



Frankfurt am Main,
3 July 2020

BVI's comments on ESMA's Consultation Paper on Technical Standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT

BVI¹ gladly takes the opportunity to present its views on ESMA's consultation paper on the reporting obligation for (OTC) derivatives. We generally support the initiative started by ESMA to further streamline the reporting obligation for all relevant financial counterparties (UCITS/AIFs). However, we strongly question if the proposed requirements are appropriate in order to simplify the reporting burden for the reporting entities.

The threatening jumble of different data standards and formats in regulatory reporting presents a huge burden for both the fund industry and the Competent Authorities in both operational and financial terms and impedes efficient supervision concerning the analyses of systemic risk within the financial markets. Enhancing consistency of regulatory reporting in terms of content is therefore strongly needed in order to enable the regulators across the board to use the stored data for the purpose of detecting systemic risk and to keep the administrative burden for the reporting entities at a reasonable level.

Especially from the viewpoint of the supervised entity (e.g. investment fund management company) the intended purpose of the EMIR reporting and the proposed extension of the data points are not always clear. Looking at the amount of often diverse but also often overlapping data points collected, there is the impression that the data requirements are defined by the rule of "as much as possible" instead of "as much as necessary". This impression is reinforced as it is not all transparent whether the data is really used or evaluated by the Competent Authorities. ESMA and the National Competent Authorities (NCAs) should make transparent to the public if the extension of the new reporting obligation is really justified and proportionated in respect to detect systemic risk in the (OTC) derivative market compared with the significant additional reporting burden for the financial counterparties (UCITS/AIF). Better transparency why the data is collected and how it is used would help to improve market comprehension and acceptance. The introduction of the EMIR reporting obligation in 2014 is a good example that central banks and national regulators face difficulties to analyse, aggregate and monitor systemic risk in the derivative market. Due to insufficient (regulatory) technical standards, the reporting entities sent their reports to the trade repositories without knowledge whether the reports of one reporting entity matched with the reports of the other counterparty.

The intention of EMIR REFIT was to streamline the reporting requirements for all (financial) counterparties (UCITS/AIFs), thereby reducing the administrative burden but also ensuring that the quality of data needed for monitoring derivatives markets and identifying financial stability risk is not lost. Therefore, we strongly support the recommendation of the EU Commission to introduce a single-sided reporting for exchange traded derivatives (ETDs).² Only CCPs should be responsible and legally liable to report ETDs on behalf on both counterparties to a trade repository. The EU Commission

¹ BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset Managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 114 members manage assets more than 3 trillion euros for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 22%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2017%3A208%3AFIN>, p. 10.



concluded that a single sided reporting of ETDs could greatly simplify the reporting burden without adversely impacting the transparency of the derivatives market. While CCPs will face a slightly higher burden, they are well equipped for this task and the overall reporting burden will decrease as the reporting requirement concerning ETDs will be eliminated for all other counterparties. However, in order to avoid a different reporting system within a regulation (single sided reporting for ETDs vs. double-sided reporting for OTC derivative contracts) we urged the EU Commission to introduce also a single-sided reporting for all OTC derivative contracts. Such a single-sided reporting, preferably by the sell-side, could ease the reporting obligation both for all market participants and for the regulators when analysing the data.

Our members are of the view that the proposed draft will further enhance the reporting burden and the complexity for all financial counterparties which was not the intension of EMIR REFIT as suggested by the EU Commission. We strongly encourage ESMA to take into consideration the EU principle of proportionality when they finally assess the feedback obtained by the financial industry and submit the draft technical standards to the EU Commission for endorsement.

In the context of a global level, the European asset management industry is operating in an extremely competitive environment. EU fund providers are contending with their peers from non-EU jurisdictions for investment opportunities as well as for investors. This challenge remains virtually unrecognised in current EU (reporting) regulation which largely focuses on consumer protection and systemic risk. Neither the EU Commission nor the ESAs as representatives of the executive branch have a mandate to consider the competitiveness of the domestic industry as a factor in performing their duties. This has resulted in massive over-regulation in regulatory reporting for the European asset management industry which has to dedicate enormous resources to compliance with this regulation.

Other jurisdictions, such as the United States, also take investor protection and systemic resilience into account. However, they have complemented these legitimate political objectives with a third one: Fostering the global competitiveness of the domestic financial industry. In doing so, they give the relevant industries more financial leeway to invest more money in forward looking aspects of business such as artificial intelligence, big data and other technological developments, which in turn strengthens their competitiveness at the global level. We believe it is essential that the EU and the ESAs also enshrines this third objective in its regulatory (reporting) framework. In this context, the US-CFTC has installed a single-sided reporting party concept thereby alleviating significantly the reporting burden for the financial industry without negatively impacting the transparency of the whole derivatives market. Therefore, we encourage ESMA to also take into consideration the global competitiveness of the EU financial industry by reducing the regulatory reporting burden within the EU derivative market. In this respect, we propose an Hybrid Transaction Reporting Mechanism ("HTRM") concept or alternatively a closer alliance with the ANNA-DSB.

