07 March 2018
ESMA 70-145-466

ANNEX I: Additional response to the consultation document 'Fitness check on supervisory reporting'

1. The Commission consultation document 'Fitness check on supervisory reporting' focuses on the main issues and challenges that have been identified with respect to the EU supervisory reporting requirements. Respondents are particularly requested to take into consideration the costs inquired until the end of 2016, and only for those frameworks in force at that date. The ESMA response to the consultation thus only covers the AIFMD[1] reporting requirements with a specific focus on the first and the third sections of the consultation document. However, ESMA deemed it necessary to supplement the response with this Annex covering the reporting requirements that were not yet in force at the end of 2016 or that were in the course of being implemented but the costs for which were not fully incurred yet. It includes elements that were not explicitly addressed in the consultation document but which ESMA believes are essential to take into account in the context of the given initiative. This Annex covers reporting regimes under the following sectoral legislations: CRAR[2], EMIR[3], MiFIR[4], MAR[5], Prospectus[6], SFTR[7] and CSDR[8].

Introduction

2. The elaboration and development of any reporting regime is primarily influenced and driven by the purpose of the reporting and intended subsequent data use by regulators. Although the alignment of different regimes is the desired outcome when developing technical standards, certain fundamental differences are due to the different scopes and purposes of the reporting regime and should be taken into account. ESMA therefore supports the purpose of the fitness check of the EU reporting requirements in the financial sector as outlined in the Commission's Evaluation roadmap[9]. Namely ESMA supports, identifying potential areas where compliance cost and burden stemming from the reporting

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[1] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010
[2] Regulation (EU) No 462/2013 of the European Parliament and of the Council of May 21 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies
[3] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories
[4] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012
[5] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation)
[6] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market
[7] Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012
8 Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012
[9] https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-5063271_en

obligations could be reduced without compromising the financial stability, market integrity, and consumer protection objectives of these obligations.

3. ESMA has focused its efforts on harmonising reporting regimes to the extent it was feasible under each of the individual sectoral legislations since the development of a single rule book and implementation of EMIR reporting requirements in 2012. In particular, close attention was paid to the consistency of the description of individual data elements, permissible reportable values, alignment of reporting logics, methods and procedures, etc. However, in some instances, ESMA faced certain challenges when aiming to harmonise reporting requirements at the technical level to the desirable extent. Such challenges were primarily driven by factors outside ESMA's scope of influence and could be summarised as follows:

    a. Insufficient timelines for the development/implementation of the new reporting requirements;

    b. Imprecise/inconsistent empowerments for the development of the implementing measures;

    c. The lack of a dedicated and appropriate legal instrument for developing reporting rules and instructions;

    d. Unexploited synergies amongst reporting frameworks;

    e. Inconsistent/insufficient definitions in primary legislations;

    f. The absence of consistent and coherent approach to data reporting legislative initiatives across various legislative frameworks.

4. This Annex is structured according to the above-mentioned common challenges, with each section focusing on one of them and including specific examples. The conclusions section then highlights the key areas of possible improvements and opportunities including possible synergies. It also focuses on the need for a consistent and coherent approach to data reporting across various reporting regimes.

Section 1: Insufficient timelines for the development/implementation of the new reporting requirements

5. Introduction of a new or an amendment of an existing reporting framework normally requires extensive and resource intense work in respect of design, construction, testing and operation of IT systems. Such work is commonly based on the requirements contained in Regulations as well as respective implementing acts.

6. Five sequential phases are typically observed when developing a system: business requirements, functional specifications, programming, testing and deployment. These phases are sequential and the first one (business requirements) cannot be completed before the final versions of the regulatory and implementing technical standards (RTS and ITS) are known and stable. It is therefore highly important to ensure that sufficient timelines for development and implementation of reporting regimes are envisaged at the outset of the legislative process. As evidenced by the following examples, the lack of such time might result in additional uncertainty, strain and burden being imposed both on reporting entities and on the regulatory community.

