Position paper

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ESMA Final Report on a comprehensive approach for the simplification of financial transaction reporting

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General remarks

We welcome the direction taken by ESMA in its Final Report (ESMA12-1406959660-3235) and expressly support the objective of achieving tangible relief in capital markets reporting for reporting entities. Many of the short- and medium-term proposals are well suited to delivering swift simplification, and we appreciate the effort to reduce the reporting burden at an early stage. In our view, this constitutes an important step in the right direction.

Notwithstanding this positive overall assessment, we would like to raise a few specific points that, from our perspective, warrant further consideration.

1. Recommendation #1 – Revision of dual-sided reporting under EMIR and SFTR through delegated reporting

We very much welcome the decision to reduce dual-sided reporting under EMIR and SFTR by extending the scope of delegation - including for FCs (in particular for smaller entities). Since delegation of reporting already exists to a significant extent under MiFIR as well, it would, in our view, be only consistent to pursue a corresponding simplification in MiFIR reporting as part of the same step. As regards the provision of personal information (where required, cf. number 110 on page 39 of the Final Report), we see no objection to maintaining the corresponding reporting channels for the small number of data fields concerned.

However, as regards timing, we would like to understand in particular how the necessary Level 1 changes could be achieved in the short and medium term. One possibility would be to incorporate them into the MISP (*Market Infrastructure and Supervision Package*) In its draft amendment proposals, at least the ECON committee has put forward a corresponding proposal in the context of EMIR. Another possibility could be a very targeted "Reporting Omnibus Regulation" addressing only the limited changes required at this stage. Followed by a comprehensive review once the comprehensive review takes place.

2. Recommendation #8 - Reporting of SFTR reporting of trades for which settlement fails

We do not consider the following proposal to be appropriate:

"*Amending the SFTR Level 3 to exclude securities financing transactions from SFTR reporting obligations where the opening leg settlement fails prior*

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to the reporting deadline (T+1). In such cases, the transaction does not result in a completed opening leg and does not generate an actual economic exposure. Transactions that fail to settle and never generate such exposure should not trigger lifecycle reporting under SFTR. The SFTR reporting obligation should be explicitly limited to transactions that give rise to an effective transfer of securities or cash and therefore create a risk exposure relevant for supervisory purposes."

This approach overlooks the fact that the obligations under a repo arise upon conclusion of the contract, and that errors or delays in the settlement process are in this context of no relevance. The obligation arises irrespective of settlement (fails). At the same time, it would not be sensible to require the reporting of settlement failures or delays, as these are in turn irrelevant to the contractual obligations arising under a repo.

In addition, we would like to point out that in practice, reporting under the SFTR takes place either in near-time or on the morning of T+1. In case of a settlement fail, a cancellation would have to be submitted on the evening of T+1. On the following day, a new UTI would have to be assigned to the affected transaction, and – due to the pairing requirement - the counterparties would need to exchange the new UTI between themselves (depending on which party acts as UTI generator). The new UTI would then have to be imported into the reporting system. Hence, this proposal is not workable in practice or achievable only at disproportionate operational effort.

Given, that there is no burden relief to be achieved – rather the contrary - we would therefore strongly advise against this approach.

3. Recommendation #5 – Deprioritising a limited list of RTS 22 and 23 of MiFIR optional fields
We generally welcome recommendation #5. However, we are skeptical about the following limitation:

"*Ensuring a coordinated supervisory approach whereby NCAs would not prioritise supervisory actions for the identified optional RTS 22 and RTS 23 fields, provided that their reporting does not raise material data quality or supervisory concerns.*"

In our view, the relevant fields should be firmly set forth as set out on page 46 of the Final Report. It should not be left to the assessment of the individual NCAs whether a given field is to be regarded as “raising material data quality or supervisory concerns”. A discretionary, case-by-case approach at national level risks undermining the intended relief and would perpetuate divergent supervisory practices as well as legal uncertainty for reporting entities. We therefore advocate a fixed, harmonised determination of the fields concerned.

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