

The new EU transaction reporting regimes

Comparing MiFIR, MiFID1, EMIR, REMIT and SFTR

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C L I F F O R D
C H A N C E

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The EU is rolling out multiple overlapping and complex transaction reporting regimes, serving different purposes and having different structures.

This document compares the key elements of the main regimes to highlight differences and similarities in approach.

The Markets in Financial Instruments Directive (MiFID1) introduced a transaction reporting regime across the EU in 2007. The scope of this regime is set to expand significantly in 2017 when the recast Markets in Financial Instruments Directive (MiFID2) and the Markets in Financial Instruments Regulation (MiFIR) come into effect.

There are also other EU product-specific transaction reporting regimes in place or in development, namely:

- a reporting regime for derivative transactions under the EU regulation on OTC derivatives, CCPs and trade repositories (EMIR), which came into effect on 12 February 2014;
- a reporting regime for wholesale energy market contracts under the EU regulation on wholesale energy market integrity and transparency (REMIT), which will come into effect on 7 October 2015 for the first wave of reportable products; and
- a reporting regime for securities financing transactions (SFTs) under a proposed EU regulation on securities financing transactions (SFTR), which is currently progressing through the EU legislative process.

MiFID2 also introduces a new position reporting regime for commodity derivatives (see below for summary).

The tables below have been prepared on the basis of:

- Final Level 1 and Level 2 legislation for MiFID1, EMIR and REMIT.
- Final Level 1 legislation for MiFID2 and MiFIR and the European Securities and Markets Authority's (ESMA) proposals for Level 2 legislation, as outlined in its May 2014 consultation paper and discussion paper and its December 2014 final technical advice and consultation paper.
- Proposed amendments to the European Commission's (Commission) proposal for a SFTR from the Council of the European Union (Council) and separate proposed amendments from the Economic and Monetary Affairs Committee (ECON) of the European Parliament (Parliament).

Some key issues

Purpose

The MiFID1, MiFIR and REMIT reporting regimes focus on the prevention of market abuse, whilst the reporting regimes under EMIR and the proposed SFTR focus on the monitoring of systemic risk in specific markets.

'In-scope' entities

The MiFID1 and MiFIR reporting regimes apply to EU regulated investment firms and banks. Unregulated end-users are not subject to these reporting requirements.

With some exceptions, EMIR, REMIT and the proposed SFTR apply to any person who trades the relevant products, regardless of their regulated status.

Overlapping product scope

Certain products will be within the scope of multiple reporting regimes. For example, derivative transactions may need to be reported under MiFID1 / MiFIR, EMIR and / or REMIT.

Reportable information

The information which must be reported is not consistent across the reporting regimes and some information will need to be obtained from, or checked with, other parties (i.e. clients / counterparties), in some cases on a trade by trade basis.

Trigger events

Broadly speaking, the trigger for reporting under EMIR, REMIT and the proposed SFTR is the same – conclusion, modification or termination of a contract.

The reporting obligation under REMIT is also triggered by the placement of an order to trade at an organised market place (and any modification or termination thereof).

ESMA's proposals for the MiFIR reporting regime include a broad range of trigger events, including the transmission of orders.

Scope and boundary issues

Experience with EMIR reporting has shown that there will be boundary issues when determining whether particular transactions need to be reported e.g. whether FX forwards are 'derivatives' and therefore reportable under EMIR.

There will be additional scope problems under MiFIR due to the broad range of transactions subject to the regime and the fact that ESMA has said that it will not publish a 'golden source'.

Application to non-EU branches

The reporting regimes under EMIR and REMIT apply to non-EU branches of EU entities. Given the similarities between EMIR and the proposed SFTR, it is likely that the SFTR will have a similar scope of application.

The application of the MiFID1 reporting regime to non-EU branches is unclear. ESMA proposes to apply the MiFIR transaction reporting regime to non-EU branches of EU firms.

Double reporting

A transaction may trigger reporting requirements under different regimes and it is possible that these obligations may be triggered at different times.

For example, where a give-up occurs within the EMIR reporting deadline and there has not been any change to the economic terms of the original trade, the post give-up trade should be reported under EMIR. However, under MiFIR, ESMA proposes that the original trade should be reported and not the post give-up trade.

Comparison of transaction reporting regimes

| | MiFIR (Article 26) | MiFID 1 (Article 25) | EMIR (Article 9) | REMIT (Article 8) | SFTR (Article 4) |
|----------------------------------|--|--|---|--|---|
| Purpose | Enable regulators to detect and investigate potential instances of market abuse and monitor the fair and orderly functioning of markets and investment firms' activities. | Enable regulators to detect and investigate potential instances of market abuse and monitor the fair and orderly functioning of markets and investment firms' activities. | Provide authorities with a comprehensive overview of the market and for assessing systemic risk, in particular regarding interconnectedness between OTC derivative market participants. | Enable efficient market monitoring by regulators for the detection and deterrence of market abuse in wholesale energy markets. | Provide authorities with a comprehensive overview of the market for SFTs for the identification and monitoring of financial stability risks entailed by shadow banking activities of regulated and unregulated entities. |
| Start date | 3 January 2017. | Member States were required to apply the transaction reporting rules from 1 November 2007. | 12 February 2014 (with valuation and collateral reporting on 11 August 2014). (See below for backloading). | 7 October 2015 for reportable products relating to the supply of electricity or natural gas with delivery in the EU which are executed at organised market places (including matched and unmatched orders). 7 April 2016 for: (i) reportable products relating to the transportation of electricity or natural gas in the EU which are executed at organised market places (including matched and unmatched orders); (ii) transportation contracts acquired through primary allocation of a transmission system operator (TSO); and (iii) reportable products concluded outside an organised market place. (See below for backloading). | The Parliament text proposes a start date of 4 months after the entry into force of the technical standards which are required to further specify the details of the SFTR reporting regime. The Council text proposes a later start date of 12 months for financial counterparties and 24 months for non-financial counterparties after the technical standards have entered into force. Under both proposals, ESMA would be required to submit draft technical standards to the Commission within 12 months of the publication of the SFTR in the EU Official Journal. (See below for backloading). |
| Scope of application Entities | Investment firms (as defined in Article 4(1)(1) of MiFID2) authorised under MiFID2 and credit institutions authorised under CRD4 when providing investment services and / or performing investment activities. EU branches of non-EU firms authorised pursuant to Article 39 of MiFID2 must also comply with the MiFIR transaction reporting regime. Trading venues (as defined in Article 4(1)(24) of MiFID2) must report details of transactions which are executed through their systems by a firm which is not itself subject to the MiFIR transaction reporting regime. | Investment firms (as defined in Article 4(1)(1) of MiFID1) authorised under MiFID1 and credit institutions authorised under CRD4 when providing investment services and / or performing investment activities. | Financial counterparties and non-financial counterparties (as defined in Articles 2(8) and 2(9) respectively of EMIR), including Article 1(5) exempt entities. CCPs (as defined in Article 2(1) of EMIR) are also subject to the reporting obligation. | Market participants (as defined in Article 2(7) of REMIT). 'Market participant' means any person, including TSOs, who enter into transactions, including the placing of orders to trade, in one or more wholesale energy markets. This includes persons established or resident outside the EU. Market participants entering into transactions in reportable products must be registered with the relevant competent authority. Non-EU persons are required to register with the competent authority of a Member State in which they are active. | The Parliament text imposes the reporting obligation on financial counterparties, non-financial counterparties, CCPs (each as defined in EMIR) and central securities depositories (as defined in CSDR) which are established: (i) in the EU (including all its branches, irrespective of where they are located); and (ii) in a third country, if the SFT is concluded in the course of the operations of an EU branch. The Council text envisages a similar scope of application. |

