

FESE Response to the ESMA Consultation Paper on MiFIR Reference Data and Transaction Reporting

Brussels, 20th November 2020

Introductory remarks

FESE fully agrees with ESMA that data quality and completeness are essential for the correct functioning of the legislative requirements, as these are highly data-dependent. While improvements are still being made by both ESMA and market participants, there are still some fundamental points that require further consideration and discussion. In addition to the points raised in the Consultation Paper, we would like to make the following observations:

1. Reference data and reporting: Operationally speaking, the main concerns raised by MiFID II/R are related to reference data and reporting, in particular RTS 23. The problems raised by FESE during the past¹, unfortunately, remain. These issues concern the FIRDS/FITRS Database Reporting, CFI code attribution and matching with MiFIR identifiers, tick sizes, and Legal Entity Identifiers (LEIs).
2. Interpretation of certain terms: Trading venues have different interpretations of key concepts like, for instance, “maturity date”. Specifically, some FESE Members use the settlement date while others use the valuation date if the final terms of the instrument do not mention explicitly maturity date. This can pose some problems. Guidance on these specific questions would be useful. In addition, regarding Level 3 Q&As, the questions submitted by some FESE Members are not always responded in a satisfactory way.
3. CFI codes: When the financial instrument is listed, the CFI Code should not change. However, this is not always the case. CFI codes change often on the Association of National Numbering Agencies (e.g. from bond to warrant) and this can impact data validation as the MiFID II data sent to ESMA changes according to the CFI code (CFI validation matrix). In an ideal case, the original CFI code on the Association of National Numbering Agencies should not be modified during the listing period to mitigate reporting issues and inconsistencies.
4. Corrections via NCAs: When there are corrections to be performed, they need to be dealt with via NCAs. This is a time-consuming and burdensome process that should be revisited and improved.

We would welcome further engagement on these topics and urge ESMA to continue to liaise with market participants on trying to resolve outstanding issues.

¹ FESE, “FESE Input on the Functioning of the ESMA Database” (Brussels, 2019).

Q1. Do you foresee any challenges for UCITS management companies and AIF managers in providing transaction reports to NCAs? If yes, please explain and provide alternative proposals.

The goal of reporting transactions is to enable NCAs to carry out their mission of monitoring markets. For this to happen, the data quality and the completeness of transactions for each financial instrument are very important. Trading venues already reports its non-MiFID members' transactions to the relevant NCAs under Article 26(5) MiFIR. If reporting is extended to AIF managers and UCITS management companies, the information required for reporting should be the responsibility of these entities; a trading venue will only be able to report the data that has been transmitted to it i.e. a trading venue can only report transactions executed on its systems and the data transmitted by its members. The trading venue should not be responsible for data not available or not transmitted by the non-MiFID members.

Q2. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

No, FESE does not foresee any challenges with the outlined approach and supports ESMA's suggestion to align the wording in Article 26 (5) MiFIR with the existing provisions to ensure consistency in the terminology applied across different trading venues.

Q3. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

FESE supports clarification of the text to clearly state who will have to transmit the copy of the reports in order to avoid any misunderstanding from reporting entities.

Q4. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

FESE considers it essential that regulators be able to exchange reporting data. We would also like to highlight that, in certain cases where our members have experience in reporting to several European regulators, the exchange of information and data is not easy. Indeed, we find that reporting procedures are not fully harmonised. For example, some NCAs feedback on the reporting files is made at the unit transaction level, in other cases it is on the global file (which is difficult to manage). In addition to reporting transactions with ESMA, some regulators request additional on-demand reporting in another format. The need for a fully harmonised process for transaction reporting within all Member States should be considered by ESMA. While sharing transaction reports among NCAs makes sense, RTS 24 already allows for ad hoc requests to inform adjacent NCAs (including RCAs). Hence, we would welcome if ESMA could clarify why to include RCAs as a recipient of transaction reports as well as who should transmit these reports. Moreover, any questions from receiving NCAs on transmitted reports should be channelled through that NCA to which the reporting entity is fulfilling its reporting obligation.

Q5. Do you envisage any challenges in increasing the scope including derivative instruments traded through an SI as an alternative to the expanded ToTV concept? Please justify your position and if you disagree please suggest alternatives.

FESE would agree with ESMA's proposal to include OTC instruments that are traded through an SI. This would allow for creating a level playing field between trading venues and SIs, and increasing transparency.

Q6. Do you agree that the extension should include all Systematic Internalisers regardless of whether they are SI on a mandatory or voluntary basis? Please justify your position.

FESE agrees with the inclusion of both mandatory and voluntary SIs in the expanded reporting scope with a view to reducing complexity and providing a more comprehensive picture of the European trading landscape to the regulators.

Q7. Do you envisage any challenges with the approach described in paragraphs 45-46 on the scope of transactions to be covered by the extension? Please justify your position and indicate your preferred option for SIs under the mandatory regime explaining for which reasons. If you disagree with all of the outlined options, please suggest alternatives.

