MAR Benchmark Study

How energy companies across Europe are keeping up with the regulatory requirements of EU Regulation 2014/596, also known as the Market Abuse Regulation (MAR)

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The regulatory landscape affecting the European energy sector is changing rapidly. Are you keeping up or falling behind?

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Published by PricewaterhouseCoopers GmbH Wirtschaftsprüfungsgesellschaft

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February 2019, 20 Pages, 8 Figures, Soft cover

Introduction

The objective of this Benchmark Study is to get a snapshot of current MAR compliance efforts across the European energy sector.

MAR has been in force since July 2016, yet implementation of effective systems for trade monitoring in the European energy industry seems to be lagging behind. Is this perception correct, and if so, what are the reasons? Further assuming that these reasons show patterns that apply across the industry, what could be done to help?

It would be wrong to claim that no action is being taken to address MAR. It is just that this action involves a wide range of activities: it typically starts with awareness building and some internal meetings, then progresses to spot checks of trading behaviour using eg, Excel, all the way to automated MAR compliance, with data feeds delivering trades, orders and market data. Regular discussions with clients could give the impression that some market participants have not progressed very far beyond the first stages. This *MAR Benchmark Study* aims to provide a more fact-based analysis of the progress of MAR compliance within the energy market.

There seem to be a number of factors which drive decisions on how much to invest in MAR compliance. These factors can be broadly put into two categories: exposure and complexity. Exposure is the risk of having less-than-perfect MAR implementation, combined with the likelihood that this will come to light. This might be a high risk for a large trader who is active in many markets, and dominant in some. Complexity is the objective difficulty of putting an effective MAR compliance system in place, both from an organisational and IT perspective. Typically, exposure is higher for a larger organisation, which is active in many markets and trading in many venues. Furthermore, organisations with high exposure tend to face high complexity. So exposure and complexity go hand in hand.

Putting progress towards MAR compliance into the context of exposure and complexity allows the most interesting results of the *MAR Benchmark Study* to emerge: one would hope that progress towards MAR compliance increases in line with exposure and complexity. If some companies find that they are lagging behind in this regard, that would be a warning sign. Conversely, it would be reassuring for a company to find that their progress towards MAR compliance is in line with the rest of the industry.

Finally, some specific patterns can indeed be observed: it is mostly lack of data and uncertainty about the actual implementation requirements which hinder market participants from achieving full MAR compliance. This *MAR Benchmark Study* is intended to provide some guidance along the way.

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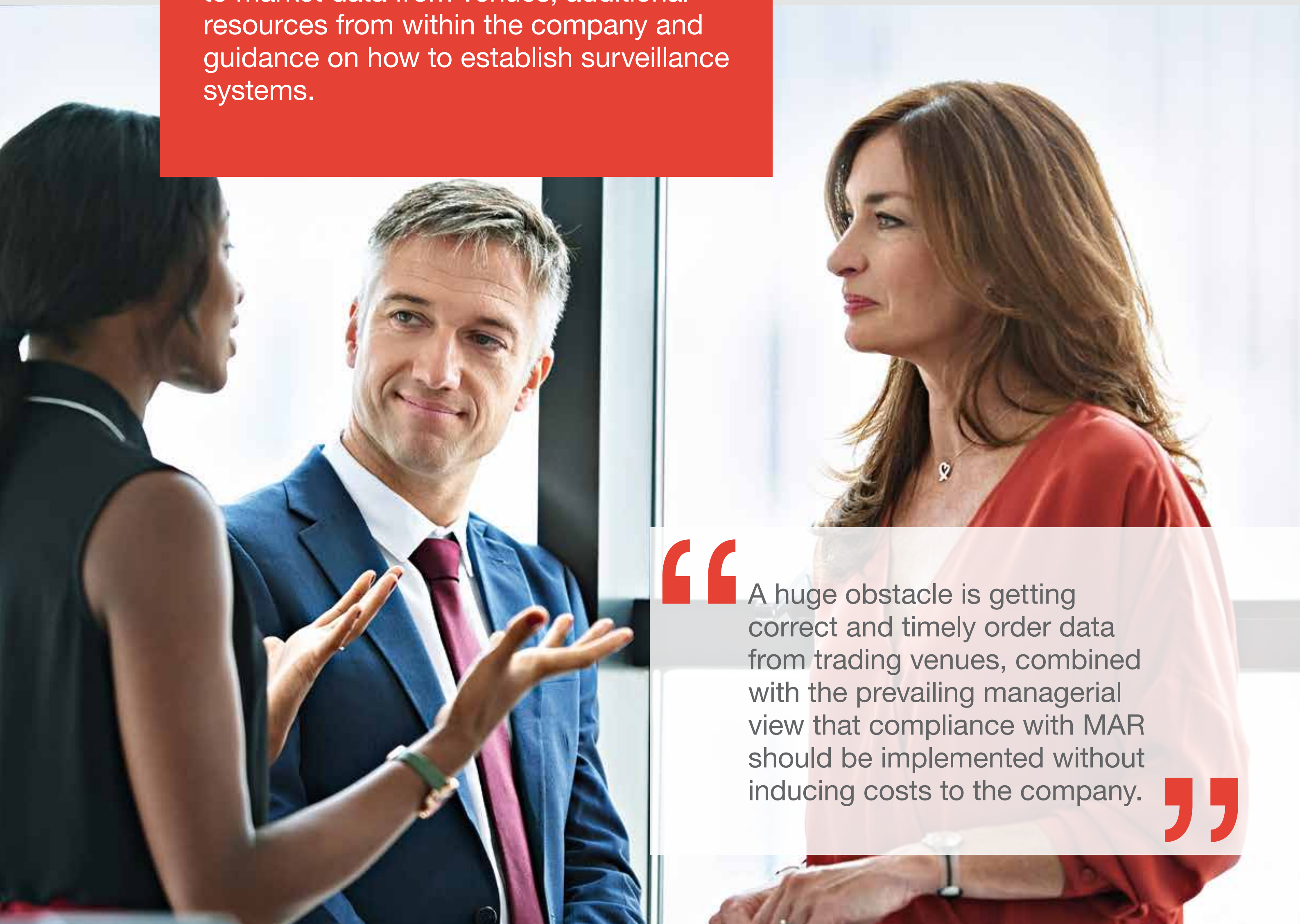
"Unlimited resources are always good but not realistic. Better access to data would be helpful."

