



European Securities and
Markets Authority

Report

Supervisory measures and Penalties under Articles 4, 9, 10 and 11 of EMIR





Acronyms

Countries:

| | |
|----|--------------------|
| AT | Austria |
| BE | Belgium |
| BU | Bulgaria |
| CZ | The Czech Republic |
| DK | Denmark |
| DE | Germany |
| EE | Estonia |
| EL | Greece |
| ES | Spain |
| FI | Finland |
| FR | France |
| HR | Croatia |
| HU | Hungary |
| IE | Ireland |
| IS | Iceland |
| IT | Italy |
| LI | Liechtenstein |
| LU | Luxembourg |
| LV | Latvia |
| MT | Malta |
| NL | Netherlands |
| NO | Norway |

| | |
|----|----------|
| PL | Poland |
| PT | Portugal |
| RO | Romania |
| SE | Sweden |
| SI | Slovenia |
| SK | Slovakia |

NCAs that contributed to the Report

| | |
|--------|---|
| ACPR | Autorité de Contrôle Prudentiel et de Résolution (FR) |
| AFM | Dutch Authority for Financial Markets (NL) |
| AMF | Autorité des marchés financiers (FR) |
| ASF | Autoritatea de Supraveghere Financiară (RO) |
| BaFin | Federal Financial Supervisory Authority (DE) |
| BdI | Banca d'Italia (IT) |
| BdP | Banco de Portugal (PT) |
| BNB | Bulgarian National Bank (BU) |
| BoG | Bank of Greece (EL) |
| CBol | Central Bank of Ireland (IE) |
| CAA | Commissariat aux Assurances (LU) |
| CNB | Czech National Bank (CZ) |
| CMVM | Comissão do Mercado de Valores Mobiliários (PT) |
| CNMV | Comisión Nacional del Mercado de Valores (ES) |
| Consob | Commissione Nazionale per le Società e la Borsa (IT) |
| Covip | Commissione di vigilanza sui fondi pensione (IT) |
| CSSF | Commission de Surveillance du Secteur Financier (LU) |

| | |
|-------|---|
| CySEC | Cyprus Securities and Exchange Commission (CY) |
| DFSA | Danish Finanstilsynet (DK) |
| DNB | Dutch Central Bank (NL) |
| FCA | Financial Conduct Authority (UK) |
| EF | Estonian Finantsinspektsioon (EE) |
| FCMC | Financial and Capital Market Commission (LV) |
| FFSA | Finanssivalvonta (FI) |
| FMA | Financial Market Authority (AT) |
| FMAL | Financial Market Authority Liechtenstein (LI) |
| FME | Financial Supervisory Authority (IS) |
| FSC | Financial Supervision Commission (BU) |
| FSAS | Finansinspektionen (SE) |
| FSMA | Financial Services and Markets Authority (BE) |
| FSAN | Finanstilsynet (NO) |
| HANFA | Croatian Financial Services Supervisory Agency (HR) |
| HCMC | Hellenic Capital Market Commission (EL) |
| HNB | Croatian National Bank (HR) |
| IVASS | Istituto per la vigilanza sulle assicurazioni (IT) |
| KNF | Komisja Nadzoru Finansowego (PL) |
| MFSA | Malta Financial Services Authority (MT) |
| MNB | Central Bank of Hungary (HU) |
| NBB | National Bank of Belgium (BE) |
| NBoS | National Bank of Slovakia (SK) |
| OeNB | National Bank of Austria (AT) |
| SMA | Securities Market Agency (SI) |



Other acronyms:

| | |
|------|--|
| CCP | Central counterparty |
| FC | Financial counterparty according to Regulation (EU) 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR). |
| DQR | Data Quality Review |
| ADQR | Annual Data Quality Report |
| LEI | Legal Entity Identifier |
| NCA | National Competent Authority |
| NFC | Non-financial counterparty according to Regulation (EU) 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR). |
| OTC | Over the counter |
| PTSC | Post-trading Standing Committee |
| RTS | Regulatory Technical Standards |
| TR | Trade Repository |

Legislation:

| | |
|------------------|--|
| CRR | Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 |
| EMIR | Regulation (EU) 648/2012 on OTC derivatives, central counterparties and trade repositories |
| EMIR Refit | Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) 648/2012 |
| MIFID II | Directive 2014/65/EU on Markets in Financial Instruments |
| RTS on margining | Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 |

Contents

| | |
|---|----|
| Executive Summary | 7 |
| 1 Background..... | 9 |
| 2 Scope..... | 10 |
| 3 Source of the information | 11 |
| 4 Findings | 12 |
| 4.1 Entities under EMIR scope by country..... | 12 |
| 4.2 NCAs structure and allocation of competences | 13 |
| 4.3 NCAs' interaction with market participants | 15 |
| 4.3.1 Interactions related to Brexit:..... | 16 |
| 4.4 Sources of information checked by the NCAs..... | 18 |
| 4.4.1 Data from Trade Repositories | 19 |
| 4.4.2 Data directly submitted by counterparties..... | 24 |
| 4.5 Supervisory tools..... | 27 |
| 4.6 Supervisory activity | 29 |
| 4.6.1 Clearing obligation | 29 |
| 4.6.2 Risk mitigation techniques for non-cleared OTC derivatives..... | 35 |
| 4.6.3 Third countries | 40 |
| 4.7 Investigations conducted..... | 41 |
| 4.7.1 Investigations regarding the clearing obligation (Article 4)..... | 42 |
| 4.7.2 Investigations regarding the reporting obligation (Article 9) | 43 |
| 4.7.3 Investigations regarding NFCs (Article 10) | 47 |
| 4.7.4 Investigations regarding the risk-mitigation techniques (Article 11)..... | 48 |
| 4.7.5 Investigations focused on different aspects of EMIR combined | 49 |
| 4.8 Supervisory and Enforcement competences and uses | 49 |
| 4.8.1 Supervisory and enforcement competences..... | 49 |
| 4.8.2 Recommendations and warning letters issued | 53 |
| 4.9 Penalties and Sanctions..... | 57 |
| 4.9.1 Quantification of administrative fines | 58 |
| 4.9.2 Criminal Sanctions | 62 |
| 4.10 Covid-19 pandemic | 64 |
| 4.11 Assessment Reports | 66 |
| 5 Conclusions..... | 66 |

| | | |
|---|--|----|
| 6 | Annexes | 71 |
| | Annex I: Questions of the survey on supervisory measures and penalties | 71 |
| | Annex II: Tables with granular information on the different countries | 83 |
| | Annex III: Summary of sanctions and its aggregated amounts by country..... | 91 |

Executive Summary

Reasons for publication

ESMA is tasked under EMIR to draft and submit an annual report on the penalties imposed by competent authorities, including supervisory measures, fines and periodic penalty payments, to the European Parliament, the Council and the Commission.

EMIR entered into force in 2012 and its obligations, as further defined in several subsequent Commission Delegated Regulations, have since gradually become applicable and enforced. This is the third report on supervisory measures and penalties under EMIR that ESMA submits to the European Parliament, the Council and the Commission. Notably, this third exercise covers the period from January 2019 to December 2020 and takes into account the changes introduced to EMIR via the EMIR review (Refit) in 2019 as well as different aspects impacting EMIR-related activities such as Brexit preparations and the Covid-19 pandemic outbreak.

Content

This third report highlights among other aspects, an increase in the use of EMIR data for supervisory purposes, greater clarity on which counterparties are subject to the clearing obligation thanks to the expanded clearing threshold notification mechanism introduced under EMIR Refit, some challenges in looking at group activities, a need for more supervisory measures regarding third country entities with a link to the EU and the benefits of exchanges among NCAs, facilitated by ESMA with initiatives such as workshops to discuss supervisory cases. In addition, the report also includes reference to enforcement cases, which for the period covered, resulted in the imposition of sanctions in France, Italy, Liechtenstein and Luxembourg.

The present report is structured in 5 Sections and 3 Annexes.

Section 1 describes the background for this exercise.

Section 2 sets out the scope and focus of the report.

Section 3 details the sources of information used for the analysis in the report.

Section 4 covers the findings of this report, divided in 11 subsections dedicated to:

(i) Entities under the EMIR scope by country; (ii) NCAs' structure and allocation of competences; (iii) NCAs' interaction with market participants; (iv) Sources of information checked by the NCAs; (v) Supervisory tools; (vi) Supervisory activity; (vii) Investigations conducted; (viii) Supervisory and enforcement competences and uses; (ix) Penalties and sanctions; (x) Covid-19 pandemic; and (xi) Assessment Reports.

Finally, Section 5 presents the conclusion. Additionally, Annex I includes the questions in the survey used as the baseline for the preparation of this report and Annex II provides tables with detailed information on the answers provided by NCAs. Annex III shows a table with a



summary of the sanctions imposed during the period covered by this report and its aggregated amounts.

1 Background

1. Under Article 85(5) of EMIR, ESMA is tasked with the development and the submission to the European Parliament, the Council and the Commission of an annual report on the supervisory measures and the penalties imposed by competent authorities, including supervisory measures, fines and periodic penalty payments.
2. Due to EMIR's phased process of implementation, the first annual report was published in June 2018¹ and a second report followed in December 2019². This report, i.e. the third one on the supervisory measures and penalties was deprioritised in spring 2020 due to the outbreak of the Covid-19 pandemic. The work for this third report was then resumed and it now covers a biannual period, from January 2019 to December 2020. The report builds on some of the findings contained in the previous reports and digs further into some other aspects, such as the supervision of risk management procedures under Article 11 of EMIR, the means used by NCAs to treat information received from trade repositories and some targeted sections on the measures undertaken by NCAs regarding Brexit preparations and the Covid-19 pandemic response.
3. As in the previous exercises, for the preparation of this report, ESMA developed and launched a survey that was responded to by NCAs. A total of 28 countries³ (including the EEA countries) provided responses. The responses to the survey are the source of the information that fed into this report and any conclusions drawn stem from NCAs contributions. Due to the different time periods (in particular length) analysed in the previous and in the current report (the first one focused on the period since the entry into force of EMIR until December 2017 while the second focused only on 2018 and the third is bi-annual), some of the results are thus not exactly comparable. As a result, the main aim of this report is to highlight certain findings more than running a comparison exercise versus the previous reports. Nevertheless, some general aspects can still be put into perspective with some results of a more comparable nature.
4. In addition, and as a novelty with respect to the previous reports, this one also contains information gathered through a workshop organised by ESMA with the NCAs of ESMA's

¹ [esma70-151-1400_report_on_supervisory_measures_and_penalties_emir.pdf \(europa.eu\)](#)

² [esma70-151-2820_2nd_annual_report_on_supervisory_measures_and_penalties_under_emir.pdf \(europa.eu\)](#)

³ NCAs from Lithuania and Cyprus did not contribute.

Post Trading Standing Committee on supervisory case discussions relating to some of the provisions of EMIR in scope of this report.

2 Scope

5. This Report on supervisory measures and penalties focuses on the provisions related to:
 - the clearing obligation (Article 4 of EMIR);
 - financial counterparties (Article 4a of EMIR);
 - the reporting obligation (Article 9);
 - non-financial counterparties (Article 10); and
 - the risk mitigation techniques (Article 11).

6. Other EMIR requirements are not covered in this report because they are addressed in different exercises conducted by ESMA, specifically:
 - the Peer Review under Article 21 of EMIR for CCPs, which indeed already covers the supervisory activities of all competent authorities in relation to the authorisation and the supervision of CCPs;
 - the direct supervision of trade repositories under EMIR; as the penalties and supervisory measures imposed on trade repositories, such as the fine imposed by ESMA in 2016⁴ or 2019⁵ do not fall in the scope of the report as defined in Article 85(5) of EMIR; and
 - the ESMA Annual Statistical Report on EU Derivatives Markets, which provides information complementary to this report on some EMIR implementation aspects, such as statistics on clearing rates⁶.

⁴ See ESMA press release: https://www.esma.europa.eu/sites/default/files/library/2016-468_esma_fines_dtcc_derivatives_repository_limited_eu64000_for_data_access_failures.pdf

⁵ See ESMA press release: <https://www.esma.europa.eu/press-news/esma-news/esma-fines-regis-tr-sa-%E2%82%AC56000-data-access-failures>

⁶ See latest report here: https://www.esma.europa.eu/sites/default/files/library/esma50-165-1362_asr_derivatives_2020.pdf

7. With regards to the three exercises mentioned in paragraph 6, the related documents are published on ESMA's website⁷.
8. Lastly, it can be noted that ESMA published in October 2019 the results of the peer review into supervisory actions aiming at enhancing the quality of data reported under EMIR⁸. The peer review report follows the ESMA peer review methodology and thus this topic is covered with a different granularity, scope, time period, sources of information, and in summary with a different objective, than any reporting related questions covered in this report on supervisory measures and penalties. Their findings are thus not meant to be comparable or repetitive. In addition, ESMA published the Annual Data Quality Report 2020 in April 2021, focused on data quality from a supervisory and convergence perspective⁹.

3 Source of the information

9. Similarly to the approach followed with the first and second reports on EMIR supervisory measures and penalties, ESMA developed and ran a survey for this exercise in order to have greater transparency on the supervisory activities of NCAs in their enforcement practices of counterparties compliance with the EMIR requirements and thus to draw more informed conclusions. The answers to this survey then served as the basis for the development of the third report on supervisory measures and penalties.
10. The survey contained thirty-two questions with different items that allowed for multiple answers. Some of the questions also had linked sub-questions. Furthermore, the respondent NCAs could provide additional details or explain any circumstances relevant for their jurisdiction using open text boxes.
11. On this occasion the survey included specific questions on three topics: (i) issues related to the implementation of amendments to EMIR introduced by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 (EMIR Refit); (ii) measures related

⁷ ESMA's last peer review report on CCP supervisory activities of NCAs is accessible at the following address: [esma93-373-39_ccp_peer_review_report.pdf \(europa.eu\)](https://www.esma.europa.eu/sites/default/files/library/esma93-373-39_ccp_peer_review_report.pdf)

ESMA's communication on the first fine imposed on a trade repository is accessible at the following address: <https://www.esma.europa.eu/press-news/esma-news/esma-fines-dtcc-derivatives-repository-limited-%E2%82%AC64000-data-access-failures>

⁸ ESMA's Final Report Peer review into supervisory actions aiming at enhancing the quality of data reported under EMIR: https://www.esma.europa.eu/sites/default/files/library/esma42-111-4895_emir_data_quality_peer_review.pdf

⁹ EMIR and SFTR data quality report 2020: https://www.esma.europa.eu/sites/default/files/library/esma80-193-1713_emir_and_sftr_data_quality_report.pdf

to the Covid-19 pandemic crisis; and (iii) Brexit related issues in relation to the EMIR requirements.

12. The list of questions included in the survey can be found in Annex I of this report.
13. ESMA received 28 responses to the survey. This time, the NCAs from Lithuania and Cyprus did not provide contributions (and as a difference to the last exercise, the United Kingdom was not included in this exercise).
14. In addition, ESMA hosted a workshop with NCAs on 19 February 2021 which focused on the discussion of a few supervisory cases. Three different NCA's representatives presented anonymised real cases and opened a discussion on supervisory practices. This discussion was an opportunity to share experiences and to identify some best practices. Some of the workshop exchanges have been also considered in the preparation of this report.
15. Finally, it is to be mentioned that concerning the supervisory measures related to the reporting obligation, the report also leverages on the on-going work undertaken jointly by NCAs and ESMA which aims at improving the quality and usability of data that is reported to TRs such as the Data Quality Action Plan and the Annual Data Quality Report.
16. As a quick clarification before the presentation of the results, please note that percentages presented in this report have been rounded and all sections present numbers which add up to 28 countries (i.e. including the EEA countries that contributed to the survey but not the two counties that did not provide a response).

4 Findings

17. Under this section of the report, ESMA presents the findings stemming from the information submitted by the NCAs in response to the survey on supervisory measures and penalties prepared and launched by ESMA (henceforth, the survey).

4.1 Entities under EMIR scope by country

18. The survey included questions on the scope of the supervision and in particular on the number of supervised entities per country, considering financial counterparties and non-financial counterparties subject to the clearing obligation.

19. Based on the answers received, around half of the countries have NFCs subject to the clearing obligation (NFCs+). Among these countries, seven countries supervise up to five NFCs+¹⁰ and in six countries there are six or more NFCs+¹¹. Within this group, France, Germany and Luxembourg have the highest number of NFCs+. The other 15 states¹² indicated there are no NFCs+ in their jurisdiction¹³.
20. Regarding the number of FCs subject to EMIR per country, numbers vary significantly depending on the country and range from 28 FCs in Estonia to around nine thousand in Luxembourg. It is noted that while 11 countries have less than 300 supervised FCs in their jurisdiction¹⁴, 17 countries supervise 300 or more FCs¹⁵. Germany, Ireland and Luxembourg are the countries with the highest numbers of entities subject to EMIR¹⁶.

4.2 NCAs structure and allocation of competences

21. The countries contributing to this report have organised the way in which they supervise and enforce EMIR in different ways. In some countries, supervision and enforcement are undertaken by the same authority while in some others, the supervisory powers are shared by different national authorities. Likewise, some countries have split the competences to supervise and enforce EMIR depending on the specific provisions (e.g., in a given country, one NCA can be responsible for the supervision and enforcement of the clearing obligation and another NCA responsible for supervising non-financial counterparties).
22. Regarding how the EEA countries are organised and how the competences to supervise and to impose penalties under EMIR are allocated, Figure 1 illustrates whether these competences (to supervise and to impose penalties) are centralised in one single authority or allocated to several (decentralised), with competences shared between different authorities. The chart refers to the allocation of competences regarding the clearing requirements in Article 4, the reporting requirements in Article 9, the requirements for non-financial counterparties in Article 10 and the risk mitigation techniques in Article 11 of EMIR.

¹⁰ CZ (5, this is an estimation), DK (1), FI (4), IE (5), IT (1), MT (3), NO (2).

¹¹ ES (6), FR (10), DE (12), LU (30), NL (20).

¹² AT; BE; BU; EE; GR; HR; HU; LV; MT; PT; SI; SK GR; HR.

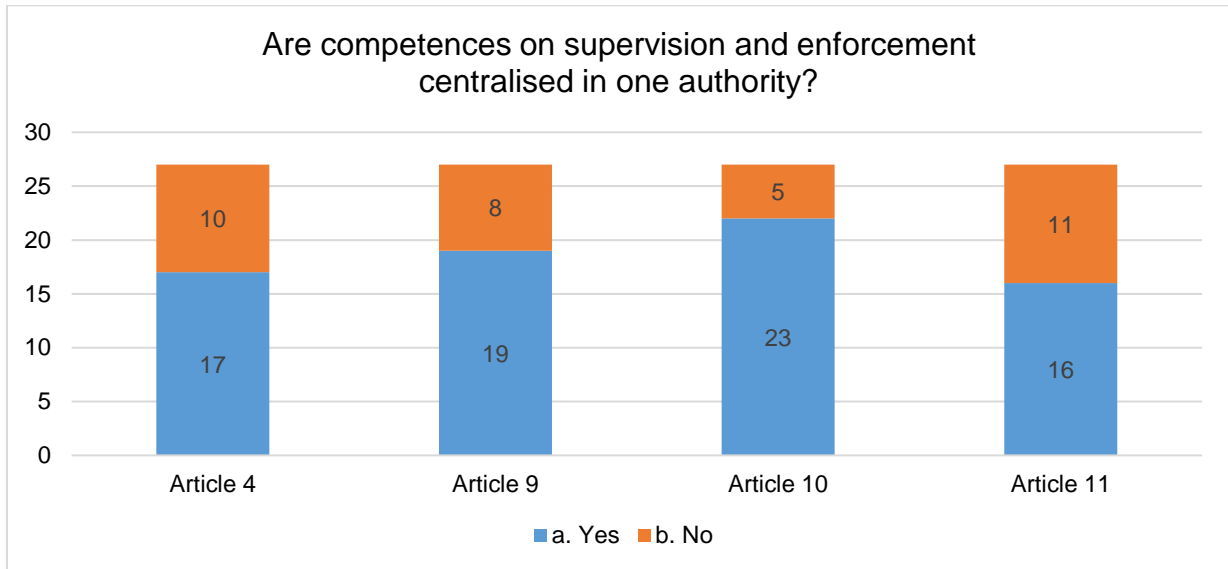
¹³ The numbers provided are rounded approximations rather than exact figures.

¹⁴ EE (28), LV (35), SI (13), PL (130), SK (160), BU (290), HR (270), CZ (240), GR (270), IS (250), MT (250).

¹⁵ BE (340), FI (440), LI (44), NL (425), RO (320), AT (940), DK (950), PT (510), ES (3,600), FR (3,300), HU (1,400), IT (1,450), NO (1,100), ES (3,600), DE (7,000), IE (8,000), LU (9,200).

¹⁶ ESMA expects to provide more detailed figures on the number of supervised FCs in the next report, including the split between FCs above and below the clearing thresholds as a result of the changes introduced by EMIR Refit.

23. Figure 1: Allocation of competences for the supervision and the imposition of penalties between NCAs in relation to provisions in Articles 4, 9, 10 and 11 of EMIR¹⁷.



24. According to the information received, and in line with previous years, in most EEA countries (67% on average¹⁸), the competence to supervise and the capacity to impose penalties in relation to Articles 4, 9, 10 and 11 of EMIR, is centralised in a single competent authority. The level of centralisation appears to be higher regarding non-financial counterparties' requirements (with 23 countries¹⁹); followed by the reporting requirements (19 countries²⁰); the clearing requirements (17 countries²¹) and the risk mitigation techniques (16 countries²²).

25. On the contrary, in around 30% of the EEA countries, competences for the supervision and the imposition of penalties in relation to Articles 4, 9, 10 and 11 are decentralised and shared by two or more NCAs. In countries where competences are split, in order to respond accurately to the ESMA survey, the NCA that is a member of the ESMA Board of

¹⁷ For detailed information on the countries, see Table 1 in Annex II.

¹⁸ The average takes into account values for Articles 4, 9, 10 and 11.

¹⁹ AT; BG; CZ; DE; DK; EE; ES; FI; FR; GR; HU; IE; IS; LI; LU; LV; MT; NL; NO; RO; SE; SI; SK.

²⁰ AT; BG; CZ; DE; DK; EE; ES; FI; FR; HU; IE; IS; LI; LV; MT; NL; NO; SE; SK.

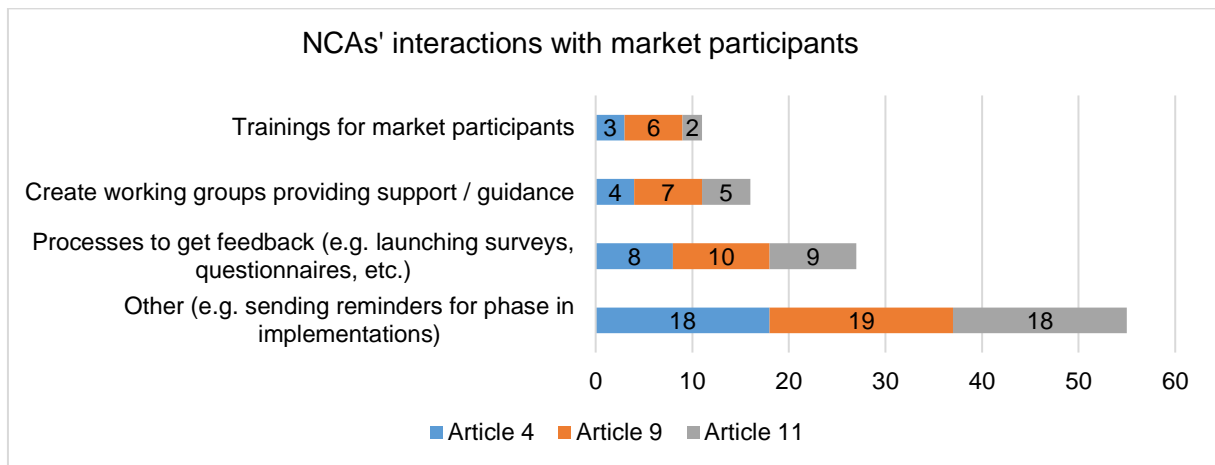
²¹ AT; CZ; DE; DK; EE; ES; FI; FR; HU; IE; IS; LI; LV; MT; NO; SE; SK.