Comparison of transaction reporting regimes

| | MiFIR (Article 26) | MiFID 1 (Article 25) | EMIR (Article 9) | REMIT (Article 8) | SFTR (Article 4) |
|-------------------------|---|---|--|--|---|
| Scope ... (contd.) | | | | The Agency for the Cooperation of Energy Regulators (ACER) will establish a European registry of market participants (which will be first published on 17 March 2015 and updated on a regular basis) and will be available on the REMIT Portal*. | |
| Exempt entities | The reporting regime applies to authorised investment firms and credit institutions. Entities which are not required to be authorised because they fall within an exemption under MiFID2 (such as the exemption for members of the ESCB) do not need to comply with the reporting requirements. | The reporting regime applies to authorised investment firms and credit institutions. Entities which are not required to be authorised because they fall within an exemption under MiFID1 (such as the exemption for members of the ESCB) do not need to comply with the reporting requirements. | There is an exemption for members of the ESCB, other Member States' bodies performing similar functions, other EU public bodies charged with or intervening in the management of the public debt and the Bank for International Settlements. | No exempt entities. | The Parliament text includes an exemption for members of the ESCB, other Member States' bodies performing similar functions, other EU public bodies charged with or intervening in the management of the public debt and the Bank for International Settlements. The Commission would have the power to amend the scope of the exemption. The Council text also proposes to exempt these entities and empowers the Commission to amend the scope of the exemption (including to non-EU central banks and public bodies charged with intervening in the management of the public debt). |
| EU branches of EU firms | In scope. ESMA proposes that branches of EU investment firms elsewhere in the EU report all transactions to the home state competent authority. Under this model the branch will not make transaction reports to the host state competent authority. | In scope. MiFID1 provides for reporting to the home state competent authority except that the host state competent authority is responsible for enforcing transaction reporting for transactions executed in the course of services provided by the branch within the territory of the host state (Article 32(7) MiFID1). However, CESR guidance states that branches of EEA investment firms elsewhere in the EEA may choose to report all transactions executed by the branch to the host state competent authority. | In scope. In-scope entities are required to report all transactions in reportable products to trade repositories, regardless of which EU branch the transaction is entered into through. | In scope. The REMIT reporting obligation applies to 'any person'. This includes EU branches of EU firms. Persons entering into reportable transactions must be registered with the applicable competent authority. A person is only required to register with one competent authority. | In scope. Branches of EU firms, wherever located, are required to comply with the reporting regime when they are counterparties to SFTs. |