"Seeing as all market data are reported to ACER (REMIT) and ESMA (EMIR, MAR) respectively, it would be more efficient for MAR compliance efforts to be undertaken by these authorities or by the data service providers who handle the reporting obligations of market participants. This would drastically reduce the workload for a vast number of market participants, while increasing the workload only for a few specialised companies/authorities."

Insights at a glance

- 38% of respondents have achieved best practice with their MAR compliance efforts, while 34% need to increase their efforts to ensure compliance with the minimum requirements of MAR.
- The automatic transmission of STOR reports is not an established industry standard.
- Major obstacles to MAR compliance are obtaining order and market data, unclear regulatory requirements and the establishment of surveillance systems.
- Factors that would ease future MAR compliance efforts are improved access to market data from venues, additional resources from within the company and guidance on how to establish surveillance systems.



"A huge obstacle is getting correct and timely order data from trading venues, combined with the prevailing managerial view that compliance with MAR should be implemented without inducing costs to the company."

A The Market Abuse Regulation

The Market Abuse Regulation needs to be applied to all financial instruments (as defined in Annex 1 of MiFID II), irrespective of their purpose. There are no thresholds or de minimis exemptions.

In accordance with the regulatory agenda developed at international level (eg, the G20 forum), the European Union unveiled a new policy framework aimed at improving the regulation and functioning of markets, including derivative markets. The objective was to improve the integrity and transparency of European financial markets, including European energy commodity markets.

In line with this objective, in the context of financial instruments MAR, aims to set up a level playing field and a common framework for market abuse prevention and detection in all member states.

MAR, published in the official journal of the European Union on June 12th 2014 and in force since July 3rd 2016, repealed and replaced MAD. Its objective was to strengthen the existing European market abuse framework by extending its scope to new markets, new platforms and new behaviours, therefore enhancing market integrity, market transparency and investor protection.

MAR is directly applicable in all European member states. In comparison to MAD, MAR extends the previous rules to additional instruments, namely all those traded exclusively on multilateral trading facilities (MTF) and organised trading facilities (OTF), and includes over-the-counter (OTC) trading under specific circumstances. In particular, the scope of MAR now includes spot contracts and commodity supply contracts that are not financial instruments (with respect to their influence on financial instruments), emission allowances spot contracts and related derivative instruments, and any manipulative behaviour that could affect relevant benchmarks. Figure 1 illustrates the main MAR requirements for market participants.

Fig. 1 MAR requirements for market participants

Prohibition of

1	Insider dealing
2	Unlawful disclosure of inside iformation
3	Market manipulation

Reporting/Disclosure of

4	Inside information and insider lists
5	Suspicious transaction and order reports (STORs)
6	Investment recommendations and statistics
+	Implementing the infrastructure to archive compliance and fulfil the requirements as outlined above

MAR is an EU regulation which intends to curb behaviour related to insider dealing, market manipulation and improper disclosure to thereby guarantee a smooth market functioning.

B Our benchmarking approach

Participants are benchmarked in accordance with their MAR readiness, in relation to the exposure and complexity of their business.

This *MAR Benchmark Study* will categorise companies from the European energy sector using two parameters:

- Exposure and complexity, and
- MAR readiness.

The two parameters and their indicators are briefly explained below.

Exposure and complexity

To measure exposure and complexity for each respondent, the following six indicators were investigated.

1. Location of trading activity
Respondents could choose from the following three options: over-the-counter (bilateral), over-the-counter (via broker) and exchange (multiple answers possible). The exposure and complexity of the respondent's business increases in line with the number of selected options.

2. The number of venues where trading activity takes place
Respondents could choose from the following 11 options, which are major European venues for trading power and gas: EEX, PEGAS, Nord Pool, Amsterdam Power Exchange, Belpex, IPEX, Energy Exchange Austria, Opcom, PXE and PolPX (multiple answers possible). Respondents were also able to add other venues that were not included in the list. The higher the number of venues where a respondent's trading activity takes place, the higher the exposure and complexity of the respondent's business.

3. The number of legal entities that are trading within the respondent's company group
The higher the number of legal entities that are trading within the respondent's company group, the higher the exposure and complexity of the respondent's business.

