Group. This will include the rule that the visiting team cannot include a representative of the NCA being visited, nor can an NCA representative

work on the assessment of that NCA. In addition to this rule, when ESMA is on-site visited no on-site team can include representatives from ESMA other than the Rapporteur.

36. A confidentiality agreement containing also provisions on managing conflicts of interest will be signed by all members of the Assessment Group.

### Evidence

37. Both NCAs and ESMA will be asked to complement their replies to the questions with examples from their actions, practices and procedures, in the form of supervisory files, and samples, and their supervisory handbooks, instruction manuals and similar material. The evidence should demonstrate their supervisory actions in relation to the scope of the mandate. The evidence will have to be provided in English, if available. When an English version of the evidence is not available, the answer has – to the extent practicable – to describe the relevant evidence in English.

### Report and Publication

38. The Final Report resulting from the work shall be made public, unless the Board of Supervisors decides otherwise at the time of approving the report.

### Time-line expected for the work

Timeline	Details
Early September 2018	Assessment Group meeting
3 October	SCSC agreeing to the mandate, consultation with MDSC
7 November	BoS – approval of mandate
November	Drafting of the questionnaire and background information questions by Assessment Group, followed by consultation of SCSC
December to 2nd half of January 2019	Questionnaire sent to NCAs and ESMA (to be completed within approximately 4 weeks)
2nd half of January - March	Review responses and organising visits
Mid March - June	On-site visits
July - August	Drafting of the report
September	Accuracy checks with NCAs and ESMA bilaterally
13 November	Finalisation of the report following consultation with the SCSC
3-4 December	BoS approval of the Final Report

## Annex 2 – The Questionnaires

### QUESTIONNAIRE FOR NCAs –

### PEER REVIEW INTO SUPERVISORY ACTIONS AIMING AT ENHANCING THE QUALITY OF DATA UNDER EMIR

The Board of Supervisors (BoS) decided through the [Supervisory Convergence Work Programme for 2018](#) to conduct a peer review into supervisory actions aiming at enhancing the quality of data reported under EMIR. ESMA as supervisor of trade repositories will also be included within the exercise as only common efforts by ESMA and NCAs can achieve an efficiently functioning reporting framework in the EU.

This peer review will be conducted in accordance with Article 30 Regulation (EU) No. 1095 /2010 of the European Parliament and of the Council of 24 November 2010 (ESMA Regulation) and the ESMA Peer Review Methodology (ESMA42-111-4661 (Methodology)).

In line with the ESMA Regulation and the Methodology, the peer review must also include a review of the independence of the NCAs and capacity to achieve high quality supervisory outcomes, including the adequacy of resources and governance, the capacity of the NCA to respond to market developments, the degree of convergence in the application of law and supervisory practices, and the extent to which the practices achieve the objectives. The mandate was approved by the Board of Supervisors in November 2018.

In accordance with the Methodology, the peer review will be carried out by the assessment group identified in the mandate.

In line with the Methodology the assessment group will report its findings to the BoS, for its approval, after having consulted the Supervisory Convergence Standing Committee.

The peer review shall focus on the objectives set in the Level 1 and 2 provisions of EMIR and their corresponding RTSs and ITSs in ensuring that the quality of data is complete, accurate, consistent and not duplicated. The provisions that NCAs will be assessed against are: Article 9(1), 11(2) of 648/2012, Articles 1, 2, 3, 4 of 1247/2012, Articles 1(1), 2(2), 3(1)(2)(3), 3(5) of 148/2013 (as amended).

To further inform the assessment, the assessment group will also consider the relevant Level 3 Q&As that relate to the provisions identified above.

On-site visit of NCAs and ESMA will follow the assessment group's review of the responses to the questionnaire. Depending on the outcome of the responses to the self-assessment questionnaire the assessment group may seek input from stakeholders and in accordance with the Stakeholder Engagement in Peer Reviews (ESMA/2016/632).

The period under review covers the period from 1 January 2017 to 31 December 2018. This period also incorporates the change to the EMIR reporting standards that applied since 1 November

2017. When answering the questions, please pay due regard to these new standards and indicate in your response to each question the changes your Authority has made following their application.

#### **A. NCA's supervisory approach to EMIR data quality**

The EMIR reporting requirements have been in place since February 2014. It is therefore expected that NCAs have identified and developed an appropriate supervisory model based on its jurisdiction's size, scale and complexity to ensure that counterparties (Counterparties) adhere to their reporting obligations under EMIR.

It is also expected that NCAs have evolved their supervisory models and place an appropriate amount of resources on ensuring that the quality of the underlying data reported is sufficient. Whatever the supervisory model adopted by an NCA, it is expected to have developed since the reporting requirements came into effect in early 2014 and since the introduction of ESMA's Data Quality Action Plan in September 2014.

It is also expected that whatever the supervisory approach it is not merely tick-box exercise but also quantitative, qualitative and probative. In this regard, it is expected that NCAs supervisory policies provide for a periodic assessment of a sample of counterparties. It is expected that the sample of counterparties is selected taking into account data quality statistics, these could be combined with rotating criteria. The size of the sample should be designed to detect instances of misreporting.

It is also expected that NCAs have developed an appropriate supervisory model to detect non-reporting counterparties in their jurisdiction and consequently compel these non-reporting entities to adhere to the applicable regulatory requirements. This is important as non-reporting counterparties will affect the overall quality of data by giving only a partial picture of the derivative markets in an NCA's jurisdiction.

Areas assessed: Article 9(1) of EMIR and Article 2 of CIR<sup>18</sup>.

1. Please provide a narrative of your NCAs supervisory approach and explain how it has developed since 2014 and the introduction of the DQAP<sup>19</sup>. Please identify whether, and if so how, it has evolved to focus on actions to enhance the quality of data reported by counterparties. Please provide a description of the internal policies and procedures that your NCA has developed and implemented to facilitate this objective. Finally, please also state whether your NCA undertakes a periodic sampling of counterparties and the methodology used.

#### **B. NCA's access, assessment and analysis of data held by Trade Repositories ("TRs") in order to perform their supervision of Counterparties**

In this section the AG is seeking to understand how frequently NCAs assess the underlying quality of data reported by counterparties. It is important that NCAs not only access the data but analyse

<sup>18</sup> Commission Implementing Regulation No 1247/2012

<sup>19</sup> Where relevant, please specify in your response the situation before and after 1 November 2017.

it too. TRs are an important source of information for NCAs and by making use of the data reported to TRs, NCAs can identify whether the counterparties they supervise are submitting data that is complete, accurate, consistent and not duplicated elsewhere.

It is expected that NCAs document in written policies and procedures, the frequency of its access to TRs and the analytical tools used to identify poor data quality whether by frequent, infrequent, large or small counterparties or report submitting entities.

Therefore, this section of the questionnaire is specifically seeking to understand (i) NCA's frequency of access to information held by TRs and (ii) the assessment undertaken by NCAs and the analytical tools used to assess and detect poor data quality. With regards to access, the AG is requesting detailed information on whether the access is reactive to events, or proactive regular and continuous. The AG is also seeking to understand the analysis undertaken by NCAs and the analytical tools used to assess and detect poor data quality. Good practice would indicate that, the more times NCAs access and also analyse derivative information held by TRs, the better they will identify whether counterparties, as well as the entities reporting on their behalf, are fully complying with their EMIR reporting requirements. It is expected that, if poor data quality is identified, then NCAs put in place supervisory actions to ensure that EMIR data quality improves. Where relevant, please specify in your response the situation before and after 1 November 2017.

Areas assessed: Article 9 (1) of EMIR, Article 1(1) of CDR 148/2013, Article 1 of CIR 1247/2012, 2(2) of CDR 148/2013, Article 3(2) and 3(3) of 148/2013.

2. Has your NCA onboarded with all registered TRs? If no, why not?
3. On average, how often did your NCA access EMIR data (e.g. daily, weekly, monthly or other)? What prompted your NCA to access EMIR data? Was it as part of an event-based, risk-based or continuous monitoring-based approach to supervision? Please specify what kind of data you access. For example, is it:
  - a. Trade activity reports;
  - b. Trade state reports;
  - c. Rejection statistics reports;
  - d. Reconciliation statistics reports;
  - e. Other, please specify which.
4. Does your NCA analyse the quality of data reported by counterparties and held with TRs? What is the frequency of your analysis? Please describe the tools your NCA used to analyse data quality?
5. Does your NCA undertake any sampling of counterparties, TRs, classes or contract type of derivatives to assess the quality of data reported by counterparties or report submitting entities and held by TRs?

<b>C. NCA's supervision of the timeliness, correctness and accuracy of derivative reporting</b>
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The mandatory reporting requirements for derivatives came into effect in February 2014 and requires counterparties to report all details regarding derivative contracts that have been entered

into, to a TR. However, the information held by TRs is only useful when the underlying data is complete, accurate, consistent and not duplicated elsewhere.

It is expected that NCAs take action to ensure that counterparties and report submitting entities, who report on their behalf, fully comply with their EMIR reporting obligations and in a timely manner.

