



European Securities and  
Markets Authority

# Final Report

**Peer Review on the collection and use of STORs under the Market Abuse Regulation as a source of information in market abuse investigations**





European Securities and  
Markets Authority

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## List of Acronyms and terms used

<b>AG</b>	Assessment Group
<b>BoS</b>	ESMA's Board of Supervisors
<b>EEA</b>	European Economic Area
<b>ESMA Regulation</b>	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
<b>MAR</b>	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC
<b>MAR Delegated Regulation</b>	Commission Delegated Regulation (EU) 2016/522 of 17 December 2015 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions
<b>MAR ITS on NCA Cooperation</b>	Commission Implementing Regulation (EU) 2018/292 of 26 February 2018 laying down implementing technical standards with regard to procedures and forms for exchange of information and assistance between competent authorities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse
<b>MAR Q&amp;A</b>	ESMA's Questions & Answers on the Market Abuse Regulation ESMA70-145-111
<b>MAR RTS on STORs</b>	Commission Delegated Regulation (EU) 2016/957 of 9 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions
<b>Market Abuse Directive</b>	Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation
<b>Mandate</b>	Mandate for this peer review as approved by the BoS on 18 December 2018

<b>Methodology</b>	ESMA Peer Review Methodology (ESMA42-111-4661)
<b>MiFID II</b>	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
<b>MiFID II RTS</b>	Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive
<b>MTF</b>	Multilateral Trading Facility
<b>NCA</b>	National Competent Authority
<b>Questionnaire</b>	Questionnaire developed as part of the peer review and issued to NCAs in February 2019
<b>Reporting Persons</b>	Persons required to submit STORs pursuant to Art. 16(1) or Art. 16(2) MAR
<b>SMSG</b>	ESMA's Securities and Markets Stakeholder Group appointed pursuant to the ESMA Regulation
<b>STOR</b>	Suspicious transaction and order report to be submitted to NCAs pursuant to Art. 16 MAR
<b>STOR Framework</b>	The STOR Framework, in this report, means Reporting Persons' obligations under Art. 16 MAR and the associated arrangements, systems and procedures requirements in the MAR RTS on STORs and Art. 31 and 54 of MiFID II
<b>TREM</b>	Transaction Reporting Exchange Mechanism. TREM is an IT system, originally implemented in 2007 by ESMA's predecessor, CESR, to facilitate the exchange of transaction reports amongst regulators. Following the introduction of MiFIR, the transaction reporting requirements in terms of the scope of instruments and information to be reported has been increased

# 1 Background

1. The Market Abuse Regulation, and its predecessor the Market Abuse Directive, recognise the key gatekeeping role of the regulated industry to complement that of National Competent Authorities in preserving market integrity. In 2003, the Market Abuse Directive introduced an obligation requiring Member States to ensure that persons professionally arranging transactions in financial instruments notify competent authorities of transactions that might constitute insider dealing or market manipulation.<sup>1</sup> In 2016, under MAR, the duty was extended to market operators and investment firms operating trading venues and to also capture orders (suspicious transaction and order reports, STORs).
2. STORs are a key element of NCAs' toolkits to detect and investigate suspected market abuse. Some fundamental information is available and detectable by Reporting Persons. As such, it is important for NCAs to effectively supervise the STOR reporting obligations to ensure Reporting Persons are fully engaged and complying with the requirements. This helps to ensure that NCAs receive useful information to fulfil their mandate to seek to preserve market integrity and enhance investor protection and market confidence.
3. Given the significance of STORs, ESMA's Board of Supervisors decided to conduct a peer review on the topic. This peer review assessed NCAs in 6 areas specifically related to the STOR Framework: (i) NCAs' supervision of market operators and investment firms that operate trading venues' systems and arrangements to detect suspicious activity and report STORs (Art. 16(1) MAR Reporting Persons); (ii) NCAs' supervision of persons professionally arranging/executing transactions regarding their systems and arrangements to detect suspicious activity and report STORS (Art. 16(2) MAR Reporting Persons); (iii) NCAs' response to poor quality and non-reporting of STORs as well as their related enforcement and sanctions activity; (iv) NCAs' analysis of STORs which includes some observations on the outcomes of STORs; (v) cross-border exchange of STORs by NCAs; and (vi) NCAs' resources for supervision of the STOR Framework.

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<sup>1</sup> Art. 9 MAD.

4. An overview of NCAs' assessment grades is set out at the end of the Executive Summary. The table which sets out the areas for improvement per NCA is found in section 7.1 Peer Review Findings.
5. For context and background information, the peer review also gathered details on the numbers of STORs reported overall and broken down by category of Reporting Person, financial instrument and type of market abuse (section 6).

### **Process for the Peer Review**

6. ESMA's Board of Supervisors (BoS) appointed an Assessment Group (AG), comprising experts from NCAs and ESMA to conduct the peer review and approved a mandate for the peer review as prepared by the AG. The AG developed a self-assessment questionnaire which was issued to all 31 EEA NCAs. The period under review was 1 January 2017 to 31 December 2018. The mandate and questionnaire are in the Annexes to this report (sections 8.1 and 8.2).
7. The questionnaire was followed by on-site visits by members of the AG to a sub-set of NCAs approved by the BoS in accordance with the mandate, namely: Germany, Greece, Ireland, Italy, Romania and Sweden.
8. Before the on-site visits, the 6 NCAs provided additional background information on policies and procedures relating to supervisory and enforcement practices, specific engagement with Reporting Persons and organisational structures in relation to the STOR Framework.
9. During the on-site visits, the AG met with stakeholders (Art. 16(1) and Art. 16(2) Reporting Persons) at each NCA. This outreach exercise was facilitated by the NCAs and the AG was grateful for this opportunity, as a complement to the engagement with NCAs, to understand Reporting Persons' experience of the STOR Framework and their related engagement with their respective NCAs. Overall, the AG engaged with 17 Reporting Persons: 14 investment firms and 3 Trading Venues. Separately, to gather additional insights, the AG met with European Industry bodies representing trading venues, investment firms and asset managers and gathered useful insights from their members. Finally, the AG also received input from ESMA's Securities & Markets Stakeholder Group at an early stage of the peer review.

## Assessment Criteria

10. As the legislative provisions for the STOR Framework are relatively high level (i.e., Art. 16 MAR and the associated arrangements, systems and procedures requirements in the MAR RTS on STORs and Art. 31 and 54 of MiFID II)<sup>2</sup>, the peer review questionnaire and the mandate set out expectations under the different areas of assessment which were based on the AG members' knowledge, expertise and practical experience of the STOR Framework and consulted upon with NCAs as part of the process. Each area of assessment contains a number of criteria. For each area, each NCA is allocated an overall assessment of: (i) fully compliant; (ii) broadly compliant; (iii) partially compliant; or (iv) non-compliant. The overall assessment table for all NCAs is set out in section 3.1. Where there are areas for improvement on the part of an NCA for any of the criteria, these are outlined in the table of peer review findings, in section 7.1.

## 2 Executive Summary

11. 2017, the first full year of the application of the STOR Framework, heralded a significant increase in STORs. This was in part due to intense efforts on the part of NCAs to raise awareness of MAR and the STOR Framework in advance of its commencement.

12. Compared to the last 12 months of MAD, the number of STORs increased by 130% from 4,634 STRs to 10,653 STORs in 2017. In 2018, the number of STORs also steadily increased by 4.5%, to 11,130 STORs. The vast majority 84% were submitted to NCAs by investment firms. 75% of STORs related to equities. In terms of suspected violations, 39% related to suspected market manipulation and 60% to insider trading. More details on the numbers of STORs received, breakdown etc are set out in section 6.<sup>3</sup>

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<sup>2</sup> Sectoral requirements for NCAs to ensure applicants have appropriate arrangements, systems and controls to comply with the STOR Framework are set out in Art. 8(1)(a) and Art. 12(1)(e) AIFMD, Art. 5(4)(a) and Art. 14(e) UCITS Directive and Art. 5(1), Art. 7, Art. 16 MiFID II and Art. 6, Art. 29(2), Art. 29(3) and Art. 72(3) of Commission Delegated Regulation (EU) 2017/1943.

<sup>3</sup> There is no breakdown between transactions and orders as the numbers of the latter is very low and NCAs did not have separate statistics to differentiate between both cases. It could be reasonably expected that the inclusion of 'orders' would give rise to a significant increase in STORs post MAR. It should be noted however that the Level 2 Regulation also included orders as the subject of infringements and, therefore, some NCAs already issued guidelines on STRs under MAD which recommended sending reports on orders in the event of detecting any reasonable suspicion of wrongdoing based on orders.



13. The peer review considers that the STOR Framework has two key objectives:
  - effective market surveillance and deterrence of market abuse - the effective operation of the STOR Framework envisages the full engagement of Reporting Persons as gatekeepers to detect and report suspicious activities, thereby ensuring markets are well surveyed which can deter market abuse
  - STORs are a key element of NCAs' toolkits to detect and investigate suspected market abuse. As a source of external information to detect and investigate suspected market abuse, NCAs received 11,130 STORs versus 1,560 other external notifications in 2018 which emphasises the significance of STORs.
14. To achieve both objectives, it is important for NCAs to effectively supervise and enforce the STOR Framework to ensure Reporting Persons are fully engaged and complying with the requirements.
15. The outcome of the assessment per NCA is presented in section 3.1. The detailed findings for each NCA which will be followed up on, in accordance with the Peer Review Methodology, are set out in section 7.1.
16. Four key recommendations for NCAs follow from the peer review:
  - NCAs should ensure all Reporting Persons are appropriately engaged in the STOR Framework from authorisation through robust ongoing proactive and reactive supervision, paying special attention to wholesale market participant activities and the detection of cross-border STORs
  - NCAs should challenge suspected non-reporting of STORs to further embed the STOR Framework
  - NCAs have tended to focus on moral suasion and bilateral engagement for supervision of the STOR Framework and should be mindful of their full supervisory toolkit (including sanctions and measures) and escalate their supervisory response in appropriate cases
  - NCAs should ensure they have appropriate IT tools to fully maximise the usefulness of regulatory data to complement their analysis of STORs.

### **Broader focus on Reporting Persons and financial instruments**

17. NCAs undertook significant efforts to raise awareness of the STOR Framework prior to the commencement of MAR which contributed to the high number of STORs. Since

then, and during the Review Period, the peer review observed good practices by NCAs in their supervision of Reporting Persons' compliance with the STOR Framework although with a lower intensity than in 2016 as NCAs were focussed to a significant extent on the implementation of MIFID II. The peer review observed that NCAs should ensure they are focussing on the full population of Reporting Persons as well as financial instruments.

18. The peer review found that most STORs are from investment firms and relate to equities. While this may reflect the predominant market activity, NCAs need to satisfy themselves that all Reporting Persons are fully engaged with the STOR Framework and have systems to detect suspicious activity across the financial instruments for which they arrange or execute transactions.
19. The peer review, drawing from both the experience gained during the on-site visits and NCA replies to the Questionnaire, observed that NCAs, in their supervision of the STOR Framework, might not always be paying due attention to activities carried out on wholesale markets (including OTC trading). Indeed, also wholesale markets participants and, more broadly, major investors can perpetrate market abuse, albeit with forms and techniques different from the more common ones used by retail investors. The peer review does acknowledge that this area of supervision is somewhat new and that wholesale markets and major investors have their own peculiarities (e.g. speed, access to different trading venues instantaneously, microstructures, trade volume sizes, relevance of algorithms): yet it is important for NCAs to be aware of the importance of the enhancement of their supervision of the STOR Framework in this regard, as such behaviours could have a sizeable impact and contagion effect.
20. Additionally, it is very important, and envisaged in the legislative framework, that NCAs assess proposed systems and arrangements to comply with the STOR Framework as part of the authorisation/licensing processes (as well as a part of ongoing supervision) to set robust regulatory expectations for the supervision and enforcement of the STOR Framework from the outset, not only on local, but also on other EU financial instruments, proportionate to Reporting Persons' clients and activities. At authorisation stage, it is important for NCAs to ensure they involve subject matter experts to assess the proposed systems and arrangements for compliance with the STOR Framework.

21. The peer review has found a lack of internal written procedures in a significant number of NCAs on the supervision of the STORs legal framework, which may impair dealing with a sudden increase in STORs or staff turnover.
22. The peer review observed that in some NCAs there is not a clear coordination between the departments in charge of the authorisation and inspections of Reporting Persons other than trading venues and the department in charge of the supervision of market abuse. It is important that there is coordination between such functions at NCAs. Additionally, NCAs should ensure that the supervision at the authorisation stage and inspections of reporting persons in the area of systems and arrangements for detecting suspicious transactions and orders is conducted by experts on market abuse.

### **Appropriate challenge for non-reported STORs**

23. Additionally, to further embed the regime, NCAs need to increase their proactive follow up with respect to suspected non-reporting of STORs. While increasing numbers of STORs presents challenges for NCAs, they should also ensure they challenge Reporting Persons in instances where they would have expected to receive a STOR. Such robust follow-up action is an important to ensure Reporting Persons are fully engaged in the STOR Framework. The objective is not to increase STORs, rather it is to ensure that NCAs are receiving meaningful intelligence across its population of Reported Persons to detect and investigate suspected market abuse.
24. NCAs could equip themselves with databases and expertise to challenge Reporting Persons for not reporting STORs and tools such as own alert systems (which should be updated), using received STORs, either local or cross-border, complaints, whistle-blowers, corporate events, etc.

### **Escalated supervisory response in appropriate cases**

25. NCAs tend to focus on moral suasion in addressing deficiencies in Reporting Persons' compliance with the STOR Framework including poor/non-reporting of STORs. The peer review notes that enforcement and sanctioning should be reserved for serious/repetitive breaches. NCAs should however be mindful of their full

supervisory toolkit and ensure they monitor poor/non-reporting (e.g. maintain a log of such reporting) to escalate their supervisory response in appropriate cases.

### **Effective tools to complement STOR analysis**

26. With regard to NCAs' substantive analysis of STORs, NCAs are generally meeting the peer review's expectations. The peer review shared good practices in terms of information sources and procedures on a confidential basis with NCAs as their publication might inhibit effective detection and analysis of market abuse.
27. The peer review observed that NCAs should ensure they have sufficient IT resources to make full use of the significant data sources available to NCAs in TREM and in the future from Trade Repositories<sup>4</sup> (TR) to analyse STORs. Some NCAs are setting up specialist data teams to maximise the use of such data which will enhance their ability to analyse STORs and surveillance activities more generally. Additionally, though outside the scope of the peer review, NCAs and ESMA could provide guidance to reporting persons on new market abuse schemes and ways to detect them.

### **Areas of assessment and summary of findings**

28. As noted in Section 1, the peer review assessed 6 areas specifically related to the STOR Framework as envisaged in the ESMA Regulation: (i) NCAs' supervision of market operators and investment firms operating trading venues' systems and arrangements to detect suspicious activity and report STORS (Art. 16(1) MAR Reporting Persons); (ii) NCAs' supervision of persons professionally arranging/executing transactions regarding their systems and arrangements to detect suspicious activity and report STORS (Art. 16(2) MAR Reporting Persons); (iii) NCAs' response to poor quality and non-reporting of STORs as well as their related enforcement and sanctions activity; (iv) NCAs' analysis of STORs which includes some observations on the outcomes of STORs; (v) cross-border exchange of STORs by NCAs; and (vi) NCAs' resources for supervision of the STOR Framework.

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<sup>4</sup> From April 2020 NCAs will have access to securities lending information through Trade Repositories.

## **NCA's' supervision of Art. 16(1) Reporting Persons**

29. The peer review observed some good engagement by NCAs, both reactive and proactive, with trading venues/investment firms operating market venues/regulated markets. Key recommendations for NCAs who were assessed below full compliance relate to formalising supervisory procedures and increased engagement, including on-site visits, making sure that trading venues report STORs. Although in some cases the areas for improvement seem similar in a Broadly Compliant or Partially Compliant mark, the differences are based on the severity of the cases and the number of entities under supervision as well as their impact.

- 9 NCAs were assessed as fully compliant: DE, IE, FR, IT, HU, MT, NL, AT, UK.
- 13 NCAs were assessed as broadly compliant: BE, CZ, DK, EL, HR, LU, PL, PT, SK, FI, SE, IS, NO.
- 8 NCAs were assessed as partially compliant: BG, EE, ES, CY, LV, LT, RO, SI.
- 1 NCA (LI) was not assessed as it has no Art. 16(1) Reporting Person under its supervision.

## **NCA's' supervision of Art. 16(2) Reporting Persons**

30. The peer review observed some good practices by NCAs in terms of proactive engagement with investment firms in particular including frequent meetings, on-site visits, industry meetings and publications.

31. As noted earlier, NCAs need to enhance their engagement with wholesale market participants' activities to ensure they are also actively engaged in the gatekeeper role (for instance asset managers).

32. It is also important for NCAs to ensure that subject matter experts provide input at the authorisation/licensing stage of Art. 16(2) Reporting Persons with respect to proposed systems and arrangements to comply with the STOR Framework. This is a key opportunity for NCAs to set regulatory expectations and emphasise the need for Reporting Persons to fully embrace, and comply with, their gatekeeper role as envisaged under the STOR Framework.

33. NCAs also need to be vigilant that Reporting Persons' systems and arrangements for detecting and reporting STORs keep pace with the evolving business model of the Reporting Person through proactive engagement and onsite visits. As noted

earlier, it is important to ensure that market abuse experts are involved in supervision including on-site visits.

34. Key recommendations for NCAs who were assessed below full compliance relate to formalising supervisory procedures, increased engagement with a broader range of Art. 16(2) Reporting Persons, including wholesale market participants, as well as focussing on all financial instrument classes, conducting onsite inspections, detecting trends and gaps and reviewing their systems and arrangements at the authorisation/licensing stage.
- 7 NCAs were assessed as fully compliant: BE, FR, HR, IT, NL, PT, UK.
  - 13 NCAs were assessed as broadly compliant: CZ, DK, DE, EE, ES, LT, HU, MT, PL, SI, SK, FI, SE.
  - 8 NCAs were assessed as partially compliant: BG, EL, IE, LV, LU, AT, IS, LI.
  - 3 NCAs were assessed as non-compliant: CY, RO, NO.

#### **NCAs' response to poor quality and non-reporting of STORs as well as their related enforcement and sanctions activity**

35. The sharp increase in STORs has proven challenging for NCAs to manage. Nevertheless, as well as managing STORs received, NCAs need to enhance their focus on poor-quality STORs, statistically there is usually a percentage of poor-quality STORs, as well as suspected non-reporting of STORs. The aim is not to receive more STORs necessarily but rather to seek to ensure that NCAs are receiving meaningful intelligence to detect and report suspected market abuse.
36. The peer review notes that enforcement and sanctions are not appropriate to respond to each suspected breach and for the most part, effective bilateral engagement with Reporting Persons, will ensure effective compliance with the STOR Framework. There are instances (e.g. repetitive poor reporting/serious non-reporting) where an escalated supervisory approach will be appropriate. NCAs should however ensure they are mindful of their full supervisory toolkit including sanctions and ways to detect non-reported STORs. Additionally, to ensure an appropriate escalated supervisory response, the peer review recommends that where it is not already the case, NCAs should track poor-quality or suspected non-reporting.
37. Key recommendations for NCAs who were assessed below full compliance relate to formalising supervisory procedures, increased focus on poor-quality or non-reported

STORs, maintaining a record of such poor or non-reporting and imposing, in appropriate cases, administrative sanctions.

- 6 NCAs were assessed as fully compliant: BE, ES, FR, NL, PT, UK.
- 12 NCAs were assessed as broadly compliant: BG, CZ, DE, IE, IT, LU, HU, AT, SI, FI, SE, NO.
- 11 NCAs were assessed as partially compliant: DK, EE, EL, HR, LV, LT, MT, PL, RO, SK, IS.
- 2 NCAs were assessed as non-compliant: CY, LI.

### **NCAs' substantive analysis and use of STORs**

38. Overall, NCAs were largely meeting the peer review's expectations in terms of procedures and factors to consider when assessing STORs relating to suspected insider trading or market manipulation. The peer review observed NCAs should ensure they have sufficient IT tools to properly leverage the detailed data available in TREM to complement their analysis of STORs.
39. The peer review notes that STORs should not automatically lead market abuse investigations/cases. Effective supervision and enforcement of the STOR regime should lead to effective surveillance of the market and deterrence of unlawful behaviour. That said, the peer review expects that STORs should lead to a proportionate number of investigations or referrals to prosecutors in appropriate cases. The purpose was not to assess sanctions/prosecutions for insider trading or market manipulation. The peer review did observe however that there were only a limited number of sanctions/asures/prosecutions during the Review Period. Although it is outside the scope, the peer review observed that it is not clear that the division of responsibilities between prosecutors and NCAs is facilitating market abuse outcomes. This could be considered as part of the MAR review.
40. Key recommendations for NCAs who were assessed below full compliance relate to high numbers of pending STORs which may suggest procedural inefficiencies and where there were limited referrals to prosecutors/investigations NCAs' grades were impacted on the basis of limited supervisory practices to assess.
- 15 NCAs were assessed as fully compliant: BE, BG, CZ, DE, ES, FR, IT, LV, LT, LU, HU, NL, UK, IS, NO.

- 16 NCAs were assessed as broadly compliant: DK, EE, IE, EL, HR, CY, MT, AT, PL, PT, RO, SI, SK, FI, SE, LI.