4. The number of traders within the respondent's company group
Respondents could choose from the following five options: 1–5 traders, 6–10 traders, 11–20 traders, 21–50 traders and more than 50 traders. The higher the number of traders within the respondent's company group, the higher the exposure and complexity of the respondent's business.

5. The number of MAR relevant commodities that are traded
Respondents could choose from the following options: coal, emissions, FX, gas, LNG, oil, power and weather (multiple answers possible). The higher the number of MAR relevant commodities traded by the respondent's company group, the higher the exposure and complexity of the business.

6. The number of different instrument types that are traded
Respondents could choose between futures, options, forwards, spot and swaps (multiple answers possible). Respondents were also able to add other instruments that were not listed. The exposure and the complexity of the respondent's business increases with the number of traded instrument types.

A score was allocated for each of the six indicators, based on the respondent's answers. Respondents were placed on a scale from 1 to 10 according to their scores.

MAR readiness

To measure the MAR readiness of the benchmark participants, the following two indicators were investigated.

1. Organisational effort towards MAR compliance
Respondents could choose between (a) no organisational effort at this point in time, (b) introduction of a company-wide MAR policy, (c) building awareness through workshops and training, and (d) development of control systems (multiple answers possible).

2. Technical effort towards MAR compliance
Respondents could choose between (a) no technical effort at this point in time, (b) implementation of a semi-manual surveillance system (eg, using Excel tools), (c) implementation of an automated surveillance system, and (d) automatic transmission of STOR reports in case of suspicious orders or transactions (multiple answers possible).

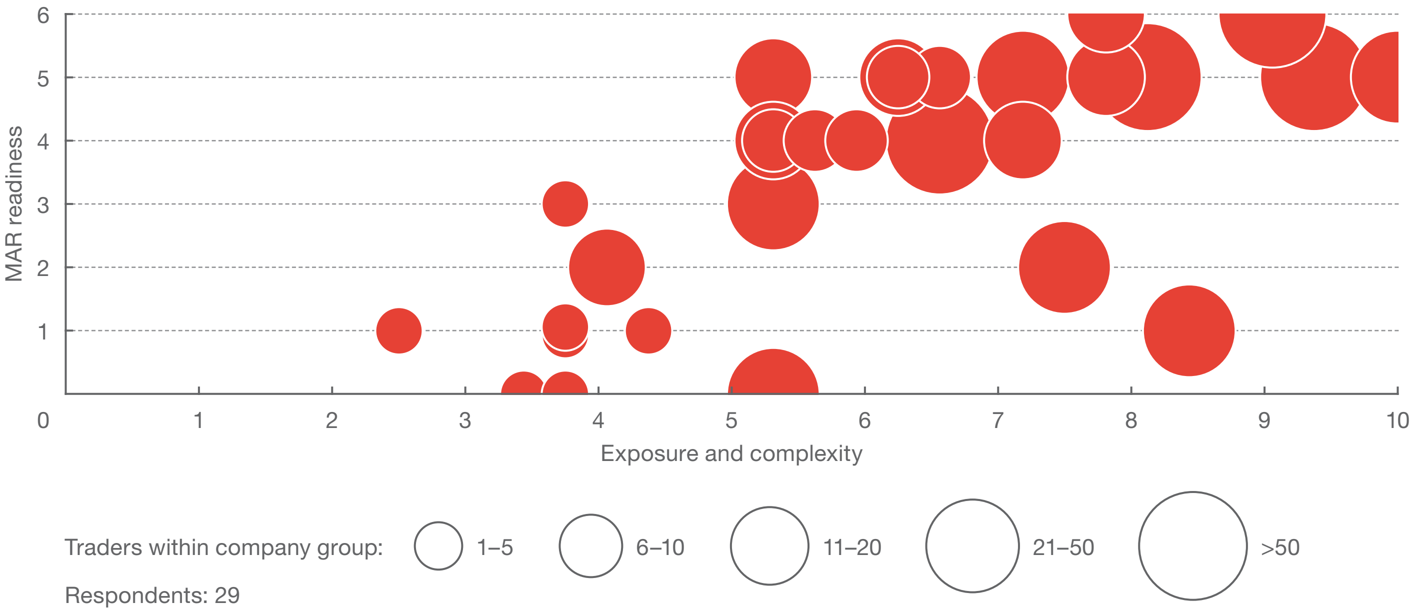
A score was allocated for each of the two indicators. Respondents were also able to add other types of effort that were not listed. Activity that was described as being “in a conception or planning phase” was not taken into account for the total score. Respondents were placed on a scale from 1 to 6 according to their score.

C Assessment of study results

In total, 29 energy companies from 14 different countries participated in this year's *MAR Benchmark Study*.

The study results are illustrated in Figure 2 with MAR readiness on the y-axis and exposure and complexity on the x-axis. Each bubble represents one of the respondents. The size of the bubbles corresponds to the total number of traders within the company group.

Fig. 2 Results at a glance



Respondents: 29

Figure 3 illustrates the study results on a national basis. The results show that in the United Kingdom and Austria, respondents are nationally at the same level in terms of their MAR readiness. At the same time, the British, Austrian and German respondents scored relatively high in comparison to other countries on the MAR readiness parameter. On the other hand, the graphs show that there is a mixed picture for Denmark, Spain, Hungary and the Czech Republic.

