



European Securities and
Markets Authority

Opinion

On the European Commission's proposed amendments to SFTR





European Securities and
Markets Authority

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1 Executive Summary

Reasons for publication

ESMA is issuing this opinion in response to the EC's proposed amendments of the technical standards on reporting under SFTR as notified by the EC letter of 24 July 2018. ESMA's view is that the proposed amendments (i) will hinder the possibility to take into account international developments and reporting standards agreed at global level and risk timely alignment with international reporting standards, (ii) will deviate from and create inconsistency with the currently applicable EMIR reporting standards, (iii) will not provide certainty, clarity, predictability and consistency which is essential for the market and public authorities in relation to reporting standards and (iv) would result in a significantly extended timeline for the introduction of global standards in the EU. Therefore the draft technical standards have not been amended by ESMA as proposed by the EC, and remain unchanged.

Contents

Section 2 provides the background of this Opinion and summarises the content of the EC letter to ESMA. Section 3 contains the legal basis applicable in this case. Section 4 includes the detailed assessment of the proposed amendments and the reasons why ESMA does not agree with them. Section 5 includes a copy of the EC's letter to ESMA and the amendments of the technical standards on which ESMA is issuing an opinion.

Next Steps

Following the adoption of ESMA's formal opinion in response to the letter received on 24 July 2018 within the six week time period provided for in the ESMA Regulation, this opinion is being duly communicated to the European Commission by the legal deadline of 4 September 2018. ESMA sends a copy of its formal opinion to the European Parliament and to the Council.

2 Background

1. On 30 March 2017, ESMA submitted to the European Commission draft regulatory technical standards on the details of securities financing transactions to be reported to trade repositories (RTS on reporting) and implementing technical standards on the format and frequency of such reports (ITS on reporting), pursuant to Regulation (EU) 2015/2365 of the European Parliament and of the Council on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (SFTR, hereinafter).
2. On 24 July 2018, the European Commission (EC, hereinafter) sent a letter informing ESMA of their “intention to endorse with amendments” the draft RTS and ITS submitted by ESMA.
3. Specifically the amendments provided by the EC relate to provisions of the draft RTS and ITS submitted by ESMA that envisaged “the mandatory use of forthcoming industry¹ standards (legal entity identifiers for branches and unique trade identifiers for transactions) for reporting to trade repositories once these standards have been “endorsed by ESMA” in the future”. The EC confirmed in their letter to ESMA that “during discussions with ESMA at staff level, it has become clear that the Commission and ESMA have a different understanding as to how such potentially forthcoming standards would be ‘endorsed’ by ESMA and, hence, how that process should be reflected in the regulatory and implementing technical standards under SFTR.”
4. Furthermore, in the letter the EC specified that to ensure legal certainty “the right to introduce changes to reporting requirements due to potentially forthcoming industry standards remains with the Commission on the basis of an according proposal by ESMA”. In the EC’s opinion, the “proposed amendment avoids that the wording in the draft technical standards submitted by ESMA be understood as delegating regulatory powers to ESMA on potential future reporting requirements, which is legally not possible under the regulatory framework governing the European Securities Authorities.”
5. The EC indicated that the proposed amendments remove the references to “potentially forthcoming industry standards and restrict the reporting obligations to requirements that market participants must comply with using current rather than future industry standards”. As an alternative to the inclusion of “*endorsed by ESMA*” in the RTS and ITS on reporting, the EC proposed including in the recitals references to ongoing work on the development of legal entity identifiers for branches and unique trade identifiers for transactions. In addition, the proposed amendment to the recitals explained “that the use of such industry standards once available, and considered appropriate by ESMA and the Commission, could be required through an amendment of the relevant implementing technical standards on the basis of a future proposal by ESMA”.

¹ The European Commission refers to industry standards in their letter, however it is worth noting that both LEI and UTI are not industry standards, but international standards subject to strict governance in which authorities and industry bodies take part. ESMA will refer to both standards as international standards throughout this Opinion.

6. In addition to this proposed amendment to the SFTR RTS and ITS on reporting, the EC also referred to the technical standards agreed under Regulation (EU) 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR). In the implementing technical standards for the format and frequency of reports to trade repositories under EMIR, laid down in Commission Implementing Regulation (EU) 2017/105, reference is made to endorsements of future industry standards by ESMA in two provisions (Articles 4(9) and 4a(1)) with regard to Unique Product Identifier (UPI) and Unique Trade identifier (UTI). In its letter to ESMA, adducing legal certainty and the necessary degree of consistency between EMIR and SFTR reporting frameworks, EC indicated that they “would ask ESMA to submit a proposal amending Commission Implementing Regulation (EU) 2017/105 in accordance with the proposed amendments of the draft technical standards under SFTR”, i.e. by removing references to endorsements by ESMA.