### **Cross-border exchange of STORs**

41. Overall, the number of STORs exchanged between NCAs, has increased from 1,408 STORs in 2017 to 2,286 in 2018. When the number of STORs sent by the UK is taken away, however, the numbers for the remaining Member States are significantly lower (154 in 2017 and 457 in 2018).
42. MAR foresees that Art. 16(2) Reporting Persons who arrange/execute cross-border transactions must have arrangements, systems and procedures can detect suspicious activity that may be relevant to other NCAs. It is not clear that all NCAs are focussing on this element of the STOR Framework.
43. Key recommendations for NCAs who were assessed below full compliance relate to delays in the transmission of STORs to other NCAs and enhanced focus on ensuring, where relevant, that Art. 16(2) Reporting Persons have arrangements and procedures to detect suspicious activity in respect of transactions arranged or executed in other Member States.
  - 11 NCAs were assessed as fully compliant: BE, DK, DE, EE, FR, IT, LV, MT, PT, FI, SE.
  - 19 NCAs were assessed as broadly compliant: BG, CZ, IE, EL, ES, HR, LT, LU, HU, NL, AT, PL, RO, SI, SK, UK, IS, LI, NO.
  - 1 NCA was assessed as partially compliant: CY.

### **NCAs' resources to supervise the STOR Framework**

44. In general, the peer review is satisfied that NCAs have appropriate resources to supervise the STOR Framework. There are a few instances where due to levels of pending STORs or a comparatively high number of STORs NCAs' assessment has been affected.
  - 17 NCAs were assessed as fully compliant: BG, CZ, IE, ES, HR, LV, LT, LU, HU, MT, PT, RO, SI, SK, IS, LI, NO.
  - 10 NCAs were assessed as broadly compliant: BE, DK, CY, FR, IT, NL, AT, FI, SE, UK.



- 3 NCAs were assessed as partially compliant: DE, EL, PL.
- 1 NCA was assessed as non-compliant: EE.

### **3 Assessment Table, Good Practices and Summary of On-Site Visits**

#### **3.1 Assessment table**

45. The following table sets out the peer review's assessment grade for each NCA under the areas assessed. In each case, NCAs are assessed as fully compliant, broadly compliant, partially compliant or non-compliant.

46. In accordance with the Peer Review Methodology, a follow up will take place regarding the points of broad, partial and non-compliance with the relevant NCAs.

**Summary table of the compliance level per jurisdiction for key areas of STOR supervision**

Country	Supervision of Art 16(1) Reporting Persons	Supervision of Art 16(2) Reporting Persons	Poor Quality/Non Reporting and related Enforcement and Sanctions	Substantive analysis of STORs and outcomes	Cross-border exchange	Resources
Belgium	Green	Green	Green	Green	Green	Green
Bulgaria	Yellow	Yellow	Green	Green	Green	Green
Czech Republic	Green	Green	Green	Green	Green	Green
Denmark	Green	Green	Yellow	Green	Green	Green
Germany	Green	Green	Green	Green	Green	Yellow
Estonia	Yellow	Green	Yellow	Green	Green	Red
Ireland	Green	Yellow	Green	Green	Green	Green
Greece	Green	Yellow	Yellow	Green	Green	Yellow
Spain	Yellow	Green	Green	Green	Green	Green
France	Green	Green	Green	Green	Green	Green
Croatia	Green	Green	Yellow	Green	Green	Green
Italy	Green	Green	Green	Green	Green	Green
Cyprus	Yellow	Red	Red	Green	Yellow	Green
Latvia	Yellow	Yellow	Yellow	Green	Green	Green
Lithuania	Yellow	Green	Yellow	Green	Green	Green
Luxembourg	Green	Yellow	Green	Green	Green	Green
Hungary	Green	Green	Green	Green	Green	Green
Malta	Green	Green	Yellow	Green	Green	Green
Netherlands	Green	Green	Green	Green	Green	Green
Austria	Green	Yellow	Green	Green	Green	Green
Poland	Green	Green	Yellow	Green	Green	Yellow
Portugal	Green	Green	Green	Green	Green	Green
Romania	Yellow	Red	Yellow	Green	Green	Green
Slovenia	Yellow	Green	Green	Green	Green	Green
Slovakia	Green	Green	Yellow	Green	Green	Green
Finland	Green	Green	Green	Green	Green	Green
Sweden	Green	Green	Green	Green	Green	Green
United Kingdom	Green	Green	Green	Green	Green	Green
Iceland	Green	Yellow	Yellow	Green	Green	Green
Liechtenstein	N/A	Green	Red	Green	Green	Green
Norway	Green	Red	Green	Green	Green	Green

**Legend**

Full Compliance	Green	Broad compliance	Light Green	Partial Compliance	Yellow	Non Compliance	Red
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### 3.2 Good practices

47. Following the analysis of answers on the questionnaires from all EEA NCAs, and also of the on-site visits, the peer review has identified good practices with regard to NCAs' supervision of the STOR Framework. The most relevant practices are indicated below and are further developed in the relevant sections.

Topic	Good Practices identified by the peer review in relation to NCA practices
<b>Supervision</b>	The authorisation process and on-going supervision of Reporting Persons is conducted with input from market abuse subject matter experts who liaise with the team responsible for the review of STORs legal framework to ensure appropriate sharing of information and effective supervision or alternatively both, authorisation and on-going supervision, are conducted by market abuse experts in coordination with the relevant departments.
	Engagement (following a proportionality principle): 1) Issuing articles on the main concerns of the NCA; 2) conducting events on an annual basis which could include discussion of trends and gaps taking into account the STORs received and other information such as macro-economic situation, new financial products, etc.; 3) sending reports on the quality of the STORs received on annual basis; 4) holding bilateral meetings on quarterly basis with trading venues and on annual basis with the major Art. 16(2) providers of STORs and major other reporting persons (in accordance with a specific risk based approach on this area).
<b>Substantive Analysis</b>	Having appropriate IT tools to use the detailed transaction data available in TREM in a systematic way to enhance the analysis of STORs.
	Passing the file onto the public prosecutors after conducting a <i>detailed</i> analysis of the suspected market abuse by the NCA.
<b>Cross-border Exchange</b>	NCAs have periodic calls/meetings with those NCAs with whom they exchange cross-border STORs or might expect to exchange such STORs to discuss the STOR Framework and share feedback on STORs exchanged.
	NCAs note when sending a STOR to another NCA if they propose to investigate the reported suspected market abuse.
<b>Resources</b>	2 NCAs have a well-developed training programme related to the STOR Framework whereby an experienced team member assists a new-joiner in case-work (review, report to public prosecutor etc). Additionally, new

	joiners spend 1-week training in relation to cash markets at the trading venue and additional optional training regarding derivative markets.
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### 3.3 Summary of on-site visits

48. The on-site visits to the NCAs played an important role in enabling the visiting team to enhance their understanding of NCAs' supervisory approach as well as the specificities of their markets. In order to gain a thorough understanding of the NCAs' practical supervision of the STOR Framework, the visiting team received further background documentation and discussed supervisory practices, as well as specific examples and STORs, to understand the different NCAs' supervisory approaches to obtain good quality STORs, enforcement practice for failure to comply with STOR requirements, NCAs' substantive analysis and use of STORs, cross-border exchange of STORs and cooperation with EU/EEA NCAs. The Assessment Group wishes to note that all visited NCAs engaged openly and constructively with the visiting team and expresses its gratitude as a result.

#### **BaFin (Germany)**

49. The on-site visit to BaFin was primarily proposed as BaFin supervises one of the largest and most diverse financial markets in the European Union. As a consequence, BaFin receives a very large number of STORs every year (e.g. 3,099 in 2018). Overall, and particularly in view of the size of the market, the AG considers that BaFin's approach to supervision of the STOR Framework is organised in a very professional way.

50. The AG were struck by structural elements of the German financial supervision architecture such as the set up with Trading Surveillance Offices (TSO)<sup>5</sup> at the trading venues (Art. 16(1) Reporting Persons) which is a unique feature not present at any of the other NCAs subject to the on-site visit program. For Art. 16(2) Reporting Persons BaFin uses public sworn auditors to conduct a 'base layer' of supervision,

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<sup>5</sup> The reporting persons included in Art. 16(1) MAR are the trading surveillance offices (TSOs) of the trading venues located in Germany. The TSO is an independent supervisory body of the exchange with administrative structures in the meaning of section 7 of the German Exchange Act (Börsengesetz, BörsG), and part of the German Market Surveillance Structure. The TSO and the stock exchange are supervised by the respective Exchange Supervisory Authority, a public institution at the level of the German states. BaFin is responsible for the supervision of the TSOs in relation to the Art. 16 (MAR) provisions.

for *inter alia* compliance with the STOR Framework, of the very large population of investment firms under BaFin's supervision.

51. Overall, the AG considers that BaFin has limited resources in relation to the very high number of STORs it receives. This is also illustrated by the high number of pending STORs, although BaFin notes that many of them relate to 'wash trades' carried out for tax reasons and with limited market impact.
52. Considering the size of derivatives and bond markets under BaFin's jurisdiction, the AG considers that the number of STORs reported on those markets, where mainly institutional participants are active, seems relatively low. BaFin indicated that the small number of STORs BaFin receives regarding derivatives, government bonds and CDS can be traced back to the fact that i) most market participants on Eurex and EEX are remote members and therefore send STORs to their home NCA, ii) the respective TSOs have sophisticated surveillance and detection systems in place (and thus already analyse market behaviour themselves, submitting only 'real' suspicions of market abuse) and iii) the surveillance and detection systems of the German market participants are regularly audited by public sworn auditors and supervised by BaFin.
53. Still, the AG considers BaFin could increasingly devote its resources to supervision of the wholesale market participants' compliance with the STOR regime and to receiving more STORs in relation to, for instance, derivative products, over the counter (OTC) transactions on bonds, or credit default swaps (CDS).
54. It is noteworthy that BaFin is the only NCA, as part of the on-site visit program, to undertake an annual review of all Art. 16(2) Reporting Persons' (under BaFin supervision) compliance with the STOR framework through this auditors' review. On the other hand, the number of follow-up visits by BaFin seemed limited in the view of the AG. As such, while the use of auditors is an effective tool for a 'base layer', the AG considers BaFin needs to enhance its follow up activity with Reporting Persons. On the other hand, BaFin had 20 bilateral one-on-one meetings with investment firms.
55. In terms of enforcement and sanctions, BaFin has not imposed sanctions yet for non-submission of STORs or for poor quality STORs. In the opinion of the AG, moral suasion could be used for non-repetitive and non-severe cases. The AG recommends that BaFin maintains a log of poor-quality STORs, better challenge for

non-reported STORs and increase focus on sanctions and formal measures to ensure effective regulatory response in appropriate cases.

56. In terms of substantive analysis of STORs, BaFin is meeting expectations. The only concern for the AG was the relatively high number of STORs still pending, a matter which is related to a slight lack of resources. Regarding cross-border STORs, the AG suggests that BaFin could conduct regular meetings with the NCAs which provide the largest number of cross-border STORs and make sure that Art. 16(2) Reporting Persons have the proper systems and arrangements to detect cross-border STORs.
57. BaFin has an effective training/introduction programme for new staff engaged in the STOR framework including a week's dedicated training at a trading venue. BaFin also has an effective whistle-blower channel which is a useful source of information on suspected insider trading in particular and a useful complement to STORs.

#### **HCMC (Greece)**

58. The on-site visit at the HCMC was proposed on the basis that HCMC has never been visited in a peer review to date and also on the basis of comparatively low numbers of STORs. HCMC noted that the Greek market shrunk considerably following the financial crisis. There are now clear signs of growth in the Greek market and the peer review noted that as the market improves HCMC has to enhance its supervision of the STOR Framework, and keep pace with market developments, to discharge its market integrity mandate.
59. HCMC needs to enhance its supervisory engagement with Reporting Persons, in particular investment firms and asset managers in respect of the STOR regime.
60. The AG noted that HCMC does not have written procedures for its supervisory practices in respect of the STOR Framework. This is important to ensure consistency.
61. The AG suggests implementing measures to challenge Reporting Persons' non reported STORs as well as their detection and surveillance capabilities.
62. The AG noted concerns that HCMC's organisational structure and reporting lines could be improved to avoid 'silo' effects and ensure there are no 'gaps' in terms of allocation of responsibilities. Since the on-site visit, HCMC has taken steps to address this issue.
63. The peer review noted that HCMC has limited resources which are impacting significantly on its ability to effectively discharge its mandate to supervise the STOR

Framework. Additionally, the centralisation of the recruitment and the length of the process also hamper HCMC's capacity to adjust their staff to market developments.

### **CBol (Ireland)**

64. The CBol has experienced a growth in the number of new entities and Reporting Persons, within the meaning of Art. 16(2) MAR since 2017, in part because of Brexit. The AG considers this presents an opportunity to embed robust expectations with these new Reporting Persons, and more generally, in terms of the CBol's supervisory expectations regarding the STOR Framework. The AG observed that notwithstanding a well-founded framework for supervision and an experienced team, the CBol provided limited example of proactive and strategic supervision of the STOR Framework during the Review Period despite having had some good examples of proactive engagement with Reporting Persons prior to MAR.
65. Additionally, the AG observed that overall, the CBol has a low proportion of STORs based on the overall number of equities traded. The CBol has reported a continued strategic proactive approach to the STOR Framework (inspections in relation to market operator's surveillance systems for example). The AG recommends that the CBol continue and build further on this approach to ensure Reporting Persons are appropriately focused on reporting STORs across all entities (i.e. asset managers and investment firms) as well as across relevant financial instruments (including OTC transactions). Additionally, the AG considers that the CBol could enhance its focus on non-reported and poor quality STORs and should use more moral suasion, supervisory and enforcement actions, in appropriate cases, in order to get better and more STORs.
66. The CBol transmits a significant number of STORs to other NCAs (these are expected to further increase). In terms of resourcing, the AG considers the CBol should carefully consider resourcing in order to ensure it is best placed to effectively supervise the STOR Framework on an adequate level especially in those cases in which systems and procedures for detecting STORs are outsourced by Reporting Persons.
67. With regard to good practices, the relationship and engagement with the market operator is well developed. The CBol has established a team, who among other tasks are taking advantage of the detailed data available in TREM to complement the CBol's market surveillance work and assist in further investigating STORs.

## **Consob (Italy)**

68. Consob supervises one of the largest financial markets in the European Union and receives a relatively high number of STORs per year 341 in 2017 and 362 in 2018. Additionally, the on-site visit was proposed as Consob had provided proactive examples of supervisory engagement with Reporting Persons.
69. Overall, the AG considered that Consob has a professional approach to its supervision of the STOR Framework. Consob engages in an effective manner and has a close relationship with the main trading venue. The AG considered Consob's model of engagement with the trading venue to be effective.
70. For instance, Consob provided good examples of proactive engagement with Reporting Persons in relation to the STOR Framework ranging from direct follow up in response to STORs, to bilateral meetings, and industry events. The AG noted with interest Consob's practice in the case of suspected non-reporting of STORs to follow up with a Reporting Person. In relation to poor quality reporting, Consob held events with associations to raise awareness about the STOR Framework to provide feedback and to emphasise that its focus is on receiving 'meaningful' STORS rather than 'defensive reports'.
71. As noted above, given they had received minimal STORs from asset managers, Consob undertook targeted supervisory action towards asset managers to raise awareness of the STOR Framework. Consob also undertakes periodic reviews of STORs received to assess if it needs to refine its supervisory approach (e.g. as is the case with asset managers).
72. Consob, similar to other NCAs, is not focussing to a significant extent on wholesale markets. Given the size of the market, the AG would have expected to see more STORs from wholesale market participants and wholesale instruments. That said, the AG noted that Consob has recently (ongoing since 2018) targeted supervisory action vis a vis asset managers to raise awareness of the STOR Framework and ensure the requirements are appropriately embedded in their systems and arrangements.
73. Consob considers that in the case of poor or non-reporting of STORs, an approach of moral suasion and measures is an appropriate regulatory response and indeed this has improved behaviours bilaterally in respect of a number of Reporting Persons.



The AG noted the improved compliance on the part of some Reporting Persons but considers that NCAs, including Consob, should have regard to their full suite of supervisory tools under MAR and take enforcement action in appropriate circumstances.

74. The relatively high number of pending cases as well as a higher than average number of STORs per FTE suggests a lack of resources.

### **ASF (Romania)**

75. The on-site visit at the ASF was proposed primarily on the basis that contrary to the general trend across NCAs, the number of STORs received significantly decreased from 2017 to 2018. ASF explained there was a drop in the number of equity transactions over the last years as well as a relatively low number of active accounts.
76. With respect to supervision of the Art. 16(1) Reporting Persons, the peer review noted that engagement with the regulated market in Romania could be enhanced. While the ASF does visit the regulated market at least once every 2.5 years, this is less than other NCAs, who have closer ongoing engagement with the regulated market on STOR-related matters.
77. For Art. 16(2) Reporting Persons, the peer review welcomed ASF's inspections activity which provides that all investment firms were visited in the last two to three years also covering STOR Framework matters. The peer review observed though that the Reporting Persons have limited detection and surveillance capability, particularly in relation to insider dealing, as well as on cross-border STORs (although taking into account the low number of trades of Romanian investors, both wholesale and retail, the AG understands that this should be applicable on a proportional base). The peer review suggests implementing measures to challenge Reporting Person's non reported STORs as well as their detection and surveillance capabilities.
78. The peer review also noted that in 2018 (during the Review Period), in the context of licensing/authorisation of investment firms, the ASF's legislative framework in place provided for consideration of certain STOR-related elements (e.g. procedures to prevent market abuse by employees of regulated entities), but did not provide for the assessment of proposed procedures to deal with the STOR Framework as envisaged under MiFID II requirements<sup>6</sup>. These requirements have since been provided for in

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<sup>6</sup> E.g. as envisaged under Art 72(3) of Commission Delegated Regulation 2017/565.

Romanian legislation (FSA Regulation no. 5/2019, transposing MiFID II requirements) but outside the Review Period. As such, this issue has been addressed. Similar provisions did apply during the Review Period in respect of asset managers.

79. The consideration of proposed STOR arrangements at licensing/authorisation is an important way to ensure the STOR Framework is set up appropriately in the Reporting Persons' business from the start and to set the expectation that this will be robustly supervised on an on-going basis.
80. With respect to their response to poor quality and non-reported STORs, the peer review noted that ASF should maintain a database of poor-quality and non-reported STORs so it can escalate its supervisory approach in appropriate cases (i.e. bilateral supervisory engagement leading to enforcement/sanctions in appropriate circumstances).
81. In general, the peer review considered the ASF has sufficient resources to effectively supervise the STOR Framework

## **FI (Sweden)**

82. The on-site visit at the FI was proposed on the basis of the relatively high number of STORs received and proactive engagement with Reporting Persons.
83. Swedish markets are very liquid and a major percentage of trading is in equity markets due to retail investors. Such a high retail investor participation is positive, but apparently also brings some challenges, including a significant number of minor infringements by new, inexperienced retail investors, whose conduct is reflected in almost all the STORs received for suspected market manipulation which might hamper the image of orderly markets.
84. FI has a very close working relationship with *Ekobrottsmyndigheten*, the Swedish Economic Crime Authority (EBM), which is responsible for prosecuting (almost all) insider trading cases and intentional market manipulation cases (overall, these cases amount to slightly more than half of the suspicious behaviours reported in the received STORs). The AG observed several good practices regarding how the two bodies cooperate. This clear-cut division of responsibility between FI and EBM – set by law according to art. 23 MAR - is unique among the visited NCAs and implies a limited scope of FI's investigative and enforcement activities in respect of market

abuse compared with other NCAs. FI has been assessed taking this division into account.

85. FI receives a significant number of cross-border STORs but sends a very limited number of STORs to other NCAs. Given the very liquid market and open economy, the AG considers FI should take steps to ensure that Reporting Persons' detection systems, procedures and arrangements are appropriately calibrated to detect suspicious activity often conducted by foreign brokers on foreign markets that may be relevant to other NCAs.
86. There is a focus on retail equity markets and more limited focus on wholesale markets, markets where other asset classes are traded and the activity of institutional investors. FI should ensure that Reporting Persons also pay attention to wholesale markets and promote STORs, as appropriate, on the instruments of those markets and professional investors.
87. The AG observed that FI is deeply engaged with Reporting Persons to improve dialogue in STOR-related issues and noted a number of good practices in this respect. Additionally, minor breaches or inconsistencies in the STOR Framework are followed up very promptly by FI through informal engagement, asking Reporting Persons to implement the necessary changes in their approach. Nevertheless, the AG also noticed that FI should pay attention to the repetition of minor breaches or inconsistencies from the same reporting persons in order to avoid further problems through imposing sanctions or other administrative measures.
88. The AG also noted that FI has procedures to manage STORs in an effective manner, avoiding bottlenecks, including the ability to close/dismiss STORs which do not report breaches/material breaches in an efficient manner and through the delegation of certain sanctioning decisions to senior staff members (with no need to involve the Board). This helps facilitate and shorten the process. FI should however ensure its processes continue to evolve to take account of the evolution of markets and financial products, the availability of new market data (e.g. TREM flows) and further potential increases in STORs.