- **Principle of proportionality**

According to Article 5 para 1 and 4 of The Treaty on European Union, the use of Union competences is governed by the principle of proportionality. Content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. For European institutions Protocol No 2 further clarifies the application of the principle of proportionality.

As set out in Protocol No 2, each institution shall ensure constant respect for the principles of subsidiarity and proportionality (Article 1 of Protocol 2). Draft legislative acts, which include proposals from the EU Commission (Article 3 of Protocol 2) shall take into account of the need for any burden



falling upon [...] economic operators and citizens, to be minimised and commensurate with the objective to be achieved (Article 5 of Protocol 2).

Due to EMIR REFIT ESMA is mandated to develop implementing technical standards to be submitted to the EU Commission who will put in place the legislative process. As it is indisputable ESMA's draft has to comply with the principle of proportionality. ESMA's draft needs to consider all burden falling upon economic operators and citizens and commensurate with the objective to be achieved.

The below mentioned proposed Hybrid Transaction Reporting Mechanism ("HTRM") aims to reduce the intended burden on economic operators and citizens without conflicting with the objectives to be achieved with ESMA's draft implementing technical standard.

According to the reporting obligation for (OTC) derivative contracts, it is the overarching goal of EMIR (Level 1) to provide all relevant information on the risks inherent in the derivative markets to ESMA, the relevant Competent Authorities, the European Systemic Risk Board (ESRB) and the relevant Central Banks of the ESCB (Recital 41 of Regulation (EU) No 648/2012).

- **Hybrid Transaction Reporting Mechanism ("HTRM")**

We would like to point out that references made to the principle of proportionality shall not put in question the validity and ESMA's mandate to draft implementing technical standards according to EMIR REFIT. We believe that ESMA has carefully calibrated the draft considering also the complexity of this matter. As the level 1 text requires clearly a dual-sided reporting obligation for financial counterparties (UCITS/AIFs) It is not our aim to request a single-sided reporting by referring to a HTRM.

The principle of proportionality requires to consider a more hybrid transaction reporting mechanism. The overarching goal of EMIR has already been achieved. The intended update of the technical standards will further improve the data quality while harmonising also the data reporting fields. ESMA describes in margin note 265 of the CP with regards to data elements related to collateral, margins, and counterparty rating triggers:

"ESMA proposed to keep this field in place. The current format provides sufficient information under a dual-sided reporting regime, but it is not compatible with information gathered under a single-sided regime. Therefore, in order to facilitate global aggregation of derivatives information, ESMA proposes, to extend the categories that need to be reported in this field in order to capture the collateralisation by both counterparties to the transaction."

If additional categories are reported by at least one of the financial counterparties (e.g. Sell-Side) it would provide ESMA and the National Competent Authorities with sufficient information. If the receiving information from one counterparty would be considered as sufficient by the Competent Authorities, then the data quality should be further improved for all reporting entities. Therefore, we suggest broadening the scope of this hybrid transaction reporting structure. Such a model would minimise the burden falling upon economic operators and citizens and would still commensurate with the objective to be achieved.

It is part of a business model of many credit institutions authorised in accordance with Directive 2006/48/EC ("Sell side") to become counterparty of (OTC) derivatives for clients from any other (financial) sector. It is usually the case that at least one of the counterparties is an authorised credit institution. This is the case for UCITS and AIF who are subject to restrictions regarding the variety of possible counterparties. As ESMA achieves the data quality goals also without obtaining the data



elements referred to recital 265 of the CP, ESMA should request such data points only from one of the counterparties, preferably the Sell-Side.

Reporting entities (e.g. UCITS/AIFs) cannot assess which data fields are required by ESMA and NCAs from both parties in order to enhance the data quality and to harmonise OTC derivatives data elements reported. According to Article 5 para 2 of Protocol 2, any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. Therefore, ESMA should assess which further data points could be made subject to the HTRM to minimise the burden falling upon economic operators and citizens and would still commensurate with the objective to be achieved.

- **Closer alliance of ANNA-DSB as an alternative to HTRM**

In order to achieve the objective of the EU principle of proportionality within the EMIR reporting obligation an alternative could be to further deepen a closer involvement with the ANNA-DSB.

Credit institutions authorised in accordance with Directive 2006/48/EC that typically act as the derivative product provider in the (OTC) derivatives market could be obliged to provide all required ESMA reference data fields to ANNA-DSB when they would like to use (OTC) ISIN for all derivative products subject to the EMIR reporting obligation. This requirement should not be restricted to TOTV-ISINs according to MiFIR. At the same time ESMA, NCAs and TRs need to be required to obtain such data only from ANNA-DSB going forward. Thereafter they need to enrich the individual transaction messages themselves as needed.

ESMA should not have any political issues with ANNA-DSB as central reference data base for derivative instruments. The EU/ESMA had been instrumental in the set-up of ANNA-DSB and are following the FSB approval of ANNA-DSB as global UPI provider. Global regulatory community acceptance is given. With such a solution the size and complexity of the existing EMIR transaction reports from counterparties to the trade repositories could be reduced to a minimum. Reporting would be more efficient and secure. Duplication of databases and data reconciliation efforts along the reporting chain could be avoided if ANNA-DSB is appointed as the golden source of issuer supplied derivative instrument reference and necessary flow data for all EMIR transaction reporting.