²² AT; CZ; DE; DK; EE; ES; FI; HU; IE; IS; LI; LV; MT; NO; SE; SK.

Supervisors has reached out to the other relevant NCA(s) in their country to include their contributions for this report²³.

4.3 NCAs' interaction with market participants

26. This report investigates the different ways in which NCAs interact with and assist market participants regarding the implementation and application of EMIR provisions (Articles 4, 9, 10 and 11).
27. Figure 2: NCAs interaction with market participants²⁴.



28. From the information gathered, some practices are common for a large percentage of NCAs in the ways they interact with stakeholders and supervised entities in their respective jurisdictions and for the purpose of EMIR.
29. Among the different means used by NCAs to interact with market participants, the most frequent ones are: establishing feedback processes or channels (96.5% of NCAs use it on average for Articles 4, 9 and 11); setting-up joint working groups for providing support and guidance to market participants (57% on average); and preparing specific trainings (25% of NCAs on average) on matters related to EMIR implementation.
30. The responses to the survey indicated that overall, there are slightly more interactions in relation to the reporting obligation (Article 9 of EMIR) than for the clearing obligation or the

²³ In particular, the following NCAs were asked to contribute as they share some of the competencies are relevant to this report: OeNB (AT); the NBB (BE), BNB (BG), ACPR (FR), BoG (GR), the HNB (HR), CAA (LU), Bdl, Covip and IVASS (IT), the DNB (NL), BdP (PT), the BS and AZN (SI).

²⁴ Detailed information with the names of the countries can be found in Table 2 in Annex II.

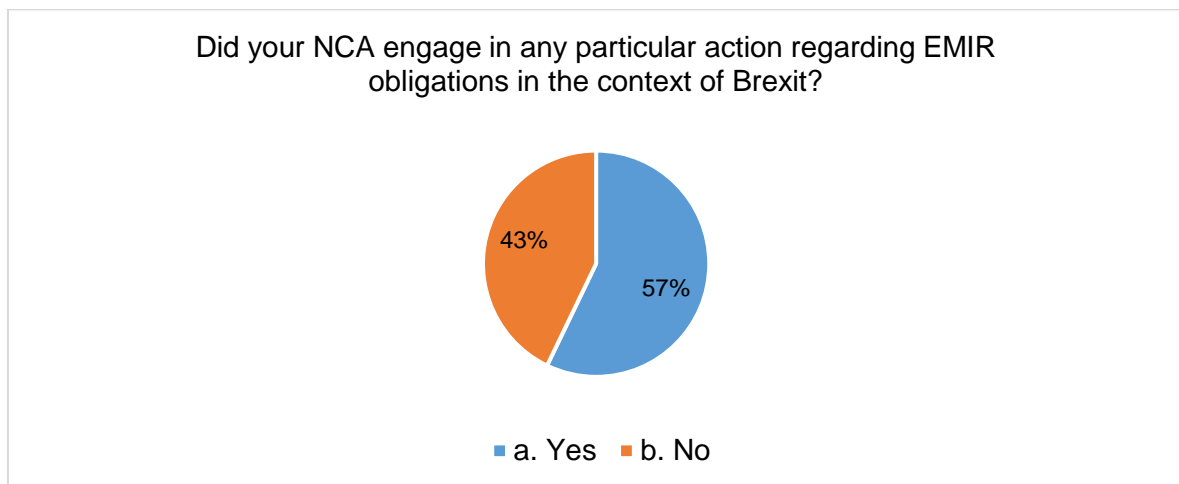
risk mitigations techniques. NCAs engaged more actively with market participants in relation to the reporting requirements by setting-up working groups, preparing specialised trainings and launching processes to get feedback from supervised entities (e.g., using surveys or questionnaires).

31. We can also observe a general increase in the number of interactions and exchanges between NCAs and their supervised entities with respect to the figures published in the last report on supervisory measures and penalties under EMIR.

4.3.1 Interactions related to Brexit:

32. The survey included one question on whether there had been any actions undertaken by NCAs in relation to EMIR obligations and Brexit. Figure 3 shows the percentage of countries (43%) who had specific exchanges and actions to facilitate or raise attention to different aspects related to Brexit.

33. Figure 3: Actions related to Brexit and EMIR obligations²⁵:



34. Among the countries who engage with market participants in preparation or to offer guidance on Brexit issues with an impact on EMIR, below more granular information on the issues tackled.
35. In Belgium, for example, the NBB had regular communications and sent warnings on the risks of Brexit, notably on the clearing obligation and on how to ensure the continuity of

²⁵ Detailed information on the names of the countries can be found in Table 3 in Annex II.

contracts if an agreement was not reached between the United Kingdom and the European Union. Further, the FSMA also spread among its supervised entities the communications issued by ESMA²⁶. In Germany, they created some working groups to provide support to market participants in the transition.

36. In France, Italy, Luxembourg, the Czech Republic and Slovenia, the NCAs contacted market participants reporting to Trade Repositories (TRs) located in the United Kingdom to ensure they were able to port their transactions and onboard onto TRs located in the EU. In addition, Consob also checked with their supervised entities whether counterparties dealing in the UK had plans to ensure clearing continuity after Brexit.
37. In Spain and Norway, the NCAs held meetings with market participants where the main topics of focus were, the portability of reporting from UK TRs to EU TRs, contract continuity and clearing via CCPs located in the UK. In addition, in Spain, the CNMV advocated for some changes in national legislation to mitigate the possible adverse effects of a no-deal Brexit and published also a public Q&A to provide clarity under such a scenario.
38. Similarly, in Luxembourg, the CSSF reached out to the main investment fund managers dealing with derivatives cleared in UK CCPs and that reported to UK TRs, to ensure that their Brexit contingency plan included EMIR requirements. Also, the CSSF raised awareness on the Brexit effects by issuing circulars and communicating directly with entities requiring assistance in the process. Thanks to this preparatory work, as well as the decision from the European Commission to grant temporary equivalence leading to ESMA's recognition of UK CCPs and the porting of all trades to TRs located in the EU, the NCA noted no significant issue was raised in Luxembourg on Brexit day.
39. In other countries such as Norway and Iceland²⁷ information on Brexit was displayed on dedicated webpages that were updated on an on-going basis.
40. In Ireland (CBoI) and in Italy (CONSOB), NCAs engaged with NFCs benefiting from an intragroup exemption from the reporting obligation with a parent entity located in the UK. These NCAs requested entities to start reporting (new as well as outstanding derivative

²⁶ For instance, ESMA issued this statement that can be found on ESMA's website:

<https://www.esma.europa.eu/document/statement-brexit-emir-and-sftr-dat>

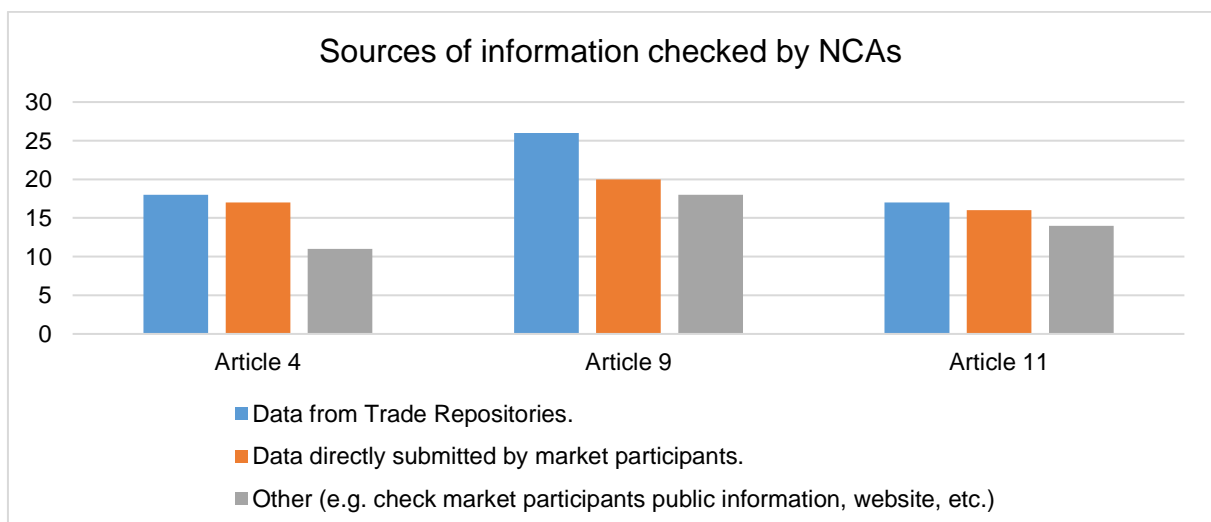
²⁷ On the website of the Ministry of Finance website and also some other supportive documentation was available on the CBI's website.

contracts²⁸) from 1 January 2021 due to the cancellation of the intragroup exemption under EMIR after Brexit. In addition, in Italy the Bdl conducted a targeted assessment of the implication of Brexit on the implications of intragroup exemptions from the clearing obligation for all significant institutions. Likewise, in relation to intragroup transactions, the CMVM in Portugal made available on its website a dedicated form for NFCs to notify the CMVM of their intention to apply for an exemption from reporting.

41. In the Netherlands and before the Brexit date, the AFM approached non-financial counterparties who benefited from an intragroup exemption from the clearing and bilateral margin requirements, asking these NFCs whether after 1 January 2021, they would request to be granted intragroup transactions. In the context of this communication, the AFM also took the opportunity to ask NFCs to confirm their status regarding the clearing obligation (i.e., if they had to be considered as NFC+ or NFC-).

4.4 Sources of information checked by the NCAs

42. The data gathered from the survey sheds some light on the sources of information used by NCAs to monitor and supervise compliance with EMIR requirements with a split regarding the clearing, reporting and risk mitigation techniques' requirements.
43. Figure 4: Sources of information checked by NCAs²⁹



²⁸ This is aligned with the ESMA EMIR Q&A TR Question 51. The document can be found following this link: https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_ga_on_emir_implementation.pdf

²⁹ More detailed information per country can be found in the detailed Table 4 in Annex II.

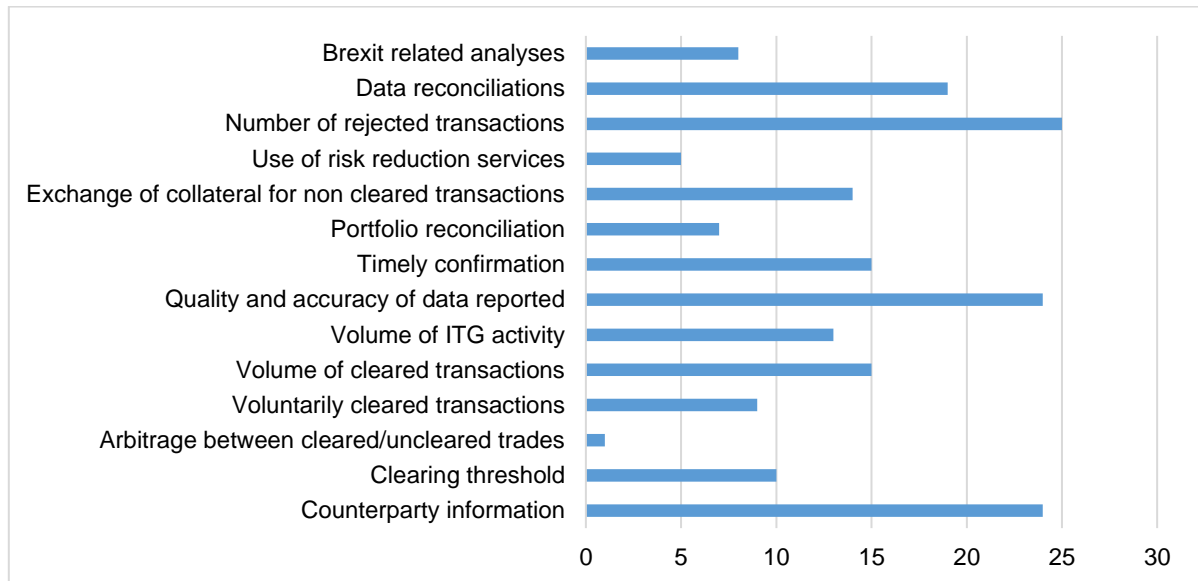
44. As it might be expected, the main two sources of information used by NCAs are:
- Data from trade repositories, which is used on average for the supervision of clearing, reporting and risk mitigation techniques' requirements by 73% of the countries contributing to the report³⁰.
 - Data directly submitted by market participants to the NCA, which is used on average for the supervision of the clearing, reporting and risk mitigation techniques' requirements by 63% of the EEA countries contributing to this report. These figures represent a significant increase from the 19% of countries who responded they checked information submitted to NCAs by market participants in the previous report.
45. In addition, on average 51% of the NCAs also reported using other types of sources for supervisory purposes. This may include publicly available data such as financial statements, information published on entities' websites and any other sources of public information such as public registers.

4.4.1 Data from Trade Repositories

46. A more granular analysis of the uses of the data gathered from the reporting to trade repositories indicates that NCAs perform multiple checks based on this information and that some are common in most of the EEA countries. Figure 5 presents different applications of TR data for EMIR supervisory purposes (in relation to Articles 4, 9 and 11).

³⁰ The use of data from trade repositories is especially higher in relation to supervisory activity related to reporting requirements in Article 9, with 93% of NCAs making use of it.

47. Figure 5: Checks performed using TR data³¹.



48. The majority of NCAs (86%) performed checks using TR data with regards to counterparty information (e.g., identification and type of counterparties and its EMIR classification). This data is used, for instance, with counterparties who fail to report while being subject to EMIR reporting requirements. This information is also used by NCAs as a first step to gather more information on any ad-hoc case analysis or for general data quality checks. Germany mentioned having used this information for mapping counterparties from different industrial sectors as a preparation of sectorial supervisory activities. Similarly, Norway used general counterparty information to analyse the use of derivatives by sector of activity. Another use reported by Italy, is to use LEI information to check that both counterparties to a transaction have identified correctly their financial or non-financial nature.

49. Around 90% of the countries performed checks using TR data on the number of rejected transactions (89%) and the quality and accuracy of the data reported (86%). Volumes of rejected transactions are part of the DQAP and are monitored on an on-going basis. Looking at how this is done in more detail, the Greek NCA reported checks on rejected reports (new and modified ones) to extract the percentage of rejected transactions against the total number of reports submitted. This information is then treated to create indicators that allow to spot higher than usual volume of rejected transaction and to calculate the correction

³¹ More detailed information per country can be found in the detailed Table 5 in Annex II.

periods needed. Italy also has a similar system and performs tests to spot rejected transactions that are not resubmitted after.

50. In addition, around 70% of the countries use TR data to monitor reconciliations of data reported to TRs. In France, the AMF compared data reported by French supervised firms with data reported by their EU counterparties. Greece and Italy monitor the ratio of unpaired counterparties and unmatching reports and look into the possible reasons for such breaks. They also check if TRs apply the reconciliation process consistently between them and verify if for the same contract the reconciliation flag provided by the two TRs is the same.
51. Finally, around 50% of the countries use TR data to supervise the volume of cleared transactions and the compliance with the timely confirmation requirement. For example, in Belgium, the FSMA performed specific checks on the timely confirmation requirement when the COVID-19 crisis broke out. More generally, France, Italy, Malta, Portugal, Spain and Greece mentioned checking compliance with the EMIR timely confirmation requirement by monitoring the execution dates and comparing them with the contracts' confirmation dates or timestamp.
52. In addition, half of the respondents use TR data to check compliance with the requirement to exchange collateral for non-centrally cleared derivatives (50%) and to monitor intragroup activity (46%).
53. Regarding the requirement to exchange collateral, in Italy the NCA monitored NFCs subject to margining requirements to check if they effectively complied, and Belgium performed analysis to assess the adequacy of margin calls and market participants' response during the first wave of the COVID pandemic. More broadly, the NCA in Ireland contacted and followed-up with counterparties that seemed not to be reporting collateral exchanges. Some NCAs indicated these checks were performed as part of the DQAP 2020 and as preparation of on-site visits. More detailed information on the analysis performed regarding compliance with the requirement to exchange collateral for non-cleared derivatives can be found under the section Risk management procedures for non-centrally cleared derivatives.
54. Regarding checks performed to supervise intragroup activity, some countries reported different uses; checks related to group investigations, to compare intragroup volume against non-intragroup activity to identify any potential arbitrage and checks in the context of

granting an intragroup exemption from reporting, from clearing or from margining requirements.

55. Furthermore, between 25% and 35% of the countries contributing to the report also use TR data to check clearing thresholds (36%), produce clearing rates (32%), undertake Brexit related analysis (28.5% countries) such as on the portability of data from UK TRs to EU TRs and portfolio reconciliation requirements.
56. With regards to clearing, TR data retrieved from TRACE³² allows NCAs to monitor cleared transactions also between parties that are not subject to clearing. This provides information on volumes of voluntary cleared transactions. This information is valuable input to analyse the use of derivatives by different sectors and market participants. On the Brexit end, Germany reported analysing relationships between German and British counterparties and Italy reported checking volumes of derivatives traded in the UK by Italian supervised entities to anticipate potential disruptions in case of a no-deal exit of the UK. In Luxembourg, the CSSF contacted major investment fund managers clearing derivatives in UK CCPs and reporting to UK TRs to ensure their Brexit contingency plans covered EMIR requirements.
57. In addition, 25% of the respondents noted using TR data to check compliance with the requirement to reconcile portfolios under EMIR. Other countries (18%) reported using TR data for checks on the use of risk reduction services such as compression or risk optimisation of portfolios (rebalance). In Italy, Consob's analysis aimed at verifying how counterparties using compression services reported compression events to TRs. For that purpose, they analysed the entire life-cycle history of a sample of contracts from the execution of the contract until the portfolio compression. Malta performed similar checks.
58. Another use of the TR data pointed out by fewer countries (3.5%) was to check whether the clearing thresholds are properly calculated and reported properly by market participants. This aspect was of particular relevance during the period covered by this report due to the changes introduced by the EMIR Review (Refit), which changed the framework for how to determine which counterparties are subject to the clearing obligation and also expanded the system of notifications to ESMA and NCAs when a counterparty or group is above the clearing thresholds. In this regard, the CBoI performed reconciliations to verify all

³² TRACE is the ESMA system allowing querying and receiving transaction level data as reported under EMIR and SFTR legislations.

counterparties had submitted their notifications to both the NCA and ESMA on the calculations of positions in OTC derivative contracts.

59. Similarly, in Italy, Consob performed checks on the OTC positions of NFCs with respect to the clearing thresholds and also investigated on the processes, system and methods used by NFCs for determining when a trade is considered as a hedge. The NCA in Portugal included checks on the calculation and identification of NFCs above the clearing thresholds in its quarterly analyses of compliance with EMIR requirements.
60. In Luxembourg and in Spain, the NCAs implemented a similar system using data reported to TRs to monitor the calculation of positions against the clearing thresholds by looking at market participant's positions for the previous 12 months. Similarly, in Malta, the MFSA performs periodic testing to determine whether an entity falls above or below the clearing thresholds. Furthermore, in Germany the NCA performed checks on the calculations of positions notified by FCs on the calculation of positions³³.
61. Another aspect mentioned was the use of TR data to supervise transactions that are not being cleared while they are subject to the clearing obligation. For instance, in Spain the NCA monitored non-cleared transactions between counterparties who are subject to the clearing obligation with focus on identifying contracts used to create an arbitrage between cleared and uncleared trades.
62. Additionally, around 25% of respondents referred to other checks performed using TR data. To name a few, in Belgium the NCA performed checks on margin requirements and cash flow projections for derivative transactions between their supervised banks. Malta compared data on open positions with transactional data to see how these were reported. Indeed, an open position should always have a corresponding new transaction, and any modifications or valuation update to the position should have a corresponding transaction submitted to a trade repository. In Portugal, the CMVM performs a quarterly analysis of the EMIR requirements, including the identification of the counterparties that are NFC+; the performance of the underlying market, the open positions of the counterparties (active, closed, open, changes), as well as data quality checks. Another example was reported by

³³ Germany also noted these checks were not yet done on NFCs activity as there is still lack of clarity on the supervisory convergence towards the way the hedging exemption should be applied for NFCs' calculation of positions when they are part of group with financial counterparties. Denmark mentioned one of the issues that remain an obstacle for the supervision of the hedging exemption in relation to NFCs is data quality and the non-accurate use of the "hedging" flag when counterparties fill out TR reports. In its turn, this makes more complex monitoring NFCs' positions with respect to the clearing thresholds.

Spain, where the CNMV used TR data to liaise with the CFTC in relation to the supervision of Spanish entities designated as Swap Dealers under US regulations.

4.4.1.1 IT tools to treat TR Data

63. The IT tools used by NCAs for the purpose of treating TR data vary significantly across countries. Nine countries mentioned the use of TRACE³⁴, some combine systems and use an SQL server or other databases to store EMIR data³⁵, other countries have developed internal IT tools to produce statistical reports (CZ, FR, DE, HU, IS, IT, LI, LU, MT, NO, NL, PL, PT, RO, ES, SE)³⁶. Other countries mentioned other systems, for example the NCA in Denmark contracted a consultancy firm to produce an analyses on the extraction and mapping possibilities of TR-data. In Estonia, the NCA uses SAP business objects and some other countries also treat TR data using Excel files³⁷.

4.4.2 Data directly submitted by counterparties

64. In relation to the data used by NCAs in their supervisory duties to monitor compliance with EMIR (in relation to Articles 4, 9 and 11), the survey investigated which are the most common types of information directly submitted by counterparties and what are the supervisory checks performed. Figure 6 presents different uses of that data for the supervision of EMIR compliance.

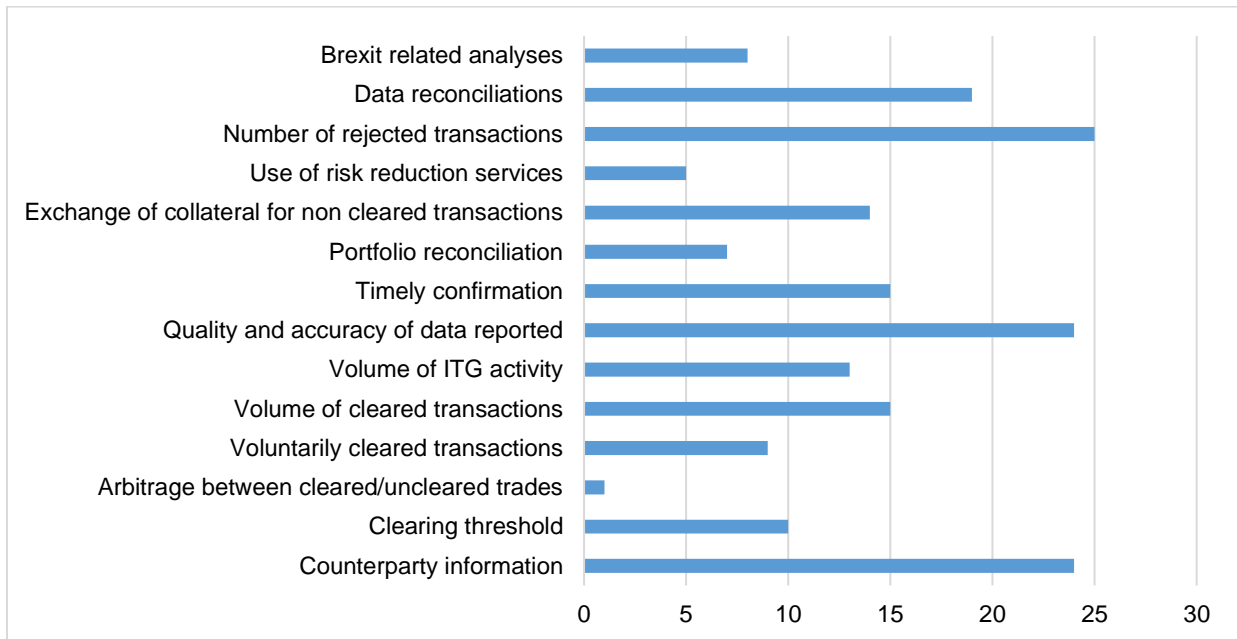
³⁴ AT, BE, BU, FI, IT, LV, LU, SK and SI.