3 Legal basis

7. In Recital 10 of SFTR it is stated that *“In order to minimise additional operational costs for market participants, the new rules and standards should build on pre-existing infrastructures, operational processes and formats which have been introduced with regard to reporting derivative contracts to trade repositories. In that context, the European Supervisory Authority (European Securities and Markets Authority) (‘ESMA’) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council² should, to the extent feasible and relevant, minimise overlaps and avoid inconsistencies between the technical standards adopted pursuant to this Regulation and those adopted pursuant to Article 9 of Regulation (EU) No 648/2012. The legal framework laid down by this Regulation should, to the extent possible, be the same as that of Regulation (EU) No 648/2012 in respect of the reporting of derivative contracts to trade repositories registered for that purpose.”*
8. Article 4(9) SFTR establishes that *“In order to ensure consistent application of this Article and in order to ensure consistency with the reporting made under Article 9 of Regulation (EU) No 648/2012 and internationally agreed standards, ESMA shall, in close cooperation with, and taking into account the needs of, the ESCB, develop draft regulatory technical standards specifying the details of the reports referred to in paragraphs 1 and 5 of this Article for the different types of SFTs that shall include at least:*
 - a. *The parties to the SFT and, where different, the beneficiary of the rights and obligations arising therefrom;*
 - b. *The principal amount; the currency; the assets used as collateral and their type, quality, and value; the method used to provide collateral; whether collateral is available for reuse; in cases where the collateral is distinguishable from other assets, whether it has been reused; any*

² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

substitution of the collateral; the repurchase rate, lending fee or margin lending rate; any haircut; the value date; the maturity date; the first callable date; and the market segment;

c. Depending on the SFT, details of the following:

(i) cash collateral reinvestment;

(ii) securities or commodities being lent or borrowed.

In developing those draft technical standards, ESMA shall take into account the technical specificities of pools of assets and shall provide for the possibility of reporting position level collateral data where appropriate.

ESMA shall submit those draft regulatory technical standards to the Commission by 13 January 2017.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.”

9. Article 4(10) SFTR provides that *“In order to ensure uniform conditions of application of paragraph 1 of this Article and, to the extent feasible, consistency with the reporting pursuant to Article 9 of Regulation (EU) No 648/2012 and harmonisation of formats between trade repositories, ESMA shall, in close cooperation with, and taking into account the needs of, the ESCB, develop draft implementing technical standards specifying the format and frequency of the reports referred to in paragraphs 1 and 5 of this Article for the different types of SFTs.*

The format shall include, in particular:

a. Global legal entity identifiers (LEIs), or pre-LEIs until the global legal entity identifier system is fully implemented;

b. International securities identification numbers (ISINs); and

c. Unique trade identifiers.

In developing those draft technical standards, ESMA shall take into account international developments and standards agreed at Union or global level.

ESMA shall submit those draft implementing technical standards to the Commission by 13 January 2017.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.”

10. Pursuant to Article 10(1) of the Regulation (EU) No 1095/2010 (ESMA Regulation, hereinafter), *“Where the Commission intends not to endorse a draft regulatory technical*

standard or to endorse it in part or with amendments, it shall send the draft regulatory technical standard back to the Authority, explaining why it does not endorse it, or, as the case may be, explaining the reasons for its amendments. Within a period of 6 weeks, the Authority may amend the draft regulatory technical standard on the basis of the Commission's proposed amendments and resubmit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council."