Data quality is enhanced when NCAs are proactive in supervising and ensuring the quality of data for all fields. It is expected that as a baseline NCAs supervise Counterparties to ensure that all fields are correct and that they are submitted and updated, as required under EMIR by counterparties or their report submitting entities in a timely fashion.

Under the current text of EMIR, the reporting requirements apply equally to both counterparties to a derivative. The accurate reporting by one counterparty but inconsistent, duplicative or lack of reporting by another counterparty creates an incomplete picture of what is happening in an NCA's jurisdiction.

To comply with the requirements, it is expected that NCAs:

- have regularly monitored the data quality statistics (rejection and reconciliation) provided by all TRs and have undertaken actions towards those entities with the most relevant data quality issues
- have investigated the main reasons for rejections with counterparties under their supervision and have requested remedial actions
- have investigated the main reasons for lack of pairing and matching of the derivatives reported by counterparties under their supervision and have requested remedial actions
- have investigated the quality of reporting of fields such as the IDs of the two counterparties UTI, notional, value of the contract, nature of the counterparties, collateral and have requested remedial actions in case of misreporting
- have well established and developed supervisory approaches so that counterparties agree on the correct UTI and LEIs when reporting derivatives
- have monitored the remedial actions undertaken by the entities with the most relevant data quality issues
- have set up IT tools to analyse data and detect misreporting
- have thorough and comprehensive supervisory approaches to ensure that both counterparties to a derivative report information accurately and correctly
- have specific documented policies and procedures in place to supervise that trades are not duplicated
- have a supervisory approach in place to supervise that trade information is updated in a timely fashion when required to do so under EMIR
- NCAs have mitigation and remedial plans in place when the data reported by counterparties is of poor quality.

Where relevant, please specify in your response the situation before and after 1 November 2017.

Articles assessed: Articles 9 (1), 11(2) of EMIR, Article 2 of CIR 1247/2012, Articles 1, 2, 3 and 4 of CIR, 1(1), 2(2), 3(1)-(3) of CDR, Article 1(1), 2(2), 3(5) of CDR

6. How did your NCA supervise counterparties or their report submitting entities regarding the EMIR requirement for reports to be submitted in a timely fashion? What supervisory follow-up actions did your NCA take in instances of non-reporting or late reporting by counterparties?
7. How did your NCA supervise counterparties regarding their obligation to ensure that they reported all relevant details of derivatives as specified in the Annexes of the RTSs and of the ITSs on reporting? What type of accuracy checks does your NCA undertake?
8. How did your NCA supervise counterparties or their report submitting entities regarding the requirement to report the correct LEIs of counterparties and other entities involved in the transaction and the requirement to report the agreed UTI of the trade? What supervisory follow-up actions did your NCA take in instances of misreporting? Please provide a narrative or summary of specific action taken in this area during the review period.
9. Specifically, with regards to UTI:
  - a) How did your NCA supervise counterparties as regards their obligation to agree the UTI between them before reporting to the TR?
  - b) How did your NCA supervise that the generation of UTI's adheres with the requirements set out under Article 4a of the ITS on reporting?
  - c) How did your NCA supervise counterparties regarding the EMIR requirement to communicate the UTI to the other counterparty in a timely manner?
10. Specifically, with regards to the reporting of the LEI:
  - a) What supervisory actions did your NCA undertake so that counterparties have an LEI and are identifying themselves with the correct LEI when they report under EMIR including following an acquisition or merger? Please describe the specific actions your NCA undertook when a counterparty did not have an LEI or was using an incorrect LEI e.g. the LEI of another entity within the group.
  - b) How did your NCA supervise that counterparties react promptly to situations where they change an LEI due to a merger, acquisition or other event where the identifier of the counterparty has to be updated. How did you supervise that they notified and provided relevant information to TRs in a timely and complete manner?
11. Did your NCA supervise counterparties as regards the EMIR requirement for valuation of contracts to be reported on a daily basis? How did your NCA do this? How does your NCA supervise that the valuation reported is in line with the provisions of Article 11(2) of EMIR. Please describe the tools used to undertake this activity and the frequency of these checks.
12. Did your NCA check whether counterparties reported the collateral of derivatives? How did your NCA do this? Please describe the tools used to undertake this activity and the frequency of these checks.

13. Overall, what mitigation plans did your NCA take in relation to poor data quality by counterparties or their report submitting entities for these key fields?
14. Please describe the steps your NCA took so that the information it received was complete and correct? Did your NCA systematically cross-check the information on derivatives that was made available to you from a given TR with the one reported by the other reporting counterparty either to the same or to another TR? What steps did your NCA take when it had an incomplete picture because of missing information?
15. Does your NCA monitor data quality statistics? How often does your NCA monitor data quality statistics? Is this done on a reactive event-specific basis or on a regular and ongoing basis? Please provide examples.
16. Please describe your supervisory approach to the monitoring of pairing rates. In your response, please state at what level this monitoring occurs at e.g. counterparty or report submitting entities, ETD/OTC? What supervisory actions has your NCA undertaken to improve pairing?
17. What was your NCA's approach in supervising that there were no trade reporting duplication by counterparties? How did your NCA identify and remediate instances of when:
  - (i) One counterparty reports at transaction level while another reports trade information at position level.
  - (ii) The same side of the derivative is reported to two different TRs.
  - (iii) The same derivative is reported by the counterparties with different Trade IDs because the UTI has not been agreed between counterparties.
18. What was your NCA's supervisory approach when it observed that a trade was reported with either identical counterparties, execution date, maturity date, notional, price, but different UTI?
19. What was your NCA's supervisory approach to the reporting of modifications by counterparties? Did you use reconciliation reports or did you compare directly the two sides of the derivatives or did you use any other technique. Please specify. How do you proceed in cases where one of the counterparties is subject to the supervision of another NCA?

<b>D. Prioritisation of EMIR data quality and integration of EMIR data into NCA's overall supervision</b>
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The information reported by counterparties relating to the derivatives they enter into is only useful if it neither siloed nor ring-fenced, but incorporated into an NCA's overall approach for supervised firms. It is therefore expected that if a counterparty is also an authorised entity in its own right or falls within the group of an authorised entity that NCA's use the supervisory leverage available to them to ensure a consistent and high quality approach by the reporting counterparty. It is also expected that NCAs engage in positive outreach with counterparties in their jurisdiction to explain to them the importance of submitting complete, accurate, consistent and not duplicated trade information.

The AG is also looking to understand whether EMIR data is integrated into the general supervisory activities carried out by the NCA.

The quality and detail of the supervisory practices depend also on the prioritisation of EMIR data quality with regards to human and IT resources and scrutiny from senior management. The AG is seeking to assess these supervisory characteristics too.

Where relevant, please specify in your response the situation before and after 1 November 2017.

Articles assessed: Article 9 (1) of EMIR, 1(1) of CDR, Article 30.2 (b) of 1095/2010

20. Please describe the flow of information between the team responsible for the EMIR reporting obligations and the team responsible for the day-to-day supervision of the reporting counterparties or related entity, if that related entity is authorised in its own right?
21. Please describe how your NCA integrated the supervision of financial counterparties who must report under EMIR into your NCA's overall approach of supervision for that firm/group?
22. How often was your NCA's management informed of EMIR data quality issues during the review period? Please provide details of any specific actions taken during the review period following management's review of EMIR data quality.
23. Please indicate your NCA's budget for each of 2017 and 2018 relating to the supervision of counterparties under EMIR reporting. Please also provide details of your NCA's budget supervising EMIR reporting expressed as a percentage of the total budget spent on supervising all areas under your NCAs remit for each of 2017 and 2018.
24. During the review period, please indicate the number of Full Time Employees involved in activities relating to the supervision of the EMIR reporting obligations. Please provide a breakdown of the number of senior experts working in this area together with their role and background.
25. Please describe any general outreach or communication exercises your NCA conducted during the review period to counterparties highlighting and stressing the importance of submitting timely, accurate, consistent and non-duplicative trade reports.



## QUESTIONNAIRE FOR ESMA –

### PEER REVIEW INTO SUPERVISORY ACTIONS AIMING AT ENHANCING THE QUALITY OF DATA UNDER EMIR

#### A. ESMA's supervisory approach to EMIR data quality

The EMIR reporting requirements have been in place since February 2014. It is therefore expected that ESMA has identified and developed an appropriate supervisory model based on the size, scale and complexity of the registered trade repositories it supervises and the accompanying derivative reporting requirements.

It is expected that ESMA's supervisory model has developed over the last number of years and incorporates and complements the outcomes of the Data Quality Action Plan that was introduced in September 2014.

It is also expected that whatever ESMA's supervisory model, the approach adopted is not merely a tick-box exercise but also quantitative, qualitative and probative. In this regard, it is expected that ESMA's supervisory approach provides for a comprehensive review of the overall functioning of TRs and provides periodically an in-depth analysis of a specific area to be selected based on a risk based approach to the supervision of TRs. It is also expected that ESMA also selects other areas to focus on based on rotating criteria in undertaking its role as a supervisor.