## **4 Emerging, cross-cutting issues.**

### **Issues of interpretation/implementation and policy recommendations**

#### **4.1 Emerging and cross-cutting issues**

89. The Methodology foresees that the peer review should identify emerging and cross-cutting issues.
90. The peer review observed a number of emerging issues that were outside the scope of the peer review or outside the Review Period but should nonetheless be noted for NCAs to take into account as appropriate in their supervision.
91. The peer review noted it is important for NCAs to be mindful of trends and market developments that may influence their supervision of the STOR Framework. Since the implementation of MiFID II, off-venue trading on systematic internalisers has increased. It is important that NCAs monitor the trading on systematic internalisers and engage with such entities to ensure their systems and arrangements are appropriately tailored for compliance with the STOR Framework.
92. In the context of Brexit, there has been a significant number of re-locations of entities. The peer review notes that a number of firms intend to outsource their surveillance function to a UK entity. While outsourcing is possible as long as the outsourcing firm has appropriate systems and arrangements to ensure compliance with its regulatory obligations both at authorisation and on an on-going basis, NCAs should maintain a focus on this area if post-Brexit regulatory regimes begin to diverge.
93. Additionally, while this peer review is not focussed on NCAs' own market surveillance systems, the importance of NCAs' IT tools and resources in this respect cannot be underestimated. These are important to complement NCAs' analysis of STORs. Indeed, they are necessary to properly understand, supervise and challenge Reporting Persons' surveillance and alert systems and enable NCAs to lead by example. They can enable NCAs to challenge non-reporting or poor-quality reporting as well as supervising Reporting Persons' own surveillance and detection systems to comply with the STOR Framework. While outside the scope of the review, in some instances, NCAs may be over-relying on supervised entities, such as Trading Venues to provide surveillance information which cannot substitute their supervision.

94. The Peer Review Methodology and ESMA Regulation includes an assessment of independence. At the on-sites, the peer review observed some issues that could impact on NCA's independence and their ability to effectively supervise the STOR Framework. In one instance, for example, a representative of the Stock Exchange was a member of the NCA's Board taking decisions on STOR-related matters relating to investment firms who were also members of the Stock Exchange thus posing independence concerns. This issue has since been addressed. Separately, the peer review observed an instance where the relevant Treasury was providing direction on expenditure by an NCA which could impact its ability to properly allocate resources to effectively supervise the STOR Framework. The peer review recommends that ESMA should consider the issue of independence of NCAs as part of a more general exercise.

## 4.2 Interpretation or implementation issues of Union Law

95. The Peer Review Methodology and ESMA Regulation requires the peer review report to outline any observed inconsistency/general problems in the implementation of potential breaches of Union Law ESMA technical standards, guidelines, recommendations or recommendations in the conduct of commonly agreed supervisory practices as outlined above. A number of issues identified as part of the peer review are set out below.

96. In spite of the broad interpretation given by ESMA to Art. 16(2) MAR,<sup>7</sup> the peer review observed that asset managers and non-financial entities, even when professionally arranging or executing orders regarding financial instruments, do not consider themselves subject to, or consider they should be excluded from, STOR reporting obligations (this was observed in SE and is likely a broader issue). This is a matter of concern as according to the ESMA MAR Q&A, all NCAs should verify whether asset managers and any other entity which receives and transmits orders have implemented systems and procedures to detect and report STORs.

97. The peer review observed that in some NCAs there are a significant number of STORs related to wash trades. Those transactions are being classified as minor market integrity infringements and subject to moral suasion. Some NCAs are

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<sup>7</sup> See ESMA's Questions & Answers on the Market Abuse Regulation ESMA70-145-111.

reporting them to their Anti-Money-Laundering Agencies if the volume reaches some thresholds. Taking into account the number of this type of STOR, the peer review suggests that ESMA could facilitate discussions on effective ways to deal with this issue (e.g., using moral suasion and in repetitive cases imposing sanctions; forwarding them to the AML authorities etc).

98. Based on stakeholder input, there is an interest in guidance on what amounts to an 'order' and how Reporting Persons should deal with suspicious orders (execute or not) which could benefit from further interpretation or policy recommendations. In this regard, Reporting Persons face the challenge of whether or not to execute such transactions.
99. As noted earlier, while envisaged under MAR and the new MAD, it is not clear that by prescribing market abuse breaches as criminal offences, that market abuse outcomes will be facilitated or proceeded against. Public prosecutors are consistently under resourcing pressures and it is not clear that market abuse breaches are prioritised. Additionally, this split of responsibilities dilutes expertise. While NCA staff are sometimes seconded to prosecutors or requested to provide specialist assistance, it is not clear that splitting responsibilities between NCAs and prosecutors is yielding outcomes.
100. With respect to cross-border STORs, Art. 16(4) envisages that STORs should be sent "immediately" to the NCA of the relevant trading venue. While there will be instances where it is necessary to alert another NCA of suspected market abuse immediately, there is cause to consider that "immediately" may cause difficulty and "without delay" would enable NCAs in less urgent situations to ensure they gather as much data as possible to assist the receiving NCA to enable them to take a decision on next steps.
101. Furthermore, with respect to cross-border STORs, there is a potential gap in terms of supervisory responsibilities or at least a challenge in terms of discharging supervisory mandates. Art.16(3) envisages that a branch of an Art. 16(2) Reporting Person shall submit a STOR to the NCA in the Member State where the branch is located. In the case of non-reporting the NCA can follow up with the branch, but as prudential supervision for the parent entity (including systems and arrangements for detection and reporting of STORs) rests with the 'home' NCA, it is necessary to refer the matter to the 'home' NCA for investigation.

### 4.3 Policy Recommendations

102. The peer review recommends that ESMA facilitate NCA discussions/good practice sharing in a number of areas as set out below.
103. ESMA could facilitate discussion to share 'typologies' of market abuse patterns/suspicious behaviour which may in due course be appropriate to share with Reporting Persons. Of course, it is not incumbent on NCAs alone to provide guidance, and Reporting Persons also provided examples of their own engagement with industry bodies and engagement amongst compliance functions at Reporting Persons to share insights on market surveillance lessons learnt and common and emerging behaviours to enhance compliance with the STOR Framework. In this regard, ESMA is already playing a significant role which could be reinforced.
104. ESMA could have a role and facilitate the sharing of new practices, e.g. new alerts for surveillance systems, how to best use the new data on TREM, Trade Repositories (from April 2020), etc. This can ensure constant learning at NCA level to improve engagement with Reporting Persons.
105. ESMA could facilitate discussions to focus on cross-border STORs and sharing practices on how NCAs ensure Reporting Persons have appropriate arrangements, systems and procedures to detect suspicious activity that may be relevant to other NCAs.
106. To expedite cross border exchanges, the peer review notes that NCAs should consider requesting Reporting Persons (or particular categories of Reporting Persons to be proportionate) to submit STORs to NCAs in English.
107. At the on-site visits and as part of the stakeholder engagement, it was observed that it might be useful to consider development of a common exchange platform for STORs.
108. As noted earlier, stakeholders would welcome guidance on when to report suspicious orders and what action to take (to execute or not). In the absence of legislative clarity, ESMA could develop guidance.

## 5 Process Overview

109. The ESMA Supervisory Convergence Work Programme for 2018 provided that a peer review was to be conducted on the collection and use of suspicious transaction and order reports under the Market Abuse Regulation<sup>8</sup> (MAR) as a source of information in the context of market abuse investigations. In December 2018, the ESMA Board of Supervisors approved the mandate for the peer review (see Annex 8.1).
110. The peer review was conducted in accordance with Art. 30 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 (ESMA Regulation) and ESMA's Peer Review Methodology (ESMA42-111-4661) (the Methodology).
111. 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.
112. In accordance with the Methodology, the peer review was carried out by an independent group of experts, identified in the mandate. All EEA NCAs listed in the table below, were subject to this peer review. While MAR was not part of the EEA Agreement during the Review Period, EEA States have been assessed in the same

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<sup>8</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.



way as other NCAs notwithstanding that it was not in force in these States at the time.

113. The AG developed a questionnaire which was issued to all 31 EEA NCAs. The period under review was 1 January 2017 to 31 December 2018. All questions to NCAs were related to that period and answers were requested to cover that period unless otherwise specified in the questionnaire.
114. The questionnaire was followed by on-site visits by members of the AG to a subset of NCAs approved by the BoS in accordance with the mandate. The jurisdictions subject to the on-site for the purpose of the peer review were: Germany, Greece, Ireland, Italy, Romania and Sweden (highlighted below in bold).
115. As part of the on-site visits, the AG met Reporting Persons in each jurisdiction which was a useful complement to the information provided by NCAs and provided further perspective. Separately, to gather additional insights, the AG met with European Industry bodies and gathered useful insights from their members. Finally, the AG also received input from ESMA’s Securities & Markets Stakeholder Group at an early stage of the peer review.

**Country codes and acronyms of NCAs participating in the peer review (the NCAs who were subject to the on-site program are highlighted in bold)**

Country Code	Country	Competent Authority	Acronym
BE	Belgium	Financial Services and Markets Authority	FSMA
BG	Bulgaria	Комисията за финансов надзор	FSC
CZ	Czech Republic	Česká národní banka	CNB
DK	Denmark	Finanstilsynet	Finanstilsynet
<b>DE</b>	<b>Germany</b>	<b>Bundesanstalt für Finanzdienstleistungsaufsicht</b>	<b>BaFin</b>
EE	Estonia	Finantsinspektsioon	FSA
<b>IE</b>	<b>Ireland</b>	<b>Central Bank of Ireland</b>	<b>CBol</b>

EL	<b>Greece</b>	<b>Ελληνική Επιτροπή Κεφαλαιαγοράς</b>	<b>HCMC</b>
ES	Spain	Comisión Nacional del Mercado de Valores	CNMV
FR	France	Autorité des Marchés Financiers	AMF
HR	Croatia	Hrvatska Agencija za Nadzor Financijskih Usluga	HANFA
IT	<b>Italy</b>	<b>Commissione Nazionale per le Società e la Borsa</b>	<b>Consob</b>
CY	Cyprus	Επιτροπή Κεφαλαιαγοράς Κύπρου	CySEC
LV	Latvia	Finanšu un kapitāla tirgus komisija	FKTK
LT	Lithuania	Lietuvos Bankas	LB
LU	Luxembourg	Commission de Surveillance du Secteur Financier	CSSF
HU	Hungary	Magyar Nemzeti Bank	MNB
MT	Malta	Malta Financial Services Authority	MFSA
NL	Netherlands	Autoriteit Financiële Markten	AFM
AT	Austria	Finanzmarktaufsicht	FMA
PL	Poland	Komisja Nadzoru Finansowego	KNF
PT	Portugal	Comissão do Mercado de Valores Mobiliários	CMVM
RO	<b>Romania</b>	<b>Autoritatea de Supraveghere Financiară</b>	<b>ASF</b>
SI	Slovenia	Agencija za trg vrednostnih papirjev	ATVP
SK	Slovakia	Národná Banka Slovenska	NBS
FI	Finland	Finanssivalvonta	FSA
SE	<b>Sweden</b>	<b>Finansinspektionen</b>	<b>FI</b>
UK	United Kingdom	Financial Conduct Authority	FCA

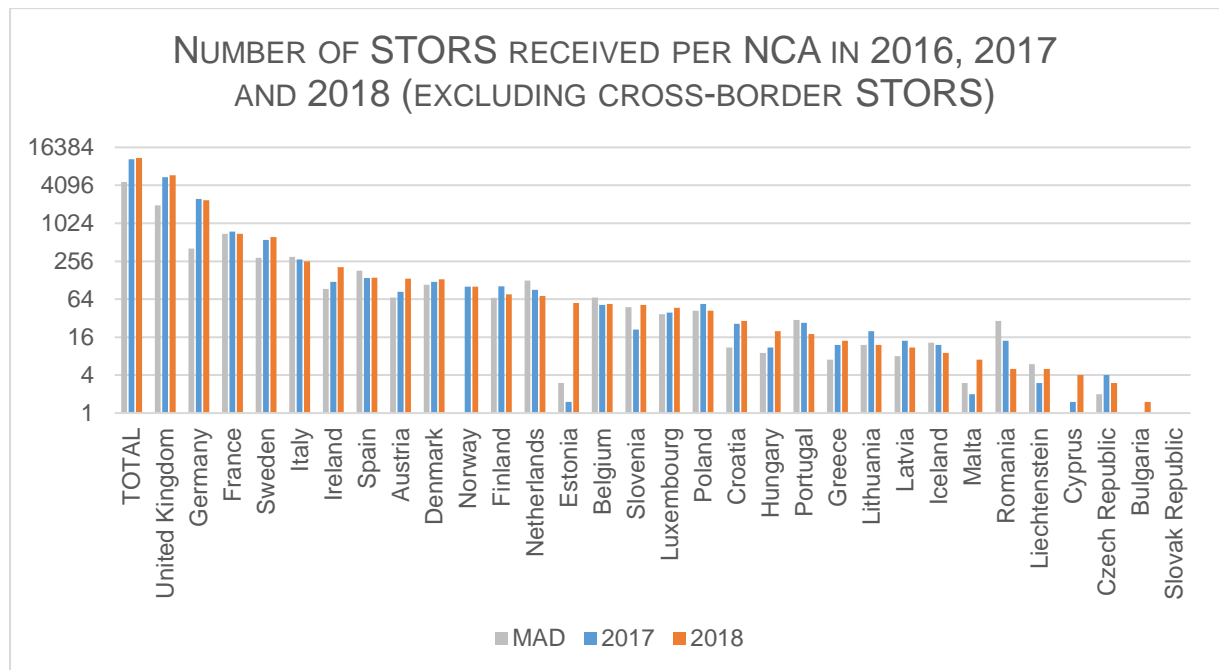
IS	Iceland	Fjármálaeftirlitið	FME
LI	Liechtenstein	Finanzmarktaufsicht	FMA
NO	Norway	Finanstilsynet	Finanstilsynet

## 6 Information on STORs received by NCAs

### Overview

116. Before going into detail on the assessment areas, this section sets out background information, provided in response to the questionnaire on the number of STORs received by NCAs during the Review Period, the breakdown between suspected insider trading and market manipulation, types of financial instruments reported in STORs and the types of reporting persons. Overall, NCAs received 10,653 STORs in 2017 and 11,130 in 2018 (these figures exclude STORs received on a cross-border basis from other EU/EEA NCAs based on Art. 16(4) MAR). During the last 12-month period under MAD, NCAs received 4,634 STRs.

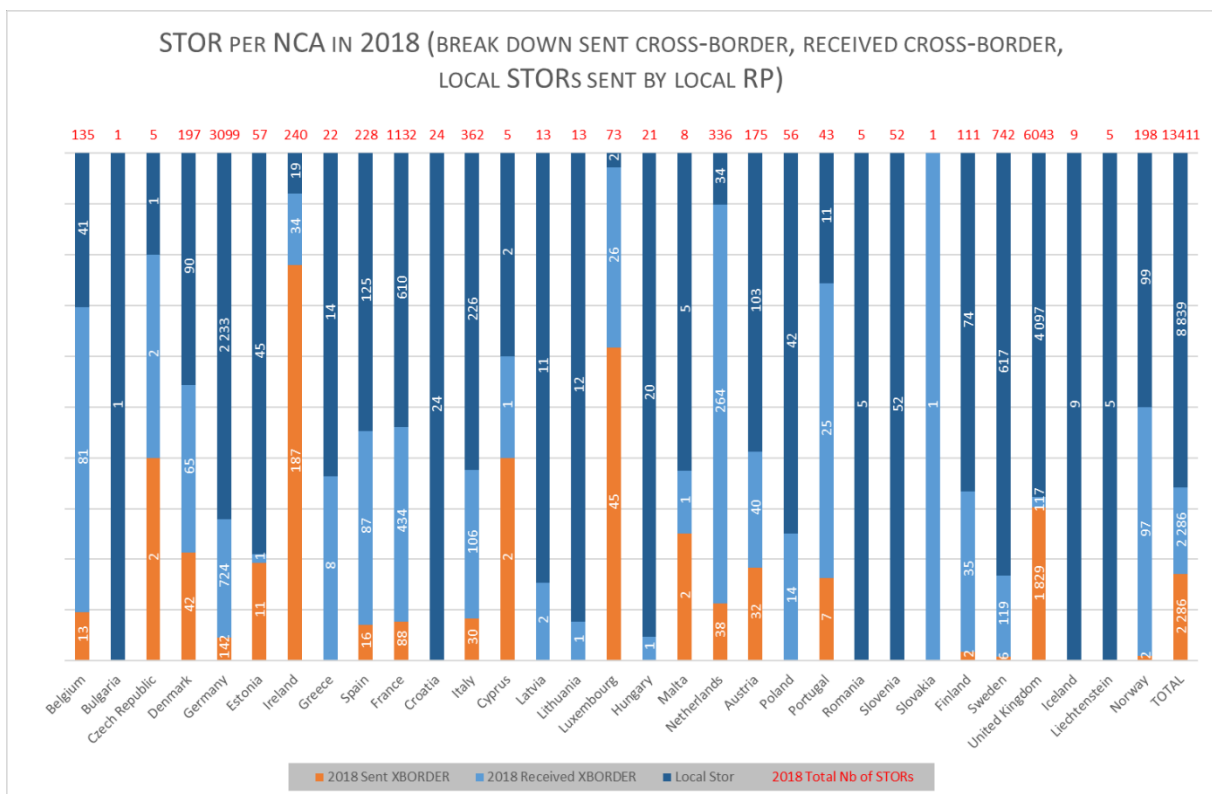
**Figure 1 – Number of STORs (and STRs for MAD) received per NCA**



117. In 2017, 10,653 STORs were received by NCAs from Reporting Persons (this figure excludes cross-border STORs received from other NCAs). The UK received by far the highest number of STORs with 5,501 reports in 2017 (52% of total). It should be noted that the UK represents more than 60% of the equity trades in the EU. DE received the second highest number of STORs (2,498).
118. During the final 12-month period under MAD (1 July 2015 till 30 June 2016), NCAs received 4,634 STRs. In relation to the last period under MAD, the number of STORs in 2017 increased by 130%.
119. In 2018, the number of STORs received by NCAs reached 11,130 with the UK again receiving the highest number of STORs (5,926) ahead of DE (2,375) and FR (698). This is shown in the table above (with a logarithmic scale).
120. As noted at the outset, under MAR, the reporting obligation was extended to orders as well as a broader population of reporting persons. The preceding obligation under MAD required persons “professionally arranging transactions in financial instruments who reasonably suspect that a transaction might constitute insider dealing or market manipulation” to notify the NCA. Even though there has been a high increase in STORs, the increase of STORs relating to orders alone seems to have been limited. Prior to MAR, some NCAs had issued guidelines on the information to report in STRs in which they informed that suspicious orders were also subject to be reported. Such NCAs did not expect to receive more STORs because of MAR. That said, it appears not all NCAs may be focusing on this new specific requirement which requires Reporting Persons to ensure that systems and procedures have been implemented to detect suspicious orders. Indeed, stakeholders noted there is limited guidance in this respect, and it would be welcome. Another relevant factor which explains the sharp increase in the number of STORs is the high number of engagement events that NCAs conducted in 2016 in order to increase awareness of the new MAR among reporting persons.
121. To compare the value of STORs versus other external sources of information received by NCAs in relation to suspected market abuse, the peer review has also asked about the number of other external notifications to assist with the detection of market abuse. The majority of NCAs receive far more STORs than any other type of notifications (1,316 in 2017 and 1,560 in 2018 versus 10,653 and 11,130 STORs for the same periods).

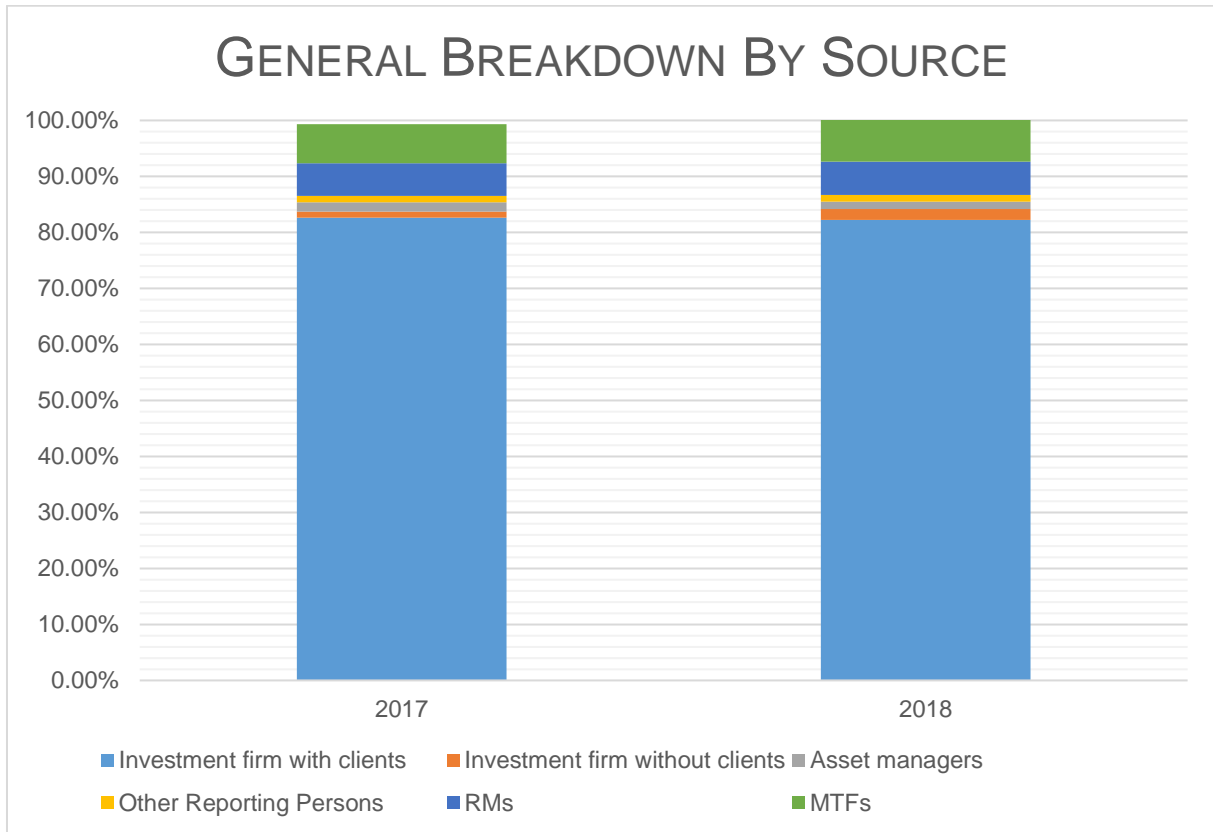
122. From 2017 to 2018, we can see that the STORs received by almost all NCAs have increased. Only 6 NCAs (LV, LT, NL, PL, RO, FI) received less STORs in 2018 than in 2017.