11. Pursuant to Article 15(1) of the ESMA Regulation, *"Where the Commission intends not to endorse a draft implementing technical standard or intends to endorse it in part or with amendments, it shall send it back to the Authority explaining why it does not intend to endorse it, or as the case may be, explaining the reasons for its amendments. Within a period of 6 weeks, the Authority may amend the draft implementing technical standard on the basis of the Commission's proposed amendments and resubmit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council."*
12. Finally, in accordance with Article 44(1) of ESMA Regulation, with regard to the acts specified in Article 10 to 16, the Board of Supervisors *"shall take decisions on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions."*

4 ESMA's opinion

4.1 SFTR reporting standards

4.1.1 Summary of amendments

13. The EC's proposed amendments to the technical standards submitted by ESMA are included in Annex 2.
14. The first relevant change introduced by the EC refers to the LEI for branches in recital 2 of the draft ITS on reporting. The change removes the reference to LEI for branches not being *"yet fully in place"* and substitutes it to as *'being developed'*. The amendments proposed by the Commission go on to clarify in those recitals that the SFT reports should use the ISO code of the country in which a branch is located as the identifier until the extension of LEIs to branches is *'finalised and considered suitable'*. Additional changes by the Commission indicate that this will require a future amendment of the delegated act. The Commission's changes remove any reference to ESMA endorsing the LEI for branches from the recitals.
15. The ITS on reporting also includes amendments proposed by the EC in relation to the need for reporting entities to wait until the UTI system is finalised and considered suitable before the UTI is used to identify specific SFTs. Similar to the use of the LEI for branches, the

Commission's changes specify that this will require a future amendment of the delegated act.

16. In Article 2 of the draft ITS on reporting the EC is proposing to remove reference to the 'branch of a counterparty' in the list of entities which should be identified with an LEI. New text has been added by the Commission which refers to the Annex to the ITS for an explanation of how to identify such an entity.
17. In Article 3 of the draft ITS on reporting, which refers to the Unique Trade Identifier, the EC removed any reference to a global identifier endorsed by ESMA. Instead, the amendments propose that reports need to be identified using a UTI agreed by the counterparties.
18. The Annex to the ITS on reporting includes amendments which remove the option to use an LEI when reporting either 'Branch of the reporting counterparty' or 'Branch of the other counterparty'.
19. In Table 1 of the Annex to the RTS on reporting the Commission's amendments are similar to those made for the same fields in the ITS.

4.1.2 Assessment of amendments

20. To explain the importance of the original text and the limitations of the Commission's proposed alternatives, this opinion elaborates on the reasons why the provisions were originally included in the draft standards, which can be summarised as follows:
 - a) To comply with the specific mandate in SFTR for ESMA to include LEI, ISIN and UTI and to ensure that the technical standards on reporting under SFTR are consistent and aligned with the technical standards under EMIR where the same formulation is already into force.
 - b) To effectively take into account international developments and standards agreed at Union or global level, as required under the empowerment in Article 4(10), and thus align with the ongoing international discussions pertaining to the development of the international standards for LEI and UTI;
 - c) To facilitate the implementation of global standards in a transparent, pragmatic, predictable, certain, timely and future-proof manner.
21. In addition, we analyse below the impact of the current timelines for adoption of standards by the EC and the subsequent implementation of those by the industry.

4.1.2.1 Complying with ESMA's mandates under SFTR and applicable Union legislation

22. The draft RTS and ITS on reporting were prepared in accordance with the mandates under Articles 4(9) and 4(10) SFTR. ESMA considers that the draft reporting standards submitted

to the Commission would achieve the most explicit, precise and consistent approach for reporting counterparties making use of the LEI for branches and UTI.

23. Under Article 4(9) SFTR, ESMA was mandated to *“to ensure consistency with the reporting made under Article 9 of Regulation (EU) No 648/2012 and internationally agreed standards”*.
24. Under Article 4(10) SFTR, ESMA was mandated (i) *“to ensure uniform conditions of application of paragraph 1 of this Article and, to the extent feasible, consistency with the reporting pursuant to Article 9 of Regulation (EU) No 648/2012 and harmonisation of formats between trade repositories”*, (ii) *“The format shall include, in particular: (a) Global legal entity identifiers (LEIs), or pre-LEIs until the global legal entity identifier system is fully implemented; (b) International securities identification numbers (ISINs); and (c) Unique trade identifiers;”* and finally that (iii) *“In developing those draft technical standards, ESMA shall take into account international developments and standards agreed at Union or global level.”*
25. Concerning LEI for branches, it is worth noting that branches do not have a reporting obligation under EMIR. As indicated in paragraphs 208-212 of the Final report on the technical standards under SFTR and on certain amendments to EMIR³, ESMA duly considered the two alternatives, i.e. ISO country code and LEI for branches, as these were also the two alternatives supported by the respondents to the Discussion and Consultation papers under SFTR. At that stage, the use of ISO country code was preferred, also because of the consistency with the MiFIR framework. However, ESMA also considered the requirement under Article 4(10) SFTR to use LEI, and made reference to the LEI for branches. As an active member of the global LEI public sector governance mechanism, ESMA indicated in the Final Report on the Technical standards under SFTR and certain amendments to EMIR that *“imposing LEIs for the purpose of identification of the branches’ location before the framework is globally implemented would be premature”*. ESMA also committed to *“closely observe the implementation of the LEIs for branches to determine when those codes should start to be used by the entities reporting under SFTR”*. To avoid unnecessary delays once the LEI for branches framework is fully implemented, ESMA included *“the two solutions (LEI codes and ISO country codes) with a view to develop future-proofed rules”*.
26. Generation of a UTI is critical in dual-sided reporting regimes such as EMIR and SFTR. Therefore, with regards to the UTI, ESMA acknowledged in paragraph 235 of the Final report that *“there is no global Unique Trade Identifier for the SFT transactions that could be applied”*, hence ESMA proposed *“to include in the technical standards specific rules aligned with the one included in the revised draft ITS on reporting under Article 9 of EMIR.”* In addition, with regards to the alignment with the global UTI generation rules as developed by CPMI-IOSCO, ESMA noted in paragraph 244 *“that the proposed flowchart is broadly aligned with the UTI guidance except for the placement of the counterparties agreement at*