Areas assessed: Article 80(1) of EMIR, Article 8 (b) 150/2013, Article 1 (c) of 150/2013

1. Please provide a narrative of ESMA's supervisory approach to TRs and explain how it has developed since 2014 and the introduction of the DQAP in 2014<sup>20</sup>. Please identify whether ESMA's supervisory approach has evolved to focus on actions to enhance the quality of data held by TRs. Please provide a description of the policies and procedures that ESMA has developed and implemented to facilitate this objective.

#### B. ESMA's access, assessment and analysis of data held by Trade Repositories ("TRs") in order to perform supervision of TRs

In this section the AG is seeking to understand how ESMA interacts with TRs.

It is expected that during the review period ESMA:

- Has regularly accessed all the registered TRs (via Trace or via SFTP or via portal);
- Has set up IT tools to access and analyse TRs data

The AG expects that ESMA has written policies and procedures that document the frequency of a continuous or risk-based access and, in case of event –driven access, the events that trigger the access.

<sup>20</sup> Where relevant, please specify in your response the situation before and after 1 November 2017.

Where relevant, please specify in your response the situation before and after 1 November 2017.

Areas assessed: 80(1) of EMIR, 78 (4) of 648/2012, 23 of 150/2013, 81(2) of EMIR, 4 and 5 of CDR.

2. On average, how often did ESMA access EMIR data (e.g. daily, weekly, monthly or other)? What prompted ESMA to access EMIR data? Was it as part of an event-based, risk-based or continuous monitoring-based approach to supervision?
3. Does ESMA analyse the quality of data held with TRs? What is the frequency of ESMA's analysis? Please describe the tools ESMA used to analyse data quality.
4. Does ESMA undertake any sampling of counterparties, TRs, classes or contract type of derivatives to assess the quality of data held by TRs?
5. What (if any) supervisory actions did ESMA put in place after it accessed, identified and assessed poor data quality held by TRs?
6. Does ESMA monitor data quality statistics? How often does ESMA monitor data quality statistics? Is this done on a reactive event specific basis or regular and ongoing basis?

**C. ESMA's supervision of TRs' outsourcing arrangements, organisational structure and compliance departments to ensure that the quality of data is fit for purpose**

Ensuring that EMIR data is of quality, that is, it is complete, accurate, consistent and not duplicated elsewhere is the responsibility of all TR staff. It is expected that ESMA staff supervises all TRs in ensuring that TR staff are aware of the organisational requirements that they must robustly and continually adhere to. In particular, it is expected that ESMA takes necessary action so that the compliance departments of TRs are aware of ESMA's regulatory expectations regarding data quality and that they strive to achieve it. It is also expected that ESMA staff when they supervise TRs, assess and act upon identified issues so that any outsourcing arrangements entered between the TR and another entity do not jeopardise or compromise the quality of EMIR data. It is expected that ESMA regularly and often supervises compliance departments and outsourcing arrangements in this regard.

Where relevant, please specify in your response the situation before and after 1 November 2017.

Provisions assessed: Article 80(1) of EMIR, Articles 8 (b), 16 (c) of 150/2013, 78(4) of 648/2012

7. How did ESMA supervise existing outsourcing arrangements and assess whether they affect the integrity and quality of data? What direct and follow-up actions did ESMA take in instances where existing outsourcing arrangements were considered as potentially affecting the integrity and quality of data?
8. What was ESMA's approach in supervising TRs organisational structures and adequacy of TRs' human resources as regards their effect to data quality? What direct and follow-up actions did ESMA take in instances where it was considered that existing organisational structures were affecting data quality?

9. How did ESMA supervise TRs and particularly their compliance departments, as second lines of defence in ensuring that the quality of data reported under Article 9 of EMIR was complete, accurate, consistent and not duplicated?

**D. ESMA's supervision of TRs regarding the requirements relating to transparency and allowing data access to authorities and counterparties**

ESMA, NCAs and reporting counterparties, as well as report submitting entities must be able to access data held by TRs. Access to derivative information is key to reporting counterparties in order to update the derivative information. Authorities must also be able to access trade information in order to fulfil their statutory and regulatory objectives. It is expected that ESMA supervises TRs so that all relevant stakeholders can access easily and update trade information when the need arises. Where accessibility issues arise, it is expected that ESMA's supervision department takes action so that issues are resolved in a timely and comprehensive manner.

Furthermore, when aggregate derivative data is being published, it is expected that ESMA supervises that the TRs are having the right processes in place to avoid inaccuracies with the data aggregations. Where relevant, please specify in your response the situation before and after 1 November 2017.

Provisions assessed: Article 23 (a)(b)(c) of CDR (EU) No 150/2013, Article 81(2) of EMIR, Articles 4, 5 of CDR 151/2013.

10. How did ESMA supervise TRs regarding their compliance with the requirement to provide data access under Article 81 (2)? How does ESMA check that each relevant Authority's accesses the data it is entitled to? What direct and follow-up actions did ESMA take in instances where issues related to authorities' access rights were identified?
11. How did ESMA supervise TRs regarding their compliance with the requirements for data access, irrespective of the systems used (e.g. TRACE, Bilateral SSH FTP). Please focus on the following aspects: XML messages, timeliness, encryption, queries, etc.
12. How frequently did ESMA's supervise these requirements? In your response please describe whether it was reactive to requests and complaints or proactive and on a regular and often basis?
13. During the Review Period please describe how ESMA supervised TRs regarding the accuracy of the aggregate derivatives trade data made available to the public? What direct and follow-up actions did ESMA take in instances where the data made available to the public was not correct?
14. What tools did ESMA utilise to supervise the publication of aggregate derivatives data?
15. How did ESMA supervise TRs regarding the requirement to have the appropriate interfaces to facilitate and allow reporting counterparties and their report submitting entities to access and correct derivative data?

## E. Supervision of TR requirement to verify correctness of reporting and to perform TR reconciliation

To comply with the requirements, it is expected that **ESMA**:

- has regularly monitored that TRs perform the validation in line with the applicable rule and has undertaken actions towards TRs with the most relevant data validation issues
- has regularly monitored that TRs inform properly the reporting counterparties and report submitting entities, as appropriate, in case of rejection and has undertaken actions towards TRs that have not properly informed reporting entities
- has regularly monitored that TRs perform properly the reconciliation process and has undertaken actions towards TRs with the most relevant reconciliation issues
- has regularly monitored that TRs inform properly the reporting counterparties and report submitting entities, as appropriate, in case of unpairing / unmatching and has undertaken actions towards TRs that have not properly informed those entities
- has set up adequate IT tools to verify the correctness of the validation and reconciliation process
- has taken actions so that TRs comply with all of the validation rules in force at the relevant time
- take actions so that when data is correctly rejected by TRs that this information is delivered to counterparties or the report submitting entity in a timely and appropriate manner
- has taken actions in relation to TRs to implement fixes to their systems and controls as regards data quality in a timely, diligent and comprehensive manner. When a TR does not meet ESMA's expectations, the AG expects ESMA to escalate matters and take a rigorous approach to the supervision of that entity.

Where relevant, please specify in your response the situation before and after 1 November 2017.

Provisions assessed: Article 19 (b) of CDR (EU) No 150/2012, Article 19 (c) of CDR (EU) No. 150/2013, Articles 19 (a), 23 (a), (b), (c) of CDR (EU) No 150/2013

16. How did ESMA supervise TRs as regards the correct application of the validation rules? What tools did ESMA utilise in order to check this? What direct and follow-up actions did ESMA take in instances where the validation was not performed correctly by TRs?
17. With what frequency did ESMA supervise the requirement of TRs to comply with the validation rules in force correctly? In your response please describe whether it was reactive to requests and complaints or proactive and on a regular and often basis?
18. What was ESMA's supervisory approach in supervising that TRs informed the reporting counterparty or report submitting entity about the completeness, accuracy, consistency and non-duplication of its data? What tools did ESMA utilise in order to check this? What direct and follow-up actions did ESMA take in instances where the information was not provided timely and properly by TRs?

19. What was ESMA's supervisory approach in supervising that TRs informed the reporting counterparty or report submitting entity in a timely and prompt fashion about rejections of reported derivatives? What tools did ESMA utilise to check this? What direct and follow-up actions did ESMA take in instances where the information was not provided timely by TRs?
20. What was ESMA's approach in ensuring that TRs implement remedial fixes that affect the application of the validation rules to their systems and controls, policies and procedures in a timely and efficient manner?
21. How did ESMA supervise TRs reconciliation and what actions has it taken so that data was timely and accurately reconciled when counterparties reported to different TRs?
22. How frequently did ESMA supervise the performance of reconciliation processes between TRs? Please describe what initiates these checks, whether they are done on a systematic or regular and often basis or whether they are performed on an event driven basis following complaints from either NCAs, counterparties or other third parties? What direct and follow-up actions did ESMA take in instances where it was detected that the reconciliation process was not performed correctly between TRs?
23. What was ESMA's approach in supervising that TRs informed the reporting counterparty or report submitting entity in a timely and prompt fashion about lack of reconciliation of reported derivatives, subject to reconciliation? What direct and follow-up actions did ESMA take in instances where the information was not provided timely by TRs to a reporting counterparty or report submitting entity?
24. How does ESMA supervise that TRs react promptly to a situation where counterparties or delegated entities notify a change in LEI due to a merger, acquisition or other event where the identifier of the counterparty has to be updated? Please describe the actions taken in the review period in this respect.