³⁵ BE, HR, FI, HU, IE (use also a program called XSD2Code), LV and PL.

³⁶ CZ, FR, DE (with fully internal IT tools to process TR data and to produce statistical reports), HU, IS is in the process of developing an IT tool, IT (during 2020 CONSOB has put in place a dashboard to monitor EMIR data quality issues which includes several data quality checks and multi-layer graphic output for the purpose of data quality monitoring; Banca d'Italia is working on a project to make TR information available on a regular basis leveraging on TRACE system and it is expected to be ready in June 2021; similarly, COVIP has started implementing IT tools to process TR data for the purpose of supervision EMIR requirements for pension funds.), LI (they have also implemented a dashboard using Business Intelligence software for supervision purposes and a workflow-tool called NEO to handle supervisory cases), LU (the CSSF uses Power BI to process TR data and has access to automatically-generated SSRS reports via a Business Intelligence in-house development which is extracting the information from the xml files received via TRACE), MT (they combine databases with Microsoft Business Intelligence solutions, and Python to automate data quality checks on TR data), NL (SQL on a Microsoft Azure data warehouse), NO (We access the data via SQL and mainly use Python for ad hoc analysis and the data quality report), PT (they use Oracle SQL Developer and Caseware IDEA and business intelligence tools for data visualization purposes), RO is in the process of developing an internal IT tool, SK *an internal statistical reporting system), ES (they use programming tools such as Python or business intelligence tools such as Power Query or Power BI), SE.

³⁷ GR, IT, IE, LU, RO, SI.

65. Figure 6: Checks performed on data directly submitted by counterparties to NCAs³⁸



66. The information received from NCAs shows that the majority of countries 57% (consistent with the previous report, with 58%) use the data submitted to NCAs by counterparties to perform cross-checks with data reported to TRs³⁹. Regarding the documentation used for such purposes, financial statements seem to be widely used. Around 46% (consistent with the previous report) of the countries check financial statements for the purpose of supervising compliance with certain EMIR requirements⁴⁰; 43% (shows an increase from 35% in the previous report) of the countries responded that their respective authorities use information directly submitted by the supervised entities to monitor exposures⁴¹ and 61%

³⁸ Detailed information with the names of the countries can be found on Table 6 in Annex II.

³⁹ Among respondents, Portugal indicated that the CMVM cross checks the information provided by market participants under other regulations (EU or national) with the information reported under EMIR. For example, files related to the MiFIR/MiFID II transaction's reporting obligation were used to cross check with the transactions reported under EMIR. Spain reported cross-checking information reported by two different counterparties entering into a derivative to reconcile data reported by both parties.

⁴⁰ Respondents indicated different checks performed using supervised entities' financial statements; for the purpose of granting intragroup reporting, margining and clearing exemptions. Other countries such as Croatia, Germany, Italy, Romania, Spain mentioned that periodical submission of financial statements to NCAs and its assessment is part of NCAs on-going supervision.

⁴¹ For instance, in Austria the NCA checks counterparties' exposures in connection with investigations in relation to margin requirements in intragroup transactions. In Belgium, they performed granular checks using data on exposures including identification of derivatives that are proprietary and derivatives that are orders passed on from clients. The Maltese authority indicated their supervised entities are checked for financial stability purposes by, for example, doing checks on whether the entity has a high leverage and/or is over exposed in certain positions.

use it to check information on the positions held by market participants from the entity's books⁴².

67. In Germany and in Italy, NCAs requested information on exposure to market participants and information about the positions on entities' books⁴³. In Spain, data on exposures is requested from supervised entities to verify whether valuations reported are reliable and also to check compliance with exchange of collateral obligations.
68. The majority of NCAs (53.5%) also started to check the notifications received from counterparties with the calculations of their positions for the purpose of determining which counterparties are subject to the clearing obligation⁴⁴. Supervised entities are required to notify both ESMA and their NCA, which can allow for some reconciliation of the information, and thus help facilitate the direct supervision by NCAs.
69. In Austria, the clearing notifications were checked for investigations related to compliance with the changes in EMIR introduced by the EMIR review (Refit). Additionally, other countries such as Spain also use information in TRs to do calculations of entities' positions to infer whether some entities could be exceeding the clearing thresholds without notifying it.
70. Some authorities reported some other specific checks, for instance, in the Netherlands, the AFM also reviews derivative documentation from counterparties, such as framework agreements, master agreements and confirmations and organisational mandates of supervised entities. In Luxembourg, the CSSF also checked whether entities that had been granted an intragroup exemption by the NCA had made this information publicly available as required by EMIR⁴⁵.
71. Other sources of information submitted by supervised entities to NCAs for the purpose of checking EMIR compliance include auditors' reports of NFCs in Belgium, internal status

⁴² Respondents referred to some of the uses of this information. For instance, in Belgium, books are checked for the type of derivatives used and to assess liquidity levels. In Finland, Greece, Italy, Malta and Spain they also use book's information to compare it to the data reported to TRs to ensure consistency. Germany, the Netherlands, Romania and Italy reported that periodic checks of entities' books are part of their on-going supervision. Other countries mentioned books being checked also in relation to the DQR.

⁴³ In Germany this request was addressed to four entities and in Italy this check is done periodically.

⁴⁴ Notifications under Articles 4(a)(1) and 10(1) of EMIR.

⁴⁵ See article 20 of [Commission Delegated Regulation \(EU\) No 149/2013 of 19 December 2012, supplementing Regulation \(EU\) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP. Text with EEA relevance \(europa.eu\)](#)

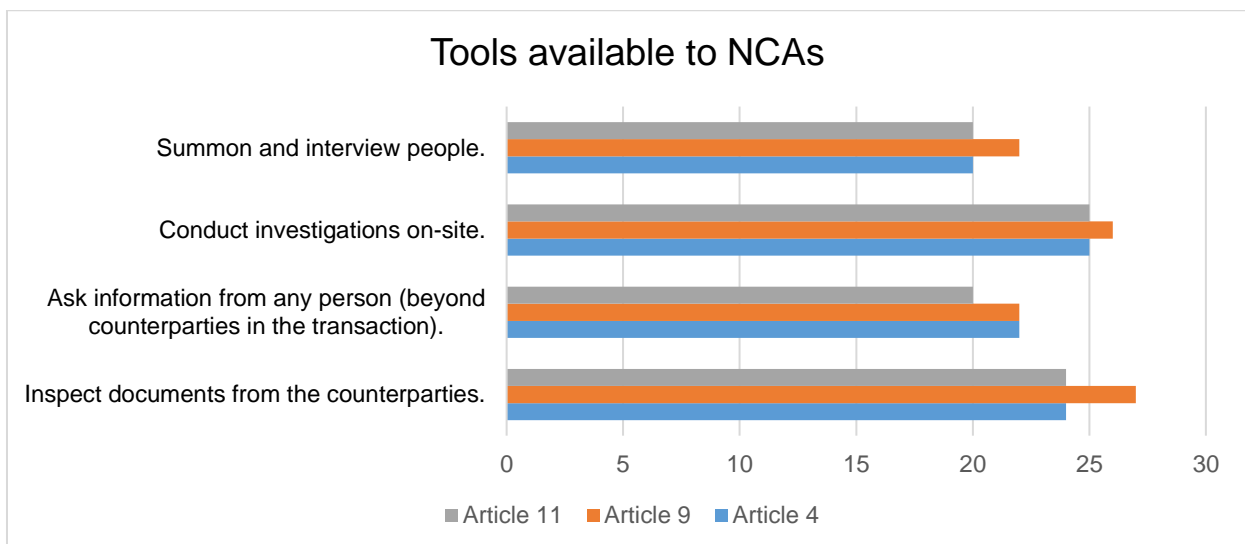
reports from large financial entities in Denmark, statistics on timely confirmations of transactions in France, detailed description of the IT systems and the processes in place in supervised entities as part of an on-going inspection by the Central Bank of Ireland, and additional information that entities submit to NCAs when requesting an intragroup exemption⁴⁶.

72. Some other countries referred to the information they collect through on-site inspections. For instance, in Malta the MFSA requires documentation on the procedures for risk mitigation techniques compliance and proof that such procedures are actually adhered to. In the Netherlands, the DNB also interviews market participants and requests further information directly from supervised entities on specific topics.

4.5 Supervisory tools

73. Based on the responses to the survey with regards to the supervisory competences and tools available for the different NCAs, Figure 7 shows the four most common supervisory tools used by NCAs to check compliance with EMIR requirements under Articles 4, 9 and 11.

74. Figure 7: Information on supervisory tools per country⁴⁷



⁴⁶ As the CSSF in Luxembourg pointed out, the information submitted by entities requesting an intragroup exemption can help identifying inconsistencies and lead to follow-up actions.

⁴⁷ More detailed information per country can be found in the detailed Table 7 in Annex II.

75. Following similar results as in last years' ESMA Report on Supervisory Measures and Penalties under EMIR⁴⁸, almost all countries responding to the survey⁴⁹ can conduct on-site investigations (88%); request from counterparties all types of documents related to clearing, reporting and risk mitigation techniques (around 90%, consistently with previous reports); and summon and interview people (with 74% of the countries).
76. Indeed, regarding on-site inspections, Greece and Romania indicated in their responses that they lack this capacity under EMIR. At the same time, Bulgaria can only go on on-site investigations when it relates to the reporting obligation under Article 9 of EMIR but cannot use this capacity in relation to compliance with the clearing obligation and risk mitigation techniques.
77. A high percentage of countries (74%, consistent with the previous report) also claim to have powers to ask information regarding clearing, reporting and risk mitigation techniques from any person (including the ones that are not counterparties to the transaction). In Belgium, for example, the FSMA may require information on EMIR compliance from external auditors. In Italy, CONSOB asked information to different market participants in relation to data reported to TRs for cleared trades and also on data reported in the notification on clearing thresholds notified to both ESMA and the NCA.
78. Notably, 15 countries⁵⁰ can use this power in all cases, as far as EMIR is concerned and regardless of concrete suspicions. The NCA in Liechtenstein indicated that any information can be requested as long as professional secrecy provisions and personal data protection provisions are observed. In the Netherlands, the NCA requests information and cross-checks data with other NCAs. This is an important supervisory aspect as some of the EMIR requirements and exemptions may need the collaboration between NCAs, especially when entities pertaining to the same group are based in different EU countries.
79. Instead, five countries⁵¹ indicate the possibility of asking documents from third unrelated parties only in the context of a suspected infringement or an on-going investigation. In France for instance, the NCA can use this power any time a significant anomaly is detected

⁴⁸ https://www.esma.europa.eu/sites/default/files/library/esma70-151-1400_report_on_supervisory_measures_and_penalties_emir.pdf

⁴⁹ Calculated as the average percentage of supervisory tools for supervising Articles 4, 9 and 11 of EMIR. See more detailed information in.

⁵⁰ DE, EE, ES, FI, HU, IE, IS, IT, MT, NL, NO, PT, LI, SK, SE.

⁵¹ FR, PL, CZ, SI; RO.

with regards to compliance with the reporting requirements (e.g. high rejection volumes or fields reported wrongly).

80. Furthermore, around 15% of the countries pinpoint to other supervisory tools, such as sending targeted questions to specific supervised entities, mandate the cessation of any activity undertaken by supervised entities (FCs, NFCs, CCPs, trading venues, etc) that is contrary to EMIR, or request the record of telephone exchanges and any traffic records as happens in Luxembourg or Portugal. In Poland, the NCA analyses data provided by counterparties under the risk assessment surveys circulated periodically.

4.6 Supervisory activity

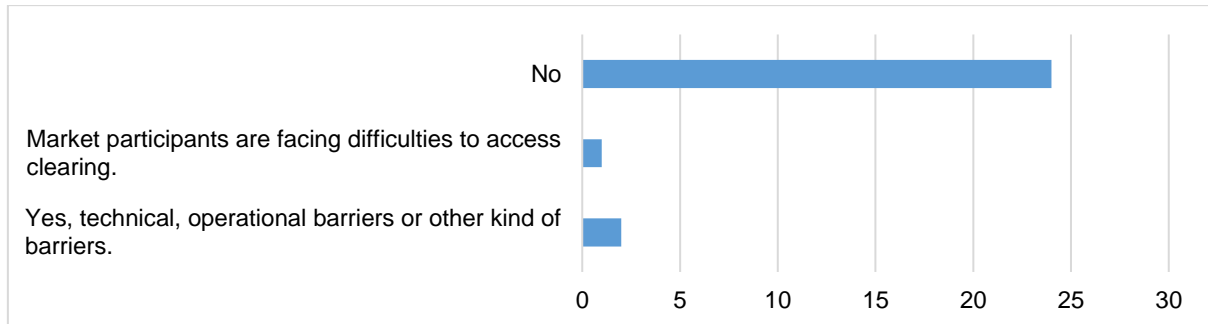
81. In this section, the report focuses on more specific supervisory initiatives addressed to check compliance with different EMIR aspects, namely the clearing obligation, the requirements for NFCs in relation to the clearing obligation and the risk mitigation techniques. The supervisory activity of NCAs related to the requirements under Article 9 of EMIR is covered in-depth by another exercise coordinated by ESMA, the Data Quality Review (DQR)⁵².

4.6.1 Clearing obligation

82. As part of the survey used to compile information to prepare this report, respondents were asked about whether NCAs had identified or been made aware of any circumstances preventing or hampering compliance with the clearing obligation.

⁵² See p. 8 of the ESMA EMIR and SFTR Data Quality report https://www.esma.europa.eu/sites/default/files/library/esma80-193-1713_emir_and_sftr_data_quality_report.pdf

83. Figure 8: Circumstances preventing market participants to comply with the clearing mandate under EMIR.



84. Based on the answers received, in the majority of countries (24) NCAs are not aware of circumstances preventing market participants from clearing. Indeed, some respondents indicated that since the entry into force of the EMIR review (Refit), allowing financial counterparties whose positions in OTC derivatives are below the clearing thresholds to benefit from a clearing exemption⁵³, these counterparties trading smaller volumes no longer have the same problem with access to clearing.

85. ESMA notes positively that some of the challenges encountered by market participants when seeking access to clearing services have decreased progressively, especially for financial counterparties trading lower volumes of OTC derivatives. This is one of the aspects of EMIR in which co-legislators and ESMA with the support of NCAs have been working on for the last years. A few legislative changes and mandates for Level 2 measures were introduced under the revised version of EMIR (Refit), such as the exemption from the obligation to clear for financial counterparties whose positions are below the clearing thresholds, a more proportionate clearing obligation for non-financial counterparties (clearing only for the asset class for which they exceed the clearing threshold), or the mandate for the Commission to develop delegated regulation on Fair, reasonable, non-discriminatory and transparent commercial terms to access clearing for which it asked for ESMA's Technical Advice⁵⁴. In addition, other regulations have also been amended to

⁵³ For the purpose on understanding how positions in OTC derivatives are calculated for financial counterparties, see Article 4(a) of EMIR as amended by Refit and the ESMA EMIR Q&A document where specific questions and answers can be found.

⁵⁴ The ESMA Final report with Technical advice on FRANDT commercial terms for clearing services (Article 4(3a) can be found here: [esma70-151-3107 final report access to clearing-frandt.pdf \(europa.eu\)](https://esma70-151-3107-final-report-access-to-clearing-frandt.pdf)

incentivise a broader access to clearing like the amendments introduced under CRR⁵⁵ with regards to the leverage ratio⁵⁶.

86. However, three countries⁵⁷ acknowledged barriers or difficulties to access clearing, especially regarding financial counterparties that are subject to clearing but have lower trading volumes. In this respect, Croatia mentioned the lack of favourable ISDA netting opinions regarding their local legal framework as a burden. France and Iceland also mentioned that small financial counterparties face technical and operational barriers that can make access to CCPs challenging. Further, Denmark, Italy and Norway mentioned the case of Pension Scheme Arrangements, for which there is ongoing working to facilitate clearing for this category of entities and for which there is a temporary exemption from clearing⁵⁸.
87. In addition, Spain indicated market participants had been concerned regarding the clearing obligation in relation to whether access clearing services through UK CCPs would have been permitted after Brexit and how.
88. Another question sent to NCAs in relation to the clearing obligation focused on whether they had prepared internal protocols for the detection of situations that would require a request for suspension of the clearing obligation. Since the entry into force of the EMIR review (Refit), ESMA can request it from its own initiative or at the request of NCAs when certain conditions are met.⁵⁹ So far, NCAs have not yet prepared internal protocols for the detection and request of suspension of the clearing obligation.

⁵⁵ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

⁵⁶ The amendment aimed at incentivising client clearing by avoiding to penalise entities who request collateral from clearing clients and pass it to the CCP.

⁵⁷ These countries are HR, FR, IS. Furthermore, MT mentioned that market participants had expressed concern regarding some difficulties to access clearing in the first implementation stages of EMIR but that later on market participants reported those barriers had disappeared.

⁵⁸ Pension funds face difficulties when it comes to post collateral in CCPs because of the nature of their business that requires to be invested and limits their liquidity.

⁵⁹ The conditions to request a suspension of the clearing obligation are detailed in Article 6a of EMIR: (a) the specific classes of OTC derivatives are no longer suitable for central clearing in accordance with the criteria referred to in the first subparagraph of Article 5(4) and in Article 5(5); (b) a CCP is likely to cease clearing those specific classes of OTC derivatives and no other CCP is able to clear those specific classes of OTC derivatives without interruption; (c) the suspension of the clearing obligation for those specific classes of OTC derivatives or for a specific type of counterparty is necessary to avoid or address a serious threat to financial stability or to the orderly functioning of financial markets in the Union and that suspension is proportionate to those aims. In addition, for cases falling under (c), ESMA should consult the ESRB before and the competent authorities before requesting the suspension from the European Commission.

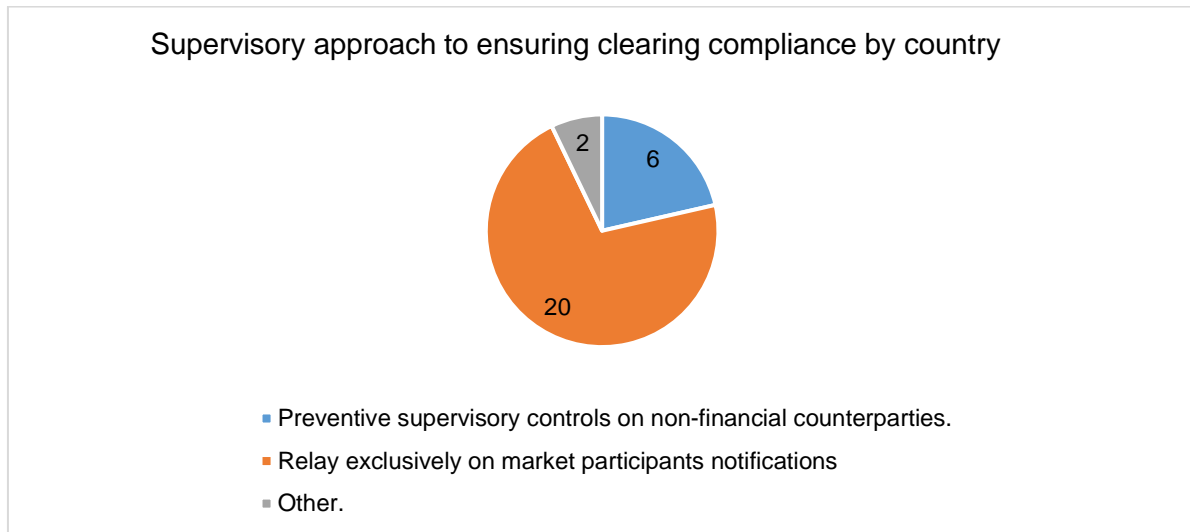
4.6.1.1 Supervision of the clearing obligation

89. In preparation for this report, ESMA has looked at the different supervisory approaches used by NCAs when supervising the clearing obligation in relation to non-financial entities that are above the clearing thresholds⁶⁰ and, therefore, are subject to the clearing obligation. According to Article 10(3) of EMIR, when calculating positions, a non-financial counterparty shall include all the OTC derivative contracts entered into by the NFC or by other NFCs within its group that are not objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity (hedging). This implies that NCAs should establish ways in which to cooperate and exchange the relevant information to understand the full group picture and the total aggregated volume of OTC derivative contracts at group level.
90. In addition, as mentioned before in this report, since the entry into force of the EMIR Review (Refit), a new category of financial counterparties was created for those entities dealing with OTC derivatives in lower volumes. Following a similar approach to the one applicable to non-financial counterparties, financials can calculate their positions against the clearing thresholds and if they do not exceed them, they are also not subject to the clearing obligation. Both financial and non-financial counterparties exceeding or no longer exceeding the clearing thresholds need to notify ESMA and their NCA⁶¹. One of the differences between the clearing threshold frameworks for financial and non-financial counterparties is the hedging exemption, which is only applicable for non-financial counterparties.
91. The survey investigated how NCAs supervised the clearing obligation for NFCs, the supervisory approach undertaken by NCAs in relation to the notifications received from both financial and non-financial counterparties for the purpose of determining whether they are subject to clearing, and the ways in which NCAs have cooperated to supervise entities pertaining to international groups with presence in more than one EEA country. Figure 9 shows the supervisory approach chosen by NCAs in relation to supervising compliance with the clearing obligation.

⁶⁰ Clearing thresholds: one billion euros for credit derivative and equity derivative contracts; three billion euros for interest rate derivative, for foreign exchange derivative and for commodity derivative contracts and others.

⁶¹ Counterparties can also decide not to calculate their positions against the clearing thresholds and they will be considered as subject to the clearing obligation for all the asset classes for which there is a mandate to clear. Counterparties choosing not to calculate their positions need to notify ESMA and the NCA of their decision.

92. Figure 9: Supervision of the clearing obligation⁶²



93. According to the feedback received, the notifications sent by entities to NCAs and ESMA are the most useful instrument when determining which entities are subject to the clearing obligation. Indeed, 71.5% of the respondents rely on these notifications for mapping counterparties under the clearing mandate. Some countries such as Malta and Spain complemented their answer explaining the regular checks they do on data submitted by entities to the NCA and reported to TRs to check that entities have notified properly.
94. In Spain, for example, the CNMV has used TR data to assess if positions reported as hedging transactions can be reasonably assumed as entered into exclusively to minimise the risk in their businesses (hedging). Denmark set up a procedure to check calculations of NFC+ becoming NFC- although the NCA reported that no such case happened in the period covered in this report. In Italy, Consob follows a very similar approach and has procedures in place to monitor volumes traded by supervised entities against the clearing thresholds. They also use TR data to assess if transactions reported for hedging purposes are significantly above the clearing thresholds and they investigate the nature and correct qualification of these transactions.
95. In addition, around 20% of the countries responding to the survey also performed preventive supervisory controls to verify if other NFCs than the ones who had notified, were above the clearing thresholds. For this purpose, NCAs indicated different checks being performed. For

⁶² More detailed information per country can be found in the detailed Table 8 in Annex II.

instance, in Belgium, certified auditors perform on-site verifications for some of the largest NFCs. This system is also in place in Germany, where auditors among others supervise the clearing thresholds and notify unreported breaches of the threshold. Similarly, in Liechtenstein, NFCs that either enter into OTC derivatives with a gross nominal value of more than 100 million Swiss francs or entered into more than 100 OTC derivatives in the past financial year, need to undergo an audit to certify they have appropriate systems in place to comply with the applicable EMIR requirements⁶³. In addition, the largest NFCs based in Liechtenstein were contacted to check their volume in OTC derivative transactions.