³ https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-82_2017_sftr_final_report_and_cba.pdf

the top of the flowchart". Hence, in line with the requirements for LEI for branches and the fact that the UTI guidance was not finalised at the time of approval of the Final report under SFTR, ESMA (i) included the legal provisions stemming from the aforementioned flowchart to address the generation of UTI, and (ii) referred to the global UTI.

27. The wording of the legal provision with regards to the global UTI is identical both under the draft ITS on reporting under SFTR *"A report shall be identified through either a global unique trade identifier endorsed by ESMA or, in the absence thereof, a unique trade identifier agreed by the counterparties."* and under amended ITS on reporting under EMIR⁴ *"A report shall be identified through either a global unique trade identifier endorsed by ESMA or, in the absence thereof, a unique trade identifier agreed by the counterparties."*
28. Moreover, the SFTR mandate provides that *"ESMA shall take into account international developments and standards agreed at Union or global level"*. By virtue of their nature, international developments are not static and are not aligned with the timing of developing and adopting technical standards for specific legislations at EU level. To fully take them into account ESMA needs to follow a process that is reasonably flexible and timely, while being fully legally compatible with EU legislation and ESMA's mandates, not involving discretionary powers or delegation of powers to ESMA.
29. As evidenced in para. 64 of the ECJ ruling on short selling⁵ *"It is clear from Article 28 of Regulation No 236/2012 that ESMA is required, in strictly circumscribed circumstances, to adopt measures of general application under that provision. Such measures may also include rules affecting any natural or legal person who has a specific financial instrument or specific class of financial instruments or who enter into certain financial transactions."*
30. In the case of the endorsement by ESMA of LEI for branches and UTI, further to complying with its mandate to *"take into account developments and standards agreed at Union or global level"*, in ESMA's opinion, the relevant wording should not be understood as involving the delegation to ESMA of regulatory powers. That is, a later endorsement of international standards by ESMA would not involve an exercise of discretion by it. Instead, such an endorsement would merely be a technical exercise based on determining and communicating the exact time when the specific global reporting standard -referred to in the SFTR draft ITS and RTS on reporting- are ready, suitable and appropriate, i.e. sufficiently mature, to be used in the EU.
31. This specific endorsement would be undertaken by ESMA within strict, clearly identifiable parameters and which would be based on all the relevant material available to it. SFTR does provide explicitly for ESMA to *"take into account international developments and standards agreed at Union or global level"*. ESMA's endorsement is strictly limited to the

⁴ Commission Implementing Regulation (EU) 2017/105 of 19 October 2016 amending Implementing Regulation (EU) No 1247/2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade L17 OJ 21.1.2017 p.17-41

⁵ <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30dd8d7f536a728a4ecd9c08cb76e9cb06bf.e34KaxiLc3qMb40Rch0SaxyOahr0?text=&docid=146621&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=500514>

choice on the timing of implementation of the two international standards, namely LEI for branches and UTI, in view of their developing nature and is not setting the ground for any specific further delegation of powers which ESMA duly recognises remain with the co-legislators. Given the mandate to take into account the international development and standards, there needs to be a mechanism to indicate when these developments are matured enough and the standards are fit for reporting purposes in the EU. This means that ESMA's powers are not legislative, neither discretionary but limited to allowing a narrow technical ability to determine when the standards (that through the RTS/ITS endorsement by the co-legislators are in fact subject to agreement by them) are sufficiently mature to be used in the EU reporting.