## **F. Prioritisation of EMIR data quality and integration of EMIR data into ESMA's overall supervision**

It is noted that EMIR is a complex piece of financial legislation. It is important that there is sufficient ESMA staff in dealing with this sensitive and important area of financial regulation.

It is important that ESMA's management are aware of issues with data quality when they arise. The AG also expects working level staff to escalate issues to management as and when they arise. As part of its supervision of EMIR, it is expected that EMIR data is not siloed within its supervision department but shared with other departments who may have an interest in performing their roles and functions. It is also expected that ESMA engages in positive outreach with external stakeholders to raise awareness of data quality issues under EMIR. The AG will seek to ascertain how effective ESMA is in undertaking such initiatives.

Where relevant, please specify in your response the situation before and after 1 November 2017.

Areas assessed: Article 80(1) of EMIR, Article 8 (b) 150/2013, Article 1 (c) of 150/2013

25. During the review period, please indicate the number of Full Time Employees involved in activities relating to the supervision of the quality of data reported to TRs under EMIR? Please provide a breakdown of the number of senior experts working in this area together with their role and background
26. How often were management informed of EMIR data quality issues during the review period? Please provide details of any specific actions taken during the review period following management's review of EMIR data quality.
27. What is the flow of information between the department responsible for TR supervision and the policy or risk analysis areas of ESMA? How are data quality issues taken into account?
28. Please indicate ESMA's budget for each of 2017 and 2018 relating to the supervision of TRs under EMIR. Please also provide details of ESMA's budget supervising EMIR reporting expressed as a percentage of the total budget spent on supervising all areas under ESMA's remit for each of 2017 and 2018.
29. ESMA has published a significant amount of Level 3 guidance such as Q&As for counterparties on the EMIR data reporting requirements. Beyond publishing material on its website how has ESMA sought to raise awareness of data quality issues with its external stakeholders (e.g. did it hold roundtable events with TRs during the review period, engage with trade bodies, interviews with trade press etc). Please explain and describe.

## Annex 3 – Findings and analysis relating to the six NCAs and ESMA

1. This section of the report sets out in more details the findings and analysis by the peer review of each of the assessment areas.
2. As noted elsewhere in this report the peer review assessed the six NCA against the expectations set out in the questionnaire based on the peer review's senior knowledge, experience and expertise of the Level 1 and 2 provisions of EMIR and their corresponding RTSs and ITSs in ensuring that the quality of data is complete, accurate, consistent and not duplicated.
3. The provisions that the peer review assessed the NCAs against are Article 9(1), 11(2) of 648/2012<sup>21</sup>, Articles 1, 2, 3, 4 of 1247/2012<sup>22</sup>, Articles 1(1), 2(2), 3(1)(2)(3), 3(5) of 148/2013.
4. In preparation for sending the questionnaire to the six NCAs the peer review devised the expectations to assess NCAs against.
5. Following the six onsite visits, the peer review complied its expectations into various categories in which to benchmark the NCAs. These categories are: (i) NCAs' supervisory approach to EMIR data quality, (ii) Integration of EMIR into NCAs' overall supervisory approach, (iii) NCAs' access, assessment and analysis of data.
6. This section of the report delivers the peer review's findings and analysis of each of these areas of EMIR data quality supervision.

### 6.1 NCAs' supervisory approach to EMIR data quality

#### AG's expectations

7. The peer review set out a range of expectations on NCAs with regards to their supervisory approach to EMIR data quality. These expectations were set out in the introduction to section A of the questionnaire. The peer review notes that the EMIR reporting requirements have been in place since February 2014 and therefore expected that NCAs have identified and developed an appropriate supervisory model based on its jurisdiction's size, scale and complexity to ensure that counterparties adhere to their reporting obligations under EMIR.
8. The peer review expects NCAs to have policies and procedures in place relating to EMIR data quality that were in place during the entirety of the Review Period. These policies and procedures should allow NCA staff to adequately supervise EMIR data quality.

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<sup>21</sup> As amended by 2017/105

<sup>22</sup> As amended by Articles 2, 3 and 4a of 2017/105

9. The peer review also stated within its expectations that adhering to the DQR in itself is not sufficient. An NCA's supervisory approach should have developed since the reporting requirements came into effect in early 2014.
10. During the Review Period the peer review expects that an NCA is proactive in its supervisory approach as opposed to being reactive<sup>23</sup>. Proactive supervision means on an own user initiative basis an NCA detecting, following-up/informing and possibly taking action against counterparties for EMIR reporting failures.
11. The peer review also stated that whatever the supervisory approach taken by the NCA it should not merely be a tick-boxing exercise but also quantitative, qualitative and probative. Sampling should occur, and these should be combined with rotating criteria. The size of the sample should be designed to detect instances of misreporting.
12. The peer review also expects that during the Review Period an NCA has taken or at least considered some form of enforcement or administrative sanctions against counterparties for EMIR reporting failures
13. Based on these expectations the six NCAs were assessed under this topic by reference to the following six criteria namely: (i) whether an NCA have developed an appropriate supervisory model based on its jurisdiction's size, scale and complexity, (ii) whether there are policies and procedures in place to supervise EMIR data quality, (iii) whether an NCA has taken supervisory actions over and above ESMA's DQR, (iv) whether the NCA is proactive in its supervisory approach as opposed to being reactive, (v) ensuring that the NCA does not take a tick-boxing approach to supervision but is quantitative and qualitative and probative. In this regard sampling should occur based on rotating criteria. The size of the sample should be designed to detect instances of misreporting and finally (vi) whether an NCA has considered some form of administrative or enforcement action during the review period.

## Findings

14. The peer review noted that the six NCAs supervise different types of markets with different types of counterparties who must report under EMIR. For example, Cyprus is noted as having a relatively large CFD marketplace, the CBoI was identified as having a large funds industry to supervise while the BaFin has one G-SIB under its jurisdiction, the FCA has three G-SIBs, the AMF has four G-SIBs while the AFM has one G-SIB to supervise.
15. The peer review assessed three NCAs [FR, IE and NL] as broadly meeting with the peer review's expectations in this area. The peer review also assessed three NCAs [CY, DE and UK] as partially meeting the peer review's expectations.

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<sup>23</sup> Reactive supervision in this instance may include counterparties informing the NCA of EMIR reporting failures and acting upon those.

16. The peer review found that notwithstanding the general observation regarding the six different markets' complexity, scale and importance the approaches taken by some NCAs overlapped considerably. The peer review found two NCAs [UK, CY] taking similar supervisory approaches. The peer review identified both NCAs relying on the parameters of ESMA's DQR as the primary approach to data quality supervision. However, the peer review identified one NCA [CY] as a late starter to this exercise as it only participated in the DQR for the first time in 2018.
17. The peer review found that another NCA [DE] marginally does more than the tests prescribed in ESMA's DQR as it analysed rejection and reconciliation statistics on a quarterly basis. It also undertook quarterly checks on the correctness of the execution date and the correctness of the asset class reported by the two counterparties of the same trade. It also undertakes occasional analysis of EMIR data quality or more commonly known as thematic reviews. Under German law professional audit firm are obligated to report any findings carried out on counterparties. These findings must be reported to BaFin. The team responsible for EMIR data quality within BaFin will remediate and explore data quality breaches under EMIR as part of its supervisory approach.
18. By contrast three NCAs [FR, IE and NL] were identified by the peer review as significantly exceeding the parameters of the DQR and to have developed an appropriate supervisory model based on their jurisdiction's size, scale and complexity. The peer review found one NCA [NL] as being well on its way to becoming an integrated data driven supervisor. This NCA has developed a data quality dashboard that can continuously and regularly monitor the quality of data reported under EMIR. This NCA introduced the dashboard on its own initiative based on an assessment of its own market and supervisory needs. The same NCA also explores in depth the granular aspects of data quality supervision by regularly processing on a monthly basis all Trade Activity Reports and one day per month Trade State Reports. It also applies 89 data quality checks to detect poor data quality.
19. Two NCAs [FR and IE] were also identified as significantly exceeding the DQR and therefore having developed a supervisory model likely appropriate, in the peer review's estimation, to its jurisdiction's size, scale and complexity. One NCA [IE] has undertaken a number of thematic reviews relating to EMIR data quality such as on valuations and the reporting by investment funds and insurance undertakings. It also developed an annual regulatory return for NFCs in Ireland. The information from this return is used to assess NFCs compliance with EMIR. These actions were in addition to the DQR for 2017 and 2018.
20. The remaining NCA [FR] launched on-site inspections to check CP's compliance with the EMIR reporting requirements and, in particular, risk mitigation (timely confirmation, portfolio reconciliation), completeness and timeliness of reporting, quality of data of reporting fields, daily valuation reporting and rejection management process. It also launched several theme-

based on-site SPOT<sup>24</sup> inspections in 2018 focusing on governance and organisational control arrangements in place for reporting transactions to TRs. Similarly, another NCA [NL] developed on its own initiative a data quality dashboard that can be used to monitor the largest counterparties and data quality of key fields. These actions were also in addition to participating in the DQR for 2017 and 2018.