96. In France, the AMF relies on entities' notifications and at the same time developed a tool to calculate NFCs' positions based on TR data and taking into account the specific cases of intragroup transactions and hedging transactions. The challenges when using these type of tools are first the quality of the data reported to TRs, which in some cases is less accurate for NFCs. The other factor to consider is that positions are calculated at group level for the purpose of the clearing obligation and identifying all entities pertaining to the same group may pose some technical difficulties.
97. In Portugal, the CMVM indicated the clearing thresholds are in general high for the NFCs in their jurisdiction and they combine relying on the notifications and doing additional checks as part of their quarterly monitoring report. In 2020, as part of this monitoring exercise, they identified a couple of entities whose reports to TRs where in some cases erroneous. In addition, the CMVM intends to send questionnaires to the counterparties under its supervision exclusively regarding the clearing obligation and follow-up where needed on a case-by-case basis.
98. Other countries, such as Croatia, Estonia, Hungary, Slovenia pointed out that in their respective markets, NFCs trade low notional volumes of OTC derivatives. Therefore, most of them do not exceed the clearing thresholds. For that reason, some of these countries did not receive any notification from NFCs.

Cooperation between NCAs for the purpose of the clearing obligation

⁶³ The fields to be audited are laid down in the national Regulation on the verification of EMIR compliance by non-financial counterparties (the so-called EMIR verification regulation). In addition, to provide further detail the requirements, the FMA published the FMA-Guideline 2019/1, which sets out the procedure to conduct on-site inspections to NFCs in detail. The FMA also published the Code of Practice 2019/2 with the criteria to enable auditors to determine whether an entity is auditable under the EMIR systems audit.

99. In the case of NFCs, in their calculation they will include all the OTC derivatives entered into by all the NFCs in their group (excluding hedging transactions). In contrast, FCs will need to take into account all positions entered into by all entities within the same group. This calculation methodology implies a certain level of collaboration between NCAs when entities pertaining to the same group are based in different countries. For that reason, the survey included a specific question on the cooperation between authorities.
100. Nine of the countries⁶⁴ responding to the survey (representing 34%) have cooperation systems in place for the supervision of cross-border groups subject to EMIR requirements. Within this group of countries, Bulgaria, Croatia, Malta, the Netherlands and Romania have this cooperation between different EEA states covered under a Memorandum of Understanding (some countries also mentioned the ESMA Multilateral Memorandum of Understanding as the basis for a collaboration between authorities). The main topics on which NCAs have cooperated are intragroup exemptions for clearing, margining and reporting requirements. Furthermore, five countries⁶⁵ also mentioned they use data from the GLEIFF database to map entities pertaining to the same group for supervisory purposes⁶⁶.
101. When considering the effectiveness of the cooperation between authorities in different countries, comments were positive. NCAs consider the current cooperative framework to be effective and useful. In addition, the feedback received also praised the efforts ESMA and NCAs are doing to exchange supervisory experiences, such as the workshop organised with discussions of supervisory cases, which allow authorities from different countries to learn from each other's experiences. ESMA is planning to continue promoting this type of workshops.

4.6.2 Risk mitigation techniques for non-cleared OTC derivatives

102. Through the responses submitted by NCAs, it is apparent that in the area of risk mitigation techniques, Article 11 of EMIR, all countries seem to follow a risk-based supervisory approach combined with other spontaneous checks or periodic controls. Notably, the survey launched to gather information this year, intended to obtain more granular information on the main areas supervised in relation to risk management procedures. To be noted that the

⁶⁴ BU, HR, CZ, DK, LI, MT, NL, RO, ES.

⁶⁵ BU, CZ, MT, NL, ES.

⁶⁶ Other countries mentioned they map groups using other sources of information such as information provided directly by entities and published financial statements and organisational diagrams.

survey allowed for a multiple answer and, as can be seen in the table below, a given country could indicate one or more supervisory approaches (e.g. one country could monitor intragroup exposures on a risk-based approach and with periodic requests for information).

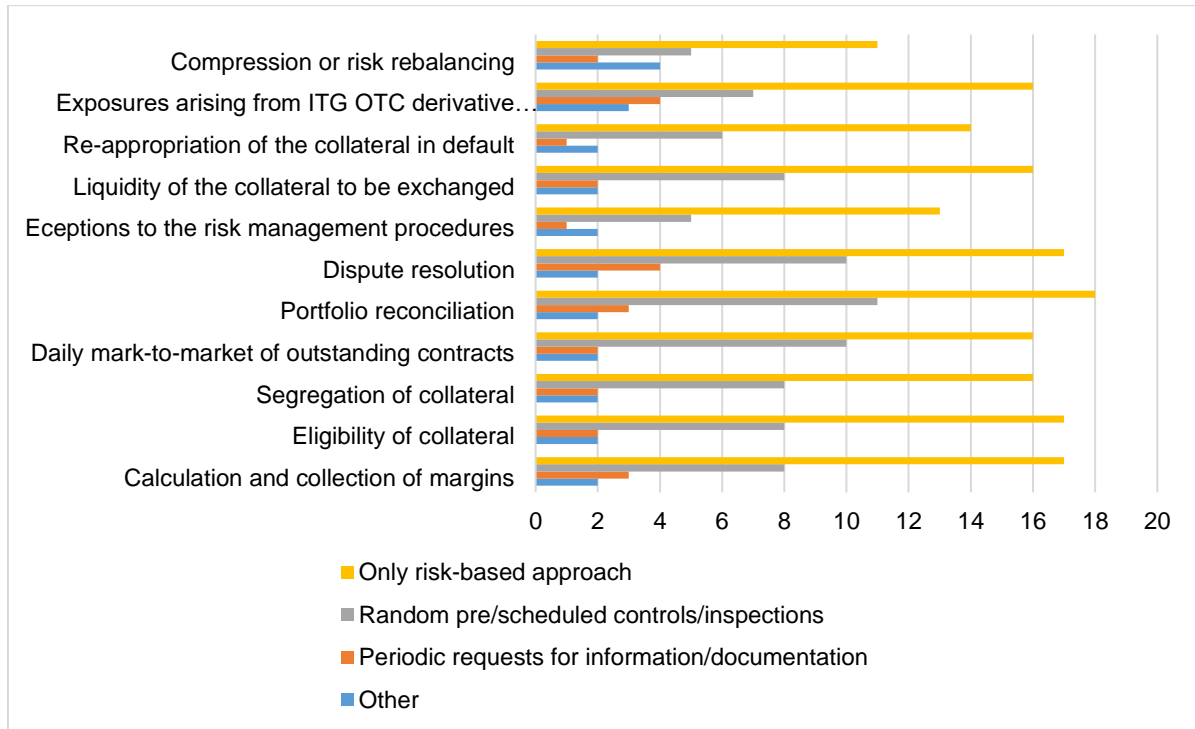
103. Figure 10 below shows more granular information on the main areas currently supervised in relation to risk management procedures. Figure 11 below presents the number of countries undertaking such supervisory actions combined with detailed information on the regulatory approaches chosen by the NCAs when supervising risk management procedures.

104. Figure 10: Supervision of risk management procedures for non-cleared OTC derivatives⁶⁷

| | Supervisory measures only following a risk-based approach | Random pre-scheduled controls/inspections to monitor compliance | Periodic requests for information/documentation to proof compliance |
|---|---|---|---|
| Timely calculation and collection of margins | 61% | 28.5% | 11% |
| Eligibility of collateral | 61% | 28.5% | 7% |
| Adequate segregation of collateral | 57% | 28.5% | 7% |
| Daily mark-to market of outstanding contracts | 57% | 36% | 7% |
| Portfolio reconciliation | 90% | 39% | 11% |
| Dispute resolution | 61% | 36% | 14% |
| Authorisation and recording of any exceptions to the risk management procedures | 46.5% | 18% | 3% |
| Periodic verification of the liquidity of the collateral to be exchanged | 57% | 28.5% | 7% |
| Timely re-appropriation of the collateral in event of default by the posting counterparty | 50% | 21.5% | 3% |
| Monitoring the exposures arising from intragroup OTC derivative contracts | 57% | 25% | 14% |
| Monitoring risk reduction services such as compression or risk rebalancing | 39% | 18% | 7% |

⁶⁷ Detailed information with the names of the countries can be found in Table 9 Annex II.

105. Figure 11: Supervision of risk management procedures for non-cleared OTC derivatives per countries⁶⁸.



106. From the information gathered, a few conclusions can be drawn. The first is that many NCAs (75%)⁶⁹ perform specific compliance checks regarding the entities' risk management procedures and that, in terms of supervisory approaches, the **risk-based approach** seems to be predominant (used by around 60% of the NCAs), followed by random controls and inspections (performed by around 50% of the NCAs) and periodic requests for information or documentation to evidence compliance with the risk mitigations techniques (around 10%). This information is consistent with the figures presented in the previous report covering 2018. Looking into a particular case, Denmark mentioned the DFSA applies a risk-based supervisory approach to all of the above requirements and due to these checks, started some investigations to look closer into different EMIR compliance topics.

107. In addition, the areas where a majority (at least 50%) of NCAs have put more supervisory efforts are the following: portfolio reconciliation, eligible collateral and the timely calculation and collection of margins, dispute resolution; adequate segregation of collateral, daily mark-

⁶⁸ Detailed information on the countries can be found in Table 9 in Annex II.

⁶⁹ Only few countries did not undertake supervisory actions regarding compliance of risk mitigation techniques during the period covered in this report: AT, BU, GR, IE, LU, PO, PT.

to market of outstanding contracts, periodic checks on the liquidity of the collateral to be exchanged, exposures arising from intragroup activity, and checks on the timely reappropriation of collateral in the event of default of the posting counterparty.

108. Furthermore, when looking into the **scheduled random controls and checks** performed by NCAs, around 40% of the NCAs focused on aspects related to portfolio reconciliation, daily mark-to market of outstanding contracts and dispute resolution. In addition, around 30% of the NCAs also performed scheduled checks on the timely calculation and collection of margins, the types of collateral considered eligible and on the liquidity verification of the collateral exchanged. For instance, in Malta the NCA provided information on how the NCA schedules onsite inspections for a list of entities at the beginning of the year. That list of entities is developed following a scoring of risk and entities which had been visited in the prior year are in general removed. As part of the onsite inspection, any documentation related to risk mitigation techniques, reporting delegation, clearing thresholds calculation and clearing arrangements are obtained from the entity. Furthermore, entities are asked for proof that they comply with the clearing obligation and risk mitigation techniques.
109. Around 10-15% of the NCAs also mentioned they launched **periodic requests** for information to supervised entities to check compliance with the calculation and collection of margin requirements, portfolio reconciliation, dispute resolution processes and to monitor the exposures arising from intragroup activity on OTC derivative contracts.
110. Regarding compliance with the risk mitigation techniques requirements, and to refer to some cases, the DFSA in Denmark conducted an investigation checking entities' compliance with the risk management procedures. These compliance measures are also monitored on an annual basis by the DFSA. In Iceland, the CBI also has scheduled some investigations to check procedures and compliance with Article 11 later this year.
111. Additionally, Germany mentioned that some of these aspects are checked by the auditors in charge of EMIR compliance supervision, including all points in the table except for checks related to risk reduction services⁷⁰.
112. A closer look into the supervision of risk reduction services such as compression, shed some light on what the means and approaches employed by NCAs for that purpose are.

⁷⁰ According to Bafin, in Germany, all NFCs which entered into OTC contracts with a volume of more than 100 OTC contracts or more than 100 million euros of gross national in a fiscal year are subject to the external audit.

Estonia, for instance monitors the use of risk reduction services using data retrieved from the TRACE. This information has been useful in determining which entities do perform these exercises to reduce risk in their portfolios. Similarly, Italy and Slovakia monitored risk reduction services mainly through on-site visits in the context of an investigation. In addition, Banca d'Italia interviewed a group of supervised entities regarding the emergence of new services provided in the area of portfolio compression and rebalancing risk in portfolios to understand to which extent this is being used by market participants.

113. Liechtenstein is developing tools that will allow to place emphasis on the monitoring of risk reduction services through more detailed analyses of transaction data. In the Netherlands, the NCA follows developments in this area but it has not been a priority in terms of supervision to date.
114. In Spain, the CNMV monitors the contract rates resulting from compression and sends enquiries to entities about the use they make of risk reduction services. As a result of this follow-up, the CNMV noticed that only the largest entities use risk reduction services. In Italy, the BDI monitors risk reduction services as part of the supervision of collateral management activities and checks the efficiency of the processes in place and the adequacy of the risk compression activities. The BDI initiated an inquiry to understand the use of risk reduction services as a follow-up action after an on-site inspection to one of their supervised entities. In addition, the NCA has also worked on a specific analysis in relation to compression and its implication in the context of the UK leaving the European Union.
115. In Germany, random samples of portfolio compression are covered by the review from auditors signing the entities' annual accounts. In Belgium, risk reduction services are also part of the auditors' checks. Moreover, the NCA contacted their supervised entities to understand whether they use risk reduction services, how they do it and which processes and vendors they use for such services. Lastly, besides the practices mentioned, other countries such as Denmark indicated that the NCA conducts back-office investigations addressed to supervised entities' compliance with risk management procedures.

4.6.3 Third countries

116. The survey also investigated any specific measures undertaken by NCAs during the period covered by the report, i.e. from January 2019 to December 2020, in relation to third country entities trading contracts with substantial effect in the Union, which would be subject to the

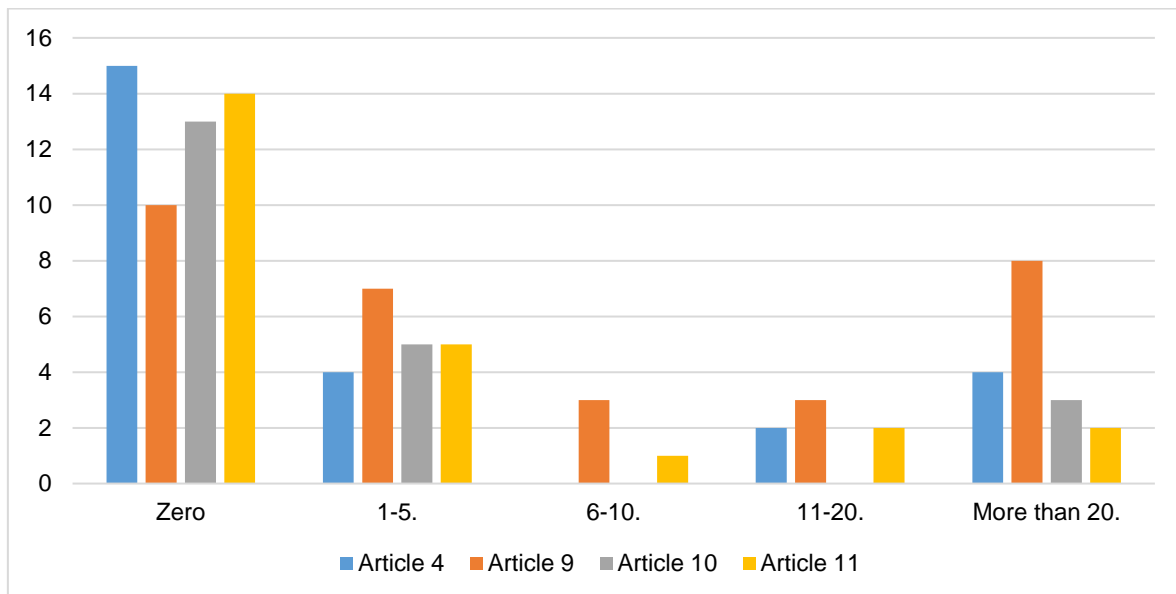
clearing obligation if established in the EU. The question was aimed at understanding how NCAs have put in place any strategy to detect potential clearing evasion, and thus maybe identify best practices. However, similarly to the findings in the previous report, only a few comments were received on the practices in this respect. Notably, most countries did not conduct any specific action in this direction during the period covered in the report. Some countries, like Croatia mentioned the exposure of their supervised entities to third countries is not significant and therefore there was no need to carry out targeted supervisory activities in this regard.

117. Other countries like Germany, noted that the NCA looked into the trading activity between supervised entities and third country entities as part of four requests for information addressed to supervised entities on clearing. Similarly, in Spain, the CNMV notes that in some cases this information is requested from supervised entities. In Malta, the MFSA performs checks on third-country entities and possible clearing evasion through on-going supervision of TR data.
118. It appears that to date, the supervision of third country entities trading with substantial effect in the Union was not considered a supervisory priority. It would appear that there might be a need to follow-up further on the assessment of this aspect in relation to the clearing mandate following the UK departure from the EU and its new status as a third-country. In this context, the supervision of OTC derivative contracts traded between EU entities and third-country entities becomes more relevant and the supervisory approach to be followed might need to be re-assessed by EU NCAs.

4.7 Investigations conducted

119. The survey asked for information on the investigations conducted by NCAs during the period covered in this report (from January 2019 to December 2020). Figure 12 presents the investigations conducted with a break-down of the EMIR requirements involved.

120. Figure 12: Investigations conducted between January 2019 and December 2020⁷¹.



121. From the answers received, the area where more countries conducted investigations is on the reporting requirements, followed by the clearing obligation, the risk mitigation techniques, and non-financial counterparty requirements. Seven countries did not conduct any investigation during the period covered in the report.

4.7.1 Investigations regarding the clearing obligation (Article 4)

122. Regarding requirements related to the clearing obligation, the following NCAs carried out some investigations at some point between January 2019 and December 2020: Austria, Germany, Ireland, Belgium, Croatia, Italy, Slovenia, Slovakia, Spain, Luxembourg.

123. To name a few cases, in Croatia, the CNB carried out 3 investigations regarding the calculations of positions in OTC derivatives for the purpose of determining if a financial entity is subject to the clearing obligation. On the same topic, CONSOB also investigated clearing threshold's notifications by asking additional information to the submitters. Likewise, in Slovakia the ATVP opened an investigation and sent a request for substantial information in relation to data submitted by the entity to the TR and the clearing obligation. Those investigations were dealt with and are closed at the moment.

⁷¹ Detailed information on the country names can be found in Table 10 in Annex II.

124. On matters connected to the clearing obligation, in Ireland, the Central Bank of Ireland conducted an analysis to monitor entities that notified they were subject to the clearing obligation. The checks included the instruments traded and clearing volumes. In addition, as part of Brexit monitoring, an ongoing analysis has been conducted, in relation to instruments mandated to clear and to check where entities were clearing those transactions. In Austria, the NCA reported 23 investigations, some related to the calculation of positions by entities for the purpose of the clearing obligation and other investigations related to exemptions from the clearing obligation and intragroup exemptions. All these investigations are closed.

4.7.2 Investigations regarding the reporting obligation (Article 9)

125. Some NCAs, Austria, Belgium, Bulgaria, Croatia, Germany, France, Hungary, Italy, Ireland, Latvia, Liechtenstein, Luxembourg, Norway, Portugal, Slovakia, Spain, Malta, the Netherlands and Slovenia reported having carried out **investigations** from January 2019 to December 2020 for matters connected to the reporting obligation.

126. Looking at more granular information, in Bulgaria 5 investigations concerned investment firms. The NCA performed checks using TRACE and in the register of transactions of the relevant entities. In Croatia, the CNB conducted one investigation as part of an on-site inspection focused on the treasury of one of their supervised entities. The investigation concluded there were no breaches of EMIR and no recommendations were issued. Similarly, in Latvia, two investigations were conducted on the compliance with the reporting obligation as part of two on-site inspections and no breach was identified. In Slovenia, the NCA sent a request for substantial information to one of their supervised entities regarding data reported to the TR.

127. In Greece, the NCA reported one investigation on an ad hoc basis concerning the DQR exercise of 2019. The investigation checked the rejected reports for three financial and two non-financial counterparties, the non-paired and non-matched trades for four financial and one non-financial counterparties, and the completeness and accuracy of the data reported for outstanding trades for two financial and three non-financial counterparties. The investigation envisaged the request of specific information from supervised entities and after its analyses the NCA considered the issue clarified and concluded no penalties had to be imposed.

128. In Liechtenstein there was one investigation that led to an enforcement case where a credit institution was found to be in breach of the reporting obligation and not reporting a number of transactions. This case was presented by the NCA at a workshop on supervisory cases organised by ESMA and allowed for discussion among the NCAs on the checks performed and on the particularities of the regulatory and supervisory framework in Liechtenstein. As a result of the investigation, the entity was fined and it addressed the misreporting.

129. In France, the AMF conducted six on-site inspections, five of which followed a shorter procedure and focused on the supervision of a single regulatory aspect. These inspections are known as “SPOT” (*Supervision des Pratiques Opérationnelle et Thématique* or operational and thematic supervision of practices in English). These SPOT investigations were carried out as a follow-up to previous investigations at five investment service providers. The focus was on the compliance with the reporting obligation under EMIR and covered the general organisation of the implementation of EMIR reporting and the governance regarding the exhaustiveness and quality of reporting to the trade repository. The information gathered in the context of the inspections allowed to identify areas of improvement and also good practices undertaken by the entities investigated. Some of the good practices found were, for instance:

- Implementation of a control grid under the responsibility of the Compliance officers, to ensure that the regulatory obligations under EMIR are monitored;
- Inclusion of the reporting delegated to third parties as an area of control within the entity;
- Regular reconciliations between the data coming from management systems and the data reported to trade repositories.
- In addition, there were some other areas identified in the course of the inspection that merited improvement, such as:
 - a. Insufficient involvement, or even no involvement of the Compliance officers in implementing and monitoring certain internal regulatory controls;
 - b. Lack of indicators to monitor the EMIR reporting governance (exhaustiveness of reporting, compliance with deadlines, quality of reporting content).

130. In addition to the SPOT investigations, the AMF also undertook a full on-site inspection. As a result, the AMF observed an infringement of Article 9, notably with regards to some interest rate derivatives and some credit derivatives concluded before the first semester of 2018 which had not been reported. Furthermore, the entity had reported some false interest rate derivatives and some other contracts were not reported timely. In view of these inconsistencies, the AMF addressed follow-up letters to the six investment service providers investigated to ask for a correction of the situation. The breaches lead to the imposition of a penalty (see paragraph 188 for detailed information).
131. In the same period, Norway conducted ten investigations. The investigations focused on different aspects: derivatives transactions in a third country that had not been reported or not accurately reported, using the intragroup exemption from reporting without having requested formally such exemption or before receiving the approval from the NCA, an inconsistent reporting of transactions leading to a double reporting where both counterparties reported (one of them acting on behalf of the other and without having a delegation agreement in place), as well as on discrepancies between transactions reported to TR and transactions listed as effectively reported to the TR. From these ten investigations, nine were closed and the entities amended the behaviours and breaches. One of the cases is still ongoing.
132. In Luxembourg, the CAA investigated inconsistencies in the data reported to TRs by 12 entities. In addition, 84 investigations took place as part of the internal monthly target reviews on reported data. As a result, some recommendations were addressed to several entities and according to those entities they remediated the issue. The procedure in this kind of investigation usually starts with an initial warning in writing. This usually includes a request for information and from there the NCA can consider the next actions if need be. The initial request for information when there is a potential breach of EMIR, usually includes a remediation plan, information on the transactions affected, if they outsourced or delegated their reporting duty and where the entity reports on behalf of another and whether any incident occurred, the NCA asks for confirmation that the entity informed the client about the error in their reporting. Finally, the NCA asks confirmation on whether the issue is solved and that any pending transaction was reported accurately.