32. ESMA believes there is a risk associated with EC's proposed amendments as those would not follow an approach to identifiers' endorsement that has already been used and is already part of the *acquis communautaire*. In ESMA's view, a legitimate expectation has been created that ESMA will endorse relevant international standards in the future, at least insofar as reporting under EMIR is concerned. This expectation would appear to be equally applicable to the endorsement of appropriate international standards in respect of reporting under the SFTR.
33. Furthermore, the EC's proposed amendments in Article 2(3) and Article 3(1) of the draft ITS on reporting are in direct contradiction with section 12.2 of the Joint Practical Guide⁶. The EC's proposed amendments reproduce the requirement about format for reporting already included in Article 1 of the draft ITS on reporting, whereas in the Joint guide it is mentioned that "*The inclusion of such provisions is pointless and leads to legal uncertainty.*"
34. In addition, similar language to that suggested by the EC in Article 3(1) with regards to UTI was already used in the EMIR reporting standards in 2012 and led to significant data quality challenges which, as a result, hampered authorities' ability to assess systemic risks to financial stability.

4.1.2.2 Aligning with the ongoing discussions on UTI and LEI and timelines for implementation of international standards and ongoing regulatory initiatives

35. The international frameworks for LEI for branches and UTI are not yet complete. Additional work is been done in several areas, among others, on UTI governance.
36. A similar situation occurred in 2011 and 2012, when ESMA was finalising the EMIR reporting standards. ESMA's experience from that time indicates that the endorsement by ESMA of the LEI for branches and the UTI would achieve the most transparent and assured outcome for industry as to what standard needs to be respected to comply with the reporting requirements in the EU.

⁶ <https://eur-lex.europa.eu/content/techleg/EN-legislative-drafting-guide.pdf>

37. It is crucial that reporting standards specify in a detailed and clear manner the approach that will be taken for the adoption of global identifiers in the EU, to avoid uncertainty amongst market participants.
38. For instance, in 2012, the requirements on EMIR reporting were not sufficiently clear for market participants because the requirement in the technical standards for the endorsement of identifiers was not specifically clarified. In different recitals, and field definitions, UPI, UTI and LEI referred to an identifier “*being available*”, “*existing*”, “*defined in the Union*”, “*endorsed in Europe*”, “*to be defined*” and “*agreed in Europe*”. The lack of clarity in that instance hindered the smooth adoption of the reporting regime by the market, had a significant negative impact on the overall quality of data, led to a high number of reconciliation problems and conflicted with the need to follow internationally adopted standards. The EC’s proposed amendments introduce the risk of a similar outcome for SFTR.
39. When ESMA publicly consulted as part of the process for the finalisation of the draft technical standards under SFTR, feedback in relation to the proposal to use LEI for branches was positive. Nevertheless, being part of the LEI public sector governance mechanism, ESMA indicated that “*imposing LEIs for the purpose of identification of the branches’ locations before the framework is globally implemented would be premature*”. Therefore there is a need to ensure that the LEI for branches are fit and suitable for the given reporting purpose, when they becomes available. The process of endorsement by ESMA is the one that will ensure there is clarity amongst reporting entities around if and when the standard is ready to be used, in order to improve supervisory information and SFT data quality.

4.1.2.3 Facilitating the implementation of global standards in the EU

40. As indicated above, SFTR explicitly mandates ESMA to take into account international developments and standards agreed at Union or global level. ESMA therefore implements this mandate with regards to the international standards (such as LEI for branches and UTI) in a way that provides the market with maximum clarity, certainty, transparency and lead time for implementation.
41. Under Article 1(5) of the ESMA Regulation, ESMA is mandated to “*contribute to ensuring the consistent, efficient and effective application of the acts referred to in paragraph 2, foster supervisory convergence, provide opinions to the European Parliament, the Council, and the Commission and undertake economic analyses of the markets to promote the achievement of the Authority’s objective.*”
42. As highlighted in section 4.1.2.1, the endorsement of a global reporting standard by ESMA will be a technical decision and it is restricted to the timing when a specific global reporting standards, namely LEI for branches and UTI, are deemed ready to be implemented in the Union. Until such time, the currently available standardised solution, also included in the draft RTS and ITS on reporting under SFTR, will be used.