* <https://www.acer-remit.eu/portal/home>

Comparison of transaction reporting regimes

| | MiFIR (Article 26) | MiFID 1 (Article 25) | EMIR (Article 9) | REMIT (Article 8) | SFTR (Article 4) |
|-----------------------------|---|--|--|---|---|
| Non-EU branches of EU firms | ESMA proposes to apply the transaction reporting regime to actions taken by non-EU branches of EU firms which result in transactions in reportable products. Transaction reports in respect of such transactions will need to be submitted to the home state competent authority of the EU investment firm. | Not addressed. MiFID1 does not address whether EEA investment firms are required to report transactions executed in non-EEA branches. There are conflicting Q&A from the Commission as to the application of MiFID1 to non-EEA branches of EEA investment firms. | In scope. In-scope entities are required to report all transactions in reportable products to trade repositories, including those entered into through non-EU branches. | In scope. The REMIT reporting obligation applies to 'any person'. This includes non-EU branches of EU firms. Persons entering into reportable transactions must be registered with the applicable competent authority. A person is only required to register with one competent authority. | In scope. Branches of EU firms, wherever located, are required to comply with the reporting regime when they are counterparties to SFTs. |
| EU branches of non-EU firms | In scope. It is a principle of MiFID2 / MiFIR that EU branches of non-EU firms should not be treated in a more favourable way than EU firms. Therefore, it is likely that Member States will require EU branches of non-EU firms to comply with the reporting regime. Branches established pursuant to Article 39 of MiFID2 are required to comply with the MiFIR reporting regime. | In scope. Commission Q&A provides that EEA branches of non-EEA firms should not be treated in a more favourable way than EEA firms. The FCA, for example, requires UK branches of non-EEA firms to comply with the reporting regime. | Out of scope. EU branches of non-EU firms are <u>not</u> required to comply with the EMIR reporting regime. | In scope. The REMIT reporting obligation applies to 'any person'. This includes non-EU firms, whether or not they have an EU branch. Persons entering into reportable transactions must be registered with the applicable competent authority. For non-EU persons, this should be the competent authority of a Member State in which they are active. A person is only required to register with one competent authority. | In scope. EU branches of non-EU firms are required to comply with the reporting obligation when they are counterparties to SFTs. |
| Reportable products | (i) Financial instruments which are admitted to trading or traded on a trading venue or for which a request for admission to trading has been made; (ii) financial instruments where the underlying is a financial instrument traded on a trading venue; and (iii) financial instruments where the underlying is an index or a basket composed of financial instruments traded on a trading venue. 'Financial instruments' means those instruments listed in Section C of Annex 1 of MiFID2. 'Trading venue' means a regulated market, multilateral trading facility or organised trading facility. | Financial instruments admitted to trading on a regulated market. 'Financial instruments' means those instruments listed in Section C of Annex 1 of MiFID1. 'Regulated market' has the meaning given in Article 4(1)(14) of MiFID1. The FCA's Transaction Reporting User Pack (TRUP) states that CESR and the Commission agreed that competent authorities do not need to require firms to report transactions in non-securities derivatives (i.e. commodity, interest-rate and FX derivatives) admitted to trading on a regulated market. In such cases, competent authorities will receive reports from the regulated market directly. | Any derivative contract. 'Derivative contract' means a financial instrument as set out in points (4) to (10) of Section C of Annex 1 of MiFID1. This includes both exchange-traded and OTC derivatives. The ESMA Q&A addresses give-up transactions. Where a give-up occurs from the investment firm to a clearing member within the reporting deadline and no changes to the economic terms of the original trade have been made, the trade should be reported in its post give-up state. This differs to ESMA's suggested approach under MiFIR – give-ups for clearing or settlement do not need to be reported, but the original transaction does. | (i) Contracts for the supply of electricity or natural gas where delivery is in the EU; (ii) derivatives relating to electricity or natural gas produced, traded or delivered in the EU; (iii) contracts relating to the transportation of electricity or natural gas in the EU; and (iv) derivatives relating to the transportation of electricity or natural gas in the EU. | The Parliament text proposes to specify the following products as reportable products: (i) repurchase agreements (as defined in Article 4(1)(83) of the CRR); (ii) securities or commodities lending / borrowing (as defined in Article 3(5) of the SFTR); and (iii) buy-sell back / sell-buy back transactions or collateral swap transactions. Under the Parliament's proposal, the Commission would have the power to extend the list of reportable products to cover other types of transactions which have an equivalent economic effect and pose similar risks to SFTs. |

Comparison of transaction reporting regimes

| | MIFIR (Article 26) | MiFID 1 (Article 25) | EMIR (Article 9) | REMIT (Article 8) | SFTR (Article 4) |
|------------------------------|--------------------|----------------------|---|---|---|
| Reportable products (contd.) | | | This difference in approach may reflect the different purposes of the regime. | <p>Article 3(1) of the REMIT Implementing Regulation further specifies the above classes of reportable products and also divides them into:</p> <ul style="list-style-type: none"> (i) standard contracts - a contract concerning a wholesale energy product admitted to trading at an organised market place* (irrespective of whether or not the transaction actually takes place on that market place); and (ii) non-standard contracts – a contract which is not a standard contract. | <p>The Council text also proposes to specify repurchase agreements, securities or commodities lending / borrowing and buy-sell back / sell-buy back transactions as reportable products. It would also include margin lending transactions. The Council proposal does not include an empowerment for the Commission to add further products to the list.</p> <p>The Commission proposal also covered economically equivalent contracts.</p> |
| Exempt transactions | No exemption. | No exemption. | <p>No exemption.</p> <p>There is no exemption from the reporting regime for intragroup transactions. However, where an intragroup exemption has been relied on in respect of the EMIR clearing or margin requirements, the transaction report must indicate this.</p> | <p>The following types of transactions do not need to be reported unless concluded on an organised market place or upon the reasoned request of ACER on an ad hoc basis:</p> <ul style="list-style-type: none"> (i) intragroup contracts; (ii) contracts for the physical delivery of electricity produced by a single production unit with a capacity equal to or less than 10 MW or by production units with a combined capacity equal to or less than 10MW; (iii) contracts for the physical delivery of natural gas produced by a single natural gas production facility with a production capacity equal to or less than 20 MW; and (iv) contracts for balancing services in electricity and natural gas. <p>ACER issued a letter indicating that it will not request information in respect of these transactions until 31 December 2016 (at the earliest).</p> | <p>The Parliament text proposes to exempt transactions with exempt entities (see 'exempt entities' row above) i.e. neither party to the SFT is required to report.</p> <p>The Council text proposes to exempt transactions concluded between a financial counterparty and a member of the ESCB.</p> |

* An organised market place means: (i) a multilateral system, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in wholesale energy products in a way that results in a contract; and (ii) any other system or facility in which multiple third-party buying and selling interests in wholesale energy products are able to interact in a way that results in a contract. These include electricity and gas exchanges, brokers and other persons professionally arranging transactions, and trading venues as defined in Article 4 of MiFID2.