Fig. 3 **Results by country**

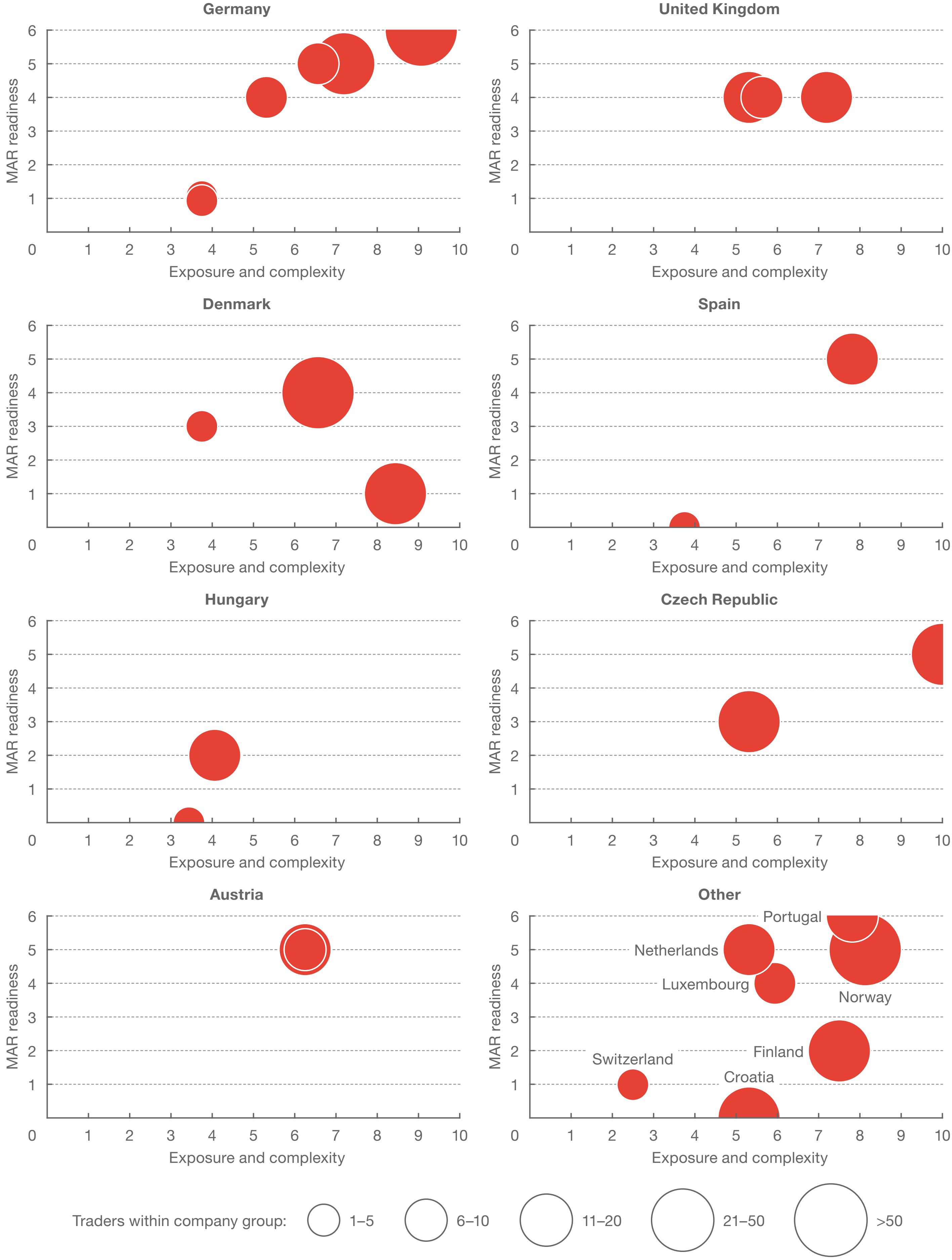
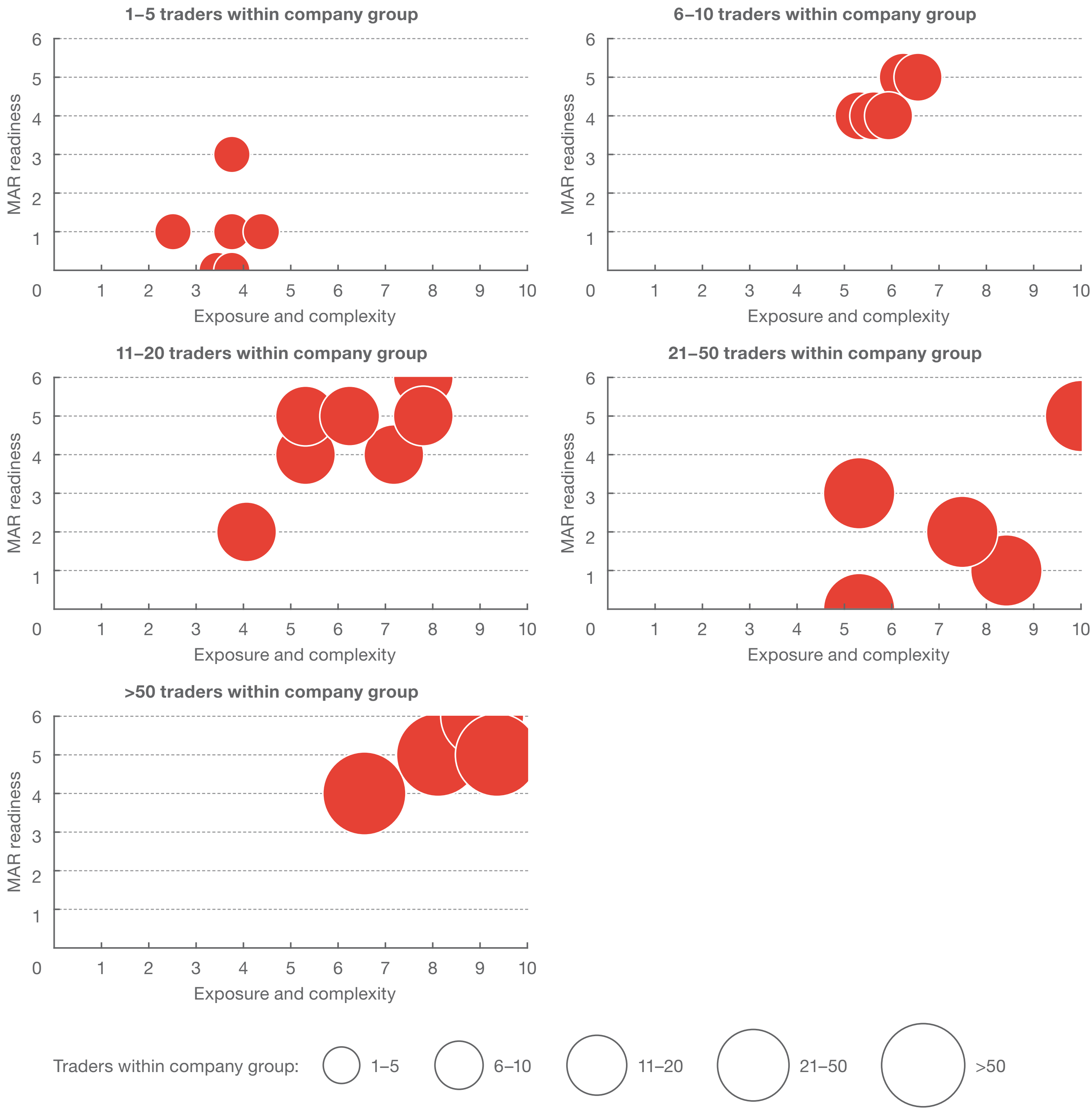