133. In addition, the CSSF in Luxembourg liaised with 17 investment fund managers who contacted the authority to fix reporting issues encountered⁷². In that context, the CSSF required two investment fund managers to improve the internal EMIR reporting procedures in place to ensure compliance with the reporting obligation. Among these files, 15 were closed and two remain still open.
134. In Ireland, The Central Bank contacted a large number of counterparties in relation to the accuracy of their TR data as part of the ongoing data quality monitoring. In Austria, the NCA reported 60 investigations, mainly focused on intragroup transactions and the reporting exemption, as well as data quality investigations. Most of these investigations are closed, however a few are still open.
135. In Germany, BaFin dealt with a total of 352 investigations. Among those, 270 cases were triggered as a result of the on-going supervisory activity and also in relation to intragroup exemption requests, 41 investigations were initiated upon issues reported directly by supervised entities, 37 other cases were triggered by the findings in the audits done by the external audits and in 4 cases BaFin requested information to check compliance with EMIR requirements, also including reporting.
136. In Italy, CONSOB performed specific reviews on data reported to TRs on 27 entities. After identifying reporting data quality issues, the authority asked the affected counterparties to ensure a better governance of EMIR reporting and to correct the data. As part of these investigations, CONSOB also detected anomalies in reconciliations across TRs and reported those to ESMA as the TR direct supervisor. Furthermore, CONSOB investigated 46 requests for intragroup exemption from the reporting obligation, assessing if the conditions to benefit from the exemption were met (especially with regards to the existence of centralised risk evaluation, measurement and control procedures). Also in Italy, COVIP requested two pension funds to provide information about compliance with EMIR requirements.
137. In Portugal, the CMVM conducted 23 investigations, all of them under the 2019 DQR exercise and opened 11 other investigations under the 2020 DQR exercise. Additionally, 8

⁷² Similarly, the CSSF contacted in the context of its CSSF DQAP 2020 exercise many entities to notify them of potential reporting issues and requested them to fix them. In addition, 56 entities under the Metier OPC supervision for which issues with the reporting were identified based on the information received from TRs (high level of rejections and data quality issues) were contacted in writing in order to obtain information on the issues detected and to obtain confirmation that the transactions have been corrected, reported with the adequate quality standards and accepted by a trade repository. 8 files are still under resolution (IT developments needed).

supervisory actions were carried out on investment funds aiming to obtain information on data reported to TRs and on the internal procedures and controls used by these entities to comply with the EMIR reporting requirements.

138. The investigations conducted focused on the accuracy of some reporting fields, checks and controls regarding the procedures implemented in order to confirm the correction of the information reported, as well as on the changes introduced by the EMIR review (Refit) in relation to the reporting obligation⁷³. On the last point, the CMVM highlighted that counterparties need to establish internal procedures to ensure they comply with their reporting obligations (both FCs and NFCs as per EMIR Refit changes) and the information reported by themselves or on their behalf is accurate.
139. In Malta, the MFSA identified certain anomalies in data reported from several entities and this triggered the investigation of a large number of entities. As a result, most entities rectified their reports and no further actions were required. However, the MFSA is still looking into some of these cases.
140. In the Netherlands anomalies in reporting also triggered 33 investigations and all of them were solved without the need for a sanction. In the same line, in Spain the CNMV also liaised with entities whose reports to TRs presented inconsistencies and, as mentioned by the authority, problems were promptly fixed thanks to the quick reaction of the entities investigated.

4.7.3 Investigations regarding NFCs (Article 10)

141. Some NCAs, Italy, Greece, Germany, Ireland, Luxembourg, Spain, Sweden and Slovakia reported having conducted **investigations** from January 2019 to December 2020 for matters connected to NFC requirements.
142. For example, CONSOB requested information from non-financial counterparties regarding their notifications of calculations of positions in OTC derivatives for the purpose of determining whether they were subject to the clearing obligation. The CNMV in Spain also

⁷³ In more detail, the CMVM reminded and warned entities that on the one hand, for the OTC derivative contracts celebrated between a NFC and a FC before the 17 June 2020, the counterparties retain responsibility of ensuring that reports submitted on their behalf are accurate and adequately submitted to the TR regardless of delegating the reporting obligation. On the other hand, for OTC derivatives contracts celebrated between a NFC and a FC after the 17 June 2020, the CMVM warned NFCs under its supervision, that FCs trading with NFCs are solely responsible and legally liable for the reporting on behalf of both counterparties.

carried our checks to ensure entities had correctly calculated their positions when notifying the NCA and ESMA on whether they were subject to the clearing obligation. The CNMV noted a prompt interest from non-financial counterparties towards correcting any problem identified in the notifications. No penalties were imposed in this regard.

143. In addition, in Germany, BaFin carried out a total of 51 investigations on NFCs. Among those, 50 cases were triggered by findings reported in external auditors' reports and required short procedures. Another investigation focused on the calculation of outstanding OTC derivative contracts for the purpose of the clearing obligation and involved requests for information addressed to that NFC.

4.7.4 Investigations regarding the risk-mitigation techniques (Article 11)

144. Some NCAs, Belgium, Croatia, Hungary, Germany Italy, Norway, Poland, Slovakia, Spain and Luxembourg reported having undertaken **investigations** from January 2019 to December 2020 for matters connected to risk mitigation techniques.

145. To name a few of these cases, in Croatia, the CNB carried out two investigations in relation to intragroup exemptions from the margining requirements under Article 11(6) of EMIR. In Poland, there were also two investigations conducted with regards to intragroup exemptions from margining and both are now closed without any fine imposed. In Italy, CONSOB also assessed a number of requests for intragroup exemption from margining requirements in relation to two NFC+. In addition, Banca d'Italia investigated a bank, mainly focusing on how the bank assessed and managed counterparty credit risk; likewise, COVIP requested two pension funds to provide information about compliance with risk mitigation techniques under EMIR.

146. In addition, Norway conducted one investigation on risk management procedures to assess the capacity of supervised entities for the prompt transfer of own funds and the capacity to repay liabilities. This investigation is still on-going.

147. In Spain, the CNMV conducted several investigations to verify Spanish entities had governance procedures and they had established the relevant contractual arrangements to ensure compliance with the risk mitigation techniques under EMIR.

148. During the same period, some NCAs carried out investigations that involved the supervision of several aspects of EMIR combined, which included risk mitigation techniques. The cases of Belgium, Germany and Hungary are examples of that.

149. In Belgium, the NBB addressed recommendations to several entities with respect to EMIR requirements on different topics, including data quality issues, entities' internal procedures, activity on contracts subject to central clearing and outsourced activities such as trade reporting, valuation, reconciliation of portfolios. In some cases, entities were asked to remediate a potential breach.

4.7.5 Investigations focused on different aspects of EMIR combined

150. In Germany, more than 63 investigations took place as part of the checks performed by external auditors. In addition, BaFin also carried out four extensive investigations, concerning three FCs and one NFC. These investigations involved requests for specific information and covered different EMIR requirements.

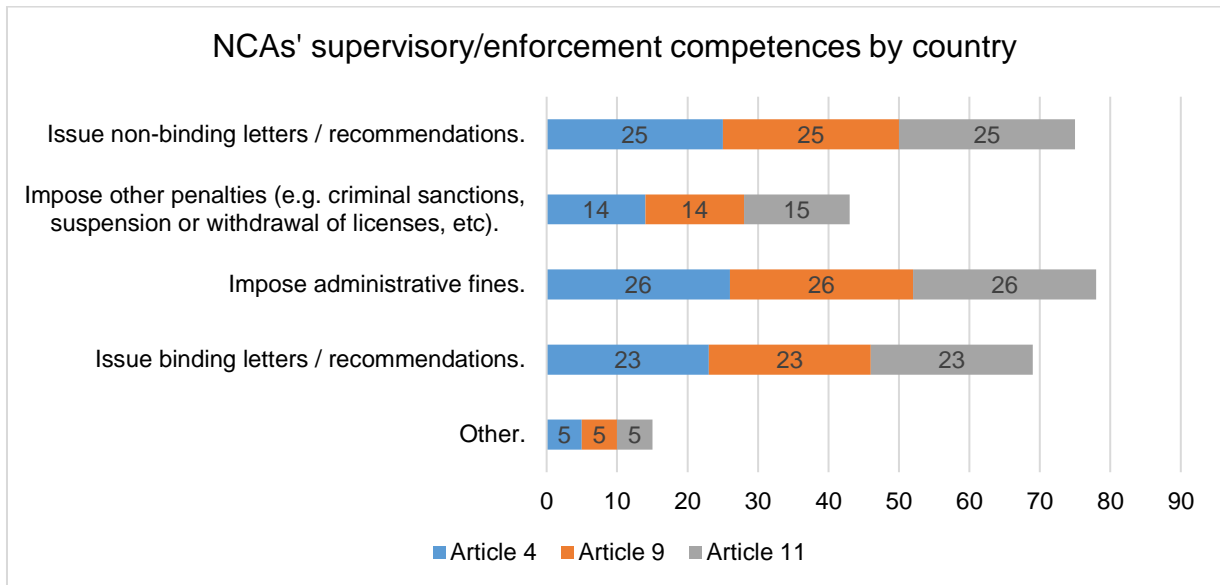
151. In Hungary, the NCA conducts comprehensive onsite investigations that are conducted at the main supervised entities every three years. This investigation also looks into compliance with EMIR requirements. During the period covered in this report, more than ten investigations took place. The investigations found a satisfactory compliance level with the EMIR requirements along with low-risk findings on aspects as internal governance and reporting procedures.

4.8 Supervisory and Enforcement competences and uses

4.8.1 Supervisory and enforcement competences

152. The survey's feedback shows that there are three main supervisory and enforcement competences shared by a great majority of NCAs, which are presented in Figure 13: to impose administrative fines; to issue binding letters as well as non-binding letters or recommendations.

153. Figure 13: Supervisory and Enforcement competences⁷⁴



154. Around 90% of the countries confirmed that they can impose **administrative fines** for breaches under EMIR, with only a few exceptions: Denmark and Croatia⁷⁵ (where fines have to be imposed by the courts).

155. Around 90% of the countries NCAs can also issue **non-binding letters** and recommendations on matters related to compliance with EMIR as part of NCAs' general supervisory powers. Only Denmark, Poland and Slovenia indicated the contrary. Some countries also reported that they can only issue recommendations in the context of an investigation or when a specific breach has been identified, such as Malta, where the authority issued a number of recommendations following on-site inspections and also off-site checks.

156. In other cases, non-binding letters or recommendations can be used to provide clarification on the application of a given regulatory requirement. In the Czech Republic the NCA mentioned that recommendations are usually issued in the form of FAQs or Q&As, however, the NCA pinpoints this is a rare case. Similarly, in Italy, CONSOB can issue recommendations as a channel to provide instructions or further clarification regarding a

⁷⁴ For detailed information on the names of the countries, see Table 11 in Annex II.

⁷⁵ In Croatia, the HANFA cannot impose administrative fines directly, but applying to the misdemeanour court and initiating a misdemeanour proceeding as the plaintiff.

specific obligation. In Liechtenstein non-binding letters are used as a tool for the FMA to inform firms of ways to improve processes or inform about best practices. No such recommendation was issued during the period covered in this report. In Luxembourg both the CSSF and the CAA have capacity to issue binding and non-binding letters and recommendations.

157. In Portugal, the CMVM may issue general recommendations directed at one or more types of supervised entities and may formulate and publish general legal opinions concerning relevant questions that are placed in writing by single entities or market associations. In other countries as in Spain, the non-binding letters or recommendations are used mainly as a first warning in situations that are not critical and in France the AMF also sends them whenever a repeated breach of EMIR requirements is found.
158. In the Netherlands, two cases investigated in relation to reporting requirements led to warning letters addressed to the board of the respective supervised entities. Further, the NCA also pointed out they had multiple exchanges with supervised entities via email and call exchanges that would qualify also as non-binding recommendations. In Romania, also for reporting purposes, the NCA issued 40 non-binding letters requesting the correction of reporting errors for both financial (2 letters) and non-financial counterparties (38 letters).
159. Regarding the supervision of risk mitigation techniques, in Italy, NCAs have capacity to intervene with different instruments, including letters and recommendations in relation to the entities' capacity to manage counterparty credit risk and when a new risk emerges, e.g. such as risks derived from Brexit.
160. Furthermore, around 80% of the NCAs of the countries surveyed have also the capacity to **issue binding letters**, generally, in situations where there is a suspicion of infringement. In such cases, these binding letters are used to require supervised entities to cease a certain behaviour and to comply with EMIR requirements. When these letters are not respected, other administrative procedures could be initiated. On the contrary, four countries indicated that they cannot issue binding orders: Czech Republic, Hungary, Poland and Slovenia.
161. In Denmark, for instance, the NCA issues binding orders and can report any infringements of EMIR to the police with the intention of the imposition of a fine. Additionally, in Denmark the NCA gathers information on market practices in order to identify the best practices in

the industry. Binding letters are thus used to benchmark other institutions and make them aware of some improvements that they could implement to adhere to those best practices.

162. In France, the AMF issues binding letters whenever a repeated breach is detected. These letters can take either the form of an injunction proceeding (the binding letter is used to put an end to a current and continuing breach); or of an administrative settlement (a settlement procedure which provides binding commitments).
163. In Germany, as a consequence of an extensive investigation, during the period covered in this report the NCA issued one binding letter in relation to a breach under EMIR related to the clearing obligation.
164. In Liechtenstein, binding letters are prescribed for cases where weaknesses in EMIR compliance have been identified and there is a potential risk of breaching regulatory requirements or when there is a risk of substantial increase in the risk exposure of financial intermediaries.
165. The Spanish NA noted binding letters are the most used tool in EMIR supervision, as a first step and after a shortcoming is identified in the regulatory implementation and compliance. Through these binding letters, the CNMV requires entities to remedy any particular situation concerning EMIR obligations. In line with this approach Italy reported 27 binding letters issued by CONSOB in relation to reporting requirements.
166. In addition, in Luxembourg both the CSSF and the CAA have the capacity to act issuing binding and non-binding letters and imposing administrative fines when a breach of EMIR is detected and within the following remits: a counterparty does not comply with certain EMIR obligations, publishes inaccurate, incomplete or false information, counterparties do not provide requested documents, when an entity impedes the supervision of the authority or when the recommendations issued by the authorities are not followed by counterparties.
167. From the information gathered through the survey, it was also apparent that there are **other types of supervisory and enforcement tools** in place. Notably, 50% of the countries answered their jurisdictions envisage other penalties besides administrative fines. For example, countries such as France, Iceland, Liechtenstein⁷⁶, Malta, Norway, Portugal and

⁷⁶ In more detail, authorisations may be withdrawn in Liechtenstein on the grounds of: the firm has obtained the authorization by false statements or by other means or the FMA was not aware of material circumstances; the firm fails to comply with the FMA's requests to restore the lawful situation; the firm systematically or repeatedly violates its legal obligations.

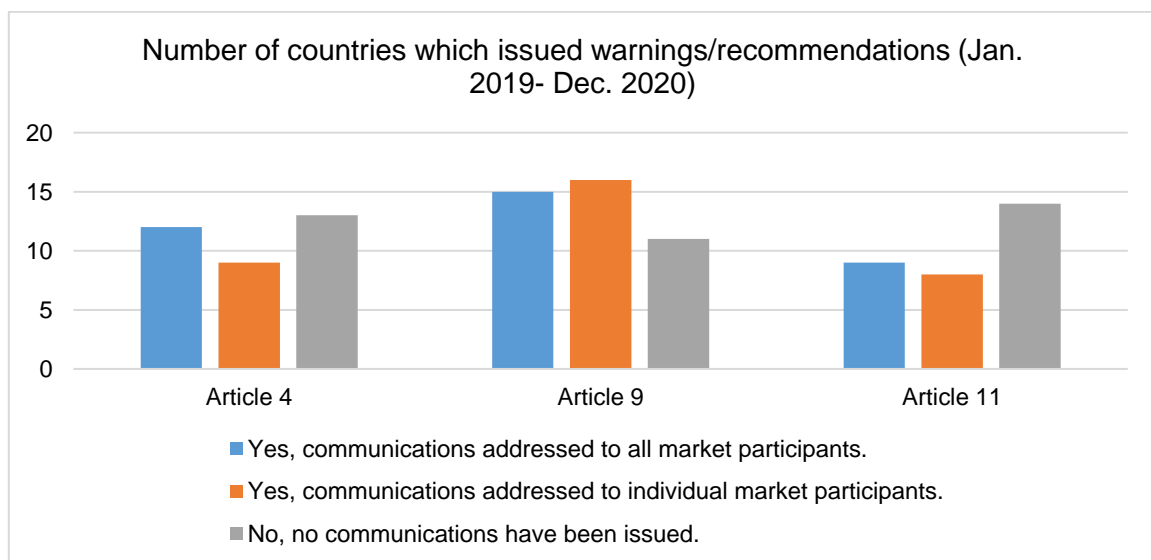
Spain also mentioned the possibility for example, to impose the discontinuation of all activities which are in breach of the provisions of EMIR; to order a market operator to suspend trading in a financial instrument; withdraw the licence of an entity to provide financial services (temporarily or permanently) or in the case of the ACPR in France, suspend entities' managing directors in case of a breach of EMIR. In Iceland, before a case of serious offenses, the CBI can also file complaints to the Economic Crime Unit of the National Police Commissioner's Office.

168. Additionally, Norway indicated that the NCA can initiate procedures leading to **criminal penalties**, which in the case of Norway, can translate into up to a one-year imprisonment. Similarly, Iceland can also impose criminal sanctions to firms providing clearing services without being authorised.

4.8.2 Recommendations and warning letters issued

169. NCAs were asked in the survey to provide information on whether they issued recommendation letters or sent warnings to supervised entities during the period analysed for this report, on how many they issued and for which purposes. Figure 14 below illustrates the responses received.

170. Figure 14: Recommendations or warnings issued in the last period⁷⁷



⁷⁷ Detailed information on the countries can be found in Table 12 in Annex II.

171. Around half of the countries (45%) did not issue any recommendation or warning for the period between January 2019 and December 2020. However, on average⁷⁸, 11 countries addressed recommendation letters or warnings to individual market participants and on average, 12 countries addressed general recommendations to all market participants. This shows an increase with respect to previous reports where the average of countries issuing recommendations to market participants (to all or to particular entities) was less than half. The issues tackled in these communications vary.

4.8.2.1 Recommendations addressed to all market participants (public)

172. In relation to the **clearing obligation**, in Belgium, France, Germany, Ireland, Italy, Liechtenstein, Luxembourg⁷⁹, Norway, Slovakia, Spain, NCAs reached out to all market participants in relation to the new requirements introduced by the EMIR review (Refit) and also reminding the specific dates of entry into force of new EMIR Refit provisions. In Italy, CONSOB issued two communications, one related to the notifications on positions in OTC derivative contracts for the purpose of determining which counterparties are subject to clearing and another related to notifications on intragroup exemptions.

173. Some NCAs such as CONSOB in Italy or ATVP in Slovakia sent communications to their market participants on issues related to Brexit and the reporting obligation to assist entities and to ensure the timely reporting of data from UK trade repositories to EU TRs, as well as to ensure counterparties had the set-up or adequate plans to ensure continued access to clearing. The CSSF in Luxembourg also communicated to their market participants on the statements published by ESMA on Brexit referring to the impact on EMIR and SFTR data⁸⁰ as well as on the intragroup exemption from the reporting obligation under EMIR Refit. Additionally, the CSSF also publicly communicated an administrative sanction imposed in relation to reporting obligations under EMIR⁸¹.

174. Also, on the area of **reporting requirements**, France issued communications on findings of on-site inspections on reporting matters and also communicated to the public a sanction imposed to a supervised entity. Further, Malta noted the MFSA issues at least once a year

⁷⁸ An average considering the recommendations and warnings sent regarding Article 4, 9 and 11 of EMIR.

⁷⁹ The documentation is available on the CSSF website.

<https://www.cssf.lu/en/2019/02/esma-issues-statement-to-address-upcoming-emir-refit-implementation/>
<https://www.cssf.lu/en/2019/04/communication-with-regards-to-the-new-emir-refit-regime/>

⁸⁰ The statement from ESMA can be found here: <https://www.esma.europa.eu/document/statement-brexit-emir-and-sftr-data>

⁸¹ [https://www.cssf.lu/wp-](https://www.cssf.lu/wp-content/uploads/S_11_GFI_Edmund_de_Rothschild_Asset_Management_Luxembourg_S.A._2020.01.20.pdf)

[content/uploads/S_11_GFI_Edmund_de_Rothschild_Asset_Management_Luxembourg_S.A._2020.01.20.pdf](https://www.cssf.lu/wp-content/uploads/S_11_GFI_Edmund_de_Rothschild_Asset_Management_Luxembourg_S.A._2020.01.20.pdf)

the findings of the on-site inspections and data quality monitoring with the objective to reach all market participants.

175. Additionally, in Ireland an ‘industry letter’ was issued and published by the NCA, which was addressed to all investment funds and NFCs above the clearing thresholds, in February 2019. In the Netherlands, the AFM sent communications to trade associations.

176. Another topic for which NCAs issued recommendations to all market participants was Brexit and the implications of the UK leaving the EU on the clearing obligation. In Ireland, the Central Bank provided periodic updates to Irish market participants on extensions to the periods to which derogations between Irish and non-equivalent third countries applied.

4.8.2.2 Recommendations addressed to individual market participants (non-public)

177. In Belgium, as a result of investigations, the NCA addressed 14 individual communications. In Germany, individual recommendations were also issued in the context of investigations, aiming at correcting deficiencies in EMIR regulatory compliance. Similarly, in Luxembourg, as a follow-up on a general survey launched in 2018 which included EMIR requirements, the CSSF addressed 25 letters to investment fund managers in order to require improvements of the EMIR internal monitoring and oversight procedures.

178. In France, the AMF communicated through the members of their post-trade consultative group sessions regarding the new requirements introduced by EMIR refit. In Spain the CNMV addressed letters to market participants regarding EMIR notifications on the calculation of positions and on the deadlines for the implementation of certain EMIR obligations such as the exchange of collateral.

179. Further, regarding reporting, BaFin sent a letter addressed to an entity including clarifications on reporting. In the Czech Republic, the department responsible for data quality contacted many market participants with informal e-mails and phone calls with respect to the DQR exercise. In Luxembourg the CSSF also contacted entities in the context of the CSSF DQAP 2020 to notify them of potential reporting issues and requesting them to fix them. Following a request by ESMA's data standing committee, the CAA has analysed the consistency of trading data reported to the TR and contacted those companies whose

data showed inconsistencies⁸². The outcome of these checks revealed 230 inconsistent trades involving 12 insurers and 18 depository banks. Consequently, the CAA contacted all companies individually over the summer and autumn of 2020 and worked with them to resolve the issues encountered⁸³. The exercise forced insurers and their depository banks to review the reporting processes and improve the overall robustness of their procedures.