Comparison of transaction reporting regimes

| | MiFIR (Article 26) | MiFID 1 (Article 25) | EMIR (Article 9) | REMIT (Article 8) | SFTR (Article 4) |
|-------------------|--|--|--|---|---|
| Reportable events | <p>When an investment firm executes a transaction in a reportable product, whether or not such transactions are carried out on a trading venue.</p> <p>Firms which transmit orders must either transmit all reportable information to the receiving firm or report the order, if executed, as a transaction.</p> <p>(i) Execution</p> <p>ESMA proposes that 'execution' means any action that results in a transaction, irrespective of whose behalf the action is undertaken, if such action in a chain of events leading to the transaction is of enough importance that without that involvement the transaction would not have taken place.</p> <p>This captures actions by in-scope entities either as principal on own account (either on its own behalf or on behalf of a client) or as agent for the account of, and on behalf of, a client.</p> <p>(ii) Transaction</p> <p>ESMA proposes that 'transaction' means an acquisition, disposal or modification of a reportable product.</p> <p>ESMA intends to exclude from the meaning of 'transaction' certain specified events, including amongst others:</p> <ul style="list-style-type: none"> (i) SFTs, provided they are subject to reporting under the SFTR; (ii) contracts arising solely and exclusively for clearing or settlement purposes; (iii) post-trade assignments and novations in derivatives; | <p>When an investment firm executes a transaction in a reportable product, whether or not such transactions are carried out on a trading venue.</p> <p>(i) Execution</p> <p>Execution of transactions (whether on a principal or agency basis), but not the reception and transmission of orders (although the FCA has said that this will only be the case where the firm transmitting the order provides the execution entity with the identity of the ultimate client).</p> <p>(ii) Transaction</p> <p>Transaction is defined in Article 5 of the MiFID1 Implementing Regulation as the purchase or sale of a financial instrument. It does not include:</p> <ul style="list-style-type: none"> (i) SFTs; (ii) the exercise of options or of covered warrants; or (iii) primary market transactions. | <p>When an in-scope entity concludes, modifies or terminates a reportable product.</p> <p>Principal only reporting i.e. the reporting obligation applies if an in-scope entity is a counterparty to a reportable transaction. The ESMA Q&A states that investment firms which provide investment services, such as execution of orders and receipt and transmission of orders, do not have an obligation to report under EMIR unless they become a counterparty to a transaction by acting as principal.</p> | <p>When an in-scope entity concludes, modifies or terminates a reportable product or places an order to trade a reportable product at an organised market place or modifies or terminates such an order.</p> <p>In its transaction reporting user manual (TRUM), ACER sets out its understanding of the reference to orders in REMIT. For example, in its view, this includes quotations on trading venues such as indication of interests advertised on the screens of organised market places. As per Article 7(3) of the REMIT Implementing Regulation, orders placed in brokers' voice operated services are not reportable unless they appear on electronic screen or other devices used by the trading venue (these orders are only reportable at the request of ACER).</p> | <p>Both the Parliament and Council proposals envisage that the reporting obligation should be triggered when an in-scope entity concludes, modifies or terminates a SFT.</p> <p>Both proposals envisage principal only reporting i.e. the reporting obligation applies if an in-scope entity is a counterparty to a reportable transaction.</p> |

Comparison of transaction reporting regimes

| | MiFIR (Article 26) | MiFID 1 (Article 25) | EMIR (Article 9) | REMIT (Article 8) | SFTR (Article 4) |
|----------------------------|--|---|------------------|--|------------------|
| Reportable events (contd.) | <p>(iv) portfolio compressions;</p> <p>(v) internal transfers within the same legal entity (which do not lead to a change in beneficial ownership); and</p> <p>(vi) a change in the composition of an index after a transaction has occurred.</p> <p>(iii) Transmission of orders</p> <p>A firm which transmits an order must submit a transaction report unless:</p> <p>(i) it has a written transmission agreement in place with the receiving firm; and</p> <p>(ii) it transmits to the receiving firm the reportable information in accordance with the terms of the transmission agreement, including within the timeframe specified in that agreement.</p> <p>If the conditions are not met: (i) the transmitting firm must submit a transaction report pertaining to the client order (with a flag to indicate that the reports relates to an order which has been filled by a third party); and (ii) the receiving firm must treat the transmitting firm as its client and submit a transaction report accordingly.</p> | | | | |
| Data source | <p>Article 27 of MiFIR and Article 4 of MAR envisage the publication of details of financial instruments admitted to trading / traded on a trading venue. However, ESMA has said that it will not publish a single 'golden source' of reportable financial instruments which firms can rely on, as producing an exhaustive list of reportable financial instruments would</p> | <p>The MiFID1 Implementing Regulation requires competent authorities to calculate and publish a set of information regarding all shares which are admitted to trading on a regulated market. ESMA has collected this information, and publishes it in the form of a database:</p> | <p>N / A</p> | <p>ACER will draw up and maintain a public list of standard contracts and a public list of organised market places and update these lists in a timely manner. The list of organised market places is already available on the REMIT Portal and ACER has stated that the list of standard contracts will be published on the REMIT Portal on 17 March 2015.</p> | <p>N / A</p> |

Comparison of transaction reporting regimes

| | MiFIR (Article 26) | MiFID 1 (Article 25) | EMIR (Article 9) | REMIT (Article 8) | SFTR (Article 4) |
|----------------------|---|--|--|---|---|
| Data source (contd.) | <p>be challenging and impractical due to the difficulty in capturing information about all OTC derivatives and overseas traded derivatives.</p> <p>ESMA has also said that the reporting obligation in respect of financial instruments which are admitted to trading or traded on a trading venue or for which a request for admission to trading has been made, applies irrespective of whether the instrument is contained in the list of instruments published by ESMA for the purposes of Article 27 of MiFIR and Article 4 of MAR .</p> | <p>http://mifidatabase.esma.europa.eu/Index.aspx?sectionlinks_id=14&language=0&pageName=MIFIDLiquidSearch</p> | | <p>ACER states that the purpose of the list is to specify the contract types for which Table 1 of the Annex to the REMIT Implementing Regulation (the standard reporting form) is applicable. The creation of the list of standard contracts is not intended to assign unique identifiers to the contracts listed, nor will the information collected be used for matching against the transaction reports. The only purpose of the public list is to display the characteristics of each contract type for which the standard reporting form is applicable.</p> | |
| Over-reporting | <p>No.</p> <p>ESMA has said that firms should only submit transaction reports for actions that are considered reportable transactions. Where a firm submits a report for non-reportable transactions, it must cancel these transaction reports without delay.</p> | <p>Not specified.</p> <p>The FCA has said that, whilst it expects firms to take reasonable steps to avoid over-reporting of non-reportable products, they do allow some over-reporting.</p> | <p>Not specified.</p> | <p>Not specified.</p> | <p>Not specified.</p> |
| Obligation | <p>Report complete and accurate details of reportable transactions to the competent authority <u>as quickly as possible</u>, and no later than the close of the following working day.</p> | <p>Report details of reportable transactions to the competent authority <u>as quickly as possible</u>, and no later than the close of the following working day.</p> | <p>Report details of derivative contracts to a trade repository registered or recognised under EMIR no later than the working day following the conclusion, modification or termination of the contract.</p> | <p>Details of standard contracts and orders to trade placed on organised market places must be reported to ACER <u>as soon as possible</u>, but no later than on the working day following the conclusion of the contract or the placement of the order. Details of any modification or termination of the concluded contract or the placed order must be reported <u>as soon as possible</u>, but no later than the working day following the modification or termination.</p> <p>Details of non-standard contracts (and transactions referred to in the second subparagraph of Article 5(1) of the REMIT Implementing Regulation) must be reported to ACER no later than one month following conclusion, modification or termination of the contract.</p> | <p>Both the Parliament and Council proposals envisage that in-scope entities should report details of SFTs they have concluded as well as any modification or termination to a trade repository registered or recognised under the SFTR no later than the working day following the conclusion, modification or termination of the transaction.</p> |