**Figure 2 STOR per NCA in 2018 (breakdown of sent cross-border, received cross-border, local STORs sent by local Reporting Persons (RP))**



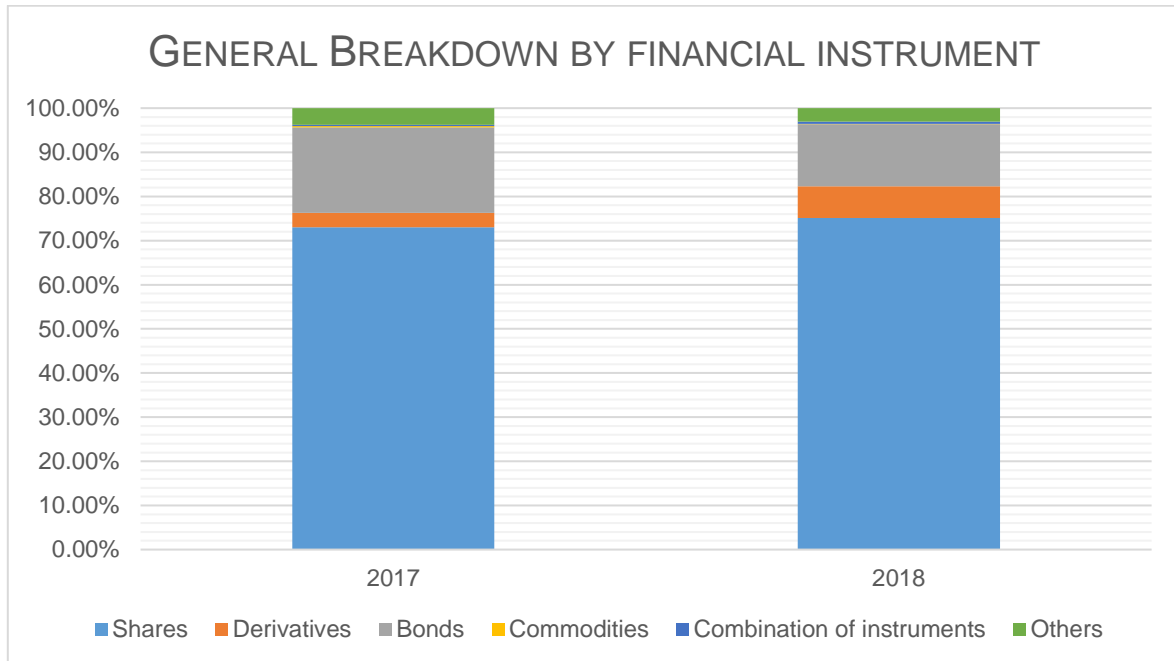
123. The above figure gives a more detailed breakdown of STORs received per NCA: (i) from Reporting Persons under their supervision relating to potentially suspicious activity on local markets (local markets); (ii) received from other NCAs as the potentially suspicious activity may be occurring in the receiving NCA’s market; and (iii) those STOR received by the NCA but then sent to another NCA on the basis that the activity relates to that other NCA’s market.

**Figure 3 – Breakdown by source of STORs in 2017 and 2018**



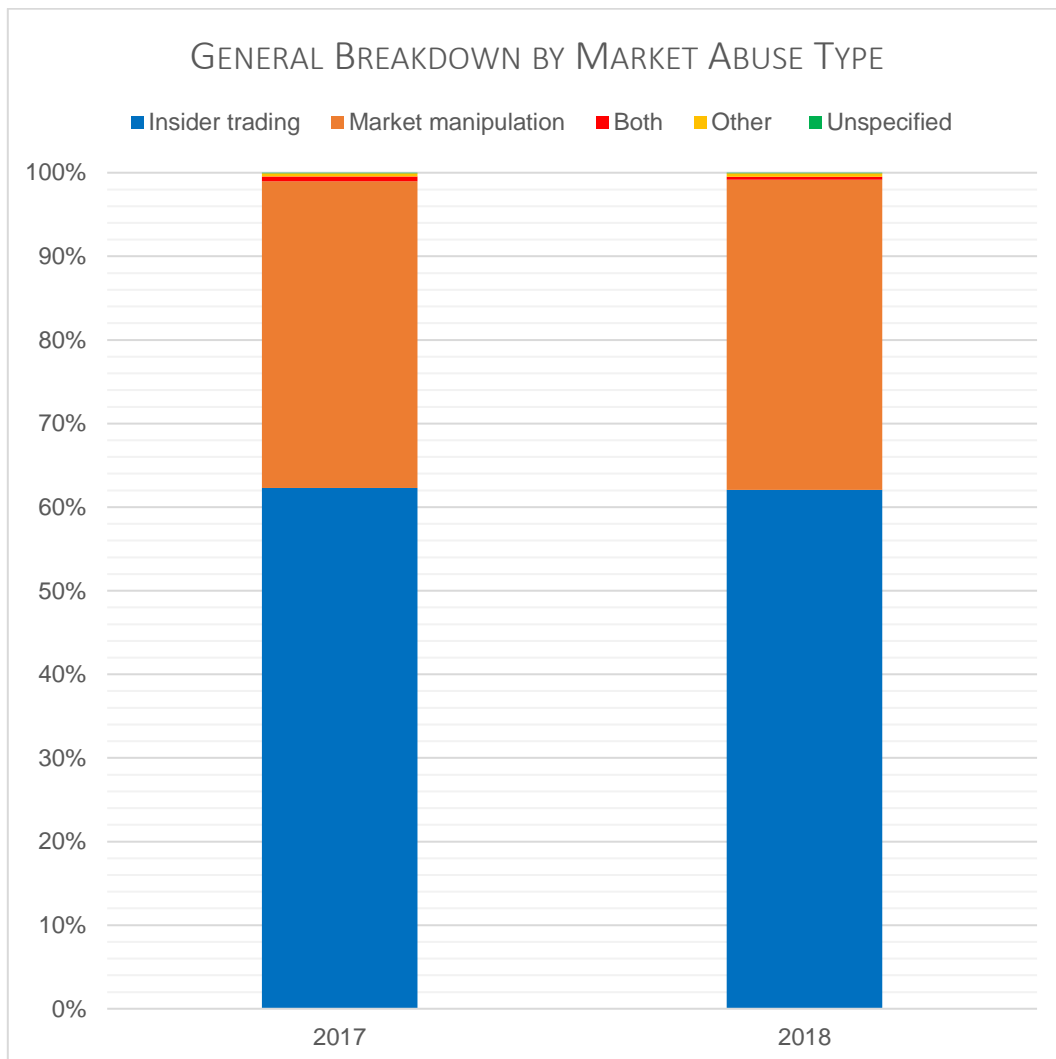
124. On average, for both 2017 and 2018, approximately 82% of STORs were received from investment firms with clients. The contribution of all other sources remained roughly the same during the two years (1-2% from investment firms without clients, around 1.5% from asset managers, another 6% of STORs from Regulated Markets and 7-8% from MTFs).

**Figure 4 – Breakdown by financial instrument**



125. STORs reported to the NCAs mainly related to equities; more than 70% in 2017 and approximately 75% in 2018. In 2018, the proportion of STORs concerning derivative products grew from approximately 3% of total to 7%. The STORs about bonds are an important category, amounting to 19% of STORs received in 2017 and 14% of total in 2018. On the other hand, there are almost no STORs received about commodities.

**Figure 5 - Breakdown per type of suspected market abuse**



126. In total, 62% of the STORs submitted in 2018 to NCAs related to suspected insider dealing and 37% to market manipulation. For 2017, this split was largely the same.

## 7 Peer Review Assessment

127. In this section, the report identifies the findings in relation to the 6 assessment categories: (i) supervision of section 16(1) Reporting Persons' compliance with the STOR Framework; (ii) supervision of section 16(2) Reporting Persons' compliance with the STOR Framework; (iii) NCAs' actions in respect of non-reported and poor-quality STORs, enforcement powers and actions taken; (iv) substantive review of



STORs; (v) cross-border exchange of STORs; and (vi) NCAs' resources to effectively supervise the STOR Framework. In accordance with the Methodology, NCAs are assessed as fully compliant, broadly compliant, partially compliant or non-compliant.

128. As a general note, affecting all the assessment areas, although in some instances the areas for improvement may seem similar for an NCA assessed as 'broadly compliant' or partially compliant', for example, the different assessment grade is based on the each NCA's own circumstances including the severity of the issue in their case, the number of entities under supervision as well as their impact.

## 7.1 Table of Peer Review Findings

<p><b>NCAs' supervision of Art. 16(1) Reporting Persons:</b>            (i) NCAs' supervisory policies and procedures; (ii) Engagement with Reporting Persons; and (iii) Assessment of trends and gaps</p>	<p><b>Full Compliance:</b> DE, IE, FR, IT, HU, MT, NL, AT, UK.</p> <p><b>Broad Compliance:</b> BE, CZ, DK, EL, HR, LU, PL, PT, SK, FI, SE, IS, NO.</p>	
	BE	The supervisory procedures need to be formalised and there should be onsite visits to Art. 16(1) Reporting Persons
	CZ	More regular engagement with Art. 16(1) Reporting Persons required e.g. regular meetings, annual events or onsite visits
	DK	It is recommended, to include events in DK's proactive engagement with Reporting Persons. Also an assessment of trends could be helpful.
	EL	Needs to enhance its policies and procedures and engage more with Art. 16(1) Reporting Persons, as there is a comparatively limited engagement with Trading Venues.

	HR	Needs to engage more with its Art. 16(1) Reporting Persons (meetings or annual event) and formalise its supervisory procedures.
	LU	There should be more engagement with Art. 16(1) Reporting Person e.g. onsite visits or other specific measures for these Reporting Person. A trends and gap analysis would be useful.
	PL	The NCA should further enhance its ability to challenge the market operator, more NCA analysis should be undertaken and verified (also) through more formal interactions with the market operator. Events should be held not only in anticipation of major regulatory changes but also to verify the effectiveness of the supervisory measures taken in this respect.
	PT	There should be more engagement with Art. 16(1) Reporting Persons e.g. onsite visits or other specific measures for these Reporting Persons
	SK	There should be more engagement with Art. 16(1) Reporting Persons to increase awareness of the STOR Framework. An event to promote the STOR Framework might be useful.

	FI	Supervisory procedure needs to be formalised. In addition, onsite visits would be useful.
	SE	There should be more engagement with Art. 16(1) Reporting Persons; e.g. onsite visits
	IS	The supervisory procedures need to be formalised and there should be onsite visits to market operator. Although MAR is not yet implemented, there is close bilateral engagement with market operator, but further analysis and assessments on STORs and market developments should be carried out by the NCA.
	NO	Although MAR is not yet implemented, there is regular and close cooperation with (especially some) market operators. More formal actions could however be taken as well as an NCA analysis on the effect of markets developments to the STOR Framework.
<p><b>Partial Compliance:</b> BG, EE, ES, CY, LV, LT, RO, SI.</p>		
	BG	Trading Venues do not submit STORs, as BG has access to its data, but there is no information regarding any engagement with Art. 16(1) Reporting Persons. Such engagement needs to be improved (e.g. on-site visits and periodic meetings).

	EE	The supervisory processes should be more formalised and EE should engage more, especially due to the rise in STORs in 2018. Also onsite visits might be useful.
	ES	Despite engagement with Regulated Markets, these entities have not sent any STORs to the NCA during the review period. Needs to conduct onsite visits/inspections of the Regulated Markets to check whether their systems are appropriate.
	CY	The supervisory procedure needs to be formalised and CY should start more proactive measures and undertake events and on-site visits in particular. It should further promote the STOR regime with its Art. 16(1) Reporting Persons.
	LV	The supervisory procedures need to be formalised and there should be more engagement with Trading Venues (Art. 16(1) Reporting Persons), as there wasn't any events, onsite visits or other proactive measures. Also, an assessment of the trends and gaps would be useful.
	LT	The supervisory procedures need to be formalised and more engagement is needed with Trading Venues (Art. 16(1) Reporting Persons). E.g. in addition to one annual meeting, regular exchange or discussions of the systems and some cases would be helpful. There have not been onsite visits during the Review Period.
	RO	There should be more engagement with Art. 16(1) Reporting Persons (e.g. more frequent on-site visits/meetings)

	<table border="1"> <tr> <td data-bbox="850 284 943 398"></td> <td data-bbox="943 284 1519 398">although the NCA has already begun to enhance its engagement in this respect.</td> </tr> <tr> <td data-bbox="850 398 943 786">SI</td> <td data-bbox="943 398 1519 786">SI should enhance its ongoing supervision with Art. 16(1) Reporting Person and develop IT tools to analyse the data available from the market operator. On-site visits/inspections are necessary to ensure detection system is appropriate. In spite of small market, assessment of gaps/trends would be useful.</td> </tr> <tr> <td colspan="2" data-bbox="850 786 1519 927"><b>Not applicable: LI</b></td> </tr> <tr> <td data-bbox="850 927 943 1079">LI</td> <td data-bbox="943 927 1519 1079">LI has no Art. 16(1) Reporting Person thus could not be assessed against this provision.</td> </tr> </table>		although the NCA has already begun to enhance its engagement in this respect.	SI	SI should enhance its ongoing supervision with Art. 16(1) Reporting Person and develop IT tools to analyse the data available from the market operator. On-site visits/inspections are necessary to ensure detection system is appropriate. In spite of small market, assessment of gaps/trends would be useful.	<b>Not applicable: LI</b>		LI	LI has no Art. 16(1) Reporting Person thus could not be assessed against this provision.
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<b>Not applicable: LI</b>									
LI	LI has no Art. 16(1) Reporting Person thus could not be assessed against this provision.								
<p><b>NCAs' supervision of Art. 16(2) Reporting Persons:</b>          (i) NCAs' supervisory policies and procedures, (authorisation and ongoing supervision); (ii) Engagement with Reporting Persons; and (iii) Assessment of trends and gaps</p>	<p><b>Full Compliance:</b> BE, FR, HR, IT, NL, PT, UK.  <b>Broad Compliance:</b> CZ, DK, DE, EE, ES, LT, HU, MT, PL, SI, SK, FI, SE.</p> <table border="1"> <tr> <td data-bbox="850 1263 984 1494">CZ</td> <td data-bbox="984 1263 1519 1494">Lack of formalised policies or procedures for STOR treatment and know-how is shared on informal basis with risk in the case of staff turnover</td> </tr> <tr> <td data-bbox="850 1494 984 1682">DK</td> <td data-bbox="984 1494 1519 1682">Need to further develop proactive and targeted engagement with Art. 16(2) Reporting Persons (e.g. Q&amp;A, Dear CEO letters).</td> </tr> <tr> <td data-bbox="850 1682 984 1951">DE</td> <td data-bbox="984 1682 1519 1951">Needs to broaden its focus on Art. 16(2) Reporting Persons including asset managers as well as on wholesale markets and other asset classes. In addition to the actions conducted by the sworn auditors, it is necessary to enhance follow-up</td> </tr> </table>	CZ	Lack of formalised policies or procedures for STOR treatment and know-how is shared on informal basis with risk in the case of staff turnover	DK	Need to further develop proactive and targeted engagement with Art. 16(2) Reporting Persons (e.g. Q&A, Dear CEO letters).	DE	Needs to broaden its focus on Art. 16(2) Reporting Persons including asset managers as well as on wholesale markets and other asset classes. In addition to the actions conducted by the sworn auditors, it is necessary to enhance follow-up		
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DK	Need to further develop proactive and targeted engagement with Art. 16(2) Reporting Persons (e.g. Q&A, Dear CEO letters).								
DE	Needs to broaden its focus on Art. 16(2) Reporting Persons including asset managers as well as on wholesale markets and other asset classes. In addition to the actions conducted by the sworn auditors, it is necessary to enhance follow-up								

	activities, in particular, through on-site visits.
EE	Some positive engagement reported (e.g. Q&A, circulars, reminders, ad hoc feedback) but needs to formalise procedures and enhance proactive engagement (e.g., events, on-site visits. An assessment of gaps/trends would be useful.
ES	Needs to enhance proactive engagement with Art. 16(2) Reporting Persons (e.g. industry events or annual feedback, etc.)
LT	Some positive engagement reported (e.g. Q&A, circulars, reminders, ad hoc feedback) but needs to formalise procedures and enhance proactive engagement (e.g., events, on-site visits. An assessment of gaps/trends would be useful.
HU	Needs to enhance proactive engagement with Art. 16(2) Reporting Persons (e.g. onsite visits). In addition, assessment of gaps/trends would be useful.
MT	Needs to enhance engagement with Reporting Persons (investment firms and asset managers) through on-site visits and more desk-based supervision.
PL	Needs to engage more with Art. 16(2) Reporting Persons (more on-site visits, events and desk-based proactive supervision) in view of decreased number STORs, also to assess possible causes

	SI	Needs to address formalised procedures to specific MAR-related issues and enhance proactive engagement (e.g., events, on-site visits). An assessment of gaps/trends would be useful.
	SK	Given the very limited size of the market, the existence of albeit poor forms of engagement and the intention to formalise processes and procedures.
	FI	The supervisory procedure needs to be formalised. In addition, more engagement with Art. 16(2) Reporting Persons (incl asset managers) is necessary and onsite visits (also on a proactive basis) would be useful. A gap analysis of STORs and appropriate follow up engagement with Reporting Persons would be useful.
	SE	Needs to broaden its focus on Art. 16(2) Reporting Persons including asset managers as well as on wholesale markets and other asset classes.
	<p><b>Partial Compliance:</b> BG, EL, IE, LV, LU, AT, IS, LI.</p>	
	BG	Although some positive engagement reported (e.g. Q&A, circulars, reminders, ad hoc feedback) needs to formalise procedures, raise awareness of the STOR Framework with Reporting Persons to ensure systems and arrangements are fit for purpose and enhance proactive engagement (e.g.,

		events, on-site visits. An assessment of gaps/trends would be useful.
	EL	Needs to formalise its procedures and engage more with Art. 16(2) Reporting Persons, as there is a limited engagement with Reporting Persons following Art. 16(2).
	IE	Needs to broaden its focus on Art. 16(2) Reporting Persons including asset managers as well as on wholesale markets and other asset classes. A gap analysis of STORs and appropriate follow up engagement would be useful.
	LV	Needs to formalise procedures and enhance proactive engagement (e.g., events, on-site visits). An assessment of gaps/trends would be useful.
	LU	Needs to engage more with Art. 16(2) Reporting Persons, including asset managers, and take more proactive measures through on-site visits and at authorisation stage. Also needs to focus more on asset managers as well as on wholesale markets and other asset classes. A gap analysis of STORs and appropriate follow up engagement would be useful.
	AT	Need to enhance engagement with Reporting Persons (Investment Firms and asset managers) also through on-site visits and increase the number of events for the industry.
	IS	MAR is not implemented yet. The limited framework to supervise the STOR framework should be enriched with written procedures, more formal and informal engagement, trend analysis, events.