21. The peer review found that the level of formality in respect of detailed policies and procedures relating to how NCAs supervise EMIR data quality was poor amongst many of the NCAs. The peer review found that one NCA [IE] adopted procedures for supervising EMIR after the review period, February 2019. Only one NCA [DE] did have procedures in place during the review period. Another NCA [UK] provided the peer review with a copy of a bank of questions for supervisors and a decision-making matrix. However, it is the peer review's view that neither of these documents provided by the FCA are likely to be sufficient to provide supervisors with the level of detail required to supervise EMIR data quality.
22. The peer review found that some NCAs were more proactive in their supervisory approach than others during the review period. The peer review found that the NCAs that were proactive were also the same NCAs that had taken steps to develop a supervisory model appropriate for the nature, scale and size of the derivatives market they supervise. Equally, the peer review found that NCAs that adhered closely to the DQR as a supervisory approach were likely to be reactive i.e. reactive to the supervisory agenda being set by external actors. This view is in line with the peer review's expectation that adhering to the DQR in itself is not sufficient and that NCAs supervisory approaches should have developed since the reporting requirements came into effect in February 2014. The peer review identified two NCAs [CY, UK] taking a quite reactive approach to EMIR data quality supervision. These NCAs integrated the DQR into their respective approaches but did not complement it with anything significantly additional. Indeed, the peer review identified that one NCA [CY] participated in the DQR for the first time in 2018. It did not participate in the DQR in 2017. The peer review also found that the another NCA [UK] responded to self-reported breaches by counterparties and remediated data quality breaches identified through policy work.
23. The peer review found another NCA [DE] as undertaking marginally more than the parameters of the DQR. It undertook some of the tests of the DQR on a more frequent basis (undertaken on a quarterly basis), following up on EMIR data quality breaches identified by external auditors, quarterly analysis on execution date, counterparty side and asset class and occasional analysis of data quality more commonly known as thematic reviews.
24. The peer review found that the other three NCAs [FR, IE and NL] were proactive in their supervisory approach during the review period. Two NCAs [FR and NL] complemented their supervisory approach with data quality dashboards, undertaking onsite inspections [FR], undertaking thematic reviews [IE] and developing more analytical and probative data quality

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<sup>24</sup> Operational and Thematic Supervision of Practices. The aim of these short, targeted inspections is to enhance supervision in context of regulatory inflation, develop the involvement of regulated entities and to offer fuller coverage and improve the AMF's market practice knowledge.

checks [NL]. The peer review found that these actions significantly exceed the parameters of the DQR and therefore could be likely described as proactive.

25. The peer review stated that data sampling should occur using rotating criteria e.g. assessing valuations and then migrating to checking LEIs or UTIs or another section of data quality supervision based on objective reasons. The peer review found one NCA [NL] applying a scoring system to EMIR data quality. This system assigns a score depending on the gravity of the issues identified. The output of this analysis is used to select and sample a shortlist of counterparties to review and follow-up. The peer review also found another NCA [IE] undertaking periodic sampling using rotating counterparties during the review period. The sample can be risk specific, industry specific or field specific. Another NCA [FR] uses their dashboard to monitor on a weekly basis rejection statistics and the trading activity of the largest counterparties in the French market. This NCA's sample is focused on the largest counterparties who represent over 90% of OTC reporting.
26. In relation to undertaking administrative or enforcement action, the peer review identified one NCA [UK] taking enforcement action during the review period. The FCA fined Merrill Lynch International £34,524,000 for failing to report 68.5 million exchange traded derivative transactions between 12 February 2014 and 6 February 2016. The peer review considers that this fine should deter counterparties from reporting incorrectly. Additionally, the peer review identified two other NCAs [FR, CY] taking steps regarding possibly enforcement and administrative sanctions for EMIR reporting failures during the review period.

## Analysis

27. As noted earlier, the peer review expects NCAs supervisory approaches to have developed their supervisory approach since the reporting requirements came into effect in February 2014. This has added resonance and weight if NCAs are also supervising either one or more G-SIBs. The peer review believes that is good practice before the commencement of a new piece of financial regulation to analyse the dynamics and intricacies of the local market in order to identify the appropriate supervisory approach.
28. The peer review recognises the importance of the DQR. It is an important exercise that since 2014 has improved EMIR data quality. However, the same objective tests prescribed in the DQR for NCAs apply equally to all NCAs regardless of the size and sophistication of the local derivatives market. Therefore, NCAs should be going further than the DQR when this is necessary. In this regard, the peer review identified three NCAs [IE, NL and FR] that undertook a more prescriptive, probative and intrusive approach to EMIR data quality. This was evidenced by these three NCAs undertaking onsite inspections, thematic reviews, enhanced data quality checks and investigations. By contrast, the peer review identified three NCAs [CY, DE, UK] as adhering closely to the DQR and only undertaking additional incremental supervisory steps.

29. The peer review believes that sampling EMIR data using rotating datasets is a sign of a proactive supervisory approach. Indeed, the peer review identified two NCAs [IE, NL] that adopt this outlook within their existing supervisory framework.
30. All NCAs should have in place policies and procedures to supervise EMIR data quality. This is important as the peer review identified within many NCAs a small close-knit team working on EMIR data quality issues. The peer review believes that should a member of the team responsible for EMIR data quality depart, NCAs may be at a significant disadvantage with a consequential impact on EMIR data quality in their jurisdiction.
31. As noted above, the reporting requirements have been in place since February 2014. NCAs as a credible deterrent should take more proactive steps when they identify counterparties who mis-report. The peer review believes that the fine against Merrill Lynch International in 2017 was likely to have had a significant impact on the market. The peer review is also encouraged by the positive steps and willingness of two other NCAs [CY, FR] to consider enforcement and administrative action against counterparties who misreport.

## 6.2 Integration of EMIR into NCAs overall supervisory approach

### AG's expectations

32. EMIR represents one of the first post financial crisis piece of European legislation. Having access to high quality EMIR data provides supervisors with the key tools needed to provide market colour and transparency to the derivative marketplace in their jurisdiction, assist with policy decision-making and identify poor conduct practices by market participants. However, the tool is only good when used, incorporated and embedded within NCA's general day-to-day supervisory frameworks. Section D of the self-assessment questionnaire set out the peer review's expectations for NCAs regarding the use of EMIR data.
33. The recurring and regular use of EMIR data across an organisation will improve its quality as any outliers, inconsistencies or anomalies will be cross-checked with TRs or directly with counterparties leading to possible modifications and improvements.
34. The peer review also set out in the questionnaire the expectation that the information should not be siloed or ring-fenced but incorporated into an NCA's overall approach for supervised firms. Building upon this expectation further supervisors should understand the benefits of EMIR and use it as an input into their approach to the firms they supervise. The peer review also set the expectation that EMIR data should be systematically shared with other teams or departments within the NCA or with other Authorities within the jurisdiction who may also require the data to fulfil their mandates.
35. Senior management within an NCA sets the tone, approach and direction for the organisation. The Preamble to section D of the questionnaire stated that the prioritisation and scrutiny of

EMIR data will be set by senior management. The peer review therefore expects senior management to be involved and aware of EMIR reporting issues, breaches and overall data quality. Examples may include but are not limited to management information reported to senior management on a recurring basis, senior management setting expectations on ways on how to prioritise and incorporate EMIR data within the NCA's overall approach, EMIR quality issues being reported to senior management by responsible teams. Senior management preparation for the annual ESMA DQR in of itself is not sufficient engagement.

36. The introductory section of the questionnaire stated that NCAs should prioritise EMIR data quality with regards to their human resources. This means that there should be a dedicated function, team or personal that supervises EMIR data quality (perhaps alongside other EMIR reporting obligations). The peer review believes that there should be human resources dedicated to supporting supervisory practices to enhance the quality of data reported under EMIR. The peer review expects that any key person risk is at least identified by the NCA.
37. Based on these expectations the six NCAs were assessed under this topic by reference to the following three criteria namely: (i) whether EMIR data is incorporated into NCAs' overall supervisory approach for regulated entities and regularly and systematically shared with other departments or with other Authorities within the same jurisdiction. (ii) the degree to which senior management of an NCA are aware of EMIR reporting issues, breaches and overall data quality and (iii) whether the NCA has a dedicated function or team responsible for supervising EMIR data quality.

### **Findings**

38. The peer review assessed two NCAs [FR, IE] as fully meeting with the peer review's expectations in this area, one NCA [NL] broadly meeting, one NCA [DE] partially meeting and two NCAs [CY, UK] not meeting the peer review's expectations.
39. The peer review found that amongst the six NCAs three NCAs [IE, FR and NL] had successfully and comprehensively integrated EMIR data within their overall supervisory approach.
40. One NCA [IE] use the information as part of its approach to fund supervision, banking supervision and supervision of insurance undertakings. The same NCA has a financial stability mandate and uses the information for that purpose too. As highlighted as a good practice, EMIR data has been used to detect possible conflicts of interest and best execution breaches during a thematic review of an investment fund.
41. The data is also used comprehensively by another NCA [FR]. Three divisions within the AMF use EMIR data, the Market Infrastructure Division which piloted the use of EMIR data following to the entry into force of the EMIR regime and which is responsible for the supervision of counterparties; the Market Surveillance Division which uses EMIR data for market abuse monitoring and engages with ESMA, and the Market Intermediaries Division which has oversight of investment firms and is responsible for monitoring the reporting obligation and data

quality and also attends the ESMA taskforce meetings. EMIR data is incorporated in the AMF's supervisory process as evidenced through the use of EMIR data for market and risk analysis. In particular, EMIR data is used for the identification of the main counterparties in the French derivatives markets as well as to analyse the systemic risk of counterparties and related Brexit exposures. EMIR data was also used in the analysis of the interconnectedness of the financial system.