Comparison of transaction reporting regimes

| | MiFIR (Article 26) | MiFID 1 (Article 25) | EMIR (Article 9) | REMIT (Article 8) | SFTR (Article 4) |
|------------------------|--|---|--|--|---|
| Obligation (contd.) | | | | Details of transportation contracts acquired through primary capacity allocation of a TSO should be reported by the TSO to ACER <u>as soon as possible</u> , but no later than on the working day following the availability of the allocation results. Modifications and terminations of such contracts must be reported <u>as soon as possible</u> , but no later than on the working day following the modification or termination. | |
| Reportable information | <ul style="list-style-type: none"> Names and numbers of the financial instruments bought or sold. Quantity, the dates and times of execution and the transaction prices. Designation to identify the clients on whose behalf the investment firm has executed the transaction. Designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction. Designation to identify the applicable waiver under which the trade has taken place. Means of identifying the investment firms concerned. Designation to identify a short sale in respect of any shares and sovereign debt within the scope of Articles 12, 13 and 17 of the SSR. 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) of MiFIR. | <ul style="list-style-type: none"> Names and numbers of the instruments bought or sold. Quantity, the dates and times of execution and the transaction prices. Means of identifying the investment firms concerned. <p>Table 1 of Annex 1 of the MiFID1 Implementing Regulation specifies the information that must be reported.</p> | <ul style="list-style-type: none"> Parties to the derivative contract and, where different, the beneficiary of the rights and obligations arising from it (including valuation and collateral information for some counterparties). Main characteristics of the derivative contracts, including their type, underlying maturity, notional value, price and settlement date. <p>The EMIR Reporting RTS and ITS further specify the content and format that reports must take.</p> <p>ESMA published a consultation paper on 10 November 2014 on proposed changes to the EMIR Reporting RTS and ITS. The deadline for responses was 13 February 2015. ESMA's proposals include clarifying certain existing fields as well as introducing a number of new fields.</p> | <ul style="list-style-type: none"> Precise identification of the wholesale energy products bought and sold. Price and quantity agreed. Dates and times of execution. Parties to the transaction and the beneficiaries of the transaction. Any other relevant information. <p>Tables 1 to 4 of the Annex to the REMIT Implementing Regulation specify the information that must be reported.</p> <p>ACER further specifies the information which must be reported in its TRUM.</p> | <p>The Parliament proposal envisages that the following information should be reported:</p> <ul style="list-style-type: none"> Parties to the SFT and, where different, the beneficiary of the rights and obligations arising from it. The individual assets being used as collateral or that are subject to SFTs including individual assets in the case of transactions collateralised by pools of assets. The principal amount, currency, type, quality and value of the individual assets being used as collateral, the method used to provide collateral, where it is available for re-use, if it has been re-used, any substitution of the collateral, the repurchase rate or lending fee, counterparty, haircut, value date, maturity date and first callable date. |

Comparison of transaction reporting regimes

| | MiFIR (Article 26) | MiFID 1 (Article 25) | EMIR (Article 9) | REMIT (Article 8) | SFTR (Article 4) |
|---|--|--|--|--|---|
| Reportable information (contd.) | <ul style="list-style-type: none"> For commodity derivatives, the reports must indicate whether the transaction reduces risk in an objectively measurable way in accordance with Article 57 of MiFID2. <p>Annex 1 of ESMA's draft RTS on transaction reporting specifies the information which must be reported.</p> | | | | <p>The Council proposal is similar to the above, with some differences. In particular, the Council proposal requires the disclosure of the value of the assets being used as collateral rather than the disclosure of the individual assets being used.</p> <p>Under both proposals, ESMA will be required to develop technical standards specifying the details of reports and the format and frequency of reports for different types of SFTs.</p> |
| Interplay with confidentiality and data privacy | <p>Not addressed.</p> <p>ESMA has acknowledged concerns regarding the incompatibility of the proposed transaction reporting regime with data protection and bank secrecy laws. Whilst ESMA states that it will ensure the transaction reporting regime complies with the EU data protection law, it has stated that the Commission will need to address concerns regarding the interaction with third-country data protection and bank secrecy laws, as this is outside the scope of ESMA's mandate.</p> | Not addressed. | <p>An in-scope entity that reports the details of a derivative contract to a trade repository or to ESMA, or an entity that reports such details on behalf of an in-scope entity, shall not be considered in breach of any restriction on disclosure of information imposed by that contract or by any legislative, regulatory or administrative provision. No liability resulting from disclosure shall lie with the reporting entity or its directors or employees.*</p> | Not addressed. | <p>Both the Parliament and Council proposals envisage that an in-scope entity which reports details of a SFT to a trade repository or to ESMA, or an entity that reports such details on behalf of an in-scope entity, shall not be considered in breach of any restriction on disclosure of information imposed by that contract or by any legislative, regulatory or administrative provision. No liability resulting from disclosure shall lie with the reporting entity or its directors or employees.*</p> |
| Who can report | <p>Either the investment firm, an approved reporting mechanism (ARM) acting on its behalf or the trading venue in whose system the transaction was concluded.</p> | <p>Either the investment firm, a third party acting on its behalf, an approved trade-matching or reporting system, or the regulated market or multilateral trading facility in whose system the transaction was concluded.</p> <p>Firms are relieved of their reporting obligation if the transaction is reported by the regulated market, multilateral trading facility or approved trade-matching or reporting system.</p> | <p>Either the in-scope entity must report or it can delegate reporting to its counterparty or a third party.</p> | <p>(i) Reportable transactions executed at organised market places, including matched and unmatched orders, must be reported by market participants through the organised market place concerned or through trade-matching or trade reporting systems.</p> <p>(ii) Details of transportation contracts acquired through primary capacity allocation of a TSO should be reported by the respective TSO only (or a third party acting on behalf of the TSO).</p> | <p>Both the Parliament and the Council proposals envisage that the in-scope entity must report itself or it can delegate reporting to its counterparty or a third party.</p> <p>The Council proposal, however, envisages the following exceptions to this general rule:</p> <ul style="list-style-type: none"> Where a financial counterparty concludes a SFT with a non-financial counterparty which, on its balance sheet dates, does not exceed the limits of at least two |