	<table border="1"> <tr> <td data-bbox="850 284 943 517">LI</td> <td data-bbox="943 284 1519 517">MAR is not implemented yet. In spite of need to formalise procedures and limited engagement, there is progress being made towards implementation of the STOR Framework.</td> </tr> </table>	LI	MAR is not implemented yet. In spite of need to formalise procedures and limited engagement, there is progress being made towards implementation of the STOR Framework.		
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RO	While some proactive steps were reported (e.g. on-site inspections) needs further engagement with Art. 16(2) Persons in particular focusing on detection systems. Failure to assess STOR arrangements for investment firms at authorisation during the Review Period (this has since been addressed and no investment firms were authorised				

		<p>during the Review Period). A gap analysis would also be useful.</p> <p>NO MAR is not implemented yet. Need to build engagement with Art. 16(2) Reporting Persons (proactive and reactive) on the basis of what is being done with Art. 16(1) Reporting Persons. At present, there are no specific legislative obligations in place requiring Reporting Persons to have in place appropriate systems to detect STORs.</p>								
<p><b>NCAs' actions in respect of non-reported and poor-quality STORs, enforcement powers and actions taken:</b> (i) NCAs' actions in respect of non-reported and poor-quality STORs; and (ii) Enforcement powers and actions taken</p>	<p><b>Full Compliance:</b> BE, ES, FR, NL, PT, UK.</p>	<p><b>Broad Compliance:</b> BG, CZ, DE, IE, IT, LU, HU, AT, SI, FI, SE, NO.</p> <table border="1"> <tr> <td data-bbox="852 1010 948 1352">BG</td> <td data-bbox="948 1010 1519 1352">Although the supervisory approach is not very proactive approach, one enforcement action was taken. Need to enhance proactive approach with respect to poor and non-reporting and maintain a log of poor quality/non-reported STORs, better challenging for non-reported STORs.</td> </tr> <tr> <td data-bbox="852 1352 948 1621">CZ</td> <td data-bbox="948 1352 1519 1621">In spite of proven awareness of the issue and limited size of market, in need to enhance proactive approach with respect to poor and non-reporting and maintain a log of poor quality/non-reported STORs.</td> </tr> <tr> <td data-bbox="852 1621 948 1890">DE</td> <td data-bbox="948 1621 1519 1890">Should maintain a log of poor quality STORs, better challenging for non-reported STORs and increase focus on sanctions and formal measures to ensure effective regulatory response in appropriate cases.</td> </tr> <tr> <td data-bbox="852 1890 948 1964">IE</td> <td data-bbox="948 1890 1519 1964">Need to enhance proactive approach with respect to poor and non-reporting</td> </tr> </table>	BG	Although the supervisory approach is not very proactive approach, one enforcement action was taken. Need to enhance proactive approach with respect to poor and non-reporting and maintain a log of poor quality/non-reported STORs, better challenging for non-reported STORs.	CZ	In spite of proven awareness of the issue and limited size of market, in need to enhance proactive approach with respect to poor and non-reporting and maintain a log of poor quality/non-reported STORs.	DE	Should maintain a log of poor quality STORs, better challenging for non-reported STORs and increase focus on sanctions and formal measures to ensure effective regulatory response in appropriate cases.	IE	Need to enhance proactive approach with respect to poor and non-reporting
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IE	Need to enhance proactive approach with respect to poor and non-reporting									

		and maintain a log of poor quality STORs, better challenging for non-reported STORs and increase focus on sanctions and formal measures to ensure effective regulatory response in appropriate cases.
	IT	Even if poor or not reported STORs are monitored, a more frequent use of sanctioning powers and other administrative measures would be welcome to ensure effective regulatory response in appropriate cases.
	LU	Even having imposed sanctions, and poor-quality/non-reported STORs are monitored, the NCA should increase its focus in this area to ensure effective regulatory response in appropriate cases.
	HU	Even having imposed sanctions, it should nonetheless maintain a log of poor quality/non-reported STORs to ensure effective regulatory response in appropriate cases.
	AT	The absence of poor quality STORs in both 2017 and 2018 (in spite of the relevance of the market) is explained as a positive outcome of an event organised in 2018 and previously in 2016. Should maintain a log of poor quality/non—reported STORs, focus on better challenging for non-reported STORs and increase focus on sanctions and formal measures to ensure effective regulatory response in appropriate cases.
	SI	Lack of instances of poor/not reporting (in spite of the material increase of the number of STORs received) verified as not due to poor procedures in

		Reporting Persons. Should anyway maintain a database on poor or not reported STORs to determine escalated supervisory response in appropriate cases.
FI	Need to enhance proactive approach with respect to poor and non-reporting and maintain a log of poor quality STORs, better challenging for non-reported STORs and increase focus on sanctions and formal measures to ensure effective regulatory response in appropriate cases.	
SE	Needs to maintain a database of poor-quality STORs and non-reported STORs to support possible moral suasion and maintain a log of poor quality/non-reported STORs to ensure effective regulatory response in appropriate cases.	
NO	With MAR not implemented, the answers show a good awareness of the issue, even if the detected episodes are not followed by proper administrative and formal actions. Needs to maintain a log of poor quality STORs, better challenging for non-reported STORs and increase focus on sanctions and formal measures to ensure effective regulatory response in appropriate cases	
<p><b>Partial Compliance:</b> DK, EE, EL, HR, LV, LT, MT, PL, RO, SK, IS.</p>		
DK	NCA has no enforcement powers, cases must be referred to the police for prosecution. Should	

		ensure it sends referrals in appropriate cases.
	EE	Partial measures/sanctions available, no logging of poor-quality STORs to determine escalated supervisory response in appropriate cases, no sanctions/measures taken.
	EL	Limited percentage of poor quality STORs if compared with market size, especially from Art. 16(2) Reporting Persons. A stricter approach with inadequate compliance with the STOR framework is needed. Enhance organisational structure and collaboration to ensure in particular there is responsibility for addressing non-reported STORS (currently being addressed). A database for poor or not reported STORS is also recommended.
	HR	In spite of no poor quality STORs and lack of focus on non-reported STORs, one formal action to improve a trading venue's reporting systems was taken. A database for poor or not reported STORS is also recommended.
	LV	Lack of formalised procedure. In the general framework lack of awareness of the issue, one instance of not reported STOR was not followed by any action notwithstanding availability of sanctions/measures.
	LT	Non-reported STOR not followed up with any action. Should maintain a database of poor-

	quality and non-reported STORs to determine escalated supervisory response in appropriate cases, no sanctions/measures taken.
MT	Attention should be paid to non-reported STORs, even if statistics on the issue are an estimate and lead to some formal action.
PL	Enhance focus on poor-quality STORs (only one instance reported) and proactive engagement is prior to MAR. Should maintain a database on poor or not reported STORs to determine escalated supervisory response in appropriate cases, no sanctions/measures taken.
RO	Not proactively addressing poor or non-reported STORs. Should maintain a database on poor or not reported STORs to determine escalated supervisory response in appropriate cases, no sanctions/measures taken.
SK	The limited number of STORs make it difficult to provide a meaningful assessment, but NCA should put in place procedures to monitor poor reporting.
IS	While there are referrals to the prosecutors, lack of focus on/tracking of poor quality / non-reported STORs and poor attention to the issue
<b>Non-Compliance: CY, LI.</b>	

	CY	Develop an internal written procedure and systems to challenge non-reporting STORs. Needs to have engagement with Reporting Persons to deal with poor quality and non-reported STORs issues and ensure it maintains a log of poor quality/non reporting to determine escalated supervisory response in appropriate cases.								
	LI	Apart from some administrative sanctions, needs to set up other formal/informal measures to detect and address poor/non-reporting.								
<p><b>NCA's substantive analysis of STORs:</b> (i) NCA's preliminary and detailed analysis of STORs; (ii) Consideration of key sources for assessment of suspected insider trading and market manipulation; (iii) Volume of pending STORs for detailed assessment which may indicate inefficiencies in process for substantive analysis; and (iv) Proportionate to market and STORs, a number of investigations/referrals to prosecutors</p>	<p><b>Full Compliance:</b> BE, BG, CZ, DE, ES, FR, IT, LV, LT, LU, HU, NL, UK, IS, NO.</p> <p><b>Broad Compliance:</b> DK, EE, IE, EL, HR, IT, CY, MT, AT, PL, PT, RO, SI, SK, FI, SE, LI.</p> <table border="1" data-bbox="874 1093 1490 1919"> <tr> <td data-bbox="874 1093 1034 1357">DK</td> <td data-bbox="1034 1093 1490 1357">Relatively high number of pending STORs still pending/unknown, also taking into account that a number of STORs go swiftly to the public prosecutor.</td> </tr> <tr> <td data-bbox="874 1357 1034 1547">EE</td> <td data-bbox="1034 1357 1490 1547">Relatively high number of STORs still pending/unknown. NCA is also not taking profit into account.</td> </tr> <tr> <td data-bbox="874 1547 1034 1812">IE</td> <td data-bbox="1034 1547 1490 1812">Relatively high number of STORs still pending/unknown, particularly compared to the 'internal' STORs; also, no market abuse investigations or referrals to prosecutors.</td> </tr> <tr> <td data-bbox="874 1812 1034 1919">HR</td> <td data-bbox="1034 1812 1490 1919">Relatively high number of STORs still pending/unknown.</td> </tr> </table>		DK	Relatively high number of pending STORs still pending/unknown, also taking into account that a number of STORs go swiftly to the public prosecutor.	EE	Relatively high number of STORs still pending/unknown. NCA is also not taking profit into account.	IE	Relatively high number of STORs still pending/unknown, particularly compared to the 'internal' STORs; also, no market abuse investigations or referrals to prosecutors.	HR	Relatively high number of STORs still pending/unknown.
DK	Relatively high number of pending STORs still pending/unknown, also taking into account that a number of STORs go swiftly to the public prosecutor.									
EE	Relatively high number of STORs still pending/unknown. NCA is also not taking profit into account.									
IE	Relatively high number of STORs still pending/unknown, particularly compared to the 'internal' STORs; also, no market abuse investigations or referrals to prosecutors.									
HR	Relatively high number of STORs still pending/unknown.									

CY	Relatively high number of STORs still pending/unknown.
EL	Relatively high number of STORs still pending/unknown.
MT	No market abuse investigations or referrals to prosecutors.
AT	Relatively high number of STORs still pending/unknown.
PL	Relatively high number of STORs still pending/unknown.
PT	Lack of market abuse investigations or referrals to prosecutors based on STORs.
RO	Lack of market abuse investigations or referrals to prosecutors based on STORs.
SI	Relatively high number of STORs still pending/unknown.
SK	Limited STORs which makes it difficult to assess supervisory practice and expected steps are partially taken.
FI	Relatively high number of STORs still pending/unknown.
SE	Use of TREM data should be enhanced.
LI	MAR not implemented.
<b>Non-Compliance: N/A</b>	



**Cross-border exchange of STORs:** (i) Transmission of STORs to other NCAs; and (ii) Timely transmission of cross-border STORs.

**Full Compliance:** BE, DK, DE, EE, FR, IT, LV, MT, PT, FI, SE.

**Broad Compliance:** BG, CZ, IE, EL, ES, HR, LT, LU, HU, NL, AT, PL, RO, SI, SK, UK, IS, LI, NO.

BG	Ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs.
CZ	Ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs.
IE	Ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs.
EL	Ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs.
ES	Seek to limit delays when sending STORs to other NCAs.  Ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs.
HR	Ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs.
LT	Ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs.
LU	Seek to limit delays when sending STORs to other NCAs and ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs.

HU	Ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs.
NL	Seek to limit delays when sending STORs to other NCAs.
AT	Seek to limit delays when sending STORs to other NCAs.
PL	Ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs.
RO	Ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs.
SI	Ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs.
SK	Ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs.
UK	Seek to limit delays when sending STORs to other NCAs.
IS	Ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs.
NO	Ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs.
LI	Ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs.

**Partial Compliance: CY**

	<table border="1"> <tr> <td data-bbox="874 284 1018 555">CY</td> <td data-bbox="1018 284 1513 555">Ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs and use relevant complaints to challenge Reporting Persons' detection systems.</td> </tr> </table> <p><b>Non-Compliance:</b> N/A</p>	CY	Ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs and use relevant complaints to challenge Reporting Persons' detection systems.
CY	Ensure Reporting Persons can detect suspicious activities that may be relevant for other NCAs and use relevant complaints to challenge Reporting Persons' detection systems.		
<p><b>NCAs' Resources to supervise the STOR Framework:</b> (i) STORs per FTE; and (ii) Pending STORs for review</p>	<p><b>Full Compliance:</b> BG, CZ, IE, ES, HR, LV, LT, LU, HU, MT, PT, RO, SI, SK, IS, LI, NO.</p> <p><b>Broad Compliance:</b> BE, DK, CY, FR, IT, NL, AT, FI, SE, UK.</p> <p>BE: higher than average number of STORs per FTE per year.</p> <p>DK: higher than average number of STORs per FTE per year.</p> <p>CY: higher than average percentage of STORs pending for review.</p> <p>FR: higher than average number of STORs per year per FTE.</p> <p>IT: higher than average number of STORs per FTE per year.</p> <p>NL: higher than average number of STORs per FTE per year.</p> <p>AT: higher than average percentage of STORs pending for review.</p> <p>FI: higher than average number of STORs per FTE per year and high number of pending.</p> <p>SE: higher than average number of STORs per FTE per year.</p>		

UK: higher than average number of STORs per FTE per year.

**Partial Compliance:** DE, EL, PL.

DE: higher than average number of pending STORs for review

EL: higher than average number of pending STORs for review.

PL: higher than average number of pending STORs for review.

**Non-Compliance:** EE

EE: higher than average number of STORs per year per FTE and high number of pending STORs for review.

## 7.2 Good practices

129. Following the analysis of the answers on the questionnaires and the on-site visits, the peer review has identified good practices with regard to NCAs' supervision of the STOR Framework which are set out below.

Topic	Good Practices by NCAs in relation to the STOR Framework as identified by the peer review
<b>Supervision</b>	The authorisation process and on-going supervision with respect to the STOR Framework is conducted by market abuse experts in collaboration in appropriate circumstances with those who deal with the review and analysis of STORs in accordance with the NCAs' internal procedures.
	Online secured reporting interface for submission of STORs to require Reporting Persons to complete all fields in the STOR Notification template.
	Some NCAs (DE, IT) report that trading venues provide additional analytical reports to supplement the information requested in the STOR Notification, which is available to them and can assist the NCA in investigating suspected market abuse.
	Engagement (following a proportionality principle): 1) issuing articles on the main concerns of the NCA; 2) conducting events on an annual basis

	<p>including focussing on trends and gaps taking into account the STORs received and other information such as macro-economic situation, new financial products, etc.; 3) sending reports on the quality of the STORs received on annual basis; 4) holding one-on-one bilateral meetings on quarter basis with trading venues and on annual basis with the major Art. 16(2) providers of STORs and major other reporting persons (in accordance with a specific risk based approach on this area), 5) workshops/seminars with Reporting Persons.</p> <p>Some NCAs encourage Reporting Persons (trading venues in particular) to provide further detailed analysis in addition to the template STOR notification.</p> <p>With respect to trends and gaps 1 NCA (IT) observed that it was not receiving STORs from asset managers and undertook direct engagement with this class of reporting persons to increase awareness of the STOR Framework and ensure their systems and procedures are fit for purpose.</p>
	<p>1 NCA (SE) produced guidance document on the type of information that should be reported in STORs to share with Reporting Persons. This NCA also offers information, videos and podcasts on its website to enable the access to raise awareness of the STOR Framework.</p>
<p><b>Poor quality and non-reported STORs.</b></p>	<p>A well-developed own-surveillance system is a useful tool to assess STORs as well as allowing NCAs to better challenge non-reporting/poor quality reporting.</p> <p>As part of actions taken by the 1 NCA (FR) towards reporting person, the monitoring of near-misses has proved an effective means to incentivise Reporting Persons to better report. By means of requests to Reporting Persons to provide on a regular basis a history of conclusions of cases that have been closed, the NCA encourages them to improve their analyses and keep clear records of their work and the reasons for their conclusions.</p>
<p><b>Substantive Analysis</b></p>	<p>Having appropriate IT tools to use the detailed transaction data available in TREM in a systematic way to enhance the analysis of STORs.</p> <p>Some NCAs have regular team meetings to discuss on-going STORs and share expertise and benefit from additional review as well as ensuring a 4-eye review of STORs.</p> <p>Passing the file onto the public prosecutors after conducting a detailed analysis by the NCA.</p> <p>Some NCAs have well developed prioritisation models for the review of STORs.</p>

	Some NCAs make use of their intelligence unit to determine whether there may be potential insider links in cases.
<b>Cross-border Exchange</b>	NCAs have periodic calls/meetings with those NCAs with whom they exchange cross-border STORs or might expect to exchange such STORs to discuss the STOR Framework and share feedback on STORs exchanged.
	NCAs note when sending a STOR to another NCA if they propose to investigate the reported suspected market abuse.
<b>Resources</b>	2 NCAs (DE, FR) have a well-developed training programme related to the STOR Framework whereby an experienced team member assists a new-joiner in case-work (review, report to public prosecutor etc). Additionally, new joiners spend 1-week training in relation to cash markets at the trading venue and additional optional training regarding derivatives markets.

### 7.3 NCAs' supervision and enforcement of the STOR Framework

130. STORs are a key element of an NCA's toolkit to detect and investigate suspected market abuse, in particular, as some fundamental information is available and detectable by Reporting Persons only. Therefore, effective supervision of the STOR reporting obligations and associated systems and controls is important to ensure that NCAs receive information of good quality to fulfil their mandate. In this section, the peer review is assessing NCAs' supervisory approach to obtain as many as possible good quality STORs (supervision of Reporting Persons' arrangements, systems and procedures either at the authorisation/licensing stage or in the on-site inspections of the Reporting Persons) and their engagement with Reporting Persons in the case of poor quality or non-reported STORs and related enforcement and sanctioning activity.

131. This section is divided into 3 areas of assessment:

- (i) NCAs' supervision of Art. 16(1) MAR Reporting Persons' compliance with the STOR Framework (market operators and investment firms operating a trading venue);
- (ii) NCAs' supervision of Art. 16(2) MAR Reporting Persons' compliance with the STOR Framework (persons professionally arranging or executing transactions);
- (iii) NCAs' handling in respect of poor-quality and non-reported STORs and actions taken (both Art. 16(1) and Art. 16(2) Reporting Persons).

132. While the expectations for (i) and (ii), as set out below, are the same, the peer review expects that there might be some differences in the supervisory approach for each category, which is why they are assessed separately.

### **7.3.1 Summary of findings regarding NCAs' supervision and enforcement of the STOR Framework**

133. Overall, the peer review observed some good engagement by NCAs, both reactive and proactive, with trading venues (Art. 16(1) Reporting Persons) and investment firms (Art. 16(2) Reporting Persons). With respect to Art. 16(2) Reporting Persons, however, NCAs need to enhance their engagement with wholesale market participants' and major investors' activities to ensure they are also actively engaged in the gatekeeper role (for instance asset managers).
134. The peer review has observed that there is a significant group of NCAs which have not developed internal written procedures on how to conduct the supervision of the STOR legal framework from the authorisation of the Reporting Persons, their ongoing supervision, and up to how NCAs can challenge Reporting Persons for non-reporting STORs. Additionally, some Regulated Markets have not reported STORs in the review period to their NCAs which is a cause of concern as they are the first line of defence in the fight against market abuse.
135. NCAs need to be vigilant that Reporting Persons' systems and arrangements for detecting and reporting STORs keep pace with the evolving business model of the Reporting Person. For example, in some instances, investment firms apply for authorisation for dealing in a broad range of instruments in different markets when the reality is that initially the firm will only deal in local securities or a few of them, etc., and the NCA, in its review, focuses on the real activity of the Reporting Person. However, when the Reporting Person increases its activities, the risk is that the NCA will not keep pace in its supervision on STORs with this new reality.
136. It was evident from engagement with stakeholders that Reporting Persons would welcome increased feedback and guidance on STORs including on emerging trends and behaviours that would assist them to focus their surveillance efforts. It was also suggested that perhaps at European level, it might be useful to consolidate and share 'typologies' of market abuse patterns/suspicious behaviour. Of course, it is not incumbent on NCAs alone to provide guidance, and Reporting Persons also provided examples of their own engagement with industry bodies and engagement

amongst compliance functions at Reporting Persons to share insights on market surveillance lessons learnt and common and emerging behaviours to enhance compliance with the STOR Framework. In this regard, ESMA, is already playing a significant role which could be reinforced.

137. The peer review noted that NCAs are not consistently taking stock of trends and gaps in the STORs they receive and those that they do not receive. It is important that NCAs consider, in the context of their own market, if there are clear gaps in terms of financial instruments or Reporting Persons and take appropriate action, through engagement with the relevant Reporting Persons. Additionally, other sources of information at ESMA's disposal such as complaints or trends, could be discussed with NCAs at ESMA.

138. It is also important for NCAs to further engage and share practices on new/emerging trends or new tools to detect suspicious activities. ESMA could have a role and facilitate the sharing of new practices, e.g. new alerts, how to best use the new data on TREM, Trade Repositories (from April 2020), etc. This can ensure constant learning at NCA level to improve engagement with Reporting Persons.

139. Further to the observations of limited enforcement and sanctions activity, as many NCAs are using moral suasion and very few imposed sanctions for non-reported STORs in severe cases, the peer review considers it important that NCAs maintain a record of poor-quality and non-reported STORs to escalate as appropriate via enforcement action.

### **Expectations**

*Areas assessed: Art. 16, 22, 30, 31 MAR, Art. 31 and 54 MiFID II and MAR RTS on STORs*

140. It is expected that NCAs ensure Reporting Persons use the STOR notification template as prescribed in the MAR RTS on STORs.

141. The peer review expects that NCAs have policies and procedures on their supervisory approach and demonstrate that they make effective use of those. The first step to guarantee an effective use of STORs as a tool to detect and seek to prevent market abuse is the soundness and quality of arrangements, systems and procedures that Reporting Persons have in place for the monitoring and reporting of suspected instances of market abuse (also "Reporting Persons' arrangements, systems and procedures"). NCAs have therefore an interest in seeking to ensure



- the soundness of such systems. The peer review asked NCAs to describe how they supervise Reporting Persons' arrangements, systems and procedures, assess their appropriateness and indicate by what means they submit STORs to their NCAs (referencing the template notification provide for in the MAR RTS on STORs).
142. As part of the supervisory approach, it is expected that NCAs engage with Reporting Persons (both on a reactive and proactive basis) to ensure the reporting requirements are embedded in their processes and that Reporting Persons understand the importance of submitting complete and meaningful STORs in a timely manner.
143. Supervision should not remain static but should evolve to take account of market practice and developments. It is therefore also expected that as part of their supervisory approach NCAs take stock of STORs received in an overall manner to observe possible gaps and trends (e.g. no STORs in relation to widely traded asset types or limited number of STORs from a category of Reporting Persons) which can then be addressed/incorporated as appropriate in their supervisory approach. The approach in this respect is proportionate to the size of the relevant NCA's market.
144. On a related point, the peer review expects to see STORs submitted across the categories of Reporting Persons as well as across the categories of financial instruments relevant to the NCA's market. Where there are 'gaps' in this respect, the peer review notes enhancements may be required in terms of an NCA's supervision (e.g., vis a vis a particular type of Reporting Person).
145. The peer review expects that following Art. 30 MAR, the NCAs have the power to take appropriate administrative sanctions and other administrative measures in relation to infringements of Art. 16(1) or (2) MAR. In such circumstances, it is expected that the NCAs take into account all relevant circumstances regarding the respective infringements. For example, in case of repeated instances of poor quality STORs submissions or situations whereby STORs should have been submitted but were not, it is expected that NCAs carry out enforcement and sanctioning activities or other measures, to be calibrated with the severity of the poor quality/not reported STOR(s).