EMIR derivative contract and MiFIR reporting regimes

7. Elaboration of EMIR and MiFIR implementing measures provide comprehensive evidence of the complexity and significance of the task that needs to be undertaken when developing reporting frameworks. Under EMIR, ESMA was required to deliver the technical standards according to Article 9 EMIR by 30 September 2012, i.e. less than three months after the publication of the Regulation in the Official Journal. The given timeframe of less than three months did not allow for extensive and thorough investigation and research into the new area of reporting. In comparison with other legislation, such as MiFID, EMIR introduced new data elements in areas where ESMA could not build on previous lessons learned. For instance, contract reporting under EMIR includes not only data on the transaction itself, but also information on clearing, ongoing valuation and collateralisation. Including this information within the reporting requirements was a new obligation under EMIR, there had been no previous practical experience from a reporting point of view. This led to the unfortunate outcome that shortly after the reporting regime was launched, ESMA concluded in late 2014 that the ITS and RTS under EMIR Article 9 should be reviewed and initiated the respective work immediately. The delay in endorsing these reviewed ITS and RTS also had an impact on the overall implementation plans, in particular those of market participants, given that the technical standards became applicable in November 2017, two months ahead of the MiFID II[10] go-live; this coincidence ESMA attempted to avoid by completing the review of EMIR reporting requirements in late 2015.
8. Under MiFIR, the lack of sufficient lead-time for implementation was evidenced by the fact that the application date for MiFIR was postponed by one year. ESMA's main argument for supporting the delay was the complexity of the IT system needed for the intake and processing of the significant amount of data requested under the Regulation[11]. This includes reference data on financial instruments, transaction reporting, data for the transparency calculations and position reporting of commodity derivatives[12].

MiFIR commodity derivatives reporting

9. The delay in endorsing ITS 4[13] and ITS 5[14] had a direct effect on NCAs finalising their position reporting regimes in advance of MiFID II applying in practice. Given the time needed for IT implementation, firms had to build their systems without having access to the final details and requirements set by NCAs, which also varied by NCA.

[10] 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
[11] https://www.esma.europa.eu/sites/default/files/library/esma-2015-1513_letter_sm_to_ec_-_implementation_timeline_mifid_mifir.pdf
[12] https://www.esma.europa.eu/sites/default/files/library/esma-2015-1514_note_on_mifid-mifir_implementation_delays.pdf
[13] Commission Implementing Regulation (EU) 2017/1093 of 20 June 2017 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators (OJ L 158, 21.6.2017, p. 16-26).
[14] Commission Implementing Regulation (EU) 2017/953 of 6 June 2017 laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (OJ L 144, 7.6.2017, p. 12-13).

Section 2: Imprecise/inconsistent empowerments for the development of the implementing measures

10. Although there might be common fields required under different regimes, the overall purpose, scope and thus structure of reports will differ due to the inherent differences (e.g. scope, purpose) of the regimes themselves. In spite of these differences, a harmonised approach to reporting could still be achieved if the definitions and representation of data elements that are common across the regimes were aligned. Equally, it is of utmost importance to provide for a legal framework that permits defining the standards to be used for the technical messages across various reporting frameworks. Definition of common technical messages consistent across various reporting frameworks are key for ensuring the quality and usability of data as well as providing the necessary level of precision and clarity for the compliance purpose.

11. Reporting of prospectus classifications, CRA supervisory data, derivative contracts under EMIR, securities financing transactions under SFTR as well as orders, trades and transactions under MiFIR implies a significant amount of data being provided by the market participants to the regulators. It is therefore crucial to ensure the highest possible level of harmonisation not only of the details of data to be reported and their formats, but also to standardise the technical format of the reports as well as methods and arrangements for reporting. Such standardisation of formats permits for the interoperability of various systems used to analyse and process this data thus leading to the increased efficiency of its use. At the same time, a high level of technical standardisation permits to limit the impact on market participants' systems and infrastructures given the possible reuse of data standardised and harmonised for the reporting purposes under various regimes. However, as illustrated below, the relevant provisions under different legislative frameworks often differ, which hampers the legal certainty regarding the actual level of alignment and desired consistency across reporting frameworks.

MiFIR transparency, order record keeping, reference data and transaction reporting

12. The difference between the approaches taken for MiFIR transparency, order record keeping, reference data and transaction reporting purposes stems partly from the fact that ESMA's mandates are different. For transparency and order record keeping ESMA has only received a mandate to define the "formats of the report" and the "details of the order data". On the other hand, the financial instruments reference data and transaction reporting empowerments of MiFIR provided for a broader mandate referring to both data "standards", "formats" and "methods and arrangements for reporting financial transactions and the form and content of such reports".