180. In Latvia, the NCA sent letters to a randomly selected group of entities to check their compliance with the reporting obligation by requesting their registers of transactions to check those against the information received from TRs. Norway also addressed individual market participants on EMIR refit requirements, notably on the new reporting requirements on NFCs when trading with NFCs that are not subject to the clearing obligation as well as on data quality issues arisen from the DQR exercise. Romania also issued letters requesting the correction of reporting errors for both financial and non-financial counterparties.
181. In Italy, CONSOB sent 27 letters in relation to reporting obligations, mainly focused on data quality issues. In addition, CONSOB also sent many communications requesting additional information to counterparties interested in benefiting from the intragroup exemption from reporting. Such requests for information inquired on aspects such as centralised risk evaluation, measurement and control procedures, consolidation perimeter and jurisdiction of the ultimate parent company of the group. The AFM in the Netherlands issued 31 informal and one formal letters to individual market participants that had breached reporting requirements.
182. In relation to the supervision of risk mitigation techniques, CONSOB sent a specific communication requesting additional information on risk mitigation techniques to one counterparty requesting an intragroup exemption from the obligation to exchange collateral for OTC derivative contracts not cleared. In the area of risk mitigation techniques, the CSSF launched a survey to assess compliance with the requirement to exchange collateral. The feedback received allowed to identify significant deficiencies and the CSSF addressed two formal letters to investment fund managers in January and August 2019 requesting from them a solution. The two cases were solved by mid-September 2019.

⁸² The inconsistencies were that both counterparties reported themselves as sellers or buyers, which is not possible and the exposures on the buyer and seller of an option appeared to be also reversed.

⁸³ The CAA will undertake another review in order to check whether all the corrections agreed on and confirmed have indeed resolved all inconsistencies.

4.9 Penalties and Sanctions

183. During the period in scope for this report (between January 2019 and December 2020) four countries imposed penalties in their respective jurisdictions for breaches of Articles 4, 9 10 or 11 of EMIR. France, Italy, Liechtenstein and Luxembourg issued penalties for breaches related to the reporting obligation and France also issued a penalty related to the risk mitigation techniques. In total, 5 penalties were imposed during the period covered in this report.
184. In 2019-2020 CONSOB issued three administrative fines regarding Article 9 in relation to breaches on the reporting obligation by three counterparties. Formally, two out of three of these fines have been issued in January 2021 but the supervisory measures that led to the resolution to sanction these entities were taken in 2020. The sanctions amounted € 40,000, € 30,000 and € 35,000 respectively.
185. In Liechtenstein a financial institution carrying out forward exchange transactions, considered OTC derivative contracts under EMIR, was found in breach of EMIR reporting obligations. In the course of a supervisory audit, it became apparent that the counterparty did not comply with the reporting requirements from December 2018 until September 2019. In fact, the counterparty had signed an outsourcing agreement with another bank and understood its reporting had been delegated to the external service provider. However, the outsourcing agreement did not specify the delegation of the reporting obligation to a registered TR and therefore, the counterparty did not report 30 derivative contracts. After the audit, the financial counterparty notified its omission to the FMA. Considering the absence of an intention motivating the breach, the fine imposed amounted to CHF 22,500 plus CHF 1,000 in costs (in total around € 21,500). The counterparty did not appeal and paid the penalty.
186. In Luxembourg, further to an investigation initiated in 2018 as part of a data issue identified during the ESMA Data Quality Review, the CSSF imposed an administrative fine to an investment fund manager amounting to € 20,000⁸⁴.
187. The breaches identified related to data quality issues of early terminated trades not reported as terminated to the TR. The investment fund manager later confirmed the issue had been

⁸⁴ More detailed information can be found here: https://www.cssf.lu/wp-content/uploads/S_11_GFI_Edmond_de_Rothschild_Asset_Management_Luxembourg_S.A._2020.01.20.pdf

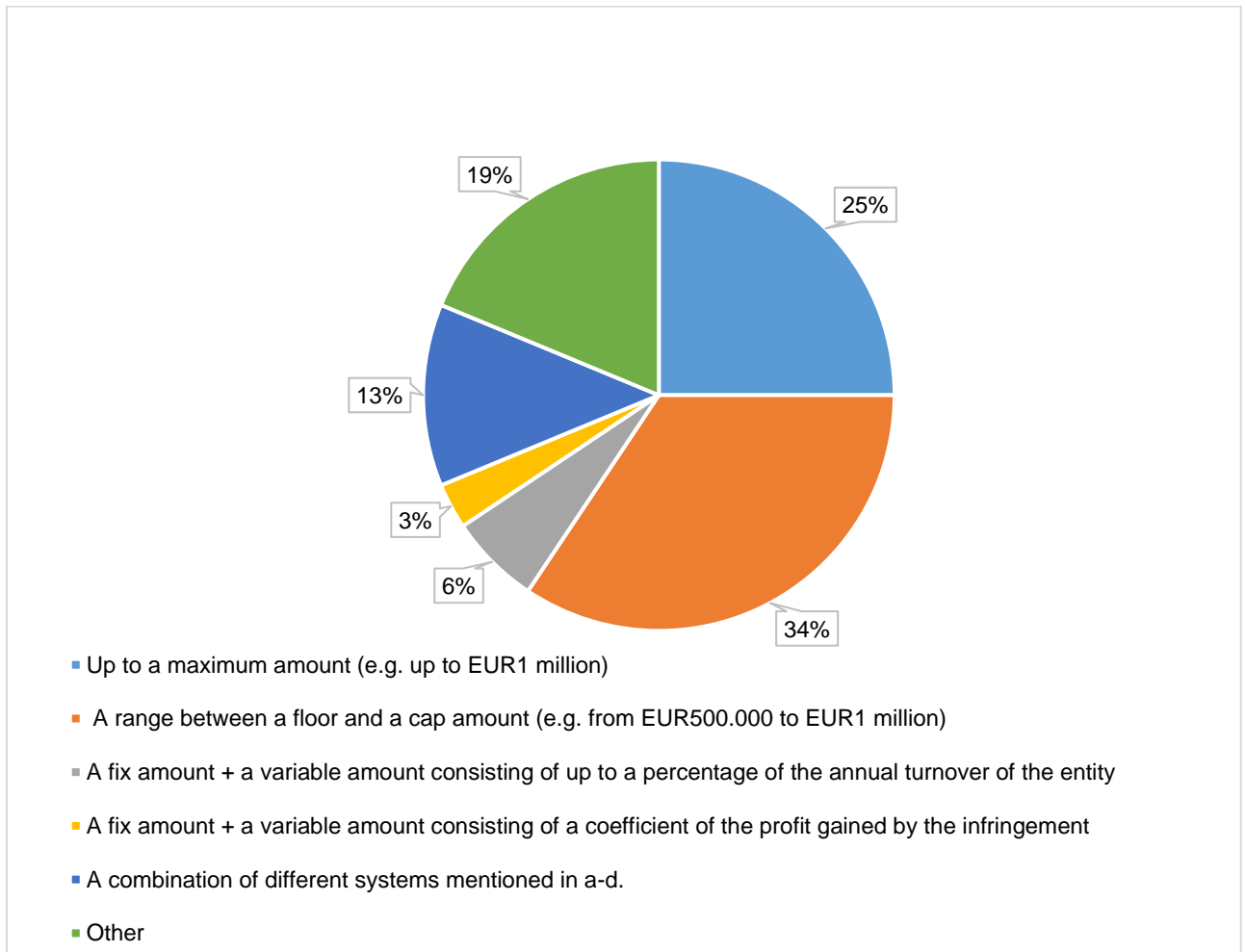
addressed, however, when the CSSF revisited the file in January 2019, they realised the issue had never been fixed. It was decided to impose an administrative fine and the case is now closed.

188. In 2020 France issued a fine of € 500,000 to a credit institution for several breaches identified in relation to Article 9 of EMIR. The credit institution failed to report all its activity in derivative contracts, had reported wrong data and had neither reported the relevant modifications as well as reporting transactions after the regulatory deadline to report. The credit institution did not appeal the decision and paid the penalty. The same credit institution was also fined for breaching its obligation to timely confirm OTC derivative transactions. In addition, the entity did not have into place the obligation to have procedures to measure and oversee the prompt confirmation of the terms of uncleared OTC derivative contracts.

4.9.1 Quantification of administrative fines

189. Based on the information received from NCAs, the different countries are classified in groups according to the methodology that they use to quantify administrative fines with respect to the clearing mandate, the reporting requirements and the risk mitigation techniques. Figure 15 displays this grouping of countries based on the methods implemented to quantify administrative fines.

190. Figure 15: System to quantify administrative fines⁸⁵.



191. Besides the methods used to quantify fines, NCAs also provided information related to the amounts of such fines. As expected, there have been no major changes in the way in which NCAs quantify administrative fines according to their national regulations. Overall, fines' amounts range from very low numbers (technically, it could be lowered to potentially € 0 in the Netherlands and Austria depending on the circumstances or be as small as € 125 in Luxembourg) and up to very large numbers (potentially € 100,000,000 in France, also depending on the circumstances).

192. Among the countries that quantify fines **up to a maximum amount**, numbers differ between countries. In Estonia administrative fines can be up to € 32,000, followed by Liechtenstein⁸⁶

⁸⁵ The detail on the names of the countries can be found in Table 13 in Annex II.

with fines up to approximately € 135,000; and up to approximately € 400,000⁸⁷ in the Czech Republic. Within this group, fines can go up to € 2,500,000 in Ireland⁸⁸. Finally, in Romania, fines can be up to € 5 million⁸⁹.

193. Another group of countries quantifies administrative fines within a **range, between a floor and a cap amount** (e.g. from € 500,000 to 1 million). Amidst these countries, Austria fines range from zero euros to € 150,000; in Hungary, from approximately € 275 to € 5.5 million⁹⁰; while in Germany, from € 50,000 to € 500,000 and in Luxembourg fines range between € 125 and €1,500,000⁹¹. In Greece, between € 1,000 and € 3,000,000; and in Sweden between approximately € 475 (SEK 5,000) and approximately € 4,5 million (SEK 50 million). In Croatia the amount ranges between approximately € 26,500 and € 66,000. In the Netherlands, the base amount should be € 500,000 and the fine can amount to up to € 1,000,000. However, the base amount can be lowered, even down to zero, based on proportionality, the financial situation of the entity and other special circumstances.
194. Likewise, in Belgium fines can range from € 250 to € 2,500,000. In Malta fines can range, depending on the EMIR requirement from € 500,000 to € 2.5 million⁹². In Sweden fines can range widely, from approximately € 50 to € 5 million. In some other countries, the amounts of administrative fines are determined by a **fixed amount plus a variable amount consisting of up to a percentage** of the annual turnover of the entity. For instance, in Luxembourg, fines are quantified according to a **fix amount plus a variable amount consisting of a coefficient** of the profit gained by the infringement. If the infringement led

⁸⁷ CZK 10,000.

⁸⁸ the central bank shall have regard to all the relevant circumstances including, where appropriate, the following factors: (a) the gravity and duration of the contravention; (b) the degree of responsibility of the person responsible for the contravention; (c) the financial strength of the person responsible for the contravention, as indicated, for example, by the total turnover of a legal person or the annual income of a natural person; (d) the importance of the profits gained or losses avoided by the person responsible for the contravention, insofar as they can be determined; (e) the level of cooperation of the person responsible for the contravention with the central bank; and (g) measures taken by the person responsible for the contravention to prevent its repetition.

⁸⁹ When deciding on the amount, the following factors need to be considered: (a) the gravity and duration of the deed; (b) the form of guilt of the natural or legal person responsible for the violation; (c) the financial soundness of the person responsible for the breach, by taking into account factors such as the total turnover of the legal entity or the annual income of the natural person; (d) the value of the profits obtained or of the losses avoided by the responsible person, insofar as they can be determined; (e) the cooperation of the responsible natural or legal person with the competent authority; (f) violations previously committed by the responsible person; (g) the measures taken by the responsible person to prevent the repetition of the facts; (h) any potential systemic consequences of the committed deed.

⁹⁰ In Hungary, the NCA considers the following aspects as aggravating factors: systemic deficiency, the strong impact classification of the organization concerned, the institution's significant market share, endangering a highly protected value (such as the interests of customers, the safe operation of markets), the breach has a serious negative impact on the system of financial institutions or any of its members, lack of cooperation, conduct to conceal the infringement, the permanent nature of an infringement, whether repeated or sequential.

⁹¹ Luxembourg has a combined system for the cases in which the offense committed has provided a financial benefit, please see following paragraph for more details.

⁹² The following are mitigating factors under Maltese law: seriousness and length of the violation; any benefits gained; potential losses for third parties; any consequences for the financial system; culpability; previous violations; cooperation of the violator; measures to prevent repetition. These factors can only lead to a lower fine and never to an increased fine.

to a financial benefit, directly or indirectly, the fine amount will not be less than the profit made and not more than five times the profit. In France, fines can amount to up to € 100,000,000 or up to ten times the amount of the profit derived from the infringement.

195. In addition, in some countries, **finer vary depending on whether the infringement was committed by a natural or a legal person**. In Latvia, for instance, the NCA can impose a fine of up to € 142,300 for legal persons and of up to € 57,000 to natural persons.
196. In Italy, in case of violation of Articles 4, 9, 10 or 11 of EMIR, the amount of the fine ranges from € 5,000 to € 5,000,000 if the infringement is committed by a natural person and, if the offence is committed by an entity, the fine applied ranges from € 30,000 to € 5,000,000 or up to 10% of the turnover if this amount is more than € 5 million and if the turnover figure is available. Similarly, in Slovenia, the amount of the fines depends on who committed the infringement and its size: from € 12,000 to € 150,000 for infringements committed by a legal person; from € 25,000 to € 250,000 for entities considered medium or large; and from € 6,000 to € 100,000 for individual entrepreneurs. Additionally, an amount ranging from € 800 to € 10,000 shall be imposed on the responsible person of the entity which committed the infringement; or from € 200 to € 5,000 on the individual entrepreneur.
197. In Finland, the amount of fines is grounded on the nature and duration of the infringement. For breaches related to reporting requirements and risk mitigation techniques, the amount of the fine imposed to a legal person ranges between € 5,000 and € 100,000 while the amount for a natural person ranges from € 500 to € 10,000. For breaches related to the clearing obligation and non-financial counterparties' requirements, amounts can be of up to 10% of the turnover of the legal person for the year preceding the act or omission, but not exceeding € 10 million. The amount for natural persons can be of up to 10% of their income, according to the latest tax assessment, not exceeding € 100,000.
198. Finally, many countries have **mixed methods** to quantify administrative fines and combine the features of the different groups above. For example, in Portugal, different scales can be applied depending on the severity of the infringements (distinguishing from serious infringements), which fines can range from € 1,500 to € 2,500,000; and very serious infringements, which fines can amount from € 5,000 to €10,000,000. In addition, Portugal has a mixed system for quantifying fines that allows to raise the applicable fine up to the highest of the following values: (i) the economic benefit or the losses potentially avoided by infringing EMIR (totally or partially); or (ii) when the infringement is committed by a legal

person, 10% of the turnover as per the latest consolidated or individual accounts that have been approved by the management body. Other examples of mixed systems to determine the amounts for administrative fines are Iceland and Slovakia, where the NCA quantifies fines within a range between a cap and a floor amount also linked to a percentage of the turnover of the entity as well as to the gain earned by the infringement.

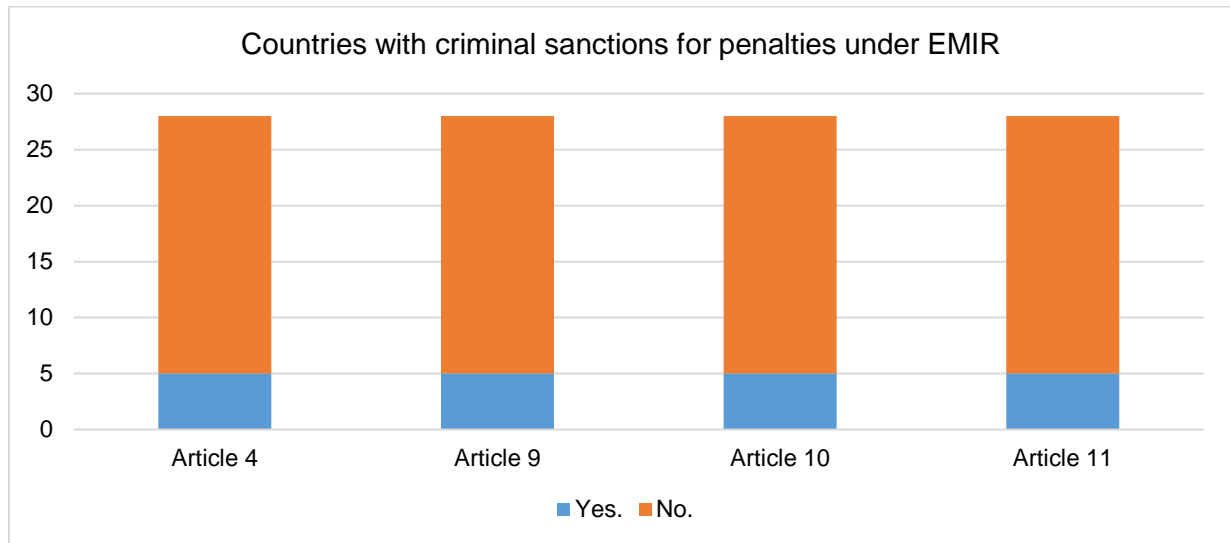
199. In Spain, for very severe infractions, fines can amount to up to any of the following references: (i) five times the gross profit or loss avoided as a result of the acts or omissions constituting the infringement; (ii) 5% of the offending entity's own resources; (iii) 5% of the total funds (own or borrowed) used in the infringement; (iv) 10% of the total annual turnover of the offending entity, according to the latest available accounts approved by the administrative body⁹³; (v) € 5,000,000. For severe infractions the following references can be considered: (i) three times the gross profit obtained as a result of the acts or omissions constituting the infringement; (ii) 2% of the offending entity's own resources; (iii) 2% of the total funds, own or borrowed, used in the infringement; or (iv) € 300,000. Finally, for offenders that committed minor infringements, a fine of up to € 30,000 shall be imposed on the offender.
200. In Poland, fines can be up to approximately € 2,356,950 (PLN 10,000,000) but this amount cannot exceed 10% of the revenue indicated in the most recent audited financial statement (when there is no obligation to audit financial statement, not exceeding 10% revenue indicated in the most recent financial statement).
201. Denmark has a different approach because the Danish FSA does not impose penalties directly, instead, the NCA reports an infringement of EMIR with the intention of imposing a fine. The specific amount of the fine will be decided by the courts. Norway instead has no minimum nor maximum amounts for fines, however, this is expected to change after this year, when a new regulation enters into force.

4.9.2 Criminal Sanctions

202. NCAs were asked about their capacity to impose criminal sanctions for breaches of EMIR requirements. The following figure presents an overview of the results.

⁹³ If the offending entity is a parent or subsidiary of the parent that is required to prepare consolidated financial statements, the total applicable annual turnover shall be that shown in the latest available consolidated financial statements

203. Figure 16: Countries with criminal sanctions for breaches under EMIR⁹⁴



204. From the feedback received, and in line with the information gathered in previous reports, Denmark, Ireland, Norway, Spain, Portugal have the capacity to impose criminal sanctions for the case of an infringement of EMIR provisions under Articles 4, 9, 10 and 11.

205. In Norway, when a breach is considered negligent or intentional then a criminal fine or imprisonment of up to one year can be imposed⁹⁵.

206. In Ireland, the regulation provides for criminal sanctions for a person, a CCP or a trading venue that is in breach of EMIR provisions (in relation to Article 9), which could, depending on the seriousness, lead to either a fine of up to € 5,000 and/or imprisonment of up to six months; or to the imposition of a fine of up to € 500,000 and/or imprisonment up to thirty-six months.

207. In Denmark, the NCA can report the breach to the police who will initiate a procedure for a fine as a criminal sanction. In Portugal, the CMVM's Management Board may order the opening of preliminary investigation proceedings to determine the possible existence of a crime. Once the preliminary investigation is concluded and a crime report has been prepared, the CMVM's Management Board refers the relevant details to the competent judicial authority. It is up to the Public Prosecutor's Office to decide on whether to initiate criminal proceedings. Similarly, in Spain, the CNMV can only apply administrative fines.

⁹⁴ Detailed information on the name of the countries can be found in Table 14 in Annex II.

⁹⁵ according to the Securities Trading Act section 21-3.

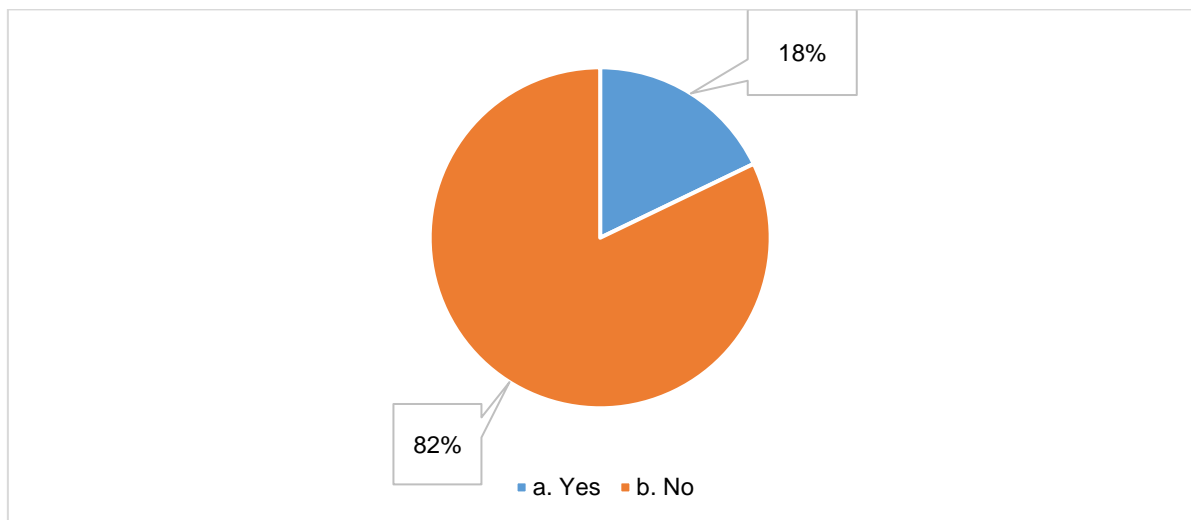
However, on a case by case basis and depending on the nature and the circumstances of the infringement, when the CNMV suspects that a criminal offence may have been committed it will report the facts to the prosecutorial and judicial authorities for them to determine if criminal proceedings should be initiated.

208. It is to be noted that no criminal sanctions have been reported to ESMA for breaches of EMIR requirements.

4.10 Covid-19 pandemic

209. The survey used for the preparation of this report included this time a specific question on whether NCAs had issued any statement or communication on issues related to EMIR obligations in the context of the Covid-19 pandemic. As a result, 18% of the NCAs responding to the survey confirmed they had undertaken specific actions.

210. Figure 17: NCAs taking specific communication actions in relation to Covid-19 pandemic and EMIR⁹⁶.



211. Among respondents, Austria, France, Ireland, Malta and Spain reached out to supervised entities in their jurisdiction. Some of these communications had a general EMIR scope, in the shape of public statements or letters as for example in Malta⁹⁷ or Spain, whilst other were more targeted. In Austria the NCA issued recommendations on monitoring CCP

⁹⁶ Detailed information on the names of the countries can be found in Table 15 in Annex II.

⁹⁷ Some of the statements can be found in this link: <https://www.mfsa.mt/wp-content/uploads/2020/06/Regulatory-Reporting-following-the-Outbreak-of-COVID-19.pdf>

activity. In France, the AMF published a statement on the importance of EMIR reporting and on the need to continue ensuring timely reporting of derivatives activity while the NCA offered help in case entities had incidents.