42. Similarly, another NCA [NL] has also integrated the data within its supervisory approach and uses the data when reviewing high-profile prospectuses of issuers who may have significant derivative exposure that should be disclosed to investors in order to make an informed decision. The same NCA also uses the data to identify if firms are meeting with the ancillary exemption under MiFID II, as part of its approach to multi asset class surveillance including commodity derivative supervision. Within the same NCA, the EMIR data quality team also engages with supervisors of regulated entities.
43. By contrast two NCAs [CY, UK] made little use of the data during the review period. CySEC did not integrate EMIR data within its supervisory approach during the review period. However, it plans to do so soon. Similarly, another NCA [UK] uses the data to produce policy papers and policy positions. The same NCA also informed the peer review that in Q4 2018 it trialled the data as an input to support its Prudential Specialist Department's Supervisory Review and Evaluation Process (SREP) on specific firms.
44. Another NCA [DE], based on information gathered through the questionnaire and the discussions during the onsite visit is likely to be at an exploratory stage in using EMIR data. The NCA after the onsite visit showed evidence of using EMIR data during the review period to contribute to an internal report to the securities supervision department. The data was also used to determine the level of derivative and German counterparty exposure had to an EU country. The peer review also identifies interaction between the Bundesbank and BaFin on EMIR related issues. While the peer review views these actions positively, the use of EMIR data within BaFin itself during the review period was limited. However, going forward, the peer review recognises the commitment by the team responsible within BaFin for supervising EMIR data quality to act as ambassadors and to champion the use of EMIR data within the wider BaFin organisation.
45. The peer review is clear that senior management involvement relating to EMIR and specifically EMIR data quality is an important supervisory attribute in ensuring that high quality is reported by counterparties. Senior management set the tone, direction and priorities for an organisation. Therefore, they are an important stakeholder in ensuring that counterparties are appropriately supervised in order to provide and submit high quality data.
46. The peer review found that senior management of all NCAs were briefed and prepared for BoS discussions on the annual ESMA DQR exercise. However, the peer review identifies the DQR as the baseline minimum all NCAs should be undertaking. Therefore, the peer review

was looking for regular and frequent interaction between the team responsible for EMIR data quality and NCA senior management.

47. The peer review found senior management at one NCA [IE] to be regularly informed on matters relating to EMIR, including EMIR data quality. This occurs when the EMIR unit at the CBol provides senior management with periodic updates on EMIR related issues. This interaction and feedback is frequent. Additionally, senior management at the CBol will raise queries and points for clarification directed to the EMIR unit if something is unclear. On a structured basis the EMIR unit at the CBol also submits an annual work programme which is closely monitored to ensure that objectives are being reached and supervisory engagements are undertaken and relevant risks mitigated.
48. Another NCA [DE] stated that beside policy matters, the Director General of the BaFin is involved and aware of EMIR reporting issues, breaches and overall data quality and that information from the ongoing supervision of EMIR data is reported from the Director General to the CEO. BaFin also reported that in the context of ESMA's data strategy discussion there have been intensive exchanges on how BaFin can develop its data strategy and systematically improve the use of EMIR data within the organisation.
49. Within another NCA [FR] the management of the Markets Directorate periodically discusses data quality issues, including EMIR data quality. EMIR data quality is also discussed by the AMF's Executive Committee.
50. By contrast, the peer review found that senior management involvement on EMIR data quality issues at two NCAs [CY, UK] is centred around discussions relating to ESMA's DQR. However, the decision to take enforcement action against Merrill Lynch International in 2017 was escalated to an Executive Committee at the FCA. Within another NCA [NL] the peer review found senior management involvement in EMIR data quality issues limited. This is because when EMIR data quality are identified they are typically resolved at local/technical level. Nevertheless, the peer review found the AFM's commitment to become a data driven supervisor to originate from senior management. The peer review also found senior management at the AFM to be champions of this approach to supervision.
51. The peer review identified that all six NCAs had set up a dedicated team to supervise EMIR data quality within each organisation. The peer review noted a high-level of dedication and professionalism from staff that supervise EMIR data quality within all six NCAs. However, the peer review found that some of the teams heavily relied upon one or two key persons and consequently the peer review found that key person risk is likely to exist within three of the NCAs [ FR, IE and NL]. NCAs need to put in mitigations plans where necessary to mitigate the risk of any loss of personnel. As a minimum this should mean putting in place comprehensible, detailed and easily understandable policies and procedures on how to supervise EMIR data quality. It could also mean training-up other members of staff on data quality issues and if necessary, recruiting or redistributing staff.

## Analysis

52. The peer review found that many NCAs make regular and consistent use of EMIR data [IE, FR, NL]. The peer review also acknowledges the wide-ranging use of the data by NCAs and flagged these uses as good practices where identified. The peer review believes that it is only through regular and consistent use that EMIR data quality will improve. The dataset should not be siloed within one team but made available to the parts of an NCA that it is relevant for.
53. The Unit responsible for EMIR data therefore has a role to play in championing its use and educating staff members who may be less familiar with the dataset, its origins, why it is important and its role to play as an important supervisory tool.
54. The peer review identified that senior management buy-in, engagement and leadership in improving data quality is vital to improving its quality. Senior management within all NCAs should set time aside to devise a strategy to improve data quality using identifiable metrics and deliverables. Indeed, senior management should also request on a frequent basis management information on data quality statistics and sign-off on remediation plans when necessary. The peer review found that within one NCA [IE] the unit responsible for EMIR data quality submits an annual work programme that is closely monitored to ensure that objectives are being reached and supervisory engagements are undertaken, and relevant risks mitigated. Improving data quality should be a feature of an NCA's annual planned work programme.

## 6.3 NCAs access, assessment and analysis of data

### AG's expectations

55. The introduction to section B of the self-assessment questionnaire stated that TRs are an important source of information for NCAs. It is therefore expected that NCAs frequently access TRs to identify poor data quality whether by large or small counterparties or report submitting entities. NCAs are expected to have connected and onboarded to all TRs from the beginning of the Review Period.
56. Additionally, it also stated that NCAs should have analytical tools to identify poor data quality. Analytical tools vary. However, they can range from using SQL queries, to having an in-house dashboard, using excel, having software tools to analyse data quality. The analytical tools used should be appropriate for the nature, scale, size and sophistication of the NCA's market.
57. Part B of the questionnaire also states that "*the AG is seeking to understand the analysis undertaken by NCAs to assess and detect poor data quality*". The peer review therefore expects that this could, at least include, analysis of trade activity reports, trade state reports, rejection statistic reports, reconciliation statistic reports or other reports.
58. Separately, the peer review also expects the NCA to have a data quality tool in place to and automatically detect and alert the NCA of the incorrect submission of all EMIR reporting fields.

The selection of a few fields to perform quality checks is not sufficient as it allows for a degree of discretion in the selection and may undermine the ability to detect data quality issues across the full dataset.

59. Based on these expectations the six NCAs were assessed under this topic by reference to the following three criteria namely: (i) whether NCAs have onboarded to all TRs from the beginning of the period and how frequently do NCA access TRs, (ii) the sufficiency of the analytical tools to identify poor data quality. The analytical tools should be appropriate for the nature, scale, size and sophistication of the NCA's market (iii) the analysis by NCAs to assess and detect poor data quality.

## Findings

60. The peer review assessed one NCA [NL] as fully meeting with the peer review's expectations in this area, one NCA [IE] broadly meeting the peer review's expectations, two NCAs [DE, FR] partially meeting the peer review's expectations and two NCAs [CY, UK] not meeting the peer review's expectations.
61. The peer review found that many of the six NCAs had access and onboarded to the EU registered TRs from the beginning of the review period. However, one NCA [CY] stated that it had only successfully connected to all TRs in June 2018.
62. Additionally, one NCA [FR] informed the peer review that it receives and stores EMIR data on a daily basis and processes all Trade Activity Reports and trade state reports every week in order to update its dashboard. Similarly, another NCA [IE] receives trade state reports and trade activity reports daily. Within this NCA trade state reports are loaded daily to the CBol's internal database while trade activity reports are not loaded to the database but are available to the EMIR unit for processing and querying through specific desk-based IT applications.
63. Another NCA [DE] informed the peer review that it accesses TR data on a daily basis. BaFin mentioned the fact that analysis is done on trade activity reports but not on the trade state report as these latter result from the aggregation of data performed by the TRs.
64. The peer review identified one NCA [NL] that accesses EMIR data on a regular basis. The AFM downloads trade activity data on a daily basis, and the trade state reports one day per month and explained that they perform analysis on a monthly basis on all the trade activity reports and on one day per month on trade state reports.
65. Another NCA [CY] reported that since it connected to TRs in June 2018 and to the TRACE hub in July 2018 it now accesses and downloads EMIR data on a daily basis and weekly basis depending on the data set. Trade activity reports are downloaded on a daily basis and transaction state reports on a weekly basis. Rejection and reconciliation reports are also downloaded over the weekend period and on ad-hoc basis.