FESE supports Option 1 being the easiest to implement and broadening the scope of instruments reported with a view to providing a more comprehensive picture of the European trading landscape to the regulators.

Q8. Do you foresee any challenges with the proposal to replace the reference to the term “index” in Article 26(2)(c) with the term “benchmark” as defined under the BMR? If yes, please explain and provide alternative proposals.

FESE supports this proposal as it can bring more clarity and legal certainty.

Q9. Which of the three options described do you consider the most appropriate? Please explain for which reasons and specify the advantages and disadvantages of the outlined options. If you disagree with all of the outlined please suggest alternatives.

FESE supports Option 1 being the easiest to implement and broadening the scope of instruments reported for enhanced market monitoring.

Q10. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

Currently, FESE members observe significant discrepancies in reporting, in particular because of the different interpretations regarding reporting obligations under MAR and MiFID II/MiFIR. Therefore, we generally agree with an alignment between MAR and MiFID II/MiFIR. We are also strongly convinced that, in order to have more transparency and ensure the integrity of the data, all market participants, not only trading venues but also SIs, should be covered by this obligation. This will ensure a level playing field. Furthermore the term “traded on a trading venue” should be clearly defined by ESMA. We would welcome a clarification on whether the alignment of the wording changes the scope of entities subject to reporting obligations. Please see also our response to Q12.

Q11. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

FESE generally agrees with the proposal and its inclusion of where the issuer has requested the admission (see also our response to Q12).

Q12. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

FESE generally agrees with the proposal. The challenge is determining when exactly there is “a request for admission” from an issuer, as there could be different interpretations taken. We suggest it should be made clear that it is when the issuer has formally signed off on the listing, rather than when it may have first made contact. As mentioned in our

answers to the previous questions, we would also welcome a clarification that the replacement of the terms “regulated market, MTF or OTF” and the introduction of the wording mentioned above would not lead to a situation where trading venues would have to report for instruments that are not set up in the trading system yet.

Q13. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

FESE would support the proposal to amend Article 27 to add SIs with a view to include them in the reference data reporting regime. Please also note FESE’s response to the previous questions on the level playing field with SIs and a more comprehensive picture of the derivatives trading landscape in Europe for regulators’ monitoring.

Q14. Did you experience any difficulties with the application of the defined list concept? If yes, please explain.

FESE members did not experience difficulties with the defined list concept. FESE supports the proposal that every trading venues and SIs is obliged to submit reference data on a daily basis with a view to increase the data accuracy of the FIRDS database.

We believe the defined list should be used by all NCAs to avoid multiple reporting of reference data. This list should be the golden source of ESMA. Currently, ESMA takes into account the first trading venue sending reference data on a specific instrument even if this trading venue is not the primary market or the most relevant market. When this data is not valid, the correction process involves trading venues requesting their NCA to ask for a correction to the NCA of the trading venue which has been taken into account by ESMA. Afterwards there is no feedback on the correction date by ESMA. This process for correction is not well known by market participants or authorities and needs to be improved to ensure the accuracy of the list.

Furthermore, to ensure the quality of the list, ESMA needs to resolve the issue of CFI codes and National Numbering Agencies (NNAs) supervision. The incorrect assignment of inappropriate CFIs by the NNAs remains the most common data issue we experience. Some invalid CFI codes are put in ESMA reference data and are the reference for reporting. There are also a number of errors in relation to CFI codes created by the NNAs which are not valid CFI types. In addition, the NNAs responsible for assigning CFI codes will often amend the CFI post-listing. This creates further issues as it can imply that different trading venues have different CFI codes depending on the point at which they sourced the data. Lastly, there are still some cases where NNAs do not assign the CFI code and therefore trading venues are unable to submit the data for these securities to ESMA. We believe these issues need to be addressed in order to ensure the quality of data.

Q15. Do you foresee any challenges with the approach as outlined in the above proposal? If yes, please explain and provide alternative proposals.

FESE members do not foresee challenges with the proposed approach. In fact, some FESE members already make use of this approach. Please also see our response to Q14.

Q16. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

FESE members do not foresee challenges and support the outlined approach of reference to articles in MiFIR.

Q17. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

FESE members do not foresee challenges with the outlined approach, and support the repeal of Article 4 MAR and all additional requirements of this Article under Article 27 MiFIR for matters of consistency. The removal of Article 4 MAR should be compensated with a reference to the amended Article 27 MiFIR.

Q18. Do you foresee any challenges with the approach outlined in paragraphs 75 and 76? If yes, please explain and provide alternative proposals.

FESE members would agree with the inclusion of SIs in the scope of TVTIC and assigning TVTIC to both sides of a trade. We do foresee a challenge with the outlined approach in paragraph 76 though since it implies that there will be a need for the systems used to be upgraded if new codes are added. Introducing a new field in the transactions reporting file has an IT impact and therefore a cost-benefit assessment has to be made.

Q19. Do you foresee any difficulties with the implementation of an additional code generated by the trading venue to be disseminated down the transaction chain in order to link all transactions pertaining to the same execution? If yes, please explain and provide alternative proposals.