212. In Ireland, communications focused on the requirement to exchange bilateral margining and the new phase-in period (after the Commission Delegated Regulation on margining⁹⁸ was amended) as well as on the new provisions introduced by EMIR Refit related to the clearing obligation.
213. In addition to the communication on Covid-19 and its potential impact on compliance with EMIR, the survey also investigated whether NCAs, as a result of the pandemic crisis, had undertaken any specific supervisory actions or changed their supervisory approach. The feedback received shows the majority of authorities did not change their approach, while around 25% of the NCAs took measures to enhance the supervisory activity of EMIR provisions.
214. The areas where supervision was enhanced as a consequence of the Covid-19 pandemic were mainly with respect to NCAs increased controls and monitoring of TR data (regarding e.g. collateral, timely confirmation, volume of activity), and enhanced CCP supervision. In Italy, for instance, CONSOB enhanced the supervision of the Italian CCP and also focused on monitoring the margins reported by the largest clearing members to ensure adequate functioning of central clearing. In parallel, Banca d'Italia strengthened supervision of market continuity and the monitoring of underlying risk exposures.
215. Although compliance with EMIR cannot be disappplied, some NCAs also noted that EMIR supervision was not necessarily a supervisory priority or had to be adapted differently during the peak of the Covid-19 crisis. Germany and the Czech Republic noted, for example, that they had to cancel scheduled on-site inspections and replace them by written requests for information. In Spain, in the first months of the pandemic, in the lock-down period, some entities required assistance to renew their LEIs and the NCA (allowed by the Spanish emergency regulatory package) froze the administrative deadlines which gave more time to market participants struggling with certain regulatory or administrative requirements.

⁹⁸ COMMISSION DELEGATED REGULATION (EU) 2016/2251 of 4 October 2016 as amended by COMMISSION DELEGATED REGULATION (EU) 2020/448 of 17 December 2019.

4.11 Assessment Reports

216. Under EMIR (Article 12), NCAs are mandated to disclose to the public every penalty that has been imposed for infringements of Articles 4, 5 and 7 to 11, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Therefore, the EEA countries should, at regular intervals, publish assessment reports on the effectiveness of the penalty rules being applied. One of the questions of the survey launched by ESMA in preparation of this report investigated if NCAs have published their assessment reports.
217. Most respondents indicated that they had not published their respective reports. They justified their answer based on the absence of any new sanction or penalty imposed during the last year. However, Malta confirmed the publication of its first report, which is accessible on the NCA's website⁹⁹ covering only the period before January 2019. In Germany, Bafin published their first assessment report¹⁰⁰ concluding that compliance with EMIR is satisfactory due to the low number of sanctions imposed. France, Liechtenstein and the Netherlands indicated in the feedback provided that only one sanction was imposed during the period covered by this report and it had been published correspondingly on their institutional websites.

5 Conclusions

218. This report on supervisory measures and penalties builds on some of the findings contained in the previous reports and digs further into some other aspects, such as the supervision of risk management procedures under Article 11 of EMIR, the means used by NCAs to treat information received from trade repositories and some targeted sections on the measures undertaken by NCAs regarding Brexit preparations and the Covid-19 pandemic response.
219. The report includes some general information regarding, for instance the number of supervised entities and how the supervisory and enforcement competences are allocated within each country and NCA(s). The feedback received illustrates that only half of the countries have NFCs subject to the clearing obligation (in four countries there are more than

⁹⁹ https://www.mfsa.com.mt/pages/readfile.aspx?f=/Files/Announcements/Circulars/Securities%20and%20markets/EMIR/201809_05_EMIR_VisitFindingsOtherUpdates.pdf

¹⁰⁰ The report can be found on their webpage, see https://www.bafin.de/DE/Aufsicht/BoersenMaerkte/Derivate/EMIR/emir_node.html

ten) and the number of FCs subject to EMIR requirements in each jurisdiction vary, with Germany, Ireland and Luxembourg being the countries with higher figures (above seven thousand FCs subject to EMIR). The report also shows that in the majority of countries, the competence to supervise, enforce and impose penalties related to Articles 4, 9, 10 and 11 of EMIR is centralised in one single authority.

220. ESMA also observes a general increase in the number of interactions and exchanges between NCAs and their supervised entities with respect to the figures published in the last report on supervisory measures and penalties under EMIR. It can also be noted that the period covered in this report has been rather particular as it has included different aspects impacting EMIR-related activities that differ from the previous periods, such as Brexit preparations and the Covid-19 pandemic outbreak response. In 57% of the countries NCAs engaged in actions related to EMIR and Brexit preparations, some of these actions focused, for instance on the portability of reporting from UK TRs to EU TRs, or contract continuity and clearing via CCPs located in the UK. In relation to the pandemic, 18% of the countries confirmed they had undertaken specific actions such as public statements or letters and recommendations regarding compliance with EMIR requirements and 25% of these NCAs took measures to enhance the supervisory activity of EMIR provisions (mainly with respect to NCAs increased controls and monitoring of TR data e.g. collateral, timely confirmation, volume of activity and enhanced supervision of CCPs).
221. In relation to the supervisory activity of requirements under Articles 4, 9, 10 and 11 of EMIR and the sources of information used by the NCAs for such tasks, 73% of the NCAs supervising EMIR requirements use TR data and 63% also use data directly submitted by market participants to the NCA. This shows an increase in the checks performed based on TR data by NCAs and this trend is also visible in relation to the tools developed and used by NCAs to process this data. Around 90% of NCAs using TR data perform checks on the number of rejected transactions and the quality and accuracy of the data reported. Around 50% of the countries use TR data to supervise the volume of cleared transactions and the compliance with the timely confirmation requirement, compliance with the requirement to exchange collateral for non-centrally cleared derivatives and to monitor intragroup activity.
222. In addition, on average 51% of the NCAs also reported the use of other types of sources for supervisory purposes. This may include publicly available data such as financial statements, information published on entities' websites and any other sources of public information such as public registers. In addition, since the entry into force of EMIR Refit,

supervised entities under EMIR are required to calculate their positions in outstanding OTC derivatives for the purpose of determining which counterparties are subject to the clearing obligation (or choose not to calculate and thus become subject to the obligation) and notify¹⁰¹ both ESMA and their NCA. Counterparties whose positions are above the clearing thresholds (or who choose not to calculate their positions) become subject to the clearing obligation. The majority of NCAs (53.5%) are performing checks on the notifications received from counterparties. This novelty introduced by Refit has proven to significantly increase visibility on the level of trading activity of supervised entities and on which counterparties are subject to the clearing obligation and has provided more effective tools to NCAs and ESMA for an enhanced supervision of the clearing obligation. Indeed, 71.5% of the respondents rely on these notifications for mapping counterparties under the clearing mandate.

223. Further, some respondents indicated that since the entry into force of Refit, allowing financial counterparties whose positions in OTC derivatives are below the clearing thresholds to benefit from a clearing exemption, has meant that the population of counterparties indicating facing barriers and difficulties to access clearing has also decreased, as counterparties trading lower volumes no longer need to clear. ESMA notes positively that the challenges encountered by some market participants when seeking access to clearing services has become a lesser problem for a number of smaller counterparties.
224. Regarding investigations and enforcement cases, during the period covered in the report, NCAs reported investigations in 21 countries. The reporting obligation was the requirement most investigated, followed by the clearing obligation and the risk mitigation techniques' requirements. In addition, on average, 11 countries issued recommendations or warning letters addressed to individual market participants regarding compliance with EMIR, and on average, 12 countries issued general recommendations to all market participants.
225. The report also looks into the different supervisory and enforcement tools accessible to NCAs and into the ways to quantify administrative fines in the different countries. All countries can impose administrative fines and their amounts are not harmonised. They range from possibly being very low (technically fines can be lowered down to even € 0 in the Netherlands and Austria or be as small as € 125 in Luxembourg as a minimum), and up

¹⁰¹ Notifications under Articles 4(a)(1) and 10(1) of EMIR.

to very large numbers (such as potentially up to € 100,000,000 in France). Different countries follow also a different approach to quantify the amount of such fines: in 25% of the countries fines are quantified up to a maximum amount, in 34% of the countries fines range between a floor and a capped amount; in around 10% of the countries fines are quantified with a fixed amount plus a variable amount (consisting of up to a percentage of the annual turnover of the entity or a coefficient of the profit gained by the infringement); 13% of the countries combine the different systems; and 19% of the countries use other methods. Furthermore, besides the capacity to impose administrative fines, Denmark, Ireland, Norway, Spain, Portugal can also impose criminal sanctions for the case of an infringement of EMIR provisions under Articles 4, 9, 10 and 11.

226. During the period covered in the report, four countries imposed penalties in their respective jurisdictions for breaches of Articles 4, 9 10 or 11 of EMIR: France, Italy, Liechtenstein and Luxembourg. In France a credit institution was penalised with € 500,000 for several breaches under Article 9 and 11 of EMIR. In Italy three sanctions were imposed for breaches under Article 9, amounting to 40,000 euros, € 30,000 and € 35,000 respectively. In Liechtenstein, also related to Article 9 breaches, one sanction was imposed adding up to CHF 23,500 (around € 21,500). In Luxembourg, an investment fund manager was sanctioned with a penalty amounting to € 20,000 also for breaches related to the reporting obligation under Article 9 of EMIR.

227. The report also sheds some light on aspects for which more coordination between NCAs, and possibly ESMA facilitated discussions, could be beneficial. One of these aspects is the supervision of EMIR compliance by entities pertaining to a group. For determining whether a counterparty is subject to the clearing obligation, entities need to consider positions of other entities within the group. However, NCAs can face limited access to data from entities that are not within their jurisdiction and this could render complicated the proper supervision of groups. This situation is even more complex for counterparties that are parts of groups with third-country entities. Beyond the group question, and to understand best practices or share experiences, ESMA facilitates some exchanges among NCAs. More specifically, ESMA is focusing its efforts towards promoting forums for exchanges of supervisory experience, such as workshops for discussing supervisory cases.

228. In addition, the report identified some areas that so far have not been a supervisory priority for NCAs that have grown in significance due to recent developments and would probably need to become a focus of supervisory attention for the coming exercises. This is the case,



for example, for supervisory measures regarding third country entities trading with substantial effect in the Union, which to date was not considered a supervisory priority. However, ESMA notes that in the context of the UK's exit from the Union, the supervision of OTC derivative contracts traded between EU entities and third-country entities becomes more relevant.

6 Annexes

Annex I: Questions of the survey on supervisory measures and penalties

General information

| | |
|--|---------------------|
| 1. Choose your jurisdiction: | [list of countries] |
| 2. Please, provide the name of your NCA (the NCA submitting the survey). | [blank space] |
| 3. Please, indicate the name of other NCAs which have contributed to your answers or which presented any challenges in the degree of cooperation, if any. | [blank space] |
| 4. Please, provide the contact details of the person answering this questionnaire (Name, position and email address). | [blank space] |
| 5. Please, provide the number of entities (FC and NFC+) that are subject to EMIR requirements in your jurisdiction. Please include a breakdown of the different types of entities (i.e. investment firm, credit institution, insurance / assurance / reinsurance undertakings, UCITS, AIFs, ...; according to Article 2(8) of EMIR). | [blank space] |

6. In relation to articles 4, 9, 10, 11 of EMIR are the competences related to (i) supervisory measures and (ii) imposition of penalties centralised in one single authority? [Multiple answers possible]

| | Art. 4 | Art. 9 | Art. 10 | Art. 11 |
|--------|--------|--------|---------|---------|
| a. Yes | | | | |
| b. No | | | | |

[Q dependent on Q6(a)] Please, identify the name of the team/s and the number of people working in it.

[Q dependent on Q6(b)] Please, specify the scope of each team/NCA, whether there is one authority dealing with supervision and another for penalties and the number of people working on each matter.

7. Please, name the team/s working on the supervision and the enforcement of Articles 4, 9, 10 and 11 and the number or estimation of people working in each team. Please, mention if you refer to part-time or full-time officers.

NCA's interaction with market participants

8. Please, fill in the following table according to the actions carried out by your NCA from January 2019 to December 2020: When responding, please consider also any action undertaken in relation to the recently introduced intragroup exemption from reporting under Article 9. [Multiple answers possible]

9.

| | Art. 4 | Art. 9 | Art. 11 |
|--|---------------|---------------|----------------|
| a. Prepare specific trainings for market participants. | | | |
| b. Launch processes to get feedback regarding the implementation of different regulatory requirements (e.g. launching surveys, preparing questionnaires, etc.) | | | |
| c. Create working groups for providing support/guidance with the collaboration of market participants. | | | |
| d. Other (e.g. sending reminders for phase in implementations) | | | |

[Q dependent on Q8(a)] Please specify on which topics and the means/format used for these trainings.

[Q dependent on Q8(b)] Please, specify which means you are using or have been used by your NCA to get market participants' feedback.

[Q dependent on Q8(d)] Please, specify.

10. Did your NCA engage in any particular action regarding EMIR obligations in the context of Brexit?
- Yes.
 - No.

[Q dependent on Q.9(a)] What were these actions and could you please mention the main issues raised by market participants in this regard?

Sources of information checked by NCAs

11. Please specify which are the sources of the information used by your NCA in order to monitor the compliance of market participants in relation to the following EMIR provisions:
[Multiple answers possible]

| | Art. 4 | Art. 9 | Art. 11 |
|--|--------|--------|---------|
| a. Data from Trade Repositories | | | |
| b. Data directly submitted by market participants | | | |
| c. Other (e.g. check market participant's public information, website, etc.) | | | |

12. Please provide information about the IT tools used by your NCA in order to process TR data.

13. Please, provide a more granular description of the uses of the TR information analysed by your NCA to check market participants' compliance with EMIR requirements:

| Information from TR data | Tick the box if your NCA has performed checks |
|---|---|
| a. Counterparty information (e.g. ID, type of counterparty, ...) | |
| b. Clearing threshold | |
| c. Information used to identify OTC derivative contracts used to take advantage from the arbitrage between cleared/uncleared trades | |
| d. Rates on voluntarily cleared transactions | |
| e. Volume of cleared transactions | |
| f. Volume of intragroup transactions/activity | |
| g. Quality and accuracy of data reported | |
| h. Compliance with the timely confirmation requirement | |
| i. Compliance with portfolio reconciliation requirement | |
| j. Compliance with the exchange of collateral for non-centrally cleared transactions | |
| k. Use of risk reduction services (e.g. compression) | |
| l. Number of rejected transactions | |
| m. Data reconciliations | |

| | |
|--|--|
| n. Brexit related analysis (i.e. Porting to EU27 TR, UK submitting entities) | |
| o. Other | |

[For respondents ticking boxes in (a)-(o) in Q12, a linked question will pop-up asking for any additional details/remarks]

[Q dependent on Q12(b)] Please, specify how is this assessed and specify if your NCA conducted any specific analysis on identifying the new population of entities subject to the clearing obligation as per Refit changes.

[Q dependent on Q12(c)] Please, specify how is this assessed.

[Q dependent on Q12(j)] Please, specify how and whether you have worked on collateral rates.

[Q dependent on Q12(k)] Please, specify how is this assessed.

[Q dependent on Q12(m)] Please, further specify.

[Q dependent on Q12(n)] Please, further specify.

[Q dependent on Q12(o)] Please, provide further details.

14. Please, provide more granular information on the data submitted directly by market participants that is used by your NCAs to check market participants' compliance with EMIR requirements:

| Information submitted by counterparties | Tick the box if your NCA performed checks |
|--|--|
| a. Exposures of certain market participants | |
| b. Information about positions from entities' books | |
| c. Cross check data reported to TRs | |
| d. Financial statements of market participants | |
| e. Notifications under Arts. 4(a)(1) and 10 (1) of EMIR regarding the clearing obligation. | |
| f. Other | |

[For respondents ticking boxes in (a)-(f) in Q13, a linked question will pop-up: Please, further specify].

Supervisory activities

15. Please, specify which of the following tools has your NCA in order to monitor the compliance in relation to the following EMIR provisions: [Multiple answers possible]

| | Art. 4 | Art. 9 | Art. 11 |
|--|---------------|---------------|----------------|
| a. Inspect all types of documents and receive copies about documents related to the clearing/reporting/risk mitigation techniques obligations from the counterparties. | | | |
| b. Ask information in relation to the clearing / reporting / risk mitigation techniques obligations from any person (including the ones that are not counterparties in the transaction). | | | |
| c. Conduct investigations on-site. | | | |
| d. Summon and interview people. | | | |
| e. Other. | | | |

[Q dependent on Q14(b)] Please, specify in which cases.

[Q dependent on Q14(e)] Please, specify.

16. Has your NCA started conducting or publishing the assessment reports mentioned in art. 12.2 of EMIR?

- a. Yes.
- b. No.

[Q dependent on Q15(a)] Could you highlight the conclusions drawn in the last assessment report on the effectiveness of the penalties rules in your jurisdiction?

[Q dependent on Q15(a)] Please, can you attach or provide the link to the most recent report?

[Q dependent on Q15(b)] Could you provide an explanation for the delay and whether you have a calendar for its publication?

Clearing obligation

17. Regarding the clearing obligation and for the period in scope (January 2019-December 2020) for this survey, has your NCA identified any particular circumstance preventing market participants to comply with the legal requirements of art. 4 of EMIR? [Multiple answers possible]

- a. Yes, technical, operational barriers or other kind of barriers.

- b. Yes, difficulties related to counterparties located in third countries.
- c. Market participants are facing difficulties to access clearing.
- d. Other.

[Q dependent on Q16(a)] Please, specify which.

[Q dependent on Q16(b)] Please, specify which.

[Q dependent on Q16(c)] Please specify kind of counterparties, size and any known reasons.

[Q dependent on Q16(d)] Please, specify which.

18. Has your NCA prepared any internal protocols for the detection and request of suspension of the clearing obligation according to Article 6a introduced by EMIR Refit?

- a. Yes.
- b. No.

Supervision of the clearing obligation for NFCs

19. In relation to non-financial counterparties (Art. 10 of EMIR), which is the approach adopted by your NCA for ensuring the compliance of the clearing obligation?

- c. Your NCA performs a preventive supervisory control to check if non-financial counterparties exceed clearing thresholds.
- d. Your NCA relays exclusively on market participants' notifications (under Article 4(a)(1) and 10(1) of EMIR.
- e. Other.

[Q dependent on Q18(a)] Please, specify the means used.

[Q dependent on Q18(b)] Please, specify -if any- the supportive documentation required when notifying.

[Q depending on Q18(c)] Please, further specify.

20. Regarding the supervision of NFCs that are part of cross-border groups and the clearing obligation, does your NCA cooperate with other authorities?

- a. Yes
- b. No

[Q dependent on 19(a)] Do you have MoU(s) covering this cooperation?

- a. Yes
- b. No

[Q dependent on 19(a)] Can you provide information on when does this cooperation occur? Examples are appreciated.

[Q dependent on 19(a)] Can you share your views on the functioning/outcome of this cooperation (e.g. benefits and challenges in the process, etc.)

[Q dependent on 19(a)] Does your NCA rely on information from GLEIF for mapping the groups?

- a. Yes
- b. No
- c. We use other sources [Please specify]

Risk management procedures for non-cleared OTC derivatives

21. In relation to the regulatory requirements envisaged in art. 11 of EMIR, in relation to risk management procedures (i.e. timely, accurate and appropriate segregated exchange of collateral), which kind of supervisory actions does your NCA undertake? [Multiple answers possible].

| | Supervisory measures only following a risk-based approach | Random pre-scheduled controls/inspections to monitor compliance | Periodic requests for information/documentation to proof compliance | Other |
|--|--|--|--|--------------|
| a. Timely calculation and collection of margins | | | | |
| b. Eligibility of collateral | | | | |
| c. Adequate segregation of collateral | | | | |
| d. Daily mark-to-market of outstanding contracts | | | | |
| e. Portfolio reconciliation | | | | |
| f. Dispute resolution | | | | |
| g. Authorisation and recording of any exceptions to the risk | | | | |

| | | | | |
|--|--|--|--|--|
| management procedures | | | | |
| d. Periodic verification of the liquidity of the collateral to be exchanged | | | | |
| e. Timely re-appropriation of the collateral in event of default by the posting counterparty | | | | |
| f. Monitoring the exposures arising from intragroup OTC derivative contracts | | | | |
| g. Monitoring risk reduction services such as compression or risk rebalancing | | | | |

[Q only addressed to the NCAs that ticked the column “other” in the table above] Please, specify and mention to which row you are referring to from (a) to (g).

[Q only addressed to the NCAs that undertake any supervisory activity regarding risk-reduction services (g)] Please, specify (i) which kind of actions, (ii) its purpose and any (iii) conclusion drawn from them.

Third countries

22. Regarding third country entities trading contracts with substantial effect in the Union, which would be subject to the clearing obligation if established in the EU, has your NCA undertaken any specific measures to detect clearing evasion in the period January 2019 -December 2020?

Investigations conducted

23. How many investigations, if any, has your NCA conducted in the period in scope for this survey (January 2019-December 2020)?

| | Art. 4 | Art. 9 | Art. 10 | Art. 11 |
|-----------------|---------------|---------------|----------------|----------------|
| a. 0 | | | | |
| b. 1-5 | | | | |
| c. 6-10 | | | | |
| d. 11-20 | | | | |
| e. More than 20 | | | | |

[Q dependent on Q22 (b)-(e)] According to your answer in Q20, please indicate (i) how many investigations, (ii) a brief summary of the cases and (iii) their status.]

Enforcement actions

24. In relation to the following EMIR provisions, your NCA has competence to: [Multi-answer]

| | Art. 4 | Art. 9 | Art. 11 |
|---|---------------|---------------|----------------|
| a. Issue non-binding letters / recommendations. | | | |
| b. Issue binding letters / recommendations. | | | |
| c. Impose administrative fines. | | | |
| d. Impose other kind of sanctions (e.g. criminal sanctions, suspension or withdrawal of license, etc.). | | | |
| e. Other. | | | |

[Q dependent on Q23(a)] Please, specify under which cases.

[Q dependent on Q23(b)] Please, specify under which cases.

[Q dependent on Q23(c)] Please, specify under which cases and its amounts.

[Q dependent on Q23(d)] Please, specify under which cases.

[Q dependent on Q23(e)] Please, specify.

25. Has your NCA issued communications (e.g. recommendations, warning letters)) regarding the implementation of the following provisions (between January 2019 - December 2020)? [multiple answers possible]

| | Art. 4 | Art. 9 | Art. 11 |
|---|--------|--------|---------|
| a. Yes, communications addressed to all market participants. | | | |
| b. Yes, communications addressed to individual market participants. | | | |
| c. No, no letters have been issued. | | | |

[Q dependent on Q24(a)] Please, specify how many and the relevant topic.

[Q dependent on Q24(b)] Please, specify (i) how many were issued, (ii) the relevant topic and (iii) whether those have been published or not.

Sanctions

26. In relation to the following EMIR provisions, has your NCA imposed any penalty in the period January 2019-December 2020?

| | Art. 4 | Art. 9 | Art. 10 | Art. 11 |
|--------|--------|--------|---------|---------|
| a. Yes | | | | |
| b. No | | | | |

[Q dependent on Q25(a)] Please, indicate (i) the number of sanctions, (ii) the type of sanction, (iii) a brief summary of the case and (iv) the current status].