Figure 4 illustrates the study results for each of the five clusters, based on the number of traders within the respondent's company group. The results show that respondents with 1–5 traders generally do not invest a lot of effort into MAR compliance. On the other hand, traders with 6–10 traders or 11–20 traders score relatively well on MAR readiness, which also has a positive correlation with the complexity of the respondent's business. For respondents with 21–50 traders, there is a mixed picture, as MAR readiness ranges from no effort at this point in time to the introduction of a company-wide MAR policy or the implementation of automated control systems. Another observation is that MAR readiness does not increase with the complexity of the respondent's business across the clusters, since respondents with 6–10 traders or 11–20 traders scored higher on MAR readiness than some respondents with 21–50 traders.

Fig. 4 Results by number of traders



Major obstacles

Based on the data, respondents see five major obstacles to a best practice solution (see Figure 5).

1. Obtaining order and market data
37.5% of respondents saw obtaining order and market data as the biggest obstacle. This includes access to order and market data per se, as well as the limited quality of the data that can be retrieved.

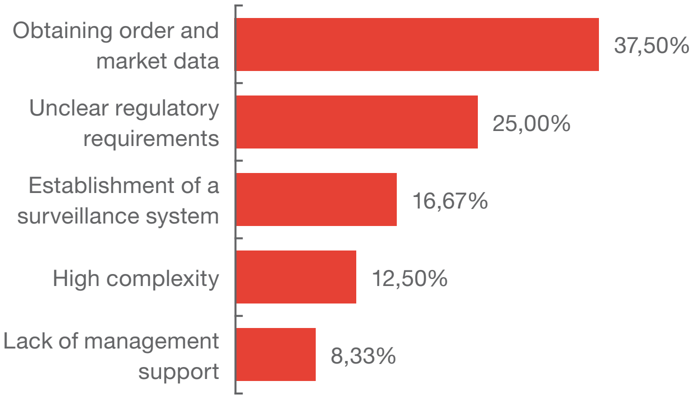
2. Unclear regulatory requirements
25% stated that the regulatory requirements are not clear. Specifically, respondents are missing clear guidance on market abuse scenarios and have difficulty finding legal experts who can help them to implement a compliant solution.

3. Establishment of a surveillance system
For 16.67% of respondents, the establishment of an adequate surveillance system is a major obstacle. For example, respondents are struggling to establish algorithms that can detect suspicious orders and transactions, while there is a perceived lack of surveillance solutions specifically for gas & power on the market.

4. High complexity
12.5% saw the high complexity of MAR as an obstacle. On the one hand, implementation for a single trading entity was found to be relatively simple in contrast to the requirements of EMIR or REMIT. However, conversely, respondents with multiple trading entities are struggling with issues such as different contract structures and traded instruments in different countries.