* ESMA has clarified by way of Q&A that transaction reports which mask counterparty identity are not compliant with Article 9 of EMIR, even where disclosure is prevented by the legal regimes of third countries. Given the similarities between the proposed SFTR and EMIR, the masking of counterparty identity is also likely to be non-compliant under the SFTR.

Comparison of transaction reporting regimes

| | MiFIR (Article 26) | MiFID 1 (Article 25) | EMIR (Article 9) | REMIT (Article 8) | SFTR (Article 4) |
|-------------------------------------|--|--|--|---|--|
| Who can report (contd.) | | | | <p>(iii) Reportable transactions which have been reported in accordance with Article 26 of MiFIR or Article 9 of EMIR must be reported to ACER by trade repositories, ARMs, competent authorities or ESMA (as appropriate).</p> <p>(iv) Reportable transactions which have been concluded outside an organised market place must be reported by market participants or third parties acting on their behalf.</p> <p>ACER has indicated that market participants may only report directly to ACER if they are registered as a Registered Reporting Mechanism (RRM). Otherwise, they must delegate reporting to a RRM. Registration commenced on 8 January 2015. The list of RRMs will be made available on ACER's website.</p> | <p>of the three criteria in Article 3(3) of Directive 2013/34/EU, the reporting obligations of both counterparties apply only to the financial counterparty.</p> <ul style="list-style-type: none"> Where a UCITS is a counterparty to a SFT, the reporting obligation applies to the UCITS management company or UCITS investment company. Where an AIF is a counterparty to a SFT, the reporting obligation applies to the AIFM. |
| Unique trade identifier requirement | <p>Yes.</p> <p>Multiple in-scope entities may be required to report the same trade.</p> <p>For transactions executed directly on a trading venue, ESMA proposes that the trading venue will generate a transaction reference number (TRN) which must be provided to both parties to the transaction. Both parties must use this TRN in their transaction reports. For all other transactions, the TRN will be a unique internal identification number, meaning multiple reports relating to the same transaction will not be required to contain a matching TRN.</p> | <p>No.</p> <p>Each investment firm is required to include a unique identification number for the reported transaction (the transaction reference number). However, this number does not have to be agreed between the parties and is not used to identify multiple reports relating to the same transaction.</p> | <p>Yes.</p> <p>Multiple in-scope entities may be required to report the same trade. In-scope entities are expected to provide a 'unique trade identifier' in each trade report. This number should be the same for all reports which relate to the same transaction.</p> <p>The Commission and ESMA have interpreted 'counterparties and CCPs shall ensure that the details of their derivative contracts are reported without duplication' (in Article 9(1) of EMIR) as requiring counterparties to agree on the contents of the reports before submitting them to trade repositories. In-scope entities should ensure, when they enter into a reportable transaction with another in-scope entity, that the common data is consistent across both reports.</p> | <p>Yes.</p> <p>Multiple in-scope entities may be required to report the same trade. In-scope entities will be expected to provide a unique transaction ID in respect of standard contracts. This is described as a unique identifier for a transaction assigned by the organised market place of execution, or by the two market participants in case of bilateral contracts to match the two sides of a transaction.</p> <p>In respect of non-standard contracts, in-scope entities must include a unique contract ID which must be assigned by the two market participants.</p> | <p>Yes.</p> <p>The Parliament proposal includes a requirement for transaction reports to include a unique trade identifier.</p> <p>The Council proposal does not explicitly require a unique trade identifier. However, it does require technical standards to ensure consistency with the EMIR reporting regime (to the extent feasible). Therefore, it is likely that the Level 2 measures will require a unique trade identifier.</p> |

Comparison of transaction reporting regimes

| | MiFIR (Article 26) | MiFID 1 (Article 25) | EMIR (Article 9) | REMIT (Article 8) | SFTR (Article 4) |
|---------------------------------|--|--|------------------|---|---|
| Double-reporting | <p>Where transactions have been reported in accordance with Article 9 of EMIR to a trade repository which is also approved as an ARM, the MiFIR transaction reporting obligation will be considered to have been complied with if the report contains all the information required by Article 26 of MiFIR.</p> <p>ESMA intends to exclude from the meaning of 'transaction' SFTs, provided they are subject to reporting under the SFTR.</p> | Not addressed. | Not addressed. | Where transactions have been reported in accordance with Article 26 of MiFIR or Article 9 of EMIR, in-scope entities' obligations under REMIT in relation to reporting those details shall be considered fulfilled. | Both the Parliament and the Council proposals envisage that where the details of a SFT have been reported to a trade repository in accordance with Article 9 of EMIR and that report effectively contains the details required by the SFTR, the reporting obligation under the SFTR shall be considered to have been complied with. |
| Potential for super-equivalence | No. | <p>Yes.</p> <p>MiFID1 allows competent authorities to extend the transaction reporting obligations to financial instruments that are not admitted to trading on a regulated market.</p> <p>The FCA has extended the scope of reportable transactions to also cover transactions in financial instruments admitted to trading on a 'prescribed market'.</p> <p>Some competent authorities (such as the FCA) have extended their transaction reporting regime to cover OTC derivatives whose value is derived from an equity or debt-related financial instrument admitted to trading on a regulated market (but not indices or baskets of securities).</p> <p>MiFID1 also allows competent authorities to require additional information to that specified in Table 1 of Annex 1 of the MiFID1 Implementing Regulation to be included in reports.</p> | No. | <p>Yes.</p> <p>Recital 17 of REMIT states that the collection of data by ACER is without prejudice to the right of national authorities to collect additional data for national purposes.</p> | No. |

Comparison of transaction reporting regimes

| | MiFIR (Article 26) | MiFID 1 (Article 25) | EMIR (Article 9) | REMIT (Article 8) | SFTR (Article 4) |
|----------------------------|--|--|--|---|---|
| Backloading | No. | No. | Yes. Contracts concluded before 16 August 2012 and which remain outstanding on that date and contracts concluded on or after 16 August 2012 must be reported to trade repositories. | Yes. Contracts concluded before the REMIT reporting obligation becomes applicable and remain outstanding on that date must be reported to ACER within 90 days of the REMIT reporting obligation becoming applicable for those contracts. The reportable details shall only include data which can be extracted from market participants' existing records. They shall at least comprise the data referred to in Article 44(2) of Directive 2009/73/EC* and Article 40(2) of Directive 2009/72/EC**. | Yes. Both the Parliament and the Council proposals envisage that contracts concluded before the SFTR reporting obligation becomes applicable and remain outstanding on that date must be reported to trade repositories. |
| Record-keeping requirement | Article 25 of MiFIR provides that in-scope entities must keep records for 5 years of relevant data relating to all <u>orders and transactions</u> in financial instruments which they have carried out, whether on own account or on behalf of a client. | Article 25(2) of MiFID1 provides that in-scope entities must keep records for at least 5 years of relevant data relating to all <u>transactions</u> in financial instruments which they have carried out, whether on own account or on behalf of a client. | In-scope entities must keep a record of any <u>derivative contract they have concluded and any modification</u> for at least five years following the termination of the contract. | No. | Both the Parliament and the Council proposals envisage that in-scope entities must keep a record of any <u>SFT that they have concluded, modified or terminated</u> for at least 5 years following the termination of the transaction. The Commission had proposed a record-keeping requirement of 10 years. |

* Details on the characteristics of the relevant transactions such as duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled gas supply contracts and gas derivatives.

** Details on the characteristics of the relevant transactions such as duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled electricity supply contracts and electricity derivatives.

Position reporting under MiFID2

| | MiFID2 (Article 58) |
|--|--|
| Purpose | To monitor compliance with the position limits regime in Article 57 of MiFID2, which has been introduced to prevent market abuse and support orderly pricing and settlement conditions including the prevention of market distorting positions. |
| Start date | 3 January 2017. |
| Scope of application Entities and reporting requirement | <p>(1) Members / participants / clients of an EU trading venue must make a daily report to the trading venue in respect of the positions held in in-scope products traded on that trading venue (Firms' Daily Venue Report).</p> <p>(2) Investment firms which trade in-scope products outside an EU trading venue must make a daily report to the relevant competent authority in respect of its positions in products traded on EU trading venues and in economically equivalent OTC contracts (Firms' Daily Off-Venue Report).</p> <p>Article 1(6) of MiFID2 provides that Articles 57 and 58 of MiFID2 also apply to persons exempt under Article 2 of MiFID2. The application to unregulated EU entities and non-EU entities may depend on national implementation. Article 1(1) of MiFID2 provides that MiFID2 applies to (amongst others) investment firms and third country firms providing relevant services through a branch in the EU. However, Article 41(2) of MiFID2 does not list Article 58 among the obligations applying to EU branches of third-country firms.</p> <p>EU trading venues are required to:</p> <p>(1) publish an aggregated weekly breakdown of positions held by different categories of persons for the different in-scope products traded on that trading venue to the relevant competent authority and ESMA (Aggregated Weekly Breakdown); and</p> <p>(2) provide a daily comprehensive and detailed breakdown of all positions held in in-scope products held by all persons on that trading venue to the relevant competent authority (Venues' Daily Breakdown).</p> <p>These reports will be based on the reports made to the trading venue by its members / participants / clients.</p> |
| Reportable products | <p>Commodity derivatives, emission allowances and derivatives over emission allowances which are traded on an EU trading venue and economically equivalent OTC contracts.</p> <p>'Commodity derivatives' is defined in Article 2(1)(30) of MiFIR.</p> <p>'Derivatives' is defined as those financial instruments listed in Annex 1, Section C (4) to (10) of MiFID2.</p> <p>'Economically equivalent OTC contracts' is not defined. ESMA is required to develop criteria for determining whether a contract is economically equivalent to a contract traded on an EU trading venue.</p> |

| | MiFID2 (Article 58) |
|--|--|
| Data source | MiFID2 does not provide for the publication of a data source of in-scope products for position limits or position reporting under MiFID2. However, Article 27 of MiFIR and Article 4 of MAR envisage the publication of details of financial instruments admitted to trading / traded on a trading venue and Recital (10) to ESMA's draft RTS on position limits under Article 57 of MiFID2 envisages that the relevant competent authority and ESMA will publish a list of commodity derivative contracts and economically equivalent OTC commodity contracts for the purpose of position limits. |
| Reportable information | <p>(1) Firms' Daily Venue Report: members / participants / clients of an EU trading venue must report details of their own positions held through contracts traded on that trading venue as well as those of their clients and the clients of those clients until the end client is reached.</p> <p>(2) Firms' Daily Off-Venue Report: investment firms which trade in-scope products outside an EU trading venue must report a complete breakdown of their positions in in-scope products traded on EU trading venues and economically equivalent OTC contracts (as well as those positions of their clients and the clients of those clients until the end client is reached) in accordance with the transaction reporting regimes under MiFIR and, if applicable, REMIT.</p> <p>The Aggregated Weekly Breakdown by EU trading venues must show aggregate positions in their contracts held by different categories of persons (specifying number of long and short positions, changes since prior report, percentage of total open interest represented by each category and number of persons in each category holding a position), subject to exceptions where numbers of persons / open positions do not exceed minimum thresholds to be set by the Commission at Level 2. The Venues' Daily Breakdown must show a complete breakdown of the positions held by all persons.</p> <p>All positions must be reported gross.</p> |
| Interplay with confidentiality and data privacy | ESMA has recognised that there are issues of confidentiality and commercial interest in passing end-client identification details upwards through the chain of account relationships. Whilst ESMA initially proposed a number of ways in which these issues could be addressed in its May 2014 discussion paper, ESMA has indicated in its follow-up consultation paper that it does not have a mandate to address issues relating to the practical implementation of position reporting between the various parties. |
| Double reporting | <p>The position reporting regime will likely require double-reporting for investment firms which are members / participants / clients of trading venues and trade in-scope products off-venue. In particular, on-venue positions will have to be reported twice (to the relevant trading venue and to the relevant competent authority). ESMA has indicated that it may explore ways to avoid this duplication of reporting.</p> <p>Transactions giving rise to reportable positions may also be reportable under the transaction reporting regimes under MiFIR, EMIR and / or REMIT.</p> |