27. Please, provide information on the system followed to quantify the administrative fines amounts in your jurisdiction in relation to Articles 4, 9, 10 and 11 of EMIR: [multiple answers possible].

| Way in which fines are quantified | Tick this box according to the system followed in your jurisdiction |
|---|---|
| a. Up to a maximum amount (e.g. up to €1 million) | |
| b. A range between a floor and a cap amount (e.g. from €500.000 to €1 million) | |
| c. A fix amount + a variable amount consisting of up to a percentage of the annual turnover of the entity | |

| | |
|--|--|
| d. A fix amount + a variable amount consisting of a coefficient of the profit gained by the infringement | |
| e. A combination of different systems mentioned in a-d | |
| f. Other | |

[Q dependent on 26(a)] Please, provide the maximum amount:

[blank space]

[Q dependent on 26(b)] Please provide the range of amounts (e.g. 'from x to z'):

[blank space]

[Q dependent on 26(c)] Please provide the fix amount and the percentage/s applicable:

[blank space]

[Q dependent on 26(d)] Please provide the fix amount and the coefficient/s applicable:

[blank space]

[Q dependent on 26(f)] Please, further specify:

[blank space]

28. Amounts of fines in Q23 vary depending on whether the infringement is committed by a natural/legal person

| | |
|--------|--|
| a. Yes | |
| b. No | |

[Q dependent on 27(a)] Please provide the amounts or range of amounts depending on whether the infringement is committed by a natural or a legal person: Please explain the factors according to which the amount of fine is calculated. Please explain if these factors are established in the law or calculated based on internal procedures.

[blank space]

29. Please, specify if during the period January 2019 - December 2020 there has been any criminal sanction or any other type of sanctions imposed in your jurisdiction (besides the administrative penalties covered in Q25) regarding the obligations in Articles 4, 9, 10 and 11.

[Blank space]

30. Does your jurisdiction envisage criminal sanctions in connection with requirements in art. 4, 9, 10 and 11?

| | |
|--------|--|
| c. Yes | |
| d. No | |

[Q dependent on Q29(a)] Please specify for which breaches and the extent of these sanctions:

[blank space]

31. Does your jurisdiction envisage other type of penalties besides administrative fines or criminal sanctions (not covered under Q22)?

| | |
|--------|--|
| a. Yes | |
| b. No | |

[Q dependent on Q30(a)] Please specify which kind of other penalties are envisaged in your jurisdiction:

[blank space]

32. In relation to the Covid-19 crisis, has your NCA issued any statement or communication on issues related to EMIR obligations?

- a. Yes.
- b. No.

33. As a consequence of Covid-19, did your NCA:

- a. Enhance supervisory activity of EMIR provisions.
- b. Relax supervisory activity of EMIR provisions.

[Q dependent on Q32(a)] Could you please specify which, e.g. enhanced supervision of market continuity protocols, etc.]

[Q dependent on Q32 (b)] Could you please specify which provisions and by which means?

Annex II: Tables with granular information on the different countries

Table 1: Allocation of competences for the supervision and the imposition of penalties between NCAs in relation to provisions in Articles 4, 9, 10 and 11 of EMIR.

| | Art. 4 | Art. 9 | Art. 10 | Art. 11 |
|-----|--|--|--|--|
| Yes | AT; CZ; DE; DK; EE; ES; FI; FR; HU; IE; IS; LI; LV; MT; NO; SE; SK | AT; BG; CZ; DE; DK; EE; ES; FI; FR; HU; IE; IS; LI; LV; MT; NL; NO; SE; SK | AT; BG; CZ; DE; DK; EE; ES; FI; FR; GR; HU; IE; IS; LI; LU; LV; MT; NL; NO; RO; SE; SI; SK | AT; CZ; DE; DK; EE; ES; FI; HU; IE; IS; LI; LV; MT; NO; SE; SK |
| No | BE; BG; GR; HR; IT; LU; NL; PT; RO; SI | BE; GR; HR; IT; LU; PT; RO; SI | BE; HR; IT; PT | BE; BG; FR; GR; HR; IT; LU; NL; PT; RO; SI |

Table 2: NCAs interaction with market participants (from January to December 2018).

| | Art. 4 | Art. 9 | Art. 11 |
|--|--|--|--|
| Launch processes to get feedback regarding the implementation of different regulatory requirements (e.g. launching surveys, preparing questionnaires, etc.) | AT; BE; DE; ES; FR; LI; LU; MT | AT; BE; DE; ES; FR; HR; LI; LU; MT; PT | BE; DE; ES; FR; IT; LI; LU; MT; PT |
| Create working groups to provide support / guidance in collaboration with market participants | AT; DE; FR; SK | AT; DE; FR; LI; LV; SI; SK | AT; DE; FR; SI; SK |
| Prepare specific trainings for market participants 8A | FI; FR; IE | AT; FI; FR; IE; IT; PT | FI; FR |
| Other | AT; BE; DK; EE; ES; FI; FR; HR; IE; IS; IT; LU; MT; NO; RO; SE; SI; SK | BE; CZ; DK; EE; ES; FI; FR; HR; IE; IS; IT; LU; MT; NL; NO; RO; SE; SI; SK | AT; CZ; DK; EE; ES; FI; FR; HR; IE; IS; LU; MT; NL; NO; RO; SE; SI; SK |

Table 3: Actions related to Brexit and EMIR obligations

| | |
|-----|--|
| Yes | BE; CZ; DE; ES; FR; GR; IE; IS; IT; LI; LU; MT; NL; NO; PT; SI |
| No | AT; BG; DK; EE; FI; HR; HU; LV; PL; RO; SE; SK |

Table 4: Sources of information checked by NCAs.

| | Art. 4 | Art. 9 | Art. 11 |
|--|--|--|--|
| a. Data from Trade Repositories | BE; CZ; DE; EE; ES; FI; FR; HR; HU; IE; IT; LU; MT; NO; PL; RO; SI; SK | AT; BE; BG; CZ; DE; EE; ES; FI; FR; GR; HR; HU; IE; IS; IT; LI; LU; LV; MT; NL; NO; PT; RO; SE; SI; SK | BE; CZ; DE; EE; ES; FI; FR; HR; HU; IE; IT; LU; MT; NO; RO; SI; SK |
| b. Data directly submitted by market participants | AT; BE; CZ; DE; ES; FI; FR; GR; HR; HU; IE; IT; LU; MT; NL; RO; SK | AT; BE; CZ; DE; EE; ES; FR; HR; HU; IE; IS; IT; LU; LV; MT; NL; NO; PL; RO; SK | AT; BE; CZ; DE; ES; FR; HR; HU; IE; IT; LU; MT; NL; PL; RO; SK |
| c. Other (e.g. check market participant's public information, website, etc.) | CZ; DE; DK; ES; IE; IS; LI; MT; PT; SI; SK | AT; BE; CZ; DK; EE; ES; FR; IE; IT; LI; LU; MT; NL; NO; PL; PT; SI; SK | CZ; DE; DK; ES; FR; IE; IS; IT; LI; LU; MT; PL; SI; SK |

Table 5: Checks performed using TR data.

| Information from TR data | NCA which performed checks |
|--|--|
| Counterparty information (e.g. ID, type of counterparty, ...) | AT; BE; CZ; DE; EE; ES; FI; FR; GR; HR; IE; IS; IT; LI; LU; LV; MT; NL; NO; PT; RO; SE; SI; SK |
| Clearing threshold | DE; EE; ES; HR; IE; IT; LI; LU; MT; PT |
| Information used to identify OTC derivative contracts used to take advantage from the arbitrage between cleared/uncleared trades | ES |
| Rates on voluntarily cleared transactions | AT; BE; DE; EE; ES; FR; IE; NO; SK |
| Volume of cleared transactions | AT; BE; DE; EE; ES; FR; HR; IE; IT; LI; MT; RO; SE; SI; SK |
| Volume of intragroup transactions/activity | AT; BE; DE; EE; ES; FR; HR; IE; IT; LI; LV; MT; SK |
| Quality and accuracy of data reported | AT; BE; CZ; DE; DK; EE; ES; FI; FR; GR; HR; IE; IS; IT; LI; LU; LV; MT; NL; NO; PT; SE; SI; SK |
| Compliance with the timely confirmation requirement | BE; EE; ES; FR; GR; HU; IT; LI; LU; LV; MT; PT; SE; SI; SK |
| Compliance with portfolio reconciliation requirement | EE; ES; FR; HU; LU; MT; SK |
| Compliance with the exchange of collateral for non-centrally cleared transactions | AT; BE; DE; EE; ES; FR; HR; HU; IE; IT; LU; MT; SI; SK |

| | |
|--|--|
| Use of risk reduction services (e.g. compression) | EE; ES; IT; MT; SK |
| Number of rejected transactions | AT; BE; CZ; DE; DK; EE; ES; FI; FR; GR; HR; IE; IS; IT; LI; LU; LV; MT; NO; PL; PT; RO; SE; SI; SK |
| Data reconciliations | AT; BE; CZ; DE; DK; ES; FR; GR; IE; IS; IT; LI; LU; LV; MT; NO; PT; SI; SK |
| Brexit related analyses (i.e. porting to EU27, UK submitting entities) | DE; ES; FR; IE; IT; LI; LU; MT |
| Other | BE; CZ; ES; FI; FR; MT; PT |

Table 6: Checks performed on data directly submitted by counterparties to NCAs.

| | |
|---|--|
| Exposures of certain market participants | AT; BE; DE; ES; HR; HU; IT; LI; MT; NL; RO; SK |
| Information about positions from entities books | BE; DE; ES; FI; GR; HR; HU; IT; LI; LU; MT; NL; NO; PL; RO; SI; SK |
| Cross check data reported to TRs | AT; BE; DE; ES; FR; HR; IE; IS; IT; LI; LU; LV; MT; NO; PL; PT |
| Financial statements of market participants | BE; CZ; DE; ES; GR; HR; IT; LI; LU; MT; NL; NO; RO |
| Notifications under Arts. 4(a)(1) and 10(1) of EMIR regarding the clearing obligation | AT; BE; DE; ES; FI; FR; HR; IE; IT; LU; LV; MT; NL; RO; SE |
| Other | BE; CZ; DK; ES; FR; IE; IS; LU; MT; NL; PL |

Table 7: Information on Supervisory tools per country.

| | Art. 4 | Art. 9 | Art. 11 |
|---|--|--|--|
| Inspect all types of documents and receive copies about documents related to the clearing/reporting/risk mitigation techniques obligations from the counterparties. | AT; BE; CZ; DE; DK; EE; ES; FI; FR; HR; HU; IE; IS; IT; LI; LU; MT; NL; NO; PT; RO; SE; SI; SK | AT; BE; BG; CZ; DE; DK; EE; ES; FI; FR; GR; HR; HU; IE; IS; IT; LI; LU; LV; MT; NL; NO; PT; RO; SE; SI; SK | AT; BE; CZ; DE; DK; EE; ES; FI; FR; HR; HU; IE; IS; IT; LI; LU; MT; NL; NO; PT; RO; SE; SI; SK |
| Ask information in relation to the clearing / reporting / risk mitigation | AT; BE; CZ; DE; EE; ES; FI; FR; HR; IE; IS; IT; LI; | AT; BE; CZ; DE; EE; ES; FI; FR; GR; HR; IE; IS; IT; | AT; BE; CZ; DE; EE; ES; FI; FR; HR; IE; IS; IT; LI; |

| | | | |
|--|--|--|--|
| techniques obligations from any person (including the ones that are not counterparties in the transaction) | LV; MT; NL; NO; PT; RO; SE; SI; SK | LI; LU; MT; NL; NO; PT; RO; SE; SI; SK | MT; NL; NO; PT; SE; SI; SK |
| Conduct investigations on-site | AT; BE; CZ; DE; DK; EE; ES; FI; FR; HR; HU; IE; IS; IT; LI; LU; LV; MT; NL; NO; PL; PT; SE; SI; SK | AT; BE; BG; CZ; DE; DK; EE; ES; FI; FR; HR; HU; IE; IS; IT; LI; LU; LV; MT; NL; NO; PL; PT; SE; SI; SK | AT; BE; CZ; DE; DK; EE; ES; FI; FR; HR; HU; IE; IS; IT; LI; LU; LV; MT; NL; NO; PL; PT; SE; SI; SK |
| Summon and interview people | AT; BE; CZ; DE; ES; FI; FR; HR; HU; IE; IS; LI; LU; MT; NL; NO; PT; SE; SI; SK | AT; BE; BG; CZ; DE; ES; FI; FR; HR; HU; IE; IS; LI; LU; LV; MT; NL; NO; PT; SE; SI; SK | AT; BE; CZ; DE; ES; FI; FR; HR; HU; IE; IS; LI; LU; MT; NL; NO; PT; SE; SI; SK |
| Other | DK; LU; PL; PT | DK; LU; PL; PT | DK; LU; PL; PT |

Table 8: Supervision of the clearing obligation.

| | |
|---|--|
| Your NCA performs a preventive supervisory control to check if non-financial counterparties exceed clearing thresholds. | BE; ES; FR; HR; LI; MT |
| Your NCA relays exclusively on market participants' notifications. | AT; BG; CZ; DK; EE; FI; GR; HU; IE; IS; LU; LV; NL; NO; PL; PT; RO; SE; SI; SK |
| Other | DE; IT |

Table 9: Supervision of risk management procedures for non-cleared OTC derivatives

| | Supervisory measures only following a risk-based approach | Random pre-scheduled controls/inspections to monitor compliance | Periodic requests for information/documentation to proof compliance | Other |
|--|--|---|---|--------|
| Timely calculation and collection of margins | BE; CZ; DE; DK; ES; FI; FR; HU; IT; LI; LU; LV; MT; NL; NO; RO; SE | DE; ES; FR; IS; IT; LU; MT; SK | FR; HU; IS | DE; MT |
| Eligibility of collateral | BE; CZ; DE; DK; ES; FI; FR; HU; IT; LI; LU; LV; MT; NL; NO; RO; SE | ES; FR; HR; IS; IT; LU; MT; SK | FR; HU | DE; MT |

| | | | | |
|---|--|--|----------------|----------------|
| Adequate segregation of collateral | BE; CZ; DE; DK; ES; FI; FR; HU; IT; LI; LU; MT; NL; NO; RO; SE | DE; ES; FR; IS; IT; LU; MT; SK | FR; HU | DE; MT |
| Daily mark-to market of outstanding contracts | BE; CZ; DE; DK; EE; ES; FI; FR; IT; LI; LU; MT; NL; NO; RO; SE | DE; EE; ES; FR; HR; IS; IT; LU; MT; SK | EE; FR | DE; MT |
| Portfolio reconciliation | BE; CZ; DE; DK; EE; ES; FI; FR; HU; IT; LI; LU; MT; NL; NO; RO; SE; SI | DE; EE; ES; FR; HR; IS; IT; LU; MT; SI; SK | EE; FR; HU | DE; MT |
| Dispute resolution | BE; CZ; DE; DK; EE; ES; FI; FR; IT; LI; LU; MT; NL; NO; RO; SE; SI | DE; EE; ES; FR; IS; IT; LU; MT; SI; SK | EE; ES; FR; HU | DE; MT |
| Authorisation and recording of any exceptions to the risk management procedures | BE; CZ; DE; DK; FI; FR; LI; LU; MT; NL; NO; RO; SE | FR; IS; LU; MT; SK | FR | DE; MT |
| Periodic verification of the liquidity of the collateral to be exchanged | BE; CZ; DE; DK; ES; FI; FR; HR; IT; LI; LU; MT; NL; NO; RO; SE | DE; ES; FR; IS; IT; LU; MT; SK | FR; IT | DE; MT |
| Timely re-appropriation of the collateral in event of default by the posting counterparty | BE; CZ; DE; DK; FI; FR; IT; LI; LU; MT; NL; NO; RO; SE | FR; IS; IT; LU; MT; SK | FR | DE; MT |
| Monitoring the exposures arising from intragroup OTC derivative contracts | BE; CZ; DE; DK; EE; FI; FR; HR; IT; LI; LU; MT; NL; NO; RO; SE | EE; FR; IS; IT; LU; MT; SK | EE; FR; HR; IT | DE; MT; NL |
| Monitoring risk reduction services such as compression or risk rebalancing | CZ; DK; EE; FI; FR; IT; LI; MT; NL; NO; SE | EE; FR; IT; MT; SK | EE; FR | DE; DK; IS; MT |

Table 10: Investigations conducted between January 2019 and December 2020.

| | Art. 4 | Art. 9 | Art. 10 | Art. 11 |
|---------------------|--|--|--|--|
| 1-5 | CZ; DK; EE; FI; GR; HR; HU; IS; IT; LV; MT; NL; NO; PL; RO; SE | CZ; DK; EE; FI; HR; IS; LV; PL; RO; SE | CZ; DK; EE; FI; HR; HU; IS; LV; MT; NL; NO; PL; RO; IT | AT; CZ; DK; EE; FI; FR; GR; HR; IE; IS; LV; MT; NL; RO; SE; IT |
| 6-10 | HR; SI; SK | BG; GR; HR; LI; LV; SI; SK | ES; GR; SE; SK | HR; NO; PL; SK |
| 11-20 | | FR; LU; NO; PT | | ES |
| More than 20 | AT; BE; ES; LU | AT; BE; HU; LU; IT | LU | BE; HU; LU |

Table 11: Supervisory and enforcement competences.

| | Art. 4 | Art. 9 | Art. 11 |
|--|--|--|--|
| Issue non-binding letters / recommendations | AT; BE; BG; CZ; DE; EE; ES; FI; FR; GR; HR; HU; IE; IS; IT; LI; LU; LV; MT; NL; NO; PT; RO; SE; SK | AT; BE; BG; CZ; DE; EE; ES; FI; FR; GR; HR; HU; IE; IS; IT; LI; LU; LV; MT; NL; NO; PT; RO; SE; SK | AT; BE; BG; CZ; DE; EE; ES; FI; FR; GR; HR; HU; IE; IS; IT; LI; LU; LV; MT; NL; NO; PT; RO; SE; SK |
| Issue binding letters / recommendations | AT; BE; BG; DE; DK; EE; ES; FR; GR; HR; IE; IS; IT; LI; LU; LV; MT; NL; NO; PT; RO; SE; SK | AT; BE; BG; DE; DK; EE; ES; FR; GR; HR; IE; IS; IT; LI; LU; LV; MT; NL; NO; PT; RO; SE; SK | AT; BE; BG; DE; DK; EE; ES; FR; GR; HR; IE; IS; IT; LI; LU; LV; MT; NL; NO; PT; RO; SE; SK |
| Impose administrative fines | AT; BE; BG; CZ; DE; EE; ES; FI; FR; GR; HU; IE; IS; IT; LI; LU; LV; MT; NL; NO; PL; PT; RO; SE; SI; SK | AT; BE; BG; CZ; DE; EE; ES; FI; FR; GR; HU; IE; IS; IT; LI; LU; LV; MT; NL; NO; PL; PT; RO; SE; SI; SK | AT; BE; BG; CZ; DE; EE; ES; FI; FR; GR; HU; IE; IS; IT; LI; LU; LV; MT; NL; NO; PL; PT; RO; SE; SI; SK |
| Impose other kind of penalties (e.g. criminal sanctions) | AT; EE; ES; HR; HU; IE; IS; LI; LV; MT; NO; PT; SE; SK | AT; EE; ES; HR; HU; IE; IS; LI; LV; MT; NO; PT; SE; SK | AT; EE; ES; FR; HR; HU; IE; IS; LI; LV; MT; NO; PT; SE; SK |
| Other | ES; FR; LU; NO; PT | ES; FR; LU; NO; PT | ES; FR; LU; NO; PT |

Table 12: Recommendations or warnings issued in the last period

| | Article 4 | Article 9 | Article 11 |
|--|--|--|--|
| Yes, communications addressed to all market participants. | BE; DE; ES; FR; IE; IT; LI; LU; MT; NO; SE; SK | BE; DE; ES; FR; HR; IE; IT; LI; LU; MT; NL; NO; SE; SI; SK | DE; ES; FR; LI; LU; MT; NO; SE; SK |
| Yes, communications addressed to individual market participants. | BE; DE; ES; FR; HR; IE; IT; LU; MT | BE; BG; CZ; DE; ES; FR; IE; IS; IT; LU; LV; MT; NL; NO; RO; SI | BE; DE; ES; FR; HR; IT; LU; MT |
| No, no communications have been issued. | AT; CZ; DK; EE; FI; GR; HR; HU; IS; NL; PL; PT; SE | AT; CZ; DK; EE; FI; GR; HR; HU; PL; PT; SE | AT; CZ; DK; EE; FI; GR; HR; HU; IE; IS; NL; PL; PT; SE |

Table 13: System to quantify administrative fines

| | |
|--|--|
| Up to a maximum amount (e.g. up to € 1 million) | AT; CZ; EE; IE; LI; MT; RO |
| A range between a floor and a cap amount (e.g. from â,~500.000 to â,~1 million) | AT; BE; DE; HR; HU; IT; LU; NL; PT; SE; SI |
| A fix amount + a variable amount consisting of up to a percentage of the annual turnover of the entity | IT; PL |
| A fix amount + a variable amount consisting of a coefficient of the profit gained by the infringement | LU |
| A combination of different systems mentioned in a-d. | ES; IS; PT; SK |
| Other | DK; FI; FR; GR; IT; NO |

Table 14: Countries with criminal sanctions for breaches under EMIR (Articles 4, 9, 10 and 11).

| | Article 4 | Article 9 | Article 10 | Article 11 |
|------|--|--|--|--|
| Yes. | DK; ES; IE; NO; PT | DK; ES; IE; NO; PT | DK; ES; IE; NO; PT | DK; ES; IE; NO; PT |
| No. | AT; BE; BG; CZ; DE; EE; FI; FR; GR; HR; HU; IS; IT; LI; LU; LV; MT; NL; PL; RO; SE; SI; SK | AT; BE; BG; CZ; DE; EE; FI; FR; GR; HR; HU; IS; IT; LI; LU; LV; MT; NL; PL; RO; SE; SI; SK | AT; BE; BG; CZ; DE; EE; FI; FR; GR; HR; HU; IS; IT; LI; LU; LV; MT; NL; PL; RO; SE; SI; SK | AT; BE; BG; CZ; DE; EE; FI; FR; GR; HR; HU; IS; IT; LI; LU; LV; MT; NL; PL; RO; SE; SI; SK |

Table 15: has your NCA issued any statement or communication on issues related to EMIR obligations in relation to the Covid-19 pandemic?

| | Art. 4 |
|-----|--|
| Yes | AT; ES; FR; IE; MT |
| No | BE; BG; CZ; DE; DK; EE; FI; GR; HR; HU; IS; IT; LI; LU; LV; NL; NO; PL; PT; RO; SE; SI; SK |

Annex III: Summary of sanctions and its aggregated amounts by country.

| NCAs' Member States | Sanctions | | No sanctions imposed |
|---------------------|---|---|----------------------|
| | Total number of penalties and measures ¹⁰² | Total aggregate amount of financial penalties | |
| Austria | | | X |
| Belgium | | | X |
| Bulgaria | | | X |
| Croatia | | | X |
| Cyprus | | | N/A |
| Czech Republic | | | X |
| Denmark | | | X |
| Estonia | | | X |
| Finland | | | X |
| France | 1 | € 500,000 | |
| Germany | | | X |
| Greece | | | X |
| Hungary | | | X |
| Ireland | | | X |
| Italy | 3 | € 105,000 | |
| Latvia | | | X |
| Lithuania | | | N/A |
| Luxembourg | 1 | € 20,000 | |
| Malta | | | X |
| Netherlands | | | X |
| Poland | | | X |
| Portugal | | | X |
| Romania | | | X |
| Slovenia | | | X |
| Slovakia | | | X |
| Spain | | | X |
| Sweden | | | X |
| Liechtenstein | 1 | CHF 23,500 ¹⁰³ | |
| Norway | | | X |
| Iceland | | | X |

¹⁰² As the penalties imposed may cover more than one legislative provision, the total number/amount of penalties disclosed in this Annex may not correspond to the sum of the number/amount of penalties disclosed in Annex II.

¹⁰³ Corresponding to EUR 21,444.70 (CHF/EUR 0.91).