66. One NCA [UK] accesses data from TRs when needed and on an ad hoc basis.
67. In relation to the tools used by NCAs, the peer review observed a wide difference in approaches by the six NCAs. Some NCAs run basic queries using SQL, while other NCAs use Python and Tableau and/or utilise a data quality dashboard.
68. One NCA [FR] utilised a dashboard to analyse on a weekly basis rejection statistics and visualize aggregated information per entities including the volume and number of trades of selected counterparties. This dashboard was significantly and comprehensively overhauled after the review period. The new dashboard's functionality allows for an analysis of the number of rejections and reconciliation, provides the ID of counterparties to a trade, erroneous notional values, identification of late reporting, the incorrect identification of underlying. It also provides users with details of the top 100 counterparties in respect of a specific asset class/type of derivatives. Its functionality can also be modified to provide both micro and macro analysis of derivative reporting at entity level. The peer review found the current state of the AMF's dashboard to be intuitive and user friendly.
69. The primary tools used by another NCA [IE] is the Microsoft SQL Server Management Studio. Data analysts from the EMIR unit at the CBol can create a number of SQL queries/reports. Since Q3 2017, R/Python has been used by SMAR team to supplement SQL reporting. The CBol runs recurring queries on the notional, maturity date, product type, asset class, valuation field, CP IDs, trade IDs, collateral field, counterparty side, counterparty sector.
70. Similarly, another NCA [DE] also runs a number of SQL queries. This NCA runs quarterly SQL queries to identify if there are differences with the reported data level for the notional amount, the execution date, the counterparties identifiers, the asset class, the underlying ISIN (looking on the same UTI), if the reporting date is earlier in time than the date of execution timestamp, what information is reported in the field "Nature" and the positive and negative valuation signs (for the same LEI).
71. Another NCA [NL] also raised queries during the review period using SQL queries. It also ran queries using specific software tools such as Power BI and Tableau. Complementing the package, the NCA also used a Data Quality Dashboard. It also comprehensively processes on a daily basis Trade Activity Reports and one day per month it processes Trade State Reports. Additionally, 89 data quality checks are also applied.
72. One NCA [UK] can use Python and Tableau as tools to process data and to generate graph-type data visualisation. However, these tools are not used either on a regular or targeted basis.
73. Another NCA [CY] has developed an internal tool to process and run data quality queries. However, this NCA only commenced data analysis using EMIR data since July 2018.

74. Specifically, regarding the analysis undertaken by NCAs to detect poor data quality. The peer review set the expectation that this could, at least include, an analysis of Trade Activity Reports, Trade State Reports, rejection and reconciliation statistics or other reports.
75. One NCA [FR] has tools in place to analyse trade activity reports and trade state reports. It also undertakes weekly monitoring of rejection statistics and ad hoc monitoring of reconciliation statistic. However, this NCA restricts its coverage to a limited number of counterparties. It limits its coverage to 5-6 counterparties who account for around 90% of counterparties who report in France. The peer review also noted that while ETD remains a significant part of the French derivatives market, the AMF heavily concentrates its efforts on OTC data leaving ETD reporting under EMIR largely unmonitored. The AMF explained to the peer review that this is because ETDs are in the AMF's view, adequately captured and supervised under MiFID (now MiFIR).
76. Another NCA [IE] accesses EMIR data daily. The CBol receives trade state reports and trade activity reports on a daily basis. Trade state reports are loaded daily to the CBol's internal database, while trade activity reports are available to the EMIR Unit for processing and querying through specific applications. The EMIR Unit also accesses and reviews the rejection and reconciliation statistics on a regular basis.
77. Another NCA [DE] focusses on trade activity reports and rejection and reconciliation statistics. Using standard SQL queries, the BaFin obtains the list of the 10 highest notional amounts and 10 highest valuation amount per asset class for a specific day.
78. One NCA closely follows the parameters of ESMA's DQR by analysing rejection and reconciliation statistics every three months and trade state reports every six months. This analysis undertaken in 2018 allowed CySEC to participate in the DQR for the first time last year.
79. Significantly, one NCA [UK] does not undertake any regular analysis to detect poor data quality. By contrast one NCA [NL] downloads trade activity reports on a daily basis, and the trade state reports for one day per month. The AFM explained that they perform analysis on a monthly basis on all the trade activity reports and on one-day per month of trade state reports.
80. Two NCAs have introduced data quality dashboards [FR, NL] that can present visually information about EMIR data quality using a set of prescribed metrics. The peer review considers this visual tool a significant step forward in addressing EMIR data quality issues. The data quality dashboard used by the AMF was substantially reprogrammed and modified to provide a better user experience after the review period.

## Analysis

81. The peer review found that the most of the six NCAs had access to TRs from the beginning of the review period. In this regard, most NCA's met the peer review expectations.
82. The peer review found that the NCAs that had the more comprehensive and thorough approach to data quality supervision also utilised a data quality dashboard that is used to depict the state of reporting by counterparties in a given jurisdiction. The peer review recommends for those NCAs that do not use a data quality dashboard that strong consideration should be given to introducing one within the respective NCA. A dashboard can support analysis through visualisation of data and increase usage of data through user-friendly interface. Additionally, access should be made available to other teams within the NCA and not just the team responsible for EMIR data quality supervision. However, the team responsible for EMIR data quality supervision should be an ambassador for its use. The peer review believes this approach will help facilitate those NCAs that have been beyond their peers on integrating EMIR data within existing supervisory approaches.
83. The peer review believes that analysis of EMIR data should be broader than rejection and reconciliation statistics. These tests, while no doubt beneficial in the early stages of EMIR data quality supervision should have progressed to the more granular aspects of data quality supervision. Sampling of datasets should be a recurring feature of an NCA's supervisory approach.
84. Additionally, the peer review believes that both OTC and ETD contracts as well as the daily activity and the state information of the outstanding trades should be given equal weighting in terms of EMIR data supervision. It is unlikely to be appropriate to deprioritise and supervise less regularly one type of derivative contract over another. Relying primarily on MiFIR as the legislative provision for the supervision of ETDs is unlikely to lead to the same outcomes as MiFIR and EMIR have obvious differences in terms of regulatory objectives. In the same note, focusing only on the state of the outstanding trades or on their individual lifecycle events provides the NCA with a partial and incomplete picture of the trading activity and market exposures and reduced opportunities to identify data quality issues.

## **7.1 Peer review findings relating to ESMA**

107. The mandate states that the provisions ESMA will be assessed against are the objectives set in the Level 1 and 2 provisions of EMIR and their corresponding RTSs and ITSs in ensuring that the quality of data is complete, accurate, consistent and not duplicated.
108. For ESMA these provisions are Article 78(4), 80(1) and 81 (2) of 648/2012, Articles 8 (b), 16 (c), 19(a)(b)(c), 23(a)(b)(c) of Regulation 150/2013, Articles 4 and 5 of 151/2013.
109. The peer review assessed ESMA's supervisory actions to enhance the quality of data under EMIR with reference to the above legislative provisions under the following areas: ESMA's

supervisory approach to EMIR data quality, integration of EMIR into ESMA's overall supervisory approach, ESMA's access, assessment and analysis of data held by TRs in order to perform supervision of TRs.

## **7.2 ESMA's supervisory approach to EMIR data quality**

### **AG's expectations**

110. The EMIR reporting requirements have been in place since February 2014. It is therefore expected that ESMA has identified and developed an appropriate supervisory model based on the size, scale and complexity of the registered TRs it supervises and the accompanying derivative reporting requirements.
111. It is expected that ESMA's supervisory model has developed over the past number of years and incorporates and complements the outcomes of the Data Quality Action Plan that was introduced in September 2014.
112. It is also expected that whatever ESMA's supervisory model, the approach adopted is not merely a tickbox exercise but also quantitative, qualitative and probative. In this regard, it is expected that ESMA's supervisory approach provides for a comprehensive review of the overall functioning of TRs and provides periodically an in-depth-analysis of a specific area to be selected based on a risk-based approach to the supervision of TRs. It is also expected that ESMA also selects other areas to focus on based on rotating criteria in undertaking its role as a supervisor.

### **Findings**

113. The peer review found that ESMA's supervisory framework is proportionate to the underlying market and well-documented through policies and procedures which cover the relevant areas.
114. The peer review found that intelligence on TR's is collected through various channels and integrated into the risk-based supervisory approach.
115. The peer review found that that the frequency and extent of communication from ESMA to NCAs and to other data users should be enhanced in order to ensure consistent actions on derivative reporting supervision.