### 7.3.2 Findings in respect of supervision of Art. 16(1) Reporting Persons

#### Supervisory policies/procedures for Art. 16(1) Reporting Persons

146. NCAs' replies to the questionnaire and the on-site visits showed different degrees of engagement in supervising Art. 16(1) Reporting Persons' arrangements, systems and procedures ranging from very limited to very proactive. A number of good practices were observed which are set out in section 7.3.4.
147. The NCAs in countries with bigger markets, in general, had formalised procedures and policies regarding the supervision of Art. 16(1) Reporting Persons. 16 NCAs have formalised policies and procedures for supervision of the respective Reporting Persons' compliance with the STOR Framework.
148. NCAs provided insights regarding their supervisory policies and procedures, including the following:
- on-site inspections/visits to supervise Art. 16(1) Reporting Persons' arrangements, systems and procedures to detect and report suspicious activity. Such inspections/visits are often part of broader MAR-related inspections by NCAs (or, sometimes, as part of an overall assessment of an entity's compliance with its regulatory obligations). As part of these visits, some NCAs devote particular attention to ensure appropriate calibration of the Reporting Persons' implemented IT systems for STORs reporting.
  - on-going bilateral engagement with Art. 16(1) Reporting Persons in relation to the STOR Framework in respect of individual STORs, or more generally, which includes the revision of new alerts in the systems implemented by these Reporting Persons.
  - some NCAs issue general inquiries/questionnaires into compliance with the provisions on market abuse detection and determine further supervisory steps depending on the outcome of such surveys.
  - strategic proactive measures, including dedicated events, to raise awareness amongst supervised Reporting Persons about the STOR Framework and the need to have arrangements, systems and procedures (some focussed in particular in the early part of the Review Period, shortly after the commencement of MAR, to raise awareness and ensure the new requirements were appropriately embedded).

149. 15 NCAs had not formalised their processes during the Review Period: BE, BG, CZ, EL, HR, CY, LV, LT, NL, SI, SK, FI, IS, NO. Most of these NCAs note they intended/were already working on formalising their policies and procedures.
150. The EEA-Countries, IS, LI and NO had not yet implemented MAR.
151. Although not explicitly addressed in the Questionnaire, the outcome of the on-site visits showed that the assessment of the STOR Framework as part of applications for authorisation phase of compliance to STOR-related issues is carried out in a very similar fashion in all visited countries.
152. The authorisation of Art. 16(1) Reporting Persons is complex and the analysis of the effectiveness of STORs-related procedures is embedded in the more general assessment of the applicant's IT systems. In NCAs, this process is often within the remit of Markets Divisions.

#### **Use of notification template for STORs by Art. 16(1) (and Art. 16(2) Reporting Persons)**

153. All NCAs report a widespread use of the STOR template by all Reporting Persons. This section has not been repeated in the analysis below with respect to Art. 16(2) Reporting Persons.
154. A very limited number of NCAs stated that some Reporting Persons report directly without the template, mainly via email. These exceptions often represent smaller firms sending STORs for the first time. This occurrence is not said to be associated with poor quality reporting. In such instances, NCAs contact the Reporting Person to ensure the use of the correct template.
155. In most countries the STOR template is available on the NCA's web page or submission takes place via secured on-line template.
156. 1 NCA noted that a market operator, under its supervision, submits STORs in a different format, given the depth of analysis, and additional information it provides, over and above the information set out in the STOR template.
157. The EEA NCAs, which have not implemented MAR, do not yet use the STOR template.

#### **Engagement with Art. 16(1) Reporting Persons**

158. To enhance STORs, and ensure high quality reporting, engagement with Reporting Persons is significant. As noted, it is expected that the engagement with Reporting Persons should be both proactive and reactive. Although most NCAs were

very proactive during the implementation of the new MAR (2016), the ongoing engagement is very important taking into account the special role of the trading venues as gatekeepers for maintaining market integrity.

159. Overall, NCAs have regular, close engagement and cooperation with Art. 16(1) Reporting Persons. This is to be expected given the limited number of such entities and their significance in providing access to markets and ability to detect suspicious activity. Furthermore, as on average, almost 15% of the total number of STORs were submitted by Art. 16(1) Reporting Persons in 2017 and 2018, this is a further reason to focus attention on such Reporting Persons. 3 NCAs (BG, CZ, ES) have not received STORs from Regulated Markets subject to their supervision during the Review Period.
160. To assess NCAs, the peer review sought details of NCAs' practices to provide feedback to the Reporting Persons (ad hoc or periodic), industry events and onsite visits, as well as further proactive measures that have been taken by the NCAs.
161. The peer review noted that NCAs use several possibilities to engage with their Reporting Persons in a proactive way. NCAs in countries with larger markets, that receive more STORs, often have comprehensive proactive measures.
162. 18 NCAs (BG, CZ, DK, EE, IE, ES, FR, IT, LV, MT, NL, PT, SI, SK, SE, FI, UK, LI) provide their Art. 16(1) Reporting Persons (and Art. 16(2) Reporting Persons) with feedback (ad hoc, periodic or both). 13 NCAs (BE, CY, DE, EL, HR, LU, HU, AT, PL, RO, IS, LI, NO) do not provide any routine feedback in respect of STORs received. Of those who provide feedback, 4 NCAs provide their Reporting Persons with periodic and ad hoc feedback (DK, IE, IT, NL), 1 NCA provides feedback annually (ES).
163. In detail, the following proactive measures are taken by the NCAs:
- Those with larger markets that receive high numbers of STORs organise events for their Art. 16(1) Reporting Persons (or for both Art. 16(1) and (2) Reporting Persons). In 2017 and/or 2018, 7NCAs (DE, FR, IT, HU, AT, SE, UK) organised at least 1 event/ STOR-focused meeting for their trading venues/market operators.
  - Another broadly used tool is onsite inspections at the trading venues' / market operators' offices. 9 NCAs (DK, FR, HR, IT, HU, MT, NL, AT, UK) performed onsite inspections in 2017 and/or 2018.

- Many NCAs also use further proactive measures to engage with Art. 16(1) Reporting Persons including ongoing bilateral cooperation or discussions of particular STORs, an exchange of views with respect to STOR-related matters such as surveillance systems and practical issues arising (appropriate thresholds, detected behaviours etc).
164. A limited number of NCAs should implement additional more proactive measures in their supervision of trading venues/regulated markets. In particular, BG, CZ, EE, EL, ES, HR, CY, LV, LT, PL, RO, SI, SK should have more proactive engagement with their trading venues/regulated markets to further promote the STOR regime.
165. Countries with a higher number of Art. 16(1) Reporting Persons could also hold an annual or biannual event or invite both (Art. 16(1) and (2) Reporting Persons) to a joint event. In addition, periodically onsite-visits are an additional useful complement to supervision and, in particular, to assess surveillance systems. The frequency of the events will depend on the complexity of NCAs' markets and the trends detected in the market or in the reported or non-reported STORs. For countries, with more limited numbers of Art. 16(1) Reporting Persons and smaller markets, it may be appropriate to hold joint events with other Reporting Persons or to set up periodic meetings to further promote the STOR regime. The frequency of such events will depend on different factors but taking into account the influence of IT developments in markets, for smaller NCAs it seems appropriate to hold one event and at least one on-site visit every two years.

### **Assessment of trends and gaps with respect to Art. 16(1) Reporting Persons**

166. To sufficiently engage (in both a reactive and proactive way) with Reporting Persons, it is useful to periodically analyse trends and possible gaps in STOR submissions (e.g. assessing the STORs reported by a Reporting Person and its role in the market) also in the context of market trends and practices (e.g. new traded financial instruments or new strategies). This can assist in identifying issues to be raised with Reporting Persons in respect of the STOR Framework.
167. An assessment of gaps (and trends) also often goes hand in hand with an NCA's own surveillance systems. If NCAs have their own market surveillance system, they can detect suspected market abuse through sources other than STORs and assess whether Reporting Persons are submitting enough STORs as well as challenging

non-reporting in appropriate instances. Nevertheless, there are other sources which could also be used such as complaints, ESMA reports on trends and complaints as activities conducted in other EU markets could be also conducted in national markets, advertising campaigns, etc.

168. NCAs in countries with a smaller market and a limited number of STORs per year do not (periodically or otherwise) assess trends or gaps in the STORs received. Notwithstanding the limited number of STORs, such an assessment is useful to consider, in the context of their market specificities, if they should be receiving STORs from categories of reporting persons or in respect of certain financial instruments. It is difficult to generalise in terms of assessment that is useful as each case is specific to the market size and activities of the respective country.

169. Such periodic analysis is useful to ensure continuous improvement for NCAs' supervision, including its own surveillance as well as integrating the findings into ongoing supervision of Reporting Persons.

### **7.3.3 Findings in respect of Art. 16(2) Reporting Persons**

170. There is a high correlation between the findings for Art. 16(1) and Art. 16(2) Reporting Persons. Nonetheless, the replies from NCAs, especially with reference to engagement, show some nuances worth noting which, in some instances, lead to different assessment grades. The peer review observed several good practices by NCAs which are noted in section 7.3.4.

### **Supervisory policies/procedures for Art. 16(2) Reporting Persons**

171. For those NCAs with formalised supervisory policies and procedures, these generally do not distinguish between the two categories of Reporting Persons. In cases where NCAs do not have formal procedures, the general supervisory engagement with Art. 16(2) Reporting Persons (i.e., in addition to ad hoc contact in relation to received STORs) was often limited to informing Reporting Persons of the new STOR-related obligations under the MAR.

172. Some NCAs provided details on their supervision of the requirement to have in place sound arrangements, systems and procedures and their verification at the authorization stage as well as on an on-going basis. While the procedures for both categories of Reporting Person is similar, the authorisation process and the on-going

general supervisory procedures are often more focused on Art. 16(2) Reporting Persons on those NCAs which the onsite visit is conducted by market abuse experts. Additionally, the direct contact is lower in scope in Art. 16(2) than in Art. 16(1) given the much higher number of Art. 16(2) Reporting Persons.

173. The following NCAs should formalise their procedures, although some note they intend or have already started to formalise their procedures: BE, BG, CZ, EL, HR, CY, LV, LT, NL, SI, SK, FI, IS, NO.

174. The EEA-Countries, IS, LI and NO did not implement MAR yet, so this has to be the first step.

### **Engagement with Art. 16(2) Reporting Persons**

175. Overall, the engagement with Art. 16(2) Reporting Persons is less close than that with market operators and trading venues. This is to be expected given the number of Reporting Persons.

176. However, NCAs have a variety of measures available to engage effectively with their Reporting Persons.

177. NCAs frequently provide feedback, usually on an ad hoc basis, to Reporting Persons.

178. 11 NCAs organised at least one event during the Review Period for their Reporting Persons to make them aware of the new STOR regime and MAR requirements. In particular, BE, DK, NL, FI, UK were focused on arranging events for Reporting Persons in relation to the STOR Framework.

179. In this respect, it is also important to give a focus to groups of Reporting Persons, where the amount or level of detail or quality is different or lower than expected.

180. Finally, publications are a useful way to further engage with Reporting Persons. NCAs like UK or SE give good examples. UK publishes the “Market Watch” articles on its website to communicate common topics or issues.

181. In addition, on-site visits are also a common tool for Art. 16(2) Reporting Persons (CZ, DK, DE, ES, FR, HR, IT, LV, LU, HU, MT, NL, PL, PT, RO, SI, SE, FI, UK, NO).

182. Further tools used include bilateral meetings with Reporting Person and periodic seminars/meetings with a broader range of Reporting Persons/trade associations.



Workshops and seminars are useful opportunities to engage with Reporting Persons and discuss new developments, trends and NCA practices and some NCAs hold such meetings periodically. For example, FR holds presentations with national associations to raise awareness of the market participants. SE holds seminars and workshops on the STOR Framework in cooperation with the economic criminal prosecutor. Also, DK focussed on trends in reported STORs at an event with Art. 16(2) Reporting Persons.

183. Additionally, NCAs have published guidance such as Q&A or more general publications to raise awareness (see for example UK's Market Watch publication). The peer review recommends that ESMA review those Q&As and guidance in order to be sure that all of them are aligned and, if needed, to propose ESMA Q&As or guidance in this matter (e.g. SE, UK).
184. The following NCAs provided more limited examples of engagement regarding the STOR Framework with their Art. 16(2) Reporting Persons during the Review Period and should enhance this engagement: BG, EE, EL, CY, LV, LT, AT, RO, SK and FI. Some of these countries already reported some good engagement measures, but they should further enhance their approach to include, for example, events, on-site visits, Q&A, etc. The approach for each country should be proportionate to its market specificities and Reporting Persons.
185. A general finding during the peer review was that the focus of NCAs' engagement with Art. 16(2) Reporting Persons was mainly directed at investment firms and banks. NCAs should also enhance their focus on other Art. 16(2) Reporting Persons, including, in particular, asset managers. The following NCAs should broaden their focus in this regard: DE, IE, LU, and SE.

### **Assessment of trends and gaps with respect to Art. 16(2) Reporting Persons**

186. For this broad category of Reporting Persons, it is useful for NCAs to analyse possible reporting gaps and trends specific to an NCA's population or Reporting Persons and market. For instance, the peer review considered that a number of NCAs should broaden their focus, and pay more attention, to wholesale market activity and other asset classes (besides equities). Depending on the outcome, an NCA could then take measures (proactive and reactive) to ensure Reporting Persons are appropriately engaged with the STOR Framework and reporting as necessary.



187. The outcome of NCAs' analysis of trends/gaps, even if carried out, seems not to be discussed with Art. 16(2) Reporting Persons with the same degree of intensity as noted for Art. 16(1) Reporting Persons, where the issue is often part of the agenda of periodic supervisory meetings. 1 NCA, DK, focussed on trends observed at a dedicated STOR event with Art. 16(2) Reporting Persons.
188. Based on stakeholder input, there is interest in increased feedback on STORs including perhaps a 'typology' of market abuse/behaviours and trends observed. This report notes that this might be an item of ESMA to facilitate discussion amongst NCAs with a view to sharing more guidance. Sources for helping NCAs to review trends and gaps in conjunction with Art. 16(2) reporting persons have already been mentioned in the previous section.

#### **7.3.4 Good Practices in respect of NCAs' supervision of Art. 16(1) and (2) Reporting Persons**

189. At the authorisation stage and during the on-going supervision, it is useful to ensure that specialist MAR/STOR input is provided to assist in the assessment of a proposed application for authorisation and the on-going supervision (this is for example done in IT, NL).
190. Most NCAs have implemented an on-line secured reporting interface on their website, which requires Reporting Persons to use the correct template and ensure the consistency reported information.
191. Some NCAs report that trading venues / trade surveillance offices (DE, IT) often provide the NCAs with detailed analytical reports in addition to the information required in the STOR template.
192. Many NCAs report several periodic initiatives directly with Reporting Persons or industries associations on developments concerning STORs, e.g. in relation to the changes with MAR some of these initiatives are listed as good practices below.
193. Especially with Art. 16(1) Reporting Persons there is a close dialogue and cooperation in many countries, as these Reporting Persons often submit the highest number of STORs and also include more specific information in their STORs, e.g. DE. They have regular (bilateral) meetings with them that allows discussing general topics as well as specific cases or problems occurred.
194. Workshops and seminars are additional possibilities to engage with Reporting Persons and spread new developments, trends and administrative practice. E.g., FR

holds presentations with national associations to raise the awareness of the market participants. SE holds seminars and workshops in cooperation with other national authorities that are involved in the topic.

195. In this respect, it is also important to give a focus to groups of Reporting Persons, where the amount or level of detail or quality is different or lower than expected. One example here is IT that, after analysing the STOR situation in the own market, gave focus to asset managers and their submission of STORs. IT has recently launched a project regarding asset managers to raise their awareness of the STOR framework. Another NCA, SE, provided guidance to Reporting Persons on the nature of the information that is useful to report to assist analysis of the STOR.
196. Publications are a useful way to engage further with Reporting Persons. NCAs like UK or SE give good examples. UK publishes the “Market Watch” articles on its website to communicate common topics or issues. SE offers information, videos and podcasts on its website to enable the access to raise awareness of the STOR Framework.
197. There are also some good practices regarding a periodic assessment of gaps or trends. 10 NCAs (BE, CZ, DK, DE, ES, IT, NL, PT, SE, UK) carry out a periodic assessment of trends and/or gaps in STOR submissions for Art. 16(1) and / or Art. 16(2) Reporting Persons. These assessments are for example used to detect new instruments and new relevant trends of market abuse. For example, NL detected through this assessment that they receive STORs mainly from investment firms and concerning equity products. Therefore, NL amended its focus to other types of Art. 16(2) Reporting Persons (e.g. asset managers) and took measures to engage with these Reporting Persons. Also, IT gave a focus to asset managers due to the analysis of the STOR situation.
198. An NCA’s own market surveillance system is useful to enrich a periodic assessment of trends and gaps. This can enable an NCA to compare with the received STORs and assess if the own tool detects different trends than the STORs report. Other sources could also be used such as complaints, ESMA reports on trends and complaints, etc.

### **7.3.5 Findings in respect of poor-quality STORs, non-reported STORs and associated enforcement actions**

199. To detect and investigate market abuse, it is important for NCAs to ensure they receive good quality STORs from Reporting Persons. As such, to ensure Reporting Persons provide meaningful good quality STORs, it is important for NCAs, as part of their supervision, to react to poor-quality STORs. NCAs should ensure their internal written procedures have included provisions for the detection and appropriate follow-up regarding poor-quality STORs and non-reported STORs.
200. Additionally, as part of its own supervision or based on other information sources (e.g. investor complaints, whistle-blower reports, other received STORs – local or cross-border-, media reports, etc.), NCAs may consider that one or more STORs should have been submitted by a Reporting Person which should prompt the NCA to follow up with the Reporting Person to understand the reasons for non-reporting. This is often a difficult task: on the one hand, NCAs often have more information than Reporting Persons but they do not know the final investor's trading habits, while on the other hand Reporting Persons will have greater knowledge of their clients' trading habits and therefore can rule out behaviour that may be otherwise suspicious. Nonetheless, where detected, NCAs should also focus on addressing non-reported STORs and follow up with Reporting Persons.
201. MAR envisages a broad supervisory toolkit for NCAs extending to sanctions and measures for appropriate situations (Art. 30 and Art. 31 MAR). The peer review appreciates that it is not for NCAs to impose sanctions/measures in all instances of poor-quality, non-reported or deficient arrangements relating to the STOR Framework. For the most part, supervision of the STOR Framework is an on-going relationship between NCAs and Reporting Persons and in most instances, on-going bilateral engagement and supervision is enough to ensure high quality reporting. It is important, however, that NCAs are mindful of their full supervisory toolkit and are prepared to impose sanctions or measure in appropriate cases (e.g. repeated poor-reporting or non-reporting or in certain scenarios a single instance of poor-reporting/non-reporting may justify the imposition of sanctions/measures). In some instances, bilateral engagement will not be enough, and it is important to impose sanctions/measures. To ensure an appropriate escalated response in cases of repeated poor-reporting or non-reporting, it is important that NCAs maintain a record

of poor/non-reporting of STORs. In some instances, this has impacted on NCAs' assessment grade and has been recommended as a follow-up action.

202. The NCAs who were assessed as fully compliant in this section, are focused on addressing poor quality/non-reported STORs. That said, for NL, despite the high level of engagement regarding poor-quality and non-reported STORs, it has imposed limited measures/sanctions. Overall, FR seems to be strongly committed to taking action in respect of poor quality and non-reported STORs. Other NCAs are in a similar situation (ES and UK).
203. The NCAs assessed as broadly compliant, are aware of the issue, have enforcement powers envisaged under MAR but few formal actions are taken. Almost all instances of poor qualities or not submitted STORs are dealt with using moral suasion or other informal approaches. It is also not clear in all instances they are maintaining a record of poor-quality/non-reported STORs to ensure an escalated supervisory response in appropriate cases.
204. The NCAs assessed as partially compliant, seem not to be paying (enough) attention to the issue, have enforcement powers but very few formal actions are taken. It is also not clear in all instances they are maintaining a record of poor-quality/non-reported STORs to ensure an escalated supervisory response in appropriate cases. All instances of poor qualities or not submitted STORs are dealt with using moral suasion or other informal approaches.
205. The NCAs assessed as non-compliant do not appear engaged in this issue and seem not to use all the measures foreseen by MAR. They need to ensure commitment to a better monitoring of the quality of received STORs and focus on non-reported STORs including maintaining a record of poor quality/non-reported STORs.