13. For this reason, ESMA did not impose an ISO 20022 full specification to post-trade transparency and order data. However, ESMA focused on ensuring the compatibility of post-trade and order data with the ISO 20022 standard, without going as far as prescribing that all approved publication arrangements and trading venues should use one single standard. This inconsistent approach has a lasting impact on the overall quality and compatibility of the data reported across the various regimes.

14. Further examples of such differences may be found, among others, in EMIR Articles 9(5) and (6) when compared to very similar requirements envisaged under SFTR Articles 4(9) and (10).

Commodity derivatives reporting under MiFID[15]

15. ESMA had the empowerment to determine the format of the weekly reporting for investment firms and market operators operating a trading venue.

16. However, for daily reports, ESMA's empowerment was limited to determining the format only for investment firms and not for trading venues. Trading venues are encouraged to adhere to the same requirements. Otherwise, the regime could not be implemented in a way that serves the purpose of ensuring compliance with the position limit regime on a convergent basis in the EU.

Prospectus

17. Article 47 of the new Prospectus regulation requests ESMA to "publish every year a report containing statistics on the prospectuses approved and notified in the Union and an analysis of trends" which together with the empowerment of Article 21(13) to drafting regulatory technical standards for "the classification of the prospectuses" should have provided for a meaningful new metadata set for the prospectus to be provided to ESMA and made available to the public. However, the breakdowns that are provided for in the Prospectus Regulation are sometimes wide, for example equity and non-equity securities is a very broad classification of the instruments. This lack of detail regarding the mandatory report and the mandatory classification introduces certain ambiguity regarding the relevant data and impacts on the ability to ultimately supply data users (including the broad public) with the appropriate information about approved prospectuses.

18. Alternatively, sectoral legislations could provide for a possibility of reusing the existing statistical standards (as European System of Accounts) and/or other classification of instruments/entities already envisaged in other relevant regulations (e.g. MiFIR).

19. The following table lists the differing empowerments in respect of technical standards on reporting envisaged currently under the respective regulations:

Empowerment	**EMIR**	**EMIR – proposal for a review**	**MiFIR**	**SFTR**	**CSDR**

[15] Article 58 of MiFID II establishes daily and weekly position reporting obligations in commodity derivatives. The daily reporting objective is to enable NCAs the effective monitoring of compliance with the position limit regime established in Article 57.
ESMA's contribution to daily reporting was in the form of Implementing Technical Standards, published as Commission Implementing Regulation (EU) 2017/1093 (ITS 4) and Commission Implementing Regulation (EU) 2017/953 (ITS 5).
ESMA publishes weekly Commitment of Traders (CoTs) reports on its website according to Article 58(1)(a) of Directive 2014/65/EU (MiFID II). This report has the objective to provide some transparency on whether positions on commodity derivatives are entered for hedging or speculative purposes and how they are distributed between different categories of users.
The CoT report shows the aggregate positions held in commodity derivatives, emission allowances or derivatives thereof traded on a trading venue by the different categories of persons required in Article 58 of MiFID II and which exceed the thresholds established in Article 83 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016. The format is presented as prescribed in Commission Implementing Regulation (EU) 2017/1093 of 20 June 2017, Annex I.

Details of the reports	Y	Y	Y	Y	Y
Content of the report			Y		Y
Type of the reports	Y	Y			
Format of the reports	Y		Y	Y	
Form of the reports			Y		Y
Frequency of the reports	Y	Y		Y	Y
Data standards and formats		Y	Y		
Specific data standards (LEI, UTI, ISIN)		Y	Y	Y	
Methods and arrangements		Y	Y		

20. The current lack of consistency across various empowerments unavoidably leads to varying level of precision and granularity of the respective reporting requirements, which, in turn, results in additional level of complexity and inconsistency at the implementation stage and subsequent compliance by reporting entities.

Section 3: The need for dedicated and appropriate legal instrument for reporting rules and instructions

21. EMIR and SFTR RTS and ITS respectively empower ESMA to define the details of the reports and their format. The necessity to set out all the details and formats in the technical standards on the one hand provides for a high degree of legal certainty concerning the reporting requirements, on the other hand implies a rather lengthy process for adapting the reporting requirements to the relevant developments in the financial industry and respective regulatory needs. In particular, the technical standards need to undergo the scrutiny of the European Commission, the European Parliament and the Council which

typically would imply between 4 and 9 months for the whole process as per the ESMA Regulation[16] (without taking into consideration any other possible delays).

22. To give an example, both EMIR and SFTR technical standards include a reporting field to specify a reference rate. The definition of the field is included in the RTS, while the specification of allowable values, including specific codes for the most common benchmarks – in the ITS. In the case where a new benchmark is created (e.g. EURO unsecured overnight rate on which the work is ongoing), in order to be able to efficiently monitor transactions based on that rate, ESMA would need to include one additional allowable value in the ITS, which would require the amendment of the technical standards. Similarly, MiFIR technical standards have detailed requirements for the classification of a commodity underlying a given financial instrument (e.g. non-precious metals such as lead, cobalt, etc.; soft agricultural such as cocoa, white sugar, etc.; others). The classification is largely based on the input from trading venues provided when these standards were developed. Once financial instruments traded on trading venues are expanded to cover new classes of underlying commodities, respective technical standards would need to be amended in order to reflect the prevailing market practice.

23. Needless to say, such changes in market practices occur relatively frequently. Therefore, consideration should be given to the development of dedicated legal instruments that would provide sufficient legal certainty to the market participants, while giving the regulators the necessary flexibility in adopting the reporting requirements (in consultation with the industry where necessary) and accompanying technical documentation (e.g. technical specifications, reporting instructions, validation rules, etc.), as relevant and when appropriate.

Section 4: Unexploited synergies amongst reporting requirements

Possible use of common international standards

24. Regulators across the globe have so far been collecting very similar information from market participants in their respective jurisdictions, however mandating different standards (e.g. business definitions, codes and technical formats). On the one hand, this has resulted in high compliance costs for global market participants; on the other, it has created challenges for authorities in understanding the information reported to them and supervising those firms. The international regulatory community has recently shown that global harmonisation of standards is possible through the development and implementation of the ISO 17442 Legal Entity Identifier (LEI). Ensuring further consistency in legal requirements and in reporting requirements across jurisdictions would bring high benefits for both reporting entities and the regulatory community.

25. In order to further ensure consistency across various reporting requirements, it would also be beneficial if the respective EU sectoral legislations explicitly referred to existing international data standards such as LEI, ISO 10962 Classification of Financial Instruments (CFI), ISO 6166 International Securities Identification Number (ISIN), and

[16] 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)

Unique Trade Identifier (UTI) and Unique Product Identifier (UPI) once these two identifiers are developed and implemented. For example, this is the approach taken for MiFIR transactions under Article 26 (6), which explicitly obliges the reporting entities to use the LEI for identifying some entities in the report: *“investment firms shall use a legal entity identifier” […] “The legal entity identifier used within the Union” [..] “shall comply with the international standards, in particular those established by the Financial Stability Board”.*

26. Taking note of the successful international achievement when developing the LEI standard, provisions under other relevant EU regulations (MiFID II/MiFIR, EMIR, SFTR, CSDR and CRA) now envisage the use of LEIs for different types of entities (trading venues, investment firms, CCPs, CSDs, CRAs, rated entities and issuers, settlement internalisers, counterparties involved in financial transactions among the others). The use of LEIs thus permits common reporting standards across various data sets, allowing for synergies among different supervisory data and being highly beneficial for supervisory activities as well as compliance efforts. Such practice could be further extended to identification of all relevant entities (under, among others, UCITS and AIFMD) that must be included in the public registers maintained by ESMA thus significantly improving the usability and relevance of data made available to market participants. Equally, the mandatory use of other international identifiers and classification taxonomy could be explored in order to foster harmonisation of the relevant data.

MiFID II commodity derivatives position reporting

27. Article 58 of MiFID II appears to require double position reporting for exchange-traded derivatives. ESMA has provided guidance to request position reports only from trading venues for exchange-traded derivatives in order to avoid duplication of records for the same derivative.

Benchmarks regulation

28. The current Benchmark Regulation does not envisage the existence of a strong identifier for the benchmarks used in the EU (regardless of the location of the administrator). This creates problems to fully identify the index and recognise it among other supervisory data (e.g. MiFID II reporting regime).

Section 5: Inconsistent/insufficient definitions in primary legislations and respective practical consequences for data reporting

MiFIR concept of ‘Traded on a Trading Venue’

29. The concept of ‘Traded on a Trading Venue’ is referred to and is particular relevant for determining the scope of a number of provisions of MiFIR:

    - Pre-trade and post-trade transparency requirements on market operators and investment firms operating a trading venue as well as for investment firms (including systematic internalisers) operating over-the-counter (OTC); and
    - transaction reporting obligations.

30. MiFIR does not require that all financial instruments traded OTC are captured by the transparency and transaction reporting obligations. In particular, financial instruments that are 'traded on a trading venue' are subject to the requirements irrespective of whether or not the transaction for the given instrument was carried out on a trading venue. While the concept of 'traded on a trading' venue seems to be self-explanatory for instruments that are centrally issued and that are fully standardised, such as shares and bonds as well as exchange traded derivatives, it is less straightforward for OTC derivatives. Given bilateral derivatives are not standardised, each time two parties enter into a contract, such contract might be slightly different from the otherwise similar one entered into by two other counterparties. For this reason, it becomes challenging to determine when a bilateral derivative that was traded OTC is different or is the same as another one traded on a trading venue. Since many provisions apply only to instruments that are considered to be traded on trading venues, the lack of a defined concept that would allow to conclude when an instrument is considered to be traded on a trading venue complicated the implementation of MiFIR reporting requirements in the context of transparency and transaction reporting.

MiFIR definition of commodity derivative

31. The legal references on what should be considered commodity derivatives across the different legal provisions that apply to those instruments do not appear to be adequately consistent. Commodities are defined in Article 2(6) of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 and are also referenced in MiFID II/MiFIR.

32. The definition of "commodity derivative" under Article 4(1)(50) of MiFID II cross references the definition of commodity derivatives in MiFIR. According to Article 2(1)(30) of MiFIR, commodity derivatives are those financial instruments defined in point (44)(c) of Article 4(1) of Directive 2014/65/EU; which relate to a commodity or an underlying referred to in Section C(10) of Annex I to Directive 2014/65/EU; or in points (5), (6), (7) and (10) of Section C of Annex I thereto

33. Article 4(1)(44)(c) of MiFID II states that transferable securities means those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

34. Point (5) of Section C of Annex I of MiFID II relates to cash settled derivatives, Point (6) relates to physically settled derivatives traded on trading venues, Point (7) relates to physically settled derivatives traded outside trading venues and Point (10) relates to cash settled derivatives with other underlyings.

35. This impacted ESMA when determining exactly what should be subject to the commodity derivatives regime, for example, whether securitised derivatives needed to be considered within scope both for position limits and also for reporting of positions.

36. "Securitised derivatives" are transferable securities whose value is based upon underlying assets. However, neither MiFID I (incl. level 2 thereof), nor MiFID II/MiFIR contain a specific definition of these instruments.

37. Where the underlying asset of securitised derivatives is one (or more) commodity, these instruments are caught by the definition of “transferable securities” in Article 4(1)(44)(c) of MIFID II and are commodity derivatives under Article 2(1)(30) of MiFIR.

38. Market participants used those conflicting definitions and cross references to lobby against treating securitised derivatives as commodity derivatives.

39. Adding securitised derivatives to the position limits and reporting regimes has increased the complexity of those regimes while they do not appear to be well calibrated to deal with those instruments.

40. In addition, MiFID II Annex I Section C(10) includes a very broad categorisation of any derivatives not already included in other categories. This includes derivatives on inflation rates or economic statistics. There is legal uncertainty on which instruments should be subject to the regime. In the end, for practical purposes ESMA provided guidance clarifying that position limits should not apply to those C10 instruments not being sufficiently linked to a commodity underlying. ESMA applied the same criteria to position reporting by requesting only position reports for those C10 instruments subject to position limits.

SFTR and EMIR

41. SFTR and EMIR share many commonalities. The overarching goal of the two regulations is to increase the transparency of the securities financing markets and of the derivative contract markets, respectively. Both regulations leverage on the same reporting mechanics, requiring the counterparties to report the conclusion of a securities transaction/derivative contract as well as any subsequent lifecycle events. Under both regimes the counterparties are required to submit the reports to a registered Trade Repository, which subsequently grants access to such reports to one or more relevant authority.

42. At the same time, several discrepancies can be observed between the definitions and requirements set out in the two regulations. To some extent the existence of such discrepancies could be justified by the fact that SFTR entered into force in 2015, that is 3 years after EMIR, allowing the legislators to build on the lessons learnt from the implementation of EMIR and improve the reporting requirements, where relevant. At the same time such improvements should also be consistently included in EMIR in the course of its review. ESMA is closely observing the review of EMIR under the Commission's REFIT programme and noted that the proposals made do not address sufficiently the existing differences between the two regulations. For instance:

    - Definitions: Status of CCP – Under EMIR, the definition of a financial counterparty (Article 2(8)) does not include a CCP. Furthermore, the Article 9 of EMIR establishes the reporting requirements for “Counterparties and CCPs”, implying that CCP is not a counterparty under EMIR. On the contrary, SFTR (Article 3(3)(g)) explicitly includes a CCP under the category of a financial counterparty.

    - Reporting framework: Firstly, the financial counterparties (FC) under EMIR, thus excl. CCPs would only be responsible for reporting on behalf of small non-financial counterparties (NFCs) the OTC trades. CCPs, on the contrary, would be obliged to report on behalf of both counterparties only the ETD trades. Given that an NFC would still need to provide certain information to the entity reporting on its behalf, in practice it would mean that in a case of an NFC that operates both in securities and derivatives markets, such NFC would need to establish separate information flows (adhering to different technical requirements) under the two regulations. Similarly, the burden for FCs would be increased, as they would need to establish different mechanisms under the two regulations to determine their obligation to report on behalf of another entity. Secondly, a small NFC that would be exempted from the reporting obligation is determined differently under EMIR and SFTR. SFTR relies on the definition of smaller non-financial of the EU Accounting Directive (2013/34/EU), whereas EMIR leverages on the concept of NFC-, i.e. non-financial counterparty not exceeding the clearing threshold. This misalignment further hampers the entities' possibilities to use the same reporting infrastructures and operational processes under both regimes.

CRA regulation

43. In comparison with other pieces of sectoral legislation, the CRA Regulation contains a limited number of supervisory reporting requirements[17]. These requirements are however hampered in their effectiveness by a number of issues such as the absence of relevant Level 1 definitions for terms used in the Regulation[18], open or partial Level 1 definitions for terms used in the Regulation[19], cross references to definitions used in other EU texts[20] or definitions that are inconsistent with other jurisdictions[21]. Cumulatively these lead to difficulties for ESMA to collect all the information it needs for supervisory purposes. The impact of these issues is also not strictly limited to supervisory reporting and can have knock on effects for the application of some non-reporting requirements.

Conclusions

44. ESMA welcomes the Commission's initiative to carry out a fitness check of the EU reporting requirements in the financial sector in order to analyse the shortfalls associated with supervisory reporting. Equally, ESMA supports the objective to ensure that EU reporting requirements provide supervisors and regulators with the relevant high quality data and timely information to help them fulfil their mandates, while at the same time keeping the administrative and compliance costs and burden for firms to a minimum.

45. Taking into account specific examples provided in the earlier sections, ESMA believes that in order to foster the achievement of the set objective it is important to consider the following measures:

    a. Providing for sufficient timelines in order to develop and implement any new or amended reporting requirements;

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[17] The principal source of these supervisory reporting requirements are the two Regulatory Technical Standards: Commission Delegated Regulation (EU) 2015/1 and Commission Delegated Regulation (EU) 2015/2)
[18] Terms such as "preliminary ratings, "error", "private ratings".
[19] Definitions such as "shareholders", "ancillary services".
[20] Definitions such as "issuer".
[21] Definition such as "Solicitation Status".

b. Ensuring the precision and consistency of empowerments for the development of regulatory implementing measures on reporting;

c. Introducing dedicated and appropriate legal instruments for developing the necessary reporting instructions and accompanying technical documentation;

d. Exploiting synergies amongst reporting frameworks, including the use of common reporting standards across different data sets;

e. Ensuring the precision and consistency of the relevant definitions in primary legislations;

f. Considering the development of the consistent and coherent approach to data reporting legislative initiatives across various legislative frameworks.

46. Such measures would contribute to ultimately alleviating the compliance burden on the industry while improving the quality and usefulness of the data provided for regulatory purposes.