### **Analysis**

116. The peer review identified that the outcome of ESMA's risk-assessment results in priority being given to the two largest TRs, while the interventions on the other five remain limited.
117. The peer review identified that ESMA should increase the coverage of TRs and utilise all the enforcement tools available (including sanctions) in order to strengthen trust in EMIR reporting and TR-supervision by NCA's.

## 7.3 Integration of EMIR into ESMA's overall approach

### AG's expectations

118. It is noted that EMIR is a complex piece of financial legislation. It is important that there is sufficient ESMA staff in dealing with this sensitive and important area of financial regulation.

119. It is important that ESMA's management are aware of issues with data quality when they arise. The peer review also expects working level staff to escalate issues to management as and when they arise. As part of its supervision of EMIR, it is expected that EMIR data is not siloed within its supervision department but shared with other departments who may have an interest in performing their roles and functions.

120. It is also expected that ESMA engages in positive outreach with external stakeholders to raise awareness of data quality issues under EMIR.

121. EMIR represents one of the first post financial crisis pieces of European legislation. Having access to high quality EMIR data will provide supervisors and policymakers with the key tools needed to provide market colour and transparency to the derivative marketplace in the EU and to assist with policy making decisions. ESMA's role as supervisor of TRs is to ensure that NCAs/ECB and the ESRB can systematically access high quality EMIR data that is relevant to their area of competence. It also has a supervisory role in ensuring that aggregate data published by TRs is fit-for-purpose.

### Findings

122. The peer review found that data quality supervision is well grounded in the organisation and that staff members charged with the supervision of TRs are very dedicated and knowledgeable. Senior management is appropriately and sufficiently involved in supervisory activities.

123. The interaction between TR Supervision and internal departments such as Markets Policy and Risk Analysis and Economics is good.

124. The peer review also found that the reporting lines are clear, and involvement of senior management is appropriate.

### Analysis

125. The peer review identified that ESMA runs a well organised and supervisory programme that is responsible, in its unique role, in enhancing the quality of data under EMIR during the review period. A corollary of this efficiency is the good interaction between TR supervision and other internal departments and functions. The peer review suggests that in order to continue this supervisory journey more resources dedicated to data quality supervision could be redistributed within the current pool of ESMA staff or alternatively recruited externally.

## **7.4 ESMA' access, assessment and analysis of data held by TRs in order to perform supervision of TRs**

### **AG's expectations**

126. The peer review expects that during the review period ESMA regularly accesses all registered TRs via TRACE or SFTP or via portal and that it has set up IT tools to access and analyse TRs data.

127. The peer review expects that ESMA has written policies and procedures that document the frequency of a continuous or risk-based access and, in case of event-driven access, the events that trigger the access in order to further enhance TR supervision and ensure more proactiveness in the ESMA actions.

### **Findings**

128. The peer review found that ESMA accesses TR data on a regular basis and that it accesses both aggregated statistic and trade level data (Trade Activity and Trade State Report). The frequency of the access depends on the purpose and the type of activity.

129. As part of its ongoing monitoring, ESMA accesses data on a monthly basis, while in cases of specific event-driven checks the access to data can be more frequent. The peer review found that ESMA aggregates information into a Data Quality Dashboard, a data quality monitoring tool, on a monthly basis. The peer review identified that the results from the Data Quality Dashboard may feed into ESMA's risk-based- approach to supervision.

130. The peer review found that when anomalies (either detected on a regular or ad-hoc basis) are discussed and follow-up activities are taken. The follow-up on data quality issues are taken in line with the risk-based approach and thus it depends on the impact of the issue, risk profile, the alternative priorities, workflow and resources available.

131. If broader issues remain, the peer review found that ESMA is active in developing policy tools, including guidelines or Q&As.

132. The peer review identified that amongst the biggest exercises ESMA performed was a comparison of the completeness and accuracy of data transferred from the TRs through SFTP

connection and through TRACE hub. For a period of time, the exercise was conducted on a daily basis.

133. The peer review also identified that ESMA should increase its supervision on the correctness of public data.

### **Analysis**

134. The peer review analysed and concluded that ESMA is adequately equipped in data analytics tools and that it regularly accesses TR data in order to monitor data quality.

## Annex 4 –Statements from NCAs

1. NCAs may express their view on the outcome of the peer review report in a statement. The statement expresses the view of the NCA only and does not prejudice the follow-up by ESMA. Two NCAs [DE, UK] have issued a statement on the outcome of the peer review report.
2. The BaFin has issued a statement which is reproduced below:

*BaFin considers that in light of a risk-based assessment its current supervisory approach is proportionate and adequate and hence is of the opinion that the peer review's expectations are at least broadly met for the period under review. The reasons are expressed in the following points.*

1. *Consideration of objective data quality parameters for grading*

*BaFin is of the opinion that the peer review has not adequately considered the objective data quality parameters available for the period under review. In addition to the stocktake of NCAs' practices these would have been sound indicators for the determination of the NCAs' ability to ensure EMIR data quality, too.*

*This relates to the data quality of outstanding derivative contracts as expressed by the share of incompliant reports under the reporting requirements in force during the review period which was used as an objective basis for the selection of the national competent authorities for this peer review (cf. Mandate for the Peer Review on EMIR Data Quality, Annex 1 of the Final Report) and the data quality statistic for the "top five counterparties" requested by the Assessment Group prior to the on-site visit. Furthermore, BaFin provided data showing good results with respect to the timeliness and non-duplicate reporting of German counterparties which should have been reflected in the peer review's assessment.*

2. *Review by certified public auditors*

*BaFin is of the opinion that the peer review's findings do not adequately take into account the overall supervision of EMIR data quality that is already carried out by certified public auditors (Wirtschaftsprüfer). The auditors' assessment is carried out on an annual basis and encompasses all relevant aspects and counterparties. These external audits might be unique throughout the EU but follow an explicit decision by the German legislator. The peer review's concern that the Unit responsible for the supervision of EMIR reporting in BaFin had not yet revised or assessed the methodologies used by external auditors either nor the extent of auditors' assessment or details of their assessment of compliance with the EMIR obligations during the period under review disregards this role of the certified public auditors and the function of the auditors' reviews as an effective way to conduct a base-layer of supervision for a large number of counterparties. Moreover, it implies that the*

*yearly audits and BaFin's follow up do not positively impact EMIR data quality, an assumption which is neither plausible nor is it proven in the peer review's findings.*

### *3. Role of Trade Repositories*

*BaFin points out that the assessment of the NCAs' supervision of the timeliness, accuracy and correctness of derivative reporting requires an adequate reflection of the prominent role of Trade Repositories (TRs) for the following two reasons.*

*Firstly, TRs are in charge of EMIR data quality checks in the first place. TRs are supposed – with regard to validation rules – to check the correctness and accuracy of derivative reporting.*

*Secondly, TRs are supposed to reconcile the reports of two counterparties of one transaction. Data quality statistics provided by TRs to NCAs are the basis of the Data Quality Action Plan jointly launched by NCAs and ESMA in September 2014. BaFin considers that the specific interconnectedness between the TRs' and NCAs' roles with regard to EMIR data quality also needs to be taken into account when assessing NCAs' approaches to ensuring EMIR data quality in the review period. This is particularly true in light of the future emphasised role of TRs stipulated in the EMIR Refit.*

3. The FCA has issued a statement which is reproduced below:

*“The FCA welcomes the objective of the peer review to promote best practice across NCAs and ESMA with a view to improving the quality of data under EMIR, which is an important piece of post-crisis legislation. However, we do not agree with the ratings given to the FCA by the peer review Assessment Group (AG), and we do not believe these findings are supported by the evidence and explanations provided during the review process.*

*In particular, we do not agree with the AG’s assessment of the FCA as regards the integration of EMIR data into our overall supervisory approach. In our view, this does not fairly account for the way in which EMIR data has been and is used across different areas of the FCA - such as internal analysis and policy research, public discussion and research papers, or as part of prudential supervision. EMIR data is also used extensively by the Bank of England, in particular with regard to its financial stability mandate. That said, we welcome the examples of other NCAs’ data use provided in the report as we develop our own approach.*

*Second, we do not agree with the AG’s assessment of the FCA as regards the assessment and analysis of data, which is also inconsistent with the finding that the FCA’s current analytical tools are ‘adequate’. We note recognition that the FCA is also currently reviewing its technology infrastructure to receive EMIR data, in order to consolidate and enhance our analytics and data quality capabilities.*

*Finally, we do not agree with the AG’s views as regards the FCA’s approach to supervising the quality of EMIR reporting. The FCA has made its expectations to the market in respect of EMIR data reporting clear, including through a dedicated section on the FCA website. Compliance with the reporting requirements in EMIR must be read in the context of the obligation to notify the FCA of any significant reporting issues such as incomplete or inaccurate data, as well as the obligation to remediate reporting systems in a timely manner. This is not a voluntary mechanism; indeed the FCA is empowered to take a range of actions against counterparties in respect of a breach of Article 9 reporting under EMIR itself, as well as in respect of the failure to inform the FCA of breaches. The AG notes the FCA’s enforcement action against Merrill Lynch as an important deterring message to counterparties. Whilst we note the AG’s recommendations in this area, we believe the calibration of our approach to be proportionate and appropriate to the issues arising.”*