5. Lack of management support
According to 8.33% of respondents, lack of management support is a major obstacle. This includes both financial support and human resources. Respondents also noted that there is a managerial view that MAR compliance should be implemented without incurring any additional costs to the company.

Fig. 5 Major obstacles



> There is little guidance on what is expected regarding the firm's trading surveillance solutions. We are still in the process of sourcing our order data from our trading venues. Once we obtain this data it is still not clear exactly what appropriate usage would be. There must be a balance between satisfactory surveillance powers and the manual burden that this surveillance will place on the participant.

> Improved access to data from trading venues, for order/trade ratio comparisons. Additional resources within the company for the analysis and implementation of regulatory issues would be very helpful.

How to improve compliance activity?

Suggestions on how to improve future compliance activity can be clustered into 6 themes (see Figure 6).

1. Improved access to market data from trading venues
25.81% of respondents indicated that better access to market data from trading venues would improve their future MAR compliance activity. Specifically, respondents called for easier access to market data, as this would also make the creation of a surveillance system easier to achieve.

2. Additional resources from within the company
25.81% of respondents noted that additional resources from within the company would improve their future MAR compliance activity. This includes additional financial resources, as well as additional staff or external advisors with up-to-date legal information, to implement solutions.

3. Guidance on setting up surveillance systems
19.35% of respondents indicated that guidance on setting up a surveillance system would improve their future MAR compliance activity. For example, respondents stated that they needed guidance on (a) how to set up surveillance thresholds, (b) what events actually would constitute a STOR in the eyes of the regulator, and (c) more information about market abuse scenarios.

4. Improved regulatory guidance
16.13% of respondents indicated that better regulatory guidance would improve their future MAR compliance activity. Suggestions ranged from official training initiatives relating to MAR, to the definition of clear standards in terms of file format, data quality, processes and data acquisition.

Fig. 6 How to ease implementation efforts

5. Separate service providers
According to 9.68% of respondents, a separate service provider would improve future MAR compliance efforts. Specifically, the best solution would be a few certified service providers who could deal with MAR reporting more efficiently and thus reduce the workload for market participants.

6. More time to achieve compliance
Finally, 3.23% of respondents noted that they needed more time to achieve MAR compliance.

D Are you keeping up or falling behind?

While 38% of the respondents have achieved best practice, 34% do not comply with the minimum requirements.

The respondents were clustered into five performance groups that reflect their MAR readiness, as well as the exposure and the complexity of their business. Figure 7 summarises the results in form of a bubble diagram.

1. Urgent action needed
The first cluster includes respondents that have implemented neither technical nor organisational activities (10%). There may be plans in an early development phase – however, there are no finalised solutions in place as yet. Respondents from cluster 1 urgently need to take action in order to comply with the minimum requirements of MAR and to avoid sanctions from the respective national regulators.

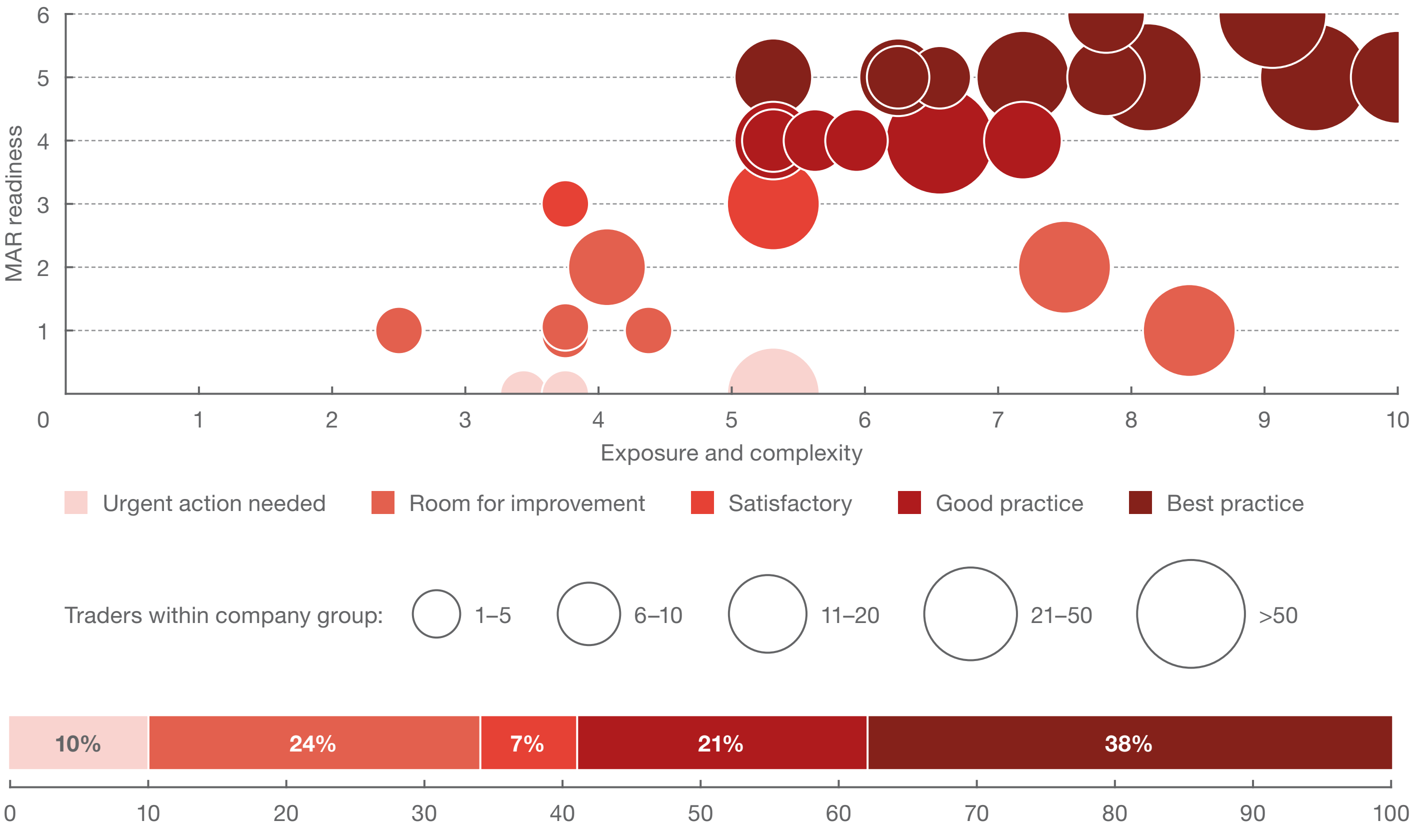
2. Room for improvement
The second cluster includes respondents that have implemented organisational activities in the form of a company-wide MAR policy, as well as workshops and training to create awareness of MAR (24%). However, no technical activities have been completed at this point in time. Some respondents argued that they do not see the need for a sophisticated technical solution, as they are trading derivatives on a small scale only.

