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Public consultation on the review of the MiFID II/MiFIR regulatory framework

Fields marked with * are mandatory.

Introduction

SECTIONS 1 and 3 of this consultation are also available in other 22 European Union languages.

SECTION 2 will be available in English only.

If you wish to respond in another language than English, please **use the language selector above to choose your language**.

Background of this public consultation

As stated by President von der Leyen in her political guidelines for the new Commission, "*our people and our business can only thrive if the economy works for them*". To that effect, it is essential to complete the Capital Markets Union ('CMU'), to deepen the Economic and Monetary Union ('EMU') and to offer an economic environment where small and medium-sized enterprises ('SMEs') can grow.

In the light of the mission letter to Executive Vice President Dombrovskis, the Commission services are speeding up the work towards a CMU to diversify sources of finance for companies and tackle the barriers to the flow of capital. The Action Plan on the **Capital Markets Union** as announced in Commission Work Program for 2020 will aim at better integrating national capital markets and ensuring equal access to investments and funding opportunities for citizens and businesses across the EU.

In addition, the new **Digital Finance Strategy** for the EU aims to deepen the Single Market for digital financial services, promoting a data-driven financial sector in the EU while addressing its risks and ensuring a true level playing field via enhanced supervisory approaches. And the revamped Sustainable Finance Strategy will aim to redirect private capital flows to green investments.

Finally, in the context of the Communication on the **International role of the euro**, the Commission has published a recommendations on how to increase the role of the euro in the field of energy. Furthermore, the Commission consulted market participants to understand better what makes the euro attractive in the global arena. Based on those consultations, the Commission has produced a Staff Working Document that provides an update on initiatives, and raises considerations for specific sectors such as commodity markets.

The Directive and Regulation on Markets in Financial Instruments (respectively MiFID II – Directive 2014/65/EU – and MiFIR – Regulation (EU) No 600/2014) are cornerstones of the EU regulation of financial markets. They promote financial markets that are fair, transparent, efficient and integrated, including through strong rules on investor protection. In doing so, MiFID II and MiFIR support the objectives of the CMU, the Digital Finance agenda, and the Sustainable Finance agenda.

Responding to this consultation and follow up to the consultation

In this context and in line with the Better Regulation principles, the Commission has decided to launch an open public consultation to gather stakeholders' views.

The Commission's consultation and separate ESMA consultations on the functioning of certain aspects of the MiFID II /MiFIR framework are complementary and should by no means be considered mutually exclusive. The Commission and ESMA consult stakeholders with respect to their specific area of competence and responsibility and with the objective to gather important guidance for any future course of action on respective sides. Both the ESMA reports and this consultation will inform the review reports for the European Parliament and the Council (see Article 90 of MiFID II and Article 52 of MiFIR), including legislative proposals where considered necessary.

This consultation document contains three sections.

The first section aims to gather views from all stakeholders (including non-specialists) on the experience of two years of application of MiFID II/MiFIR. In particular, it will gather feedback from stakeholders on whether a targeted review of MiFID II/MiFIR with an ambitious timeline would be appropriate to address the most urgent shortcomings.

The second section will seek views of stakeholders on technical aspects of the current MiFID II/MiFIR regime. It will allow the Commission to assess the impact of possible changes to EU legislation on the basis of proposals already put forward by stakeholders in the context of previous public consultations and studies (e.g. study on the effects of the unbundling regime on the availability and quality of research reports on SMEs and study on the digitalisation of the marketing and distance selling of retail financial service) and in the context of exchanges with experts (e.g. in the European Securities Committee or in workshops, such as the workshop on the scope and functioning of the consolidated tape). This second section focuses on a number of well-defined issues.

The third section invites stakeholders to draw the attention of the Commission to any further regulatory aspects or identified issues not mentioned in the first and second sections.

This consultation is open until 18 May 2020.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-mifid-r-review@ec.europa.eu.

More information:

- on this consultation
- on the consultation document
- on the protection of personal data regime for this consultation

About you

* Language of my contribution

- (○) Bulgarian
- (○) Croatian
- (○) Czech
- (○) Danish
- (○) Dutch
- (◉) English
- (○) Estonian
- (○) Finnish
- (○) French
- (○) Gaelic
- (○) German
- (○) Greek
- (○) Hungarian
- (○) Italian
- (○) Latvian
- (○) Lithuanian
- (○) Maltese
- (○) Polish
- (○) Portuguese
- (○) Romanian
- (○) Slovