

Comments

on the FSB Consultative Document “Standards and Processes for Global Securities Financing Data Collection and Aggregation”

Register of Interest Representatives

Identification number in the register: 52646912360-95

Contact:

Dr. Patrick Büscher

Telephone: +49 30 20225-5346

Telefax: +49 30 20225-5345

E-Mail: patrick.buescher@dsgv.de

Berlin, 15-02-12

Coordinator:

German Savings Banks Association
Charlottenstrasse 47 | 10117 Berlin |
Germany

Telephone: +49 30 20225-0

Telefax: +49 30 20225-250

www.die-deutsche-kreditwirtschaft.de

I. Introduction and summary of key observations and concerns

The German Banking Industry Committee (GBIC, die Deutsche Kreditwirtschaft) is grateful to be given the opportunity to comment on FSB's Consultative Document *Standards and Processes for Global Securities Financing Data Collection and Aggregation*.

We welcome that the FSB is discussing ways of aggregating and consolidating SFT data on a global level. However, we would deem it equally important not to set up redundant reporting requirements with little or no additional benefit. We would hope that the FSB and all its members will strive for a consistent and harmonized implementation of the SFT data collection.

Against this background, we first would like to draw the FSB's attention to different ongoing European legislative initiatives, namely the European Markets Infrastructure Regulation EMIR (in force), the Securities Financing Transactions Regulation SFTR (legislative proposal) and the ECB's Money Market Statistical Reporting MMSR (adopted).

While we are aware that these initiatives apply only to a European context whereas the FSB pursues a global approach, we take the liberty to quote FSB's mandate:

"The FSB promotes international financial stability; it does so by **coordinating** national financial authorities and international standard-setting bodies as they work toward developing strong regulatory, supervisory and other financial sector policies. It fosters a **level playing field** by encouraging coherent implementation of these policies..." (our emphasis).

In contradiction to this mandate, all three initiatives mentioned above are exemplary cases where coordination between standard setting bodies has been and still remains suboptimal in our opinion.

1. EMIR

The European derivatives reporting regime differs from its US counterpart in one very important point. Whereas the Dodd-Frank Act allows for single sided reporting which means that only one party to a transaction has to report the trade information to a repository EMIR requires both contractual parties – regardless of their size – to report. We wonder why in a European context single sided reports should fail to suffice for supervisory purposes and therefore believe that relating to SFT reporting the Dodd-Frank Act should serve as a specimen.

A second point stems from different "equivalence" approaches. To our knowledge, not a single trade repository from outside the EU has applied for recognition under EMIR yet. And while at least forty CCPs have applied for recognition under EMIR so far not one is recognized because of the very cumbersome process of qualifying a third country regime as having an equivalent and enforceable regulatory and supervisory framework.

And to give another example where inconsistent rules can lead to unintended consequences, in some countries due to data secrecy rules it is not permitted to convey counterparty data to a third party (even if the envisaged recipient is a regulator) while exactly this data is required under EMIR's reporting regime. In consequence, a branch of a European entity established in such a third country can only choose to break EMIR or national data secrecy rules or to refrain from entering into this transaction at all.

2. SFTR

The EU-Commission presented its proposal at the end of January 2014, thereby frontrunning the elaborations of the FSB in the field of shadow banking regulation. What worries us most is that if the SFTR was finalized before the FSB framework it will be highly unlikely or even impossible to have a consistent and harmonized implementation globally. In consequence, market participants and regulators alike will run into the same kind of problems seen before and presented above.

We are puzzled to see that the FSB document refers to the SFTR approach as one possible example of implementing a reporting regime. Even though the reference is rather general, this will set an incentive for national jurisdictions to establish a local rule before the FSB (or BCBS, CPSS...) has set up a global framework. Such a development would fly in the face of FSB's mandate.

3. MMSR

Pursuant to the MMSR which was published in December 2014 the ECB requires reporting of money market transactions regardless whether they are secured, unsecured or derivatives. Without going into detail of these reporting requirements one consequence would be that money market derivative transactions were to be reported at least three times, EMIR, MiFIR and MMSR, at that.

II. Responses to the consultative questions

As regards FSB's consultative questions please find our considerations in the following:

2. Data elements and granularity

Q2-1. Does the proposed definition of repos provide a practical basis for the collection of comparable data across jurisdictions as well as the production of comprehensive and meaningful global aggregates?

We regard the FSB definition of repurchase agreements (see Section 2.2.1) as inconsistent to some extent and would suggest an adaption by means of the following wording:

"A repurchase agreement (repo) is an arrangement involving the provision of securities or other financial assets ("~~collateral~~ object of purchase") in exchange for cash ("purchase price") (spot leg) with a commitment to repurchase the object of purchase ~~same or similar collateral~~ at a fixed price (forward leg) either on a specified future date or on demand ("open" or extendable repos). A repo is viewed from the perspective of the ~~provider of the collateral~~ initial seller ~~i.e. the cash taker~~. The transaction is called a reverse repo when viewed from the perspective of the initial buyer of collateral and cash provider."

A "repurchase" supposes that a "purchase" took place in advance. Neither the object of this purchase nor the purchase price is collateral. The exchange of collateral occurs after the object of purchase is delivered and the purchase price is paid. The key element when determining whether or not collateral is to be posted from one party to the other is the delta between the purchase price and the current market value of the securities sold to the other party.

This understanding of repos is also reflected in master agreements governing repurchase agreements between market participants (see master agreements of the Association of German Banks¹ as well as Global Master Repurchase Agreement (GMRA), issued by the International Capital Markets Association²).

While we concede that para. 42 of ESMA's Guidelines on ETFs and other UCITS issues (ESMA/2014/937EN) follows an approach similar to the FSB definition and (already) spuriously deems the purchase price under a repurchase agreement to be collateral we strongly believe that FSB (and ESMA) should take into account of what market participants agree on in practice: the purchase and repurchase of an asset in order to gain liquidity where only counterparty risk is collateralized. The providing collateral secures existing obligations and mitigates counterparty risk only in cases where such a risk actually exists (the "delta" explained above).

Regarding sell/buy back transactions we do not share FSB's view that the structure of these transactions entails difficulties in legally enforcing margin calls or exercising the right of collateral substitution. In this context, we refer to no. 14 of the Master Agreement for Securities Repurchase Transactions (Repos) ("Rahmenvertrag für Wertpapierpensionsgeschäfte"), issued by the Association of German Banks, which clarifies that sell/buy back transactions are also subject to the master agreement and adjusts certain provisions of the master agreement accordingly.³ Legally enforceable margin calls and exercising the right of collateral substitution appear intricate only in cases where one party mistakenly deems certain assets that have been exchanged between the parties as collateral (as currently proposed by FSB and practiced by ESMA, please cf. above).

Q2-2. In a later stage, a list of transactions that are economically equivalent to repos may be added to the reporting framework (see also Section 6 for details). Which economically equivalent transactions would you suggest for future inclusion? Please provide a definition of such transactions and explain the rationale for inclusion.

We believe that only sell/buy back transactions are relevant in this context and should therefore be considered exclusively.

Q2-3. Are the proposed definitions and level of granularity of the data elements described in Tables 2 to 4 appropriate for a consistent collection of data on repo markets at the national/regional level and for aggregation at the global level? In particular, are the detailed breakdown of major currencies (in Table 2), sector of the reporting entity and counterparty as well as bucketing for repo rate (in Table 3), collateral residual maturity, haircut and collateral type (in Table 4) appropriate? If not, please specify which definitions or classifications of data element(s) require modification, why the modification is necessary, and the alternative definitions/classifications.

First of all, we would like to mention, that the required data is not readily available for reporting. Additionally, the very detailed data reporting requirements proposed by the FSB do imply a considerable burden for credit institutions. The granularity within the reporting requirements under EMIR already led to considerable efforts and high cost for market participants. We therefore request the FSB to follow a more practical approach avoiding a duplication of already excessive data reporting.

Regarding the proposed reporting obligation we are of the view that data should be collected and aggregated by trade repositories. Such a centralised approach avoids an incorrect population of reporting fields and

¹ <http://bankenverband.de/downloads/fachinformationen/finanzmaerkte/rahmenvertraege-fuer-finanzgeschaefte/deutscher-rahmenvertrag-fuer-wertpapierpensionsgeschaefte>

² http://www.icmagroup.org/assets/documents/Legal/GMRA-2011/GMRA-2011/GMRA%202011_2011.04.20_formular.pdf

³ <http://bankenverband.de/downloads/fachinformationen/finanzmaerkte/rahmenvertraege-fuer-finanzgeschaefte/deutscher-rahmenvertrag-fuer-wertpapierpensionsgeschaefte>

mismatches and furthermore ensures a high level of data quality. In particular, we propose that the FSB gears to repos and securities lending transactions with a maturity exceeding one month since most repos and securities lending transactions aim at securing short term liquidity and do not bear any (systemic) risk. Also, from a practical point of view the establishment of maturity ranges should be avoided. We think that the disclosure of a specific start and end date should be deemed sufficient. The same applies to the proposed clustering of counterparties. Instead of reporting a "counterparty type" the specific counterparty should be included in the data report.

Concerning Table 2, from our point of view there is no reason for reporting reverse repos on a loan flow data basis. As regards Element 3.7. we see no need for a separate reporting of counterparty jurisdictions if the LEI should be considered. The list of collateral types under Element 4.8. should be extended by the category "covered bonds" since this type of securities is commonly used as collateral in Germany and throughout Europe as well. Further, the term "government securities" should be defined in a manner consistent with the definition of this term in the FSB's regulatory framework for haircuts on non-centrally cleared securities financing transactions dated 14 October 2014 and at least include the types of securities referred to in footnote 11 of that framework. For ensuring a high quality of data and the same level of aggregation a classification of "collateral types" should be implemented by the trade repositories on the basis of ISIN.

Our concern applies also to the reference time of reporting types of collateral. In our view a specific time for reporting these data should be fixed in order to avoid inconsistent reporting. Due to the possibility of exchanging collateral on an intraday basis the time of reporting needs to be clear as well. In this respect the centralised approach for data collection and aggregation by trade repositories is appropriate. Regards Element 4.9. the question arises which rating agency is appropriate or accepted for external ratings. Hence, we would like to request clarification on this point. In the context of Element 3.11. and 4.15. it remains questionable which benchmark fixing for FX rates (Element 3.11.) or market values (Element 4.15.) should be uniformly applied to all market participants in terms of valuation of transactions.

Regarding haircuts we would like to mention once more that the reporting of this type of collateral would be significantly cumbersome for credit institutions, especially considering that it is not imperative to provide such collateral. Besides, netting effects would need to be taken into account if various transactions with one counterparty are collateralized with different types of collateral. Again, as set out above in our answer to Q2-1, the object of purchase itself is no collateral. For that reason, it is likely that market participants report inconsistent data. Furthermore, it needs to be raised that no haircut applies to the object of purchase under a repo respectively a sell/buy back transaction.

As collateral annexes may include 150 to 200 different kind of assets constituting eligible collateral (e.g. stocks of the DAX, stocks of the DJS 600 (Return), German government bonds denominated in EUR, German government bonds denominated in USD, bonds issued by the African Development Bank, corporate bonds issued by companies listed in the BEL 20 Index, Money Market instruments issued in the UK denominated in GBP) and given that only regarding to some assets haircuts may differ based on the remaining maturity, we deem it very laborious if not impossible to build up a reporting system, reflecting all these specifics.

Apart from that, not all assets own a maturity, which is why Element 4.13 of table 4 is misleading in terms of considering a maturity for equities. Furthermore, incorporating equities in Element 4.13 contradicts in our view Element 4.11.

In general, we do not believe that reporting the haircuts agreed upon would bring any benefit. Reporting the collateral's "real" value as well as the object of purchase's value and the agreed re-purchase price should be sufficient for identifying excessive risks, if any. For the reasons given, it would not be proportionate requiring market participants to report Element 4.13 of Table 4.

Q2-4. Do you see any practical difficulties in reporting the total market value of collateral that has been re-used? Do you have any suggestion for addressing such difficulties?

We refer to our answer to Q2-1. The FSB should only deem assets as collateral, which form collateral under the relevant master agreements. Doing so would eliminate any questions on the volume of collateral and consequently its total market value.

Q2-5. Do the classifications provided for "market segment – trading" (in Table 3) and "market segment – clearing" (in Table 3 and 4) appropriately reflect relevant structural features of the repo markets? Are there additional structural features of repo markets that should be considered?

n/a

Q2-6. Are there additional repo data elements that should be included in the FSB global securities financing data collection and aggregation for financial stability purposes? Please describe such additional data elements, providing definitions and the rationale for their inclusion.

As far as the FSB deems it necessary to identify the reporting parties respectively the counterparties to the transactions, the LEI should be considered.

Q2-7. Does the proposed definition of securities lending provide practical basis for the collection of comparable data across jurisdictions as well as the production of comprehensive and meaningful global aggregates?

Generally yes. However, in Germany "over-collateralization" is not only generated by haircuts on collateral provided but by the simultaneous surcharge on the value as it is common in the respective market. For example: UCITS Fund A lends stocks in a value of EUR 1,000,000.00 to Bank B. According to the mandatory surcharge, a value of 1,030,000.00 is to be collateralized. The haircuts agreed between UCITS Fund A and Bank B apply on the collateral Bank B posts in order to collateralize 1,000,000.00. We do not know, in how many countries securities loan transactions are subject to the regime described above. At least these market practices apply for Germany and should therefore be considered in the FSB definition.

Q2-8. In a later stage, a list of transactions that are economically equivalent to securities lending may be added to the reporting framework (see also Section 6 for details). Which economically equivalent transactions would you suggest for future inclusion? Please provide a definition of such transactions and explain the rationale for inclusion.

n/a

Q2-9. For securities lending, do you think that an additional table with flow data would add insights into the operations of securities financing markets and assist regulators in their financial stability monitoring?

n/a

Q2-10. Are the proposed definitions and level of granularity of data elements as described in Tables 5 to 6 appropriate for consistent collection of data on securities lending markets at the national/regional level and for aggregation at the global level? In particular, are the detailed breakdown of major currencies (in Table 2), sector of the reporting entity and counterparty as well as bucketing for securities lending fees or rebate rates (in Table 5), residual maturity (in Table 5), collateral residual maturity and collateral type (in Table 6) appropriate? If not, please specify which definitions or classifications of data element(s) require modification, why the modification is necessary, and the alternative definitions/classifications.

Table 5 refers to table 4. Accordingly, we would like to refer to our answer to Q2-3. We do not believe that a reporting of haircuts agreed would be in any way beneficial.

Q2-11. Do you foresee any practical difficulties in reporting the total market value of collateral that has been re-used or cash collateral reinvested? Do you have any suggestion for addressing such difficulties?

n/a

Q2-12. Do the classifications provided for "market segment – trading" (in Table 5) and "market segment – clearing" (in Table 5 and 6) appropriately reflect relevant structural features of the securities lending markets? Are there additional structural features of securities lending markets that should be considered?

n/a

Q2-13. Are there additional securities lending data elements that should be included in the FSB global securities financing data collection and aggregation for financial stability purposes? Please describe such additional data elements, providing definitions and the rationale for their inclusion.

We would like to refer to our answer to Q2-6.

Q2-14. Does the proposed definition of margin lending provide practical basis for the collection of comparable data across jurisdictions as well as the production of comprehensive and meaningful global aggregates?

We wonder how systemic risk, which the FSB intends to make transparent via the suggested reporting obligation, could stem from margin lending. It is our understanding that margin lending, just as any other loan, is collateralized, so that neither party bears any relevant counterparty risk. We therefore suggest prior to installing any reporting obligations on the usage of loans an evaluation to be conducted by the FSB with the aim to gain evidence to what extent existing regulations leave space for any systemic risk.

Q2-15. In a later stage, a list of transactions that are economically equivalent to margin lending may be added to the reporting framework (see also Section 6 for details). Which economically equivalent transactions would you suggest for future inclusion? Please provide a definition of such transactions and explain the rationale for inclusion.

n/a

Q2-16. Are the proposed definitions of data elements as described in Tables 7 to 9 appropriate for consistent collection of data on margin lending at the national/regional level and for aggregation at the global level? In particular, does the collection of the data elements in table 9, which represents a specific requirement for margin lending, provide relevant information for financial stability purposes? Do you foresee any particular difficulties to reporting the required data elements at the national/regional level?

n/a

Q2-17. Are the detailed breakdown of major currencies (in Table 2), sector of the client and bucketing for loan rates (in Table 7), collateral type and bucketing for margin requirements (in Table 8) and funding sources (in Table 9) appropriate? If not, please specify which definitions or classifications of data element(s) require modification, why the modification is necessary, and the alternative definitions/classifications.

n/a

Q2-18. Is the collection of the data on the customers' short position, in addition to the value of outstanding loans, a necessary metric for assessing the overall clients' exposures and for financial stability purposes? Do you foresee any practical difficulties to report this data element at the national/regional level?

n/a

Q2-19. Are there additional data elements in relation to margin lending that should be included in the FSB global securities financing data collection and aggregation for financial stability purposes? Please describe such additional data elements, providing definitions and the rationale for their inclusion.

3. Data architecture

Q3-1. Is the data architecture described in Section 3 adequate to support the global securities financing data collection and aggregation? Are there other relevant issues to be considered?

We hold the view that a centralised approach is most appropriate to support the global securities financing data collection and aggregation especially by using identifiers like ISIN, LEI, etc. Data collection and aggregation by trade repositories will secure a high level of data quality. Additionally, such a centralised approach will save resources for both investment firms and national/regional competent authorities. We would also like to propose uniform reporting templates which are necessary on a global level to avoid inconsistent data reporting from different jurisdictions. Furthermore, the experiences from the implementation of EMIR should be taken into account.

Q3-2. Do you have any other practical suggestions to reduce any additional reporting burden and improve the consistency of the global data collection?

In order to avoid overlapping, duplicative or conflicting regulation FSB should evaluate, to which extent already existing regulation and reporting obligations regarding certain entities are sufficient for mitigating potential systemic risk. In our view it is questionable if reporting on regional level is necessary on a daily basis as long as the FSB will assess these data on a monthly basis only.

Q3-3. Do the proposed measures for minimising double-counting at the global level constitute a practical solution to the problem?

n/a

Q3-4. Are there any confidentiality issues that you consider relevant for the global securities financing data collection other than those explained above? If so, please provide any practical suggestions to overcome such issues?

We would like to draw FSB's attention to possible conflicting confidentiality measures of regional/national law. National legislature should ensure that reporting repo and securities lending transactions that take place in accordance with the proposed regulatory requirements are not in breach of conflicting confidentiality rules, such as data protection regulations or banking secrecy.

Otherwise, the reporting requirements could be undermined by such confidentiality rules. Global data collection would not only become difficult but also inaccurate. Article 9, para. 4 EMIR provides a similar provision in relation to existing derivatives reporting requirement: "A counterparty or a CCP 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 a counterparty or a CCP 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." Hence, the FSB should recommend such a provision globally.

4. Recommendations for national/regional data collections

Q4-1. Do the proposed recommendations as set out above adequately support the authorities in deriving meaningful global aggregate data? Are there any other important considerations that should be included?

Again, lessons from the implementation of EMIR should be drawn. Apart from that, we would opt for a monthly reporting.

5. Use of data

n/a

6. Next Steps

Q6-1. Are there any relevant practical issue related to the possible extension of the list of data elements to be considered as set out in Section 6?

n/a

Q6-2. Are there other data elements in relation to securities financing transactions that you think the FSB should consider for financial stability purposes?

n/a

Q6-3. Do you agree that a pilot exercise should be conducted before launching the new reporting framework? If so, are there any practical suggestions that the FSB and national/regional authorities should consider when preparing the pilot exercise?

Yes we do. Against the background of the implementation of EMIR a pilot exercise would be beneficial for national competent authorities as well as market participants and trade repositories.

Q6-4. In your view, what level of aggregation and frequency for the publication of the globally aggregated data on securities financing transactions by the FSB would be useful? Please provide separate answers for repo, securities lending and margin lending if necessary.

n/a

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