3. Satisfactory
The respondents in the third cluster have initiated organisational activities in the form of a company-wide MAR policy, as well as workshops and training sessions that are focused on MAR (7%). Technical activities include the implementation of semi-manual surveillance systems.

4. Good practice
Respondents that have achieved "good practice" have either implemented a control system or an automated surveillance system, in addition to introducing a MAR policy and conducting workshops and training sessions (21%).

5. Best practice
The last cluster includes respondents that have achieved best industry practice with their MAR compliance efforts (38%). All of these respondents have implemented control systems and automated surveillance systems to ensure MAR compliance. In addition to this, they have also conducted workshops and introduced a MAR policy.
Two of the respondents even have a system in place that automatically submits STOR reports to the competent authority if a suspicious order or transaction is detected.

Fig. 7 Benchmark participants clustered into performance groups



Respondents: 29

E Achieving best practice

In order to achieve best practice in your MAR compliance efforts[1], PwC suggests a five-step approach (see Figure 8):

1. MAR impact assessment
The first step is to conduct a MAR impact assessment. This typically includes the following aspects:
- Analysis to see whether there are any systems or procedures already in place for one of the entities that can be extended group-wide.
- Investigation of the group's portfolio and identification of which traded financial instruments are within the scope of MAR.
- Definition of a "MAR taskforce" that specifies the functions that must be included in subsequent steps (eg, compliance, front office, treasury).

2. MAR company policy
The second step is to formalise a company-wide MAR policy that is tailored to the industry and business specifics of the company group. In this context, workshops should be conducted with traders from the front office to capture the current trading process for physical and paper trades. Based on this, working instructions and processes regarding the obligations and rules of conduct for affected employees should be defined. Specifically, processes that need to be covered include (1) the identification of inside information, (2) the public disclosure of inside information, (3) the implementation and maintenance of insider lists, (4) managers' transactions, and (5) STOR reporting. For this exercise, the RACI method is often used to specify the persons that are responsible, accountable, consultable and need to be informed at every step of the different processes.

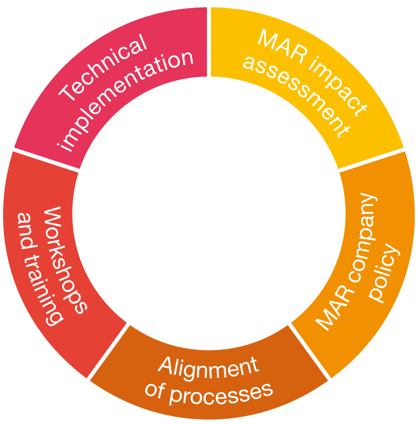
3. Alignment of processes
After establishing a company-wide MAR policy, the current trading processes need to be adjusted to the new defined state. In order to achieve this, the board of directors of the respective company group should be included, so that the required decisions are made top-down. Aspects that may require decisions from the board of directors are, for instance:
- The scope of systems and procedures to identify (attempts at) insider trading or market manipulation.
- Restricting managers from executing transactions on their own account or for the account of a third party, relating to shares or debt instruments that the company group is linked to as well relating to commodities that the company group trades.

4. Workshops and training
For this step, follow-up workshops should be conducted where the new processes are communicated and forbidden trading practices are explained through hands-on case studies. Participants in these workshops should be, as a minimum, all employees who are entitled to trade financial instruments for the company group, as well as employees who are in possession of inside information.

Workshops can be conducted via web-based training sessions – however, classroom training facilitates discussions and the understanding of the workshop participants. The workshops should be repeated on at least an annual basis, to keep awareness at a high level.