FESE members foresee a challenge with the outlined approach since it implies that there will be a need for the systems used to be upgraded if new codes are added. Hence, we do not support ESMA's suggestion to introduce an additional code since the TVTIC should be sufficient to fulfil the explored requirement. ESMA shall also ensure that the new requested data is not yet reported in other reporting files as orders reporting (RTS 24). Introducing an additional code would only lead to high implementation costs and additional complexity.

Q20. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

FESE members do not foresee challenges with the outlined approach concerning LEI and National Identifier. We do not support though the proposal to include the client category in the reporting details. Client related information is already clearly specified in RTS 22. In addition, third-country clients might not be permitted to provide personal data including any categorisation making the compliance of trading venues with Article 26(5) MiFIR to report on behalf of third-country clients even more difficult.

Q21. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

FESE members do not foresee challenges with the outlined approach concerning Algo IDs.

Q22. Which of the two approaches do you consider the most appropriate? Please explain for which reasons.

FESE members consider most appropriate the approach of option A as it seems difficult to retrieve the information of net short sale on the basis of single transactions.

Q23. Do you foresee any challenges with the outlined approaches? If yes, please explain and provide alternative proposals.

FESE members do not foresee challenges with the outlined approach.

Q24. Do you foresee any challenges with the outlined approach to pre-trade waivers? If yes, please explain and provide alternative proposals.

FESE members do not foresee challenges with the outlined approach to pre-trade transparency waivers. FESE also supports ESMA's proposal to extend the scope of this obligation to SIs with a view to provide NCAs with the complete set of information regarding transactions in non-equities executed under a waiver from pre-trade transparency both on and off-venue. We welcome the creation of a level playing field and increased transparency of off-venue trading.

Q25. Have you experienced any difficulties with providing the information relating to the indicators mentioned in this section? If yes, please explain and provide proposals on how to improve the quality of the information required.

FESE members have not experienced any difficulties.

Q26. Do you foresee any challenges with this proposal? If yes, please explain and provide alternative proposals.

FESE members do not agree with ESMA's proposal in terms of a new BBP flag in transaction reports. At least, these should be inputted into a pre-existed reporting field.

Q27. Do you agree with this approach? If not, please clarify your concerns and propose alternative solutions.

FESE members agree with this approach.

Q28. Do you agree with this analysis? If not, please clarify your concerns and propose alternative solutions.

FESE members agree with this analysis. Please also note our response to Q1 regarding the challenges for trading venues to comply with Article 26(5) MiFIR, notably that a trading venue can only report transactions executed on its systems and the data transmitted by its members. The trading venue should not be responsible for data not available or not transmitted by members that are not subject to MiFIR or are from a third country.

Q29. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

FESE does not foresee any challenges and agrees with ESMA's suggestion for Article 26(7) MiFIR with a view on harmonising EMIR and MiFIR reporting.

Q30. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

FESE would not support the introduction of UPI as an alternative of the ISIN required in the transaction and reference data reports in the event that MiFIR reporting would be extended. We think that there are sufficient, well-functioning identifiers in place today, and ISIN is the key identified in the European market. A new identifier would be costly to implement and would not bring any added value.

Q31. Are there any specific aspects relating to the ISIN granularity reported in reference data which need to be addressed? Is the current precision and granularity of ISIN appropriate or is (for certain asset classes) a different granularity more appropriate?

FESE would welcome further clarifications regarding the usage of ISINs for complex instruments.

Q32. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

N/A

Q33. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

FESE supports this approach. Issuers need to include in their prospectus, as a mandatory field, their LEI. The proposal to include this obligation under MiFIR will make the system more robust and intertwined, helping trading venues to comply with their reporting obligations.

However, as highlighted on several occasions in the past, some FESE members still encounter difficulties in reporting LEIs for non-EU issuers. Although we acknowledge the efforts done by ESMA in trying to clarify LEI reporting issues via its Q&As, reporting for non-EU issuers remains difficult as many jurisdictions have not yet implemented requirements in relation to LEI. Trading venues have reached out to non-EU issuers to encourage these to adopt LEIs but these efforts have not always been successful as, in the absence of a legal obligation, certain non-EU issuers may not see the added value of adopting an LEI. As a consequence, not all non-EU issuers have LEIs but trading venues are nonetheless required to report these for all tradable instruments. In addition, there does not appear to be a consistent approach to the application of LEIs to certain entities. For example, the application of LEIs to investment funds varies as some funds have LEIs at the umbrella level, while others have LEIs at the sub-fund level. We would urge regulators and policymakers to clarify this and ensure a consistent approach is taken. We understand that compartments/sub-funds are eligible for a LEI and can apply for it, but it is not mandatory for them to have one. It is important to distinguish between being eligible for a LEI and being required to have one, as the second one is driven by legal requirement issuing by national financial regulators.

In addition, trading venues should be in charge of checking the issuer at the time of admission of trading but cannot be responsible of the yearly renewal of the LEI. Policymakers should consider having LEI validity extended.