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| From: | Presidency |
| To: | Working Party on Financial Services and the Banking Union (MiFID-MiFIR) |
| Subject: | Annex 2 - Proposed amendments on MIFIR reporting requirements |

Annex 2 - Proposed amendments on MIFIR reporting requirements

Obligation to maintain records

| Proposal | Justification |
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| Article 25 (2) The operator of a trading venue shall keep at the disposal of the competent authority, for at least five years, the relevant data relating to all orders in financial instruments which are advertised through their systems in an electronic and machine-readable format and using a common template . The records shall contain the relevant data that constitute the characteristics of the order, including those that link an order with the executed transaction(s) that stems from that order and the details of which shall be reported in accordance with Article 26(1) and (3). ESMA shall perform a facilitation and coordination role in relation to the access by competent authorities to information under this paragraph. | In its Final Report on MAR, ESMA considers standardisation of order data beneficial for NCAs, that could (a) more easily analyse order data requested to any trading venue in the EU, thereby contributing to a more effective markets surveillance ; (b) Allow trading venues to use the same recording and reporting system with any NCA in the EU, avoiding costs linked to compliance with diverging national standards, and (c) Align the standardisation of order book data to that of transaction data, thereby ensuring a more consistent treatment of the two categories. esma70-156-2391_final_report_-_mar_review.pdf (europa.eu) |

| Proposal | Justification |
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| Article 25 (3) ESMA shall develop draft regulatory technical standards to specify the details and formats of the relevant order data required to be maintained under paragraph 2 of this Article that is not referred to in Article 26. | Please see above. |

Obligation to report transactions

| Proposal | Justification |
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| Article 26 (1) (not amended by EC) The competent authorities shall, in accordance with Article 85 of Directive 2014/65/EU, establish the necessary arrangements in order to ensure that the competent authority of the most relevant market in terms of liquidity for those financial instruments also receives that information. The competent authorities shall establish the necessary arrangements in order to ensure that the information can be shared with other competent authorities upon request. | ESMA letter to EC on AIFMD review esma34-32-551_esma_letter_on_aifmd_review.pdf (europa.eu) ESMA highlights that the current MiFIR provisions do not allow for a broad exchange of MiFIR transaction data among NCAs because data can only be exchanged with the competent authority “of the most relevant market in terms of liquidity”. Such a narrow reference does not allow for an exchange that adequately reflect NCAs’ evolving supervisory needs to monitor the most recent market developments. In line with the principles outlined in the Commission data strategy to maximise the potential usage of transaction reporting for all suitable purposes and avoid duplication of reporting flows. https://www.esma.europa.eu/press-news/esma-news/esma-published-its-assessment-and- |

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| | recommendations-ec%E2%80%99s-mifir-review-proposal Also mentioned in ESMA Final report on review of MiFIR reporting (section 4.4): https://www.esma.europa.eu/press-news/esma-news/esma-proposes-amendments-mifir-transactions-and-reference-data-reporting |
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| Proposal | Justification |
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| Article 26 (3) (not amended by EC) 3.The reports shall, in particular, include details of the names and numbers of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, a designation to identify the parties clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the entity subject to the reporting obligation , a designation to identify the applicable waiver under which the trade has taken place, means of identifying the investment firms concerned, and a designation to identify a short sale as defined in Article 2(1)(b) of Regulation (EU) No 236/2012 in respect of any shares and sovereign debt within the scope of Articles 12, 13 and 17 of that Regulation. For transaction carried out on a trading venue, the reports shall include a transaction identification code generated and disseminated by the trading venue to both buying and selling members of the trading venue. For transactions not carried out on a trading venue, the reports shall include a designation identifying the types of transactions in accordance with the measures to be adopted pursuant to Article 20(3)(a) and Article 21(5)(a). For commodity derivatives, the reports shall indicate whether the transaction reduces risk in an objectively measurable way in accordance with Article 57 of Directive 2014/65/EU. | Proposal aims to ensure consistency with revised EMIR TS on reporting and draws on: MiFIR report on review of transaction reporting (section 8.2) MiFIR report on review of transaction reporting (section 6.4) Same recommendation was included in ESMA report on carbon markets |

| Proposal | Justification |
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| Article 26 (5) (not amended by EC) The operator of a trading venue shall report details of transactions in financial instruments traded on its platform which are executed through its systems by any member, participant or user a firm which is not subject to this Regulation in accordance with paragraphs 1 and 3. | MiFIR review report on transaction reporting (section 4.2) https://www.esma.europa.eu/press-news/esma-news/esma-proposes-amendments-mifir-transactions-and-reference-data-reporting To avoid any doubts on the application of this obligation, ESMA considers that the reference to ‘firm’ should be replaced. The term used in Article 25(3) of MiFIR is more precise and would clearly encompass any entity that executes transaction on trading venues. This approach has the following benefits: (i) it ensures that the information on the trading activity on a given EU trading venue is complete and consistent with the information |

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| | <p>provided by other trading venues and (ii) it ensures a better alignment with the order record keeping requirements under Article 25 of MiFIR, thereby allowing for a better linking of orders with the executed transactions stemming from the orders.</p> <p>Lastly, this change will also have a positive impact on the application of the reporting rules to DLT market infrastructures under the DLT Pilot because it extend the obligation of the TV to report to the transaction directly executed by private individuals which will be granted access to DLT platforms.</p> |
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| Proposal | Justification |
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| Article 26 (9) (not amended by EC) | MiFIR report on review of transaction reporting (section 8.2) |
| <p>(d) the designation to identify short sales of shares and sovereign debt as referred to in paragraph 3;</p> <p>(e) the relevant categories of indices financial instrument to be reported in accordance with paragraph 2;</p> | <p>MiFIR review report on transaction reporting (section 5.3)</p> <p>https://www.esma.europa.eu/press-news/esma-news/esma-proposes-amendments-mifir-transactions-and-reference-data-reporting</p> <p>ESMA suggests to include a specific empowerment amending the existing empowerment under MiFIR Article 26(9)(e) for ESMA to specify the relevant categories of indices to be covered in light of the upcoming reviews of the legal frameworks for Benchmarks. Depending on developments on MiCA it could also be considered at a later stage to potentially also cover crypto-assets within this article.</p> |

| Proposal | Justification |
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| Article 26 (9) | MiFIR report on review of transaction reporting (section 6.4) |
| <p>(i) when an investment firm is deemed to have transmitted an order for the purposes of paragraph 4. (i) the conditions for linking specific transactions and the means of the identification of aggregated orders resulting in the execution of a transaction.</p> <p>(ii) the date by which transactions are to be reported.’;</p> | <p>Same recommendation was included in ESMA report on EU carbon markets.</p> |

Obligation to supply financial instrument reference data

| Proposal | Justification |
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| Article 27 (1) (not amended by EC) | MiFIR review report on transaction reporting (section 5.4) |
| <p>With regard to financial instruments admitted to trading on regulated markets or traded on MTFs or OTFs or traded on a trading venue or where the issues has approved trading of the issued instrument or where a request for admission to trading has been made, trading venues shall provide ESMA with identifying reference data for the purpose of transaction reporting under Article 26</p> | <p>https://www.esma.europa.eu/press-news/esma-news/esma-proposes-amendments-mifir-transactions-and-reference-data-reporting</p> <p>Technical amendments to ensure full alignment with the MAR reference data reporting obligation that was implemented with the same FIRDS system and</p> |

**and the transparency requirements under
Articles 3, 6, 8, 10, 11, 14, 18, 20 and 21.**

reflect in the legal text the current practice. No
change in the system expected.