5. Technical implementation
The last step covers the integration of processes into company systems, such as defined algorithms and procedures for identifying insider trading, market manipulation or the mere attempt at it. However, in this context it is important to find a solution that is appropriate in relation to the size of the company group. Large companies could consider technical solutions that automatically submit STOR reports to the competent authorities, to reduce the manual workload.

Fig. 8 A possible approach to achieving best practice

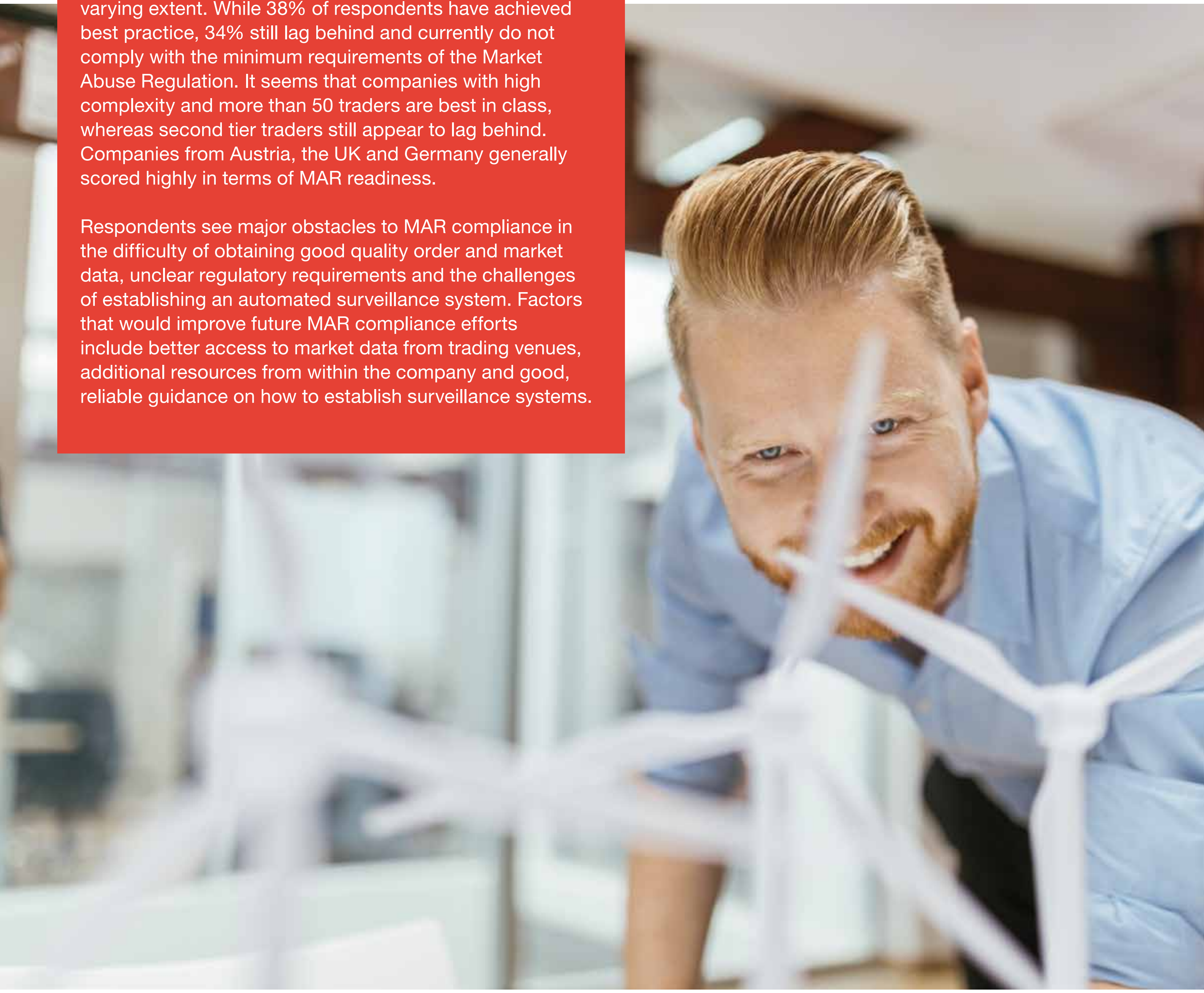


[1] Please note that the suggested approach illustrates a simplified description of how to achieve best practice. If you need additional information, you are welcome to contact us.

F Conclusion

In total, 29 companies from 14 countries from the European energy sector participated in this year's *MAR Benchmark Study*. The results confirm that market participants across Europe have undertaken MAR compliance efforts to a varying extent. While 38% of respondents have achieved best practice, 34% still lag behind and currently do not comply with the minimum requirements of the Market Abuse Regulation. It seems that companies with high complexity and more than 50 traders are best in class, whereas second tier traders still appear to lag behind. Companies from Austria, the UK and Germany generally scored highly in terms of MAR readiness.

Respondents see major obstacles to MAR compliance in the difficulty of obtaining good quality order and market data, unclear regulatory requirements and the challenges of establishing an automated surveillance system. Factors that would improve future MAR compliance efforts include better access to market data from trading venues, additional resources from within the company and good, reliable guidance on how to establish surveillance systems.



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