We would like to make the following specific comments:

Q8. Which errors or omissions in reporting should, in your view, be notified to the competent authorities? Do you see any major challenges with such notifications to be provided to the competent authorities? If yes, please clarify your concerns.

We do not agree with the proposal that counterparties should notify the NCAs if they experience a problem (e.g. IT incidence) that prevents them from submitting the reports to the TRs. NCAs have access to the relevant TR reporting data which can be used to detect systemic risk within the derivative market. Under EMIR, ESMA has direct responsibilities regarding the registration, supervision and recognition of TRs. Therefore, ESMA is well equipped to detect any shortcomings in the reporting to TRs.



Q11. Do you agree with the proposed technical format, ISO 20022, as the format for reporting? If not, what other reporting format would you propose and what would be the benefits of the alternative approach?

Q12. Do you foresee any difficulties related to reporting using an ISO 20022 technical format that uses XML? If yes, please elaborate.

We strongly agree with the proposal to use ISO 20022 as the technical format for the updated EMIR reporting as it is already foreseen for the SFTR reporting obligation. We are a strong proponent of use of ISO standards along the whole value chain of the financial industry. We believe that the ISO structure/organisation at least with some nudging by the regulators across the globe is able to create a successful story also for derivative instrument identification and classification and regulatory reporting in the same way as FSB was able to create a global solution for entity identification with the LEI leading to an ISO standard.

We believe that the priority must be on pushing the only universally accepted and government supported industry standard setting system, the UN approved ISO system. The control over the data, and thereby the underlying markets, based on a system of various commercial interests and royalty creation on data which is maintained by the incumbent market participants with the help of proprietary standards is not acceptable going forward if we really want to enable a neutral aggregation of data and thereby support the control of systemic risk within the derivative market.

Q13. Do you expect difficulties with the proposed allocation of responsibility for generating the UTI?

No, we agree with the UTI framework as suggested by ESMA.

Q21. Do you support including more specific rules provision on the timing of the UTI generation? If so, do you prefer a fixed deadline or a timeframe depending on the time of conclusion of the derivative? In either case, please specify what would be in your view the optimal deadline/timeframe. Please elaborate on the reasons why in your response.

We do not support more regulatory (specific) rules on the timing for the UTI generation (e.g. a fixed deadline). A specific deadline or a timeframe to submit the UTI should be left to the discretion to the reporting entities as they have already put in place procedures to exchange UTIs within the reporting deadline to T+1.

Q24. Do you have any comments concerning the use of ISINs as product identifiers under EMIR for the derivatives that are admitted to trading or traded on a trading venue or a systematic internaliser?

Q25. Do you have any comments concerning the use of UPIs as product identifiers under EMIR? Should in your view UPI be used to identify all derivatives or only those that are not identified with ISIN under MiFIR?

We strongly agree with the proposal to use the UPI as a product identifier under EMIR. We are a strong proponent of the use of ISO standards (e.g. ISIN, CFI, LEI) along the whole value chain of the financial industry. We believe that the ISO structure/organisation - at least with some nudging by the regulators



across the globe - is able to create a successful story for derivative product identification by UPI in the same way as ISO was able to create a global solution for entity identification with the LEI.

The ISO standard governance offers a readily available global solution with standards and an infrastructure in place which is acceptable to both the regulators and industry.

From a buy-side point of view the pre-trade availability of a globally agreed standardised set of reference data attached to an ISIN combined with a UPI which in turn enables (in a first phase) automation of regulatory reporting as well as (in a second phase) trading, clearing, settlement and collateral management would be a huge step forward for the (OTC) derivative markets.

Q26 Do you agree with the assessment of the advantages and disadvantages of the supplementary reporting of some reference data? Are there any other aspects that should be considered?

In the concept of the advantage and disadvantage of reporting of reference data, we would like to point out that references made to the principle of proportionality shall not put in question the validity and ESMA's mandate to draft implementing technical standards according to EMIR REFIT. We believe that ESMA has carefully calibrated the draft considering also the complexity of this matter. As the level 1 text requires clearly a dual-sided reporting obligation for financial counterparties (UCITS/AIFs). It is not our aim to request a single-sided reporting by referring to a HTRM.

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Q102. Do you agree with the proposed framework for verification of data submission? Please detail the reasons for your response.

We agree with the proposed framework for the verification of data submission which is based on ISO 20022.

Q106. Are there any other aspects that should be considered with regards to the scope and start of the reconciliation process? Please detail the reasons for your response.

We agree with the updated reconciliation process.

Q117. Do you agree with the proposed framework for rejection responses? Please detail the reasons for your response.

We agree generally with the proposed framework for the rejection responses based on ISO 20022.



Q121. Are there any aspects that need to be further specified regarding the end-of-day reports to be provided to reporting counterparties, the entities responsible for reporting and, where relevant, the report submitting entities? Is there any additional information that should be provided to these entities to facilitate their processing of data and improve quality of data? Please detail the reasons for your response.

No, we agree with the proposed end-of-day reports.