MiFID 2 / MiFIR

- **MiFID2:** http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_173_R_0009&from=EN
- **MiFIR:** http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_173_R_0005&from=EN
- **ESMA discussion paper (May 2014):** http://www.esma.europa.eu/system/files/2014-548_discussion_paper_mifid-mifir.pdf
- **ESMA consultation paper (May 2014):** http://www.esma.europa.eu/system/files/2014-549_-_consultation_paper_mifid_ii_-_mifir.pdf
- **ESMA consultation paper (Dec 2014):** <http://www.esma.europa.eu/consultation/Consultation-MiFID-II-MiFIR>
- **ESMA final technical advice (Dec 2014):** <http://www.esma.europa.eu/content/Technical-Advice-Commission-MiFID-II-and-MiFIR>

MiFID1

- **MiFID1:** http://www.esma.europa.eu/system/files/FIMD_official_Journal_version.pdf
- **MiFID1 Implementing Regulation:** http://www.esma.europa.eu/system/files/Reg_1287_2006.pdf
- **CESR guidance:** http://www.esma.europa.eu/system/files/07_301.pdf
- **FCA TRUP (Feb 2015):** <http://www.fca.org.uk/your-fca/documents/finalised-guidance/fg15-03>

EMIR

- **EMIR:** <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF>
- **EMIR Reporting RTS:** <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0001:0010:EN:PDF>
- **EMIR Reporting ITS:** <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:352:0020:0029:EN:PDF>
- **Commission FAQ (July 2014):** http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/emir-faqs_en.pdf
- **ESMA Q&A (Oct 2014):** http://www.esma.europa.eu/system/files/2014-1300_qa_xi_on_emir_implementation_october_2014.pdf
- **EMIR reporting consultation paper (Nov 2014):** <http://www.esma.europa.eu/consultation/Consultation-Review-technical-standards-reporting-under-Article-9-EMIR>

REMIT

- **REMIT:** <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R1227&from=EN>
- **REMIT Implementing Regulation:** <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R1348&from=EN>
- **ACER REMIT Portal (including the TRUM):** <https://www.acer-remit.eu/portal/home>

SFTR

- **Commission proposal:** http://ec.europa.eu/internal_market/finances/docs/shadow-banking/140129_proposal_en.pdf
- **Council compromise text:** <http://data.consilium.europa.eu/doc/document/ST-15424-2014-INIT/en/pdf>
- **ECON draft report:** <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-544.170+01+DOC+PDF+V0//EN&language=EN>

- **ACER:** the Agency for the Cooperation of Energy Regulators
- **AIF:** alternative investment fund, as defined in the alternative investment fund managers directive
- **AIFM:** alternative investment fund manager, as defined in the alternative investment fund managers directive
- **ARM:** approved reporting mechanism, as defined in Article 4(1) MiFID2
- **CCP:** central counterparty
- **CESR:** the Committee of European Securities Regulators, predecessor to ESMA
- **Commission:** the European Commission
- **Council:** the Council of the European Union
- **CRD4 / CRR:** the capital requirements directive and regulation implementing Basel III in the EU
- **Derivatives:** a financial instrument as set out in points (4) to (10) Section C, Annex 1, MiFID1 / MiFID2
- **ECON:** the Economic and Monetary Affairs Committee of the European Parliament
- **EEA:** European Economic Area
- **EMIR:** the EU regulation on OTC derivatives, central counterparties and trade repositories
- **EMIR Reporting RTS and ITS:** the RTS and ITS specifying the details of the EMIR reporting regime
- **ESA:** European Supervisory Authority (i.e. EBA, EIOPA or ESMA)
- **ESCB:** the European System of Central Banks
- **ESMA:** European Securities and Markets Authority
- **EU:** European Union
- **FCA:** the UK Financial Conduct Authority

- **ITS:** implementing technical standards proposed by an ESA and adopted by the Commission under powers conferred by an EU regulation or directive
- **Level 1:** an EU legislative act, such as a directive or a regulation
- **Level 2:** delegated or implementing act (including ITS and RTS) adopted by the Commission under powers conferred by an EU regulation or directive
- **MAR:** the EU regulation replacing the market abuse directive in 2016
- **MiFID1:** the EU markets in financial instruments directive
- **MiFID2 and MiFIR:** the EU directive and regulation repealing and replacing MiFID1 in 2017
- **MiFID1 Implementing Regulation:** the EU regulation containing implementing measures to develop the provisions in MiFID1
- **Parliament:** the European Parliament
- **RRM:** registered reporting mechanism
- **REMIT:** the EU regulation on wholesale energy market integrity and transparency
- **REMIT Implementing Regulation:** the EU regulation containing implementing measures to develop the provisions in REMIT
- **RTS:** regulatory technical standards proposed by an ESA and adopted by the Commission under powers conferred by an EU regulation or directive
- **SFT:** securities financing transaction
- **SFTR:** the proposed EU regulation on securities financing transactions
- **SSR:** the EU regulation on short selling
- **TRN:** transaction reporting number
- **TRUM:** ACER's transaction reporting user manual
- **TRUP:** the FCA's transaction reporting user pack
- **TSO:** transmission system operator
- **UCITS:** undertaking for collective investment in transferable securities

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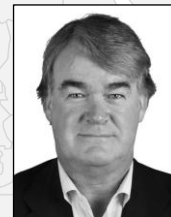
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