### **7.3.6 Poor Quality STORs**

206. It was expected by the peer review that there always might be some STORs that have to be classified as poor-quality STORs, especially from Art. 16(2) MAR Reporting Persons and if the NCA receives a number of STORs per year above a certain threshold: yet, this was not always the case. In statistical terms there are usually a percentage of poor STORs. Additionally, some NCAs are stricter than

others in their definition of poor STORs which makes the comparison among NCAs more difficult.

207. NCAs, that on average received less than 50 STORs per year between 2017 and 2018, reported that they received no or very few poor-quality STORs. This must be considered in the context of the limited size of their national markets and the even more limited number of STORs received.
208. In addition, it is notable that some NCAs reported very high percentages for poor-quality STORs from Art. 16(2) MAR Reporting Persons (some of which could come from cross-border STORs from other NCAs), while 1 NCA reported a high percentage of Poor Quality STORs from Art. 16(1) MAR Reporting Persons which would, in general, be expected to provide high quality STORs.
209. All NCAs report that Reporting Persons submitting poor quality STORs are promptly contacted to clarify and amend the deficiencies.
210. Almost all major NCAs have at their disposal a broad range of possible measures that allow them to react in an appropriate way to the submission of poor quality STORs: yet, notwithstanding this broad supervisory toolkit, only a few of them show an effective use of their powers in this regard, being the number of enforcement actions very limited, more often not exercised at all. Only a very limited number of NCAs seem not to address the issue in a satisfactory fashion, as they report no poor quality STORs, no measures available and no enforcement actions. Some NCAs do not have sufficient measures to react to poor quality STORs.
211. Many NCAs do not track the quality of STORs received. In general, the peer review considers this as a key precondition to allow NCAs take an escalated approach in appropriate cases (i.e. repeated poor quality STORs or non-reporting).

### **Non-reported STORs**

212. The issue of non-reported STORs does not seem to be systematically addressed by NCAs and no statistics are often readily available or available at all. The number of non-reported STORs (sometimes estimated) seems to be at any rate to be limited during the Review Period. This may however be on the basis that NCAs are not focussing to a great extent on non-reported STORs. Almost half of the assessed NCAs report no instance of non-submission whereas only a few report a significant increase in the provided figures.

213. Sometimes, due to the limited traded volumes in supervised markets (with ensuing illiquidity issues and the existence of wide spreads), it is difficult to discern if the market anomaly is due to an unlawful behaviour, therefore prompting the submission of a STOR, or not. Also, some NCAs report that the task of detecting STORs which should have been submitted can sometimes prove to be a hard and somehow subjective task (e.g. in the case of a STOR not reported by a parent company but reported by the subsidiary because of different information available to both entities). Besides, it seems that a key challenge is the significant increase in the number of STORs following MAR which has resulted in NCAs focusing on the received STORs only, perhaps to the expense of non-reported STORs and the Reporting Persons who may not be complying with their obligations.
214. In general, based on questionnaire replies, non-reported STORs seem to be isolated events which do not justify a dedicated policy by the NCAs, even if cases of repeated instances could prompt supervisory intervention, which, in general, was not significant.
215. Enforcement actions were taken by just a few NCAs and on-site visits following instances of not reported STORs were few. The most common response to non-submission was an informal action (bilateral contact).

### **Enforcement actions**

216. Almost all NCAs report a direct application of MAR provisions or equivalent measures as transposed in their national laws which can be exercised against both Art. 16(1) and Art. 16(2) Reporting Persons. Some NCAs provided a list of possible sanctions/measures which is a subset of those found in Art. 30 and Art. 31 MAR although, in practice, they have also implemented the measures mentioned in those articles.
217. Some NCAs report that a missed STOR submission can lead to a criminal (pecuniary) sanction (e.g. DK). In such countries, given the division of responsibilities with public prosecutors on market abuse issues, NCAs do not have a power to issue administrative fines for cases to be sanctioned, they must be handed over to the judiciary.
218. In spite of a wide range of options available to pursue and sanction failings in Reporting Persons' STOR reporting systems, limited actions were taken.

219. In general, NCAs have issued limited numbers of sanctions/asures in response to poor-quality/non-reporting of STORs. 9 NCAs, BG, ES, FR, HR, IT, LU, HU, NL and UK issued administrative fines or took some sort of formal action. ES followed the practice of sanctioning when the non-reported STOR was related to a case which was sanctioned. UK has also sanctioned cases and conducts follow ups.
220. LI and IS have a limited number of measures compared to those envisaged under MAR. The list of possible measures for NO is comparable to that envisaged under MAR.

### **7.3.7 Good practices in respect of poor-quality STORs, non-reported STORs and associated enforcement actions**

221. The peer review observed a good practice by FR with respect to challenging reporting: as part of actions taken by FR towards Reporting Persons, the monitoring of near-misses has proved an effective means to incentivise Reporting Persons to better report. By means of requests to Reporting Persons to provide on a regular basis a history of conclusions of cases that have been closed, FR encourages them to improve their analyses and keep clear records of their work and the reasons for their conclusions.

## **7.4 NCAs' substantive analysis and use of STORs**

222. In this section, the peer review is assessing NCAs' supervisory approach to the analysis and use of STORs as part of their overall market abuse supervision tool-kit. The peer review sought details in relation to the different elements of NCAs' analysis and the use of STORs. It also sought details of NCAs' processes for the substantive analysis of STORs which may ultimately prompt, or form part of, a market abuse investigation. Additionally, the peer review gathered information on the outcomes of STORs and their importance in market abuse investigations and sanctions cases as compared to other sources of information. It should be noted that notwithstanding the high number of STORs received in total, there is a relatively low number of enforcement files opened, for referral to public prosecutors and market abuse enforcement outcomes (although there could be reasons for this which are beyond the scope of this peer review, such as the legal setup in different jurisdictions).



Information gathered in response to this section in relation to sources of information, investigations and practices have been shared amongst NCAs on a confidential basis.

#### **7.4.1 Summary of findings regarding NCAs' substantive analysis and use of STORs and expectations**

223. NCAs largely met the peer review's expectations in terms of procedures and factors to consider when assessing STORs relating to suspected insider trading or market manipulation. As part of the on-site visits, the peer review observed that it is not clear that all NCAs have sufficient IT tools to efficiently analyse the detailed data available in TREM to complement their analysis of STORs. The peer review did note however that a number of NCAs are setting up specialist data teams (DE, IE) which can assist analysis of STORs, use of TREM and more generally in terms of NCAs' market surveillance functions.
224. The peer review notes that the outcome of STORs should not automatically mean market abuse investigations. Effective supervision and enforcement of the STOR regime should lead to effective surveillance of the market and deterrence of unlawful behaviour. That said, the peer review expects that STORs should lead to a proportionate number of investigations or referrals to prosecutors in appropriate cases. The purpose was not to assess sanctions/prosecutions for insider trading or market manipulation. The peer review did observe however that there were only a limited number of sanctions/asures/prosecutions during the Review Period.
225. While division of responsibilities between NCAs and prosecutors is envisaged under MAR, this does not seem to lead to outcomes and perhaps should be reconsidered in the MAR Review by the European Commission or otherwise. In the case of cross-border prosecutions in particular, it seems prosecutions are very challenging and often not prioritised.
226. One example observed by the peer review is in SE where the power to impose administrative sanctions/asures for certain market manipulation cases was granted to the NCA under MAR. Within a short period, the NCA has effectively sanctioned a large number of administrative cases thus showing that NCAs can be very effective when the infringement is an administrative one rather than a criminal one. Nevertheless, it is too early to make an assessment on this aspect as, on



average, the public prosecutors' processes last longer than cases conducted by NCAs.

### **Expectations**

**Areas assessed: Art. 16, 22, 25(5), 30, 31 MAR, MAR Delegated Regulation, Annex I MAR, Art. 31(2), 54(5) MiFID II and MiFID II RTS**

227. As noted in the Introduction, the peer review expects NCAs to conduct a phased analysis of STORs received. Regardless of NCAs' different team structures and processes for reviewing STORs, the peer review considers that NCAs' processes do not need to be formally issued but should be at hand for relevant NCA staff to help them when reviewing STORs.

228. Overall, the peer review expects efficient analysis and processing of STORs. The peer review expects NCAs' review of STORs to incorporate three key phases (in some instances one or more of the phases may be undertaken at the same time): (i) Completeness Review (as defined in the Questionnaire and dealt with as part of the supervision section); (ii) Preliminary Review (as defined in the Questionnaire); and (iii) Detailed Review (as defined in the Questionnaire). This section deals with the two latter phases. After these phases the NCA should be able to decide on necessary enforcement action if appropriate. A strategy for prioritisation of STORs may be necessary depending on the organisational structure and the number of STORs. Overall, the peer review expects that STORs are being processed efficiently and NCAs therefore have a limited number of pending/unknown cases relative to the number of STORs they receive.

229. For the Preliminary Review with regard to suspected market manipulation, the Peer Review will consider whether the NCA has looked at the quality and consistency of the information provided in the STOR (different from the Completeness Review). The peer review expects NCAs to consider at least the following elements in this phase:

- Logic of the transaction or orders according to the information provided in the STOR;
- Impact on market price formation;
- Possible profit (or loss avoided) where relevant.

230. For the Preliminary Review with regard to suspected insider trading, the peer review expects NCAs to consider at least the following:

- Logic of the transaction or orders (e.g. the transaction/s was/were executed, or orders were introduced before the inside information was released);
- Was the information 'inside information', consequently price-sensitive;
- Relationship of the possible offenders with the source of inside information.

231. The peer review expects NCAs, where they have a sufficient number of STORs, to have procedures to prioritise the review of STORs received. NCAs may for instance prioritise between those which, among other criteria, have a serious impact on market integrity or market trust; generate significant gains; relate to senior or public figures; attract public media attention affecting investor confidence, etc. NCAs may also have an internal system (often referred to as a scorecard) to classify STORs so that the most significant/impactful STORs are reviewed in advance of others.

232. For the Detailed Review, if the case is related to a possible use of inside information, the peer review expects the NCA to review whether specific information mentioned in the STOR or any other information (e.g. reporting of inside information) could lead to a reasonable conclusion that the event mentioned in the STOR could have likely happened, had already been reported by the Issuer in any of the compulsory periodic information reports or ongoing disclosure of inside information. The peer review also expects the NCA to judge if the information is price-sensitive and if there is an insider link with main stakeholders or persons included in the insider list. If the case is related to market manipulation, for the Detailed Review, the peer review expects the NCA at least to look at TREM, the activities conducted in related instruments or through other

investment firms, the impact on other market members and the impact on price formation.

233. The peer review expects NCAs to be able to effectively progress STORs. It considers that a relatively low number of unknown or pending STORs compared to the overall number of STORs is an important indicator for the effective functioning of the STOR framework. By contrast, a high ratio could mean that the NCA has insufficient resources, which results in a backlog in processing the STORs or could even mean that the internal set up of an NCA for processing STORs is not sufficiently fit for purpose to prioritise and perform the preliminary and detailed review steps on time.

234. The peer review sets out details of market abuse investigations, sanctions and administrative sanctions by NCAs which were initiated based on STORs and those which were not initiated based on STORs. The peer review expects a certain number of market abuse investigations and referrals to prosecutors based on STORs and NCAs are assessed against this. NCAs are not however assessed against the outcomes (criminal prosecutions/administrative sanctions) achieved as this can depend on market conditions, legal setup and outside the control of the NCA.

## 7.4.2 Findings in relation to NCAs' substantive analysis and use of STORs

### Preliminary review

235. Most NCAs conduct a preliminary review of the STORs received in line with the expectations of the peer review to discern which STORs are fit for a further in-depth analysis. Some NCAs, particularly those who receive a limited number of STORs make a full analysis (i.e. combined preliminary and detailed review) of every STOR received.

236. Within the preliminary review, additional analysis reported by NCAs, over and above those set out in the peer review expectations, has been shared with NCAs on a confidential basis.

## Prioritisation

237. 14 NCAs have a process for categorising and/or prioritising STORs: DE, EE, IE, ES, FR, IT, LU, NL, AT, PT, SE, FI, UK, NO. A subset of these NCAs, DE, FR, IT, LU, NL and UK, have a qualitative scorecard or risk-based matrix to prioritise STORs. This helps to identify the most serious cases and prioritise accordingly.
238. The majority of the NCAs evaluate and categorise STORs using the same principles, namely media attention, potential damage to market integrity and trust, possible link to insiders, trading patterns and severity based on level of gained profit or avoided loss.
239. 16 NCAs (BE, BG, CZ, DK, EL, HR, CY, LV, LT, MT, PL, RO, SI, SK, IS, LI) do not have formalised processes or criteria to categorise and/or prioritise STORs. The main reason for this is the limited number of STORs that those NCAs receive (often given their limited market size). It is challenging to build a prioritisation model that is “fit for all” and it is not an expectation that all NCAs have such prioritisation processes. Such processes are however useful for NCAs with high volumes of STORs as an initial filter to prioritise review. If STORs further increase for other NCAs they may wish to consider implementing such a process.
240. NCAs who do not have formalised prioritisation processes did note however that they will prioritise STORs in exceptional circumstances. For example, HU noted that, as an exception, priority could be given to specific STORs or notifications if the suspected market abuse requires quick action (for example an on-site visit at the suspected persons’ residence to seize documents or data that might be related to the suspected abusive behaviour), in the case of significant public/media attention, or STORs or notifications received within a short time concerning the same activity. In such instances, steps will be taken promptly by NCAs in order to raise the probability of successful enforcement measures.

## Detailed review

241. All NCAs (except EE and LV) confirmed that after a Preliminary Review they conduct a deeper analysis of those STORs which have not been closed (or set aside for later analysis). Overall, NCAs met expectations in terms of information sources to consult as part of the detailed review. For STORs related to market manipulation, all NCAs consult the TREM database to check for further information about the reported

misconduct and analyse the activities of the suspected market participant through other investment firms. Still, the peer review considers in some instances NCAs should ensure they have appropriate IT resources to make most effective use of TREM and other data.

242. Additional sources of information gathered by NCAs over and above the expectations set out in the peer review, have been shared with NCAs on a confidential basis.

### **Pending STORs for review and referrals**

243. The peer review noted that the total number of pending/unknown STORs compared to the total number of STORs shows a significant increase from 2017 to 2018 (from 5% to 24%). The peer review is concerned by this increase and considers that the high rate of pending STORs could impact on NCAs' ability to investigate market abuse. Half of the NCAs had more than 10% of their STORs still pending or unknown. Among these, 5 NCAs (DE, EE, EL, AT, PL) had a ratio of over 40% in 2018.
244. For NCAs with pending/unknown STORs above 10% of STORs received, this has impacted on their assessment as it suggests potential inefficiencies in the review process. If, however, the high number of pending STORs is due to the lack of resources, which is already assessed in section 7.6 (NCAs' Resources), it is considered in that section. It should be noted that UK did not provide a breakdown for pending/unknown STORs so could not be assessed on this basis.
245. By contrast, 7 NCAs (CZ, LV, LT, HU, RO, SK, IS) provided that all STORs were distributed and processed in the successive stages of the analysis. A further group of NCAs (BE, ES, LU, NL, PT and NO) presented a low ratio of pending/unknown STORs.

### **Outcomes**

246. As outcomes of the substantive analysis of STORs, the peer review identified five major outcome types.
- i. Based on STORs, NCAs could open investigations and enforce law against market abuse infringements, which at the time when the STOR was prepared and submitted, was only a suspicion. The peer review concludes only a limited

number of STORs led to enforcement in the Review Period (3% in 2017, 4% in 2018). Overall, 86 and 36 sanctions/administrative measures were imposed for insider trading/market manipulation in 2017 and 2018 respectively on the basis of information reported in STORs<sup>9</sup> (this is not to say the case relied only on a STOR).

- ii. STORs could also be transmitted to other NCAs. The peer review concluded that a very large number of STORs are transferred to other NCAs. 16% of STORs in 2017 and 20% in 2018 was transmitted to other NCAs. This shows that the fight against market abuse is not limited to trading on a national level, but is becoming more and more a cross-border issue, where trading venues and persons are involved from more than just one Member State. This emphasises the importance of NCAs ensuring they transmit high quality STORs to other NCAs in a timely manner. This is analysed in detail in section 7.5 of this report.
- iii. Another supervisory tool for NCAs is to reach out to suspected offenders by informal supervisory responses (such as warning letters or telephone calls to stop damaging conduct). 1% of STORs result in an informal measure according to the answers provided by NCAs. The peer review suggests informal measures could have more emphasis in the future, as quick and effective enforcement against market abuse is not limited to investigations solely. In particular, for less severe cases (minor wash trades or minor painting the tape). These actions have been taken place in some NCAs with significant results. Nevertheless, informal responses are not a substitute for sanctions in appropriate cases. In the case of repetitive wrongdoings on minor infringements/more serious infringements NCAs should impose sanctions or refer cases to the public prosecutors.
- iv. The remaining STORs (75% in 2017 and 51% in 2018) did not reach the level of severity for opening a market abuse investigation for various reasons, and these cases were thus closed.

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<sup>9</sup> The UK were unable to provide statistics on how many market abuse sanctions were based on STORs as they do not record information in this way. The number of sanctions/measures may therefore not be complete.

- v. Based on certain STORs or based on a trend of STORs, NCAs could also engage with Reporting Persons to modify their internal supervision procedures, including training, and/or detection systems.

	2017	2018
i. Enforcement action	3%	4%
ii. Transferred to other NCA	16%	20%
iii. Informal measures	1%	1%
iv. Closed	75%	51%
Pending/unknown	5%	24%
Total	100%	100%

### Market abuse investigations

247. The peer review asked NCAs how many market abuse investigations they initiated based on STORs versus those not initiated based on STORs. According to the answers, the STOR Framework plays a vital role in market abuse related investigations: the overall number of investigations opened in 2017 (301) and 2018 (304) based on STORs is almost three times as high as the investigations opened without STORs received in 2017 (125) and 2018 (112). It should be noted that these statistics do not include the UK as they do not maintain overall statistics in the manner requested. Another observation is that some NCAs conduct a full investigation in respect of all STORs.

### Market abuse sanctions and referrals to prosecutors

248. 14 NCAs have made referrals to prosecutors during the Review Period. Overall, 497 referrals were made to prosecutors based on STORs in 2017 and 359 in 2018, meaning 3-4% of the STORs received. DE and SE referred the highest number of cases to prosecutors. SE is worth distinguishing due to how MAR was implemented, as suspected insider trading or intentional market manipulation are both considered criminal offences and should be forwarded to the specialist criminal prosecutor (EBM). If SE is excluded, the number of STORs referred to criminal prosecution authorities is 1%. It should also be noted, that one NCA (UK) is also the criminal prosecutor.

249. As envisaged under MAR, some Member States assign the public prosecutor with the role to prosecute (certain) market abuse sanctions. This division of responsibilities is outside the remit of the peer review, but it may lead to less outcomes as prosecutors are under significant resource pressures. With many competing priorities, the prosecutors may not always be in a position to advance market abuse infringements expeditiously although taking into account when the MAR came into effective, it is too early to issue a definitive assessment in this regard.
250. NCAs reported 88 and 38 sanctions and administrative measures imposed in relation to insider trading/market manipulation based on STORs in 2017 and 2018 respectively. For the same period, NCAs reported 51 and 79 sanctions and administrative measures imposed in relation to insider trading/market manipulation not based on STORs.<sup>10</sup> In 2017, STORs were a key input for market abuse sanctions and administrative measures. In 2018, more sanctions and measures imposed were not based on STORs. This does not however diminish the value of STORs as they remain a key source of intelligence for investigations.

**Figure 6 - Measures and sanctions imposed for market abuse infringements (STOR and not STOR based)**

	STOR based Sanctions/administrative measures imposed		Not-STOR based Sanctions/administrative measures imposed	
	2017	2018	2017	2018
Czech Republic	0	0	0	0
Slovenia	0	0	3	0
Austria	2	3	8	15
Cyprus	0	0	0	0
Luxembourg	0	0	1	1
Liechtenstein	0	0	0	0
Greece	0	0	0	10
Slovak Republic	0	0	0	0
Lithuania	0	1	2	2
Romania	0	0	0	0
Netherlands	9	1	6	2
Denmark	2	0	0	0
Latvia	0	1	0	0

<sup>10</sup> These statistics are not complete as the UK does not record overall statistics on the use of STORs.



Estonia	0	4	0	4
Norway	3	3	0	0
Hungary	1	0	1	0
Poland	0	0	2	5
Finland	0	0	0	0
Spain	1	2	6	7
Germany	16	4	0	0
Italy	4	1	4	2
Bulgaria	0	0	0	16
Iceland	2	1	0	0
Croatia	7	3	0	1
Sweden	37	10	0	0
France	3	3	5	6
United Kingdom	0	0	5	0
Malta	0	0	0	0
Portugal	0	0	4	3
Ireland	0	0	0	0
Belgium	1	1	4	5
<b>Overall</b>	<b>88</b>	<b>38</b>	<b>51</b>	<b>79</b>

### 7.4.3 Good practices

#### Preliminary review

251. Several good practices with respect to the preliminary review were identified:
- It is useful to have a 4-eye principle in the initial analysis, which means that a minimum of two persons are conducting the completeness review and preliminary review in collaboration
  - All members of the surveillance team are on a weekly basis introduced to all new cases that have been in preliminary review. This is done to make all surveillance team members aware of which financial instruments are part of the investigations and to share knowledge of suspected persons (DK).
  - Some NCAs can analyse settlement details through access to the CSD (direct account system) (EE).
  - In some countries (SE) STORs can be dealt with by different authorities. They have produced joint guidance about when a STOR should be handed to which of the two authorities.