43. It is worth noting that under Articles 29 and 31 of the ESMA Regulation, ESMA is tasked with promoting supervisory convergence amongst authorities and exercising a coordination function. This is mainly performed through relevant ESMA Groups, where the national experts and ESMA staff agree on a common approach which is then approved by ESMA's Board. ESMA intends to use for the purpose of ensuring consistent use of global identifiers in this case the appropriate supervisory convergence tools among those included under Articles 16 and 29 of ESMA Regulation.
44. By endorsing when the relevant identifiers can be used for the purposes of the specific regulations, namely SFTR, ESMA will be completing its task to contribute to ensuring the consistent, efficient and effective application of SFTR in line with its mandate to take into account international developments. On the contrary, the approach proposed by the Commission disregards the mandate given to ESMA under Article 4(10) of SFTR and significantly hampers the process of introducing the consistent application of global identifiers within current and forthcoming EU reporting frameworks.
45. In contrast, as a result of the EC's proposed amendments, the implementation of any global identifiers or regulatory standards would require the submission of amendments to the technical standards. Based on the experience with all reporting regimes developed by ESMA so far, this is likely to introduce a high level of uncertainty regarding the respective timing and lead to significant delays in introducing global standards in the EU. The amendments will remove the pragmatic, predictable, certain and future-proof character of the SFTR reporting requirements. In addition, the amendments risk making the EU appear as a jurisdiction, which is non-supportive of global data reporting harmonisation efforts, and put in jeopardy the EU ability to honour its commitments to the global regulatory community in respect of conforming to the commonly agreed timelines for the introduction of global identifiers.

4.1.2.4 Delays in the adoption of technical standards by EC

46. The timeline for adoption of technical standards on reporting by the EC has significantly extended beyond the three months envisaged in the ESMA Regulation. For instance (i) under MiFIR, even though there was an early legal review, the endorsement required more than nine months, while (ii) under amended EMIR reporting, the endorsement took more than eleven months following the submission by ESMA and (iii) in the case of CSDR, the average adoption time was 14 months, increasing up to 27 months for the RTS on settlement discipline.
47. In the case of SFTR, the standards were submitted almost sixteen months before the EC's letter regarding the proposed amendments was sent to ESMA. It is worth noting that in general a normal implementation period for the industry when there is a significant regulatory development usually requires between 9 and 12 months. This situation is also taken into account under SFTR where the reporting start date is one year after the date of application of the standards. In practice, having regard to the fact that the submission of the amended versions of the RTS and ITS on reporting would need to undergo the normal development process of a minimum of 9-12 months, the industry lead time and the EC's

standard timelines for adopting technical standards, the implementation in the EU of any global standard could take around three years. On the contrary, maintaining the ESMA proposed drafting, which envisages the application of global reporting standards, e.g. LEI for branches and UTI, once those are endorsed by ESMA would achieve a much quicker application of these global reporting standards in the EU. Even taking into account the need to pre-warn the market and then a usual lead time of 9-12 months for industry to prepare, the difference in the timeline for implementation could be as much as two years.

4.1.3 Conclusion

48. Having regard to the above points, ESMA does not agree with the EC's proposed material amendments to the SFTR standards for the following reasons:

- a) They prevent ESMA from fulfilling its mandate under SFTR Article 4(10) by eliminating the possibility to take into account international developments and reporting standards agreed at global level and risk timely alignment with international reporting standards;
- b) They do not provide the certainty, clarity, predictability and consistency which is integral for the market and authorities in relation to reporting standards;
- c) They deviate from and create inconsistency with current EMIR reporting standards, already endorsed by the EC and non-objected by the European Parliament and the Council, for the endorsement of UPI and UTI; and
- d) They would result in a significantly extended timeline for the introduction of global standards in the EU, meaning either a reduced timeline for the adaptation by the industry or otherwise failure to meet international commitments for the introduction of those reporting standards in the EU.

49. ESMA therefore requests the EC to adopt the RTS and ITS on reporting without the amendments relating to the removal of "*endorsed by ESMA*".

4.2 EMIR reporting standards

50. For the reasons included in Section 4.1, ESMA does not intend to submit amendments to the EMIR implementing technical standards on reporting that are currently applicable.



5 Annexes

5.1 Annex 1

Letter from EC