## **7.5 Cross-border exchange of STORs and cooperation between NCAs**

252. Given the potentially cross-border nature of market abuse, the peer review considered whether STORs within the EU and EEA with a cross-border impact (e.g. instruments traded or orders placed on another EU market or suspicious traders in a different Member State) are being exchanged in an effective and timely manner (including any feedback) and that the NCAs conduct a quality assessment of STORs before transmitting them to other NCA(s).
253. The STORs received from other NCAs can be a useful tool for NCAs to challenge their own trading venues or Art. 16(2) Reporting Persons where they might have been expected to also submit a STOR. In addition, those transferred STORs can form an important source of information for market abuse investigations.

### **7.5.1 Summary of findings regarding cross-border exchange of STORs and cooperation between NCAs**

254. Overall, the number of STORs exchanged between NCAs, has increased from 1,408 STORs in 2017 to 2,286 in 2018. The number of STORs transferred by an NCA will generally depend on the size of an NCA's capital market, interdependency with other Member State capital markets, number of remote members, geographical links and dual listings of financial instruments. When the STORs forwarded by the UK FCA (1,254 in 2017 and 1,829 in 2018 are removed, the numbers are significantly lower (154 in 2017 and 457 in 2018). That said, equity transactions on UK platforms represent approximately 60% of the total number of transactions in the EU. Furthermore, UK member firms tend to be very active in the EU trading venues.
255. The peer review considers that NCAs may not be ensuring in all instances that Reporting Persons have appropriate arrangements, systems and procedures to detect suspicious transactions that may be relevant to other NCAs. The relevance of cross border STORs will depend on Art. 16(2) Reporting Persons' client bases. If they are arranging/executing transactions on behalf of clients in other EU markets, they will need to ensure appropriate arrangements, systems and procedures to detect and report suspicious activities. The peer review proposes that to ensure convergent practices it would be useful for ESMA to facilitate discussions amongst NCAs on this topic.

256. 11 NCAs sent no STORs to other NCAs. These NCAs have been assessed 'Broadly Compliant' as there are limited supervisory practices to assess.
257. In general, STORs are being transferred without significant delay (although it was not possible to make conclusive findings) and in a secure manner.
258. The questionnaire sought details from NCAs on the STORs they received from other NCAs in 2018 in terms of quality (i.e. was the information in the STOR sufficient to determine next steps) and timeliness (number of days between receipt by the transferring NCA and the date of receipt of the STOR by the receiving NCA). The responses from NCAs were not sufficiently detailed to draw robust conclusions (for example DE replied on a sample basis and the UK did not reply). Where they support issues identified in relation to delays in sending STORs, they have been cited in relevant sections below.
259. In terms of efficiency, the peer review notes that it might be useful to NCAs to request Reporting Persons to send STORs in English on a proportionate basis (e.g. for Reporting Persons above a certain size).
260. In general, in line with the requirement to send STORs 'immediately' as envisaged under MAR, NCAs endeavour to send STORs as quickly as possible. Some NCAs seek to complement the STOR to ensure it is as meaningful as possible for the receiving NCA. There may be a tension in the requirement under Art. 16(3) MAR to send 'immediately' and ensuring NCAs receive as meaningful STORs as possible.
261. The peer review noted good practices whereby NCAs exchange bilaterally or in clusters with respect to STORs exchanged to discuss issues of quality or more general issues arising.
262. The peer review consider it is also useful to raise awareness of Art. 25(5) MAR which could also be relevant to cross border exchange of STORs. In appropriate circumstances, where through cross-border STORs report a pattern of behaviours leading NCAs to be convinced that acts contrary to MAR are being carried out in another Members State, there is a requirement to escalate to relevant Members States and ESMA.

### **Expectations**

*Areas assessed: Art. 16(3), (4) and 25(5) MAR, ITS*

263. MAR creates an interdependence amongst NCAs and pursuant to Art. 16(4) envisages that NCAs will assist each other in detecting suspected market abuse across the EU. Art. 16(3) provides that Art. 16(2) Reporting Persons are required to notify STORs to the NCA where they are registered or have their head office or branch. While transactions may be conducted or orders placed on trading venues of other Member States, where it detects a suspicious transaction or order, irrespective of location within the EU, the Art. 16(2) Reporting Person is bound to report this to its 'home' NCA. Pursuant to Art. 16(4), this receiving NCA is required to transmit the STOR 'immediately' to the NCA of the trading venue concerned.
264. Effective and convergent supervision of reporting requirements is important in this context and it is expected that NCAs are ensuring the Art. 16(2) Reporting Persons under their supervision have appropriate arrangements, systems and procedures to detect suspicious activity that may be relevant to other NCAs. Such trading is typically carried out through foreign brokers for example in other EU markets where investors from the NCA's relevant Member State may be active.
265. For the exchange of STORs, it is important that NCAs ensure compliance with the STOR Framework and provide a common level of information thus cooperating and assisting each other in the detection of potential market abuse. It is expected that NCAs ensure their Reporting Persons can detect suspicious activity that may be relevant to other NCAs.
266. The peer review notes that in certain markets, it may be more common for investors to use investment firms located in other jurisdictions if they wish to invest in other markets. In such scenarios, cross-border STOR notifications are not relevant. Where investors use firms within their jurisdiction to trade in other markets, such firms for example will have information that other entities in the transaction chain will not have (e.g. relevant to insider trading). As such, it is important for Reporting Persons to have detection capacity, relative to their activities, to detect market abuse that may be relevant to other NCAs. It is also expected that proportionate to their market, NCAs are transferring STORs to other NCAs.

267. It is also expected that STORs are exchanged in a timely manner to enable NCAs to determine next steps. Indeed, MAR envisages that they will be transmitted ‘immediately’ to the NCA of the relevant trading venue.

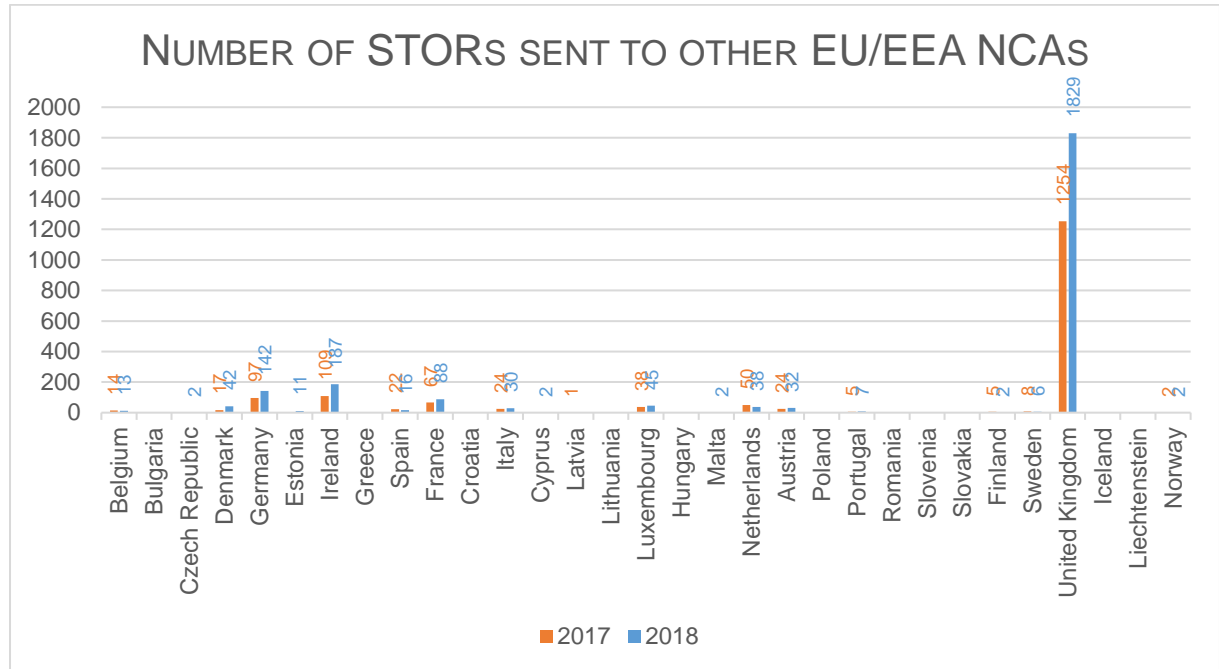
## 7.5.2 Peer review findings

### **STORs sent to other NCAs and supervision of the cross-border reporting requirements**

268. Overall, apart from those sent by the UK FCA, the number of STORs exchanged between NCAs seems low (see figure 7, an average of 15 STORs per NCA based on 2018 STORs). While the relevance of cross-border STORs will depend on the specificities of national markets, such as the interdependencies with other markets and the client bases of Art. 16(2) Reporting Persons, it is not clear that all NCAs are focusing on ensuring Reporting Persons under their supervision have appropriate arrangements, systems and procedures to detect suspicious activity that may be relevant to other NCAs. As MAR creates this duty on NCAs to assist other NCAs in the detection of suspected market abuse by providing for this exchange of STORs, it is important that NCAs effectively discharge this mandate.

269. Other NCAs, where the per review expected to see higher number of cross-border STORs, have also been assessed as broadly compliant. As noted earlier, it is recommended that NCA practices be exchanged at ESMA to determine a common supervisory approach.

**Figure 7, number of STORs sent to other EU/EEA NCAs**



### Analysis of STORs and transmission to other NCAs

270. Given the reference to ‘immediately’ in Art. 16(4) MAR, NCAs focus on transferring STORs to other NCAs at the earliest opportunity.
271. 24 NCAs confirmed they undertake a degree of analysis before sending a STOR to other NCAs. Of these, 9 NCAs did not send any STORs to other NCAs during the Review Period (EL, HR, LT, HU, PL, RO, SI, SK, LI). As such, these answers were considered as theoretical. Therefore, in practice, 15 NCAs undertake analysis of STORs before sending to other NCAs.
272. Aside from identifying the appropriate NCA to whom a STOR should be sent, 6 NCAs do not undertake any analysis of STORs received before sending it to another NCA (BG, DK, DE, EE, FI and NO). Of these, BG did not send any STORs to other NCAs during the Review Period.
273. For those NCAs who analyse STORs, overall, the focus was on ensuring, insofar as possible, that the STOR is complete (in accordance with the template set out in Art. 7. of the Delegated Regulation (EU) 2016/957), that the information reported is consistent and comprehensible and that it will allow the receiving NCA to make an initial determination on the STOR. In some instances, NCAs noted they take

additional steps and seek to enrich the STOR to ensure it is as meaningful as possible for the receiving NCA, including providing additional background information where relevant for context (NL); an outcome of internal analysis of the STOR (CZ); additional information not available to the receiving NCA (e.g. a brief market analysis of the main intermediaries active on the reported instrument(s) on national venues (IT)) and following up with the Reporting Person (BE, IE, FR). Some NCAs noted that in some instances they note if they propose to further investigate the activity reported in the STOR (ES, SE). While this may not always be feasible, this is a useful practice and can avoid overlap.

274. For those NCAs who transmit a high number of STORs it may be challenging to further enrich a STOR before transmitting it to another NCA. Given the value such additional information can provide, it may nonetheless be useful to provide further information, that only the 'home' NCA may have access to, where possible for STORs reporting suspicious activity with a potential high impact (e.g. high-profile suspected insider trading, significant monetary value).

### **Timeframes for sending STORs**

275. The questionnaire sought details on the length of time it took NCAs to send STORs to other NCAs when they transferred the STOR 'as sent' by the Reporting Person and when they followed up with the Reporting Person for additional information. MAR envisages that STORs will be sent immediately to other NCAs. Preparation for transmission will necessarily take time particularly where some translation may be required. It is important however for NCAs to receive STORs in a timely manner as it may be necessary to act quickly in the case of an investigation. It is therefore reasonable to expect that STORs are sent no later than 20 days after receipt by an NCA 'as sent' by the Reporting Person or no later than 20 days after receiving follow up information where it was necessary to follow up with the Reporting Person.

276. In 2017, 4 NCAs (ES, LU, NL, AT), sent over half of the total STORs they each transmitted to other NCAs more than 20 calendar days after receipt from the Reporting Persons. 1 NCA (LU), transmitted the remainder of its STORs sent to other NCAs more than 20 calendar days after receiving further follow-up information from Reporting Persons.

277. In 2018, 2 NCAs (ES and NL), sent over half of the total STORs they each transmitted to other NCAs more than 20 calendar days after receipt from the Reporting Persons. 1 NCA (LU) sent over half of all STORs sent to other NCAs more than 20 calendar days after receiving further follow-up information from Reporting Persons. The UK did not reply to this question, but the peer review received feedback in the questionnaire from 12 NCAs who received 483 STORs in total from the UK in 2018 which on average were received 33 days after receipt by the UK. The UK experienced a software issue in 2018 that resulted in a significant delay to disclosure of some STORs for a period of time. This issue has since been resolved. On this basis of such delays during the Review Period, the UK is considered as 'broadly compliant' in this area though the peer review notes that overall it has transmitted the highest number of STORs to other NCAs.
278. It is important that NCAs take steps to ensure they are providing STORs to other NCAs in as timely a manner as possible.

#### **Means for transmission of STORs**

279. The questionnaire asked NCAs to describe their main means for transmission of STORs to other NCAs, namely: (i) in writing by post; (ii) in writing by fax; (iii) in writing by secure electronic means; or (iv) by other means (in which case NCAs were asked to describe the means). The MAR ITS on NCA Cooperation (February 2018) requires that the information is transmitted by post, fax or in writing by secure electronic means.
280. At the on-site visits, it was noted that NCAs have a variety of different mechanisms to transmit STORs (a number with their own electronic systems). There was a suggestion that it might be useful to develop a common electronic platform for the exchange of STORs between NCAs which could be considered and/or coordinated by ESMA which the peer review supports that ESMA consider.

#### **Engagement with other NCAs**

281. Given the interdependency between NCAs envisaged in terms of the exchange of STORs, it is useful for NCAs with whom they exchange STORs or whose markets



are closely connected to have periodic engagement as necessary on STOR-related matters. This is not envisaged under MAR but is considered a good practice.

282. 8 NCAs (CZ, IE, ES, FR, NL, AT, SE, UK) noted they have bilateral engagement with NCAs with whom they exchange STORs.

283. The frequency of the engagement reported ranged from ad hoc contact to periodic meetings and the focus ranged from discussions on specific STORs, including sharing more general feedback, giving advance notice of a significant number of STORs to be transmitted and discussions regarding appropriate jurisdiction to broader issues of sharing overall feedback on STORs, means and format for transmission of STORs and best practices regarding STOR management and prioritisation. 1 NCA (NL) noted that they routinely contact the submitting NCA when they undertake a detailed review of a STOR to discuss before sending any information requests to the Reporting Person. 2 NCAs (ES and SE) referred to multilateral periodic conference calls/meetings amongst clusters of NCAs including in relation to STOR-related issues and other market abuse related matters. 1 NCA (UK) noted they host visits from other CAs to exchange information about their respective approaches to STORs in general.

284. Overall, this type of engagement is valuable and to be encouraged as a good practice. As well as encouraging engagement between NCAs, ESMA could host periodic discussions to share good practices and feedback regarding STORs.

### **7.5.3 Good practices**

285. The peer review noted as a good practice that NCAs engage with those with whom they exchange cross-border STORs or might expect to exchange such STORs to discuss the STOR Framework and share feedback on STORs exchanged.

286. The peer review also noted as a good practice that some NCAs confirm when sending a STOR to another NCA whether they plan to investigate the reported suspicious behaviour.

## **7.6 NCA Resources**

### **7.6.1 Introduction and peer review expectations**

#### **Expectations**

***Art. 25 and Art. 16 MAR***

287. The peer review expects that NCAs have sufficient resources to effectively supervise the STOR Framework. The peer review recognises that certain NCAs, as provided for in MAR, have more limited responsibilities than others (e.g. early referral of STORs to prosecutors for investigation). NCAs are assessed in the context of their responsibilities as well as on a proportionate basis relative to the size of their markets.

288. On a related point, the peer review considers that a high proportion of pending cases may signify resource challenges, and these have been taken into account in this assessment.

### **7.6.2 Peer review findings**

289. For NCAs who have a higher number of STORs per FTE per year than the EU/EEA average, this impacts on their assessment.

290. Where NCAs have a higher than average number of pending STORs, taking account of their legislative mandate, this impacts on their assessment.

291. The criteria used to assess resources are high level and do not take account of, for example, additional IT resources and/or specific procedures that NCAs may have to enhance their review of STORs. It is a matter for NCAs to satisfy themselves in general with respect to resourcing to carry out their supervision of the STOR Framework. The criteria used by the peer review, and subsequent assessment, suggest possible resourcing challenges/deficiencies. Overall, the peer review found that 17 NCAs have sufficient resources, 10 NCAs are broadly compliant, 3 NCAs are partially compliant and 1 NCA is non-compliant. The reasons for each assessment grade are set out in the table in section 7.1.

### **7.6.3 Good practices**

292. 2 NCAs described their training programmes related to the STOR Framework. DE: has a dedicated training programme for new joiners related to the STOR Framework. Typically, an experienced person helps new staff with procedures/cases. 2 persons at least work on a case; how to write a report to the Public Prosecutor and how to assist him afterwards. In addition, and more generally applicable, new joiners spend a mandatory 1-week training regarding cash markets at a trading venue. There is also the possibility for a voluntary training regarding derivative markets. FR arranges internal training sessions for analysts in charge of STORs to develop their



technical IT and data science skills with the aim of improving their STOR analysis capacity.

## 8 Annexes

### 8.1 Mandate



ESMA42-111-4772  
STOR Peer Review M

### 8.2 Questionnaire



ESMA42-111-4779 -  
STOR Peer Review - C

### 8.3 Statements from NCAs

312. 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, CY and RO, have issued a statement on the outcome of the peer review report.

313. The CySEC (CY) has issued a statement which is reproduced below:

*CySEC disagrees with some of the findings and assessments made by the Peer Review Assessment Group. Unfortunately, the Peer Review Assessment Group did not pay sufficient consideration to the specific characteristics of the Cyprus market, which in our view renders our approach justified and proportionate. The reasons are expressed in the following points.*

*i. Supervision of Article 16(1) of MAR Reporting Persons*

*CySEC is of the opinion that the peer review has not adequately considered the supervision of the two reporting persons under article 16(1) of the Market Abuse Regulation (“MAR”). In particular, in Cyprus operate only two trading venues, i.e. a regulated market and a multilateral trading facility, both operated by the Cyprus Stock Exchange. CySEC has a real-time monitoring tool for the effective supervision of the regulated market. In addition, CySEC has direct access to the central securities depository data.*

*ii. Supervision of Article 16(2) of MAR Reporting Persons*

*CySEC is of the opinion that the peer review has not adequately taken into consideration the specific characteristics of the Cyprus Investment Firms that make up the majority of the article 16(2) of MAR reporting persons. CySEC highlights that as per the data provided to the Peer*

*Review Assessment Group, the majority of the Cyprus Investment Firms offer investment services in relation to financial instruments which fall outside the scope of MAR (163 out of 248 investment firms in 2018). Moreover, the supervisory actions taken by CySEC are considered proportionate, in view of the fact that CySEC follows a risk-based supervision framework.*

*iii. Poor quality/Non reporting and related enforcement and sanctions*

*CySEC considers that the peer review has not adequately taken into account the specific characteristics of the Cyprus market that justifies the limited number of STORs received. During the period under review, no poor quality STOR was identified among the limited number of STORs received. In addition, CySEC provided information indicating the fact that proactively deals with potential cases of non-reported STORs. It is noted that during the review period no cases of non-reported STORs were identified. On another note, CySEC maintains an internal log with detailed information regarding the STORs received. This log has been further updated and includes incidents of poor quality STORs/non reported STORs that arose after the review period.*

*iv. Cross-border exchange*

*CySEC, with regards to cross-border exchange, points out that transmits STORs in a prompt manner to other EU National Competent Authorities, as well as, uses alternative tools to ensure that reporting persons can detect suspicious activities that may be relevant for other NCAs.*

314. The ASF (RO has issued a statement with is reproduced below:

*ASF welcomes ESMA initiative for a peer review on STOR and supports a convergent application of MAR in this respect. Although overall we do appreciate AG observations and critique, we disagree with the non-compliance of the Supervision of Art. 16(2) Reporting Persons and the stated reason of a legislative gap in Romania during the review period.*

*In our view, verification during the authorisation process of the conditions laid down in article 16(2) of MAR is not mandatory under level 1 legislation and during the review period no new authorisation were filed with ASF. We do not see the grounds for a noncompliance assessment, as there was no practical impact of the existing legal provisions in Romania for licensing of investment firms during the review period in relation to the verifications required by article 16(2) of MAR. We strongly believe that the non-compliance assessment is not adequately reflecting the ASF approach to supervision of reporting persons and it is not proportionate to the size and complexity of the market. ASF is already performing verifications of procedures and systems of reporting persons either off site or during onsite inspections. ASF is willing to proceed with further improvements and formalization of its internal procedures.*



*We would like to express our appreciation for the work done by the AG team and in light of the report's findings, we will prepare for improvements in the areas where recommendations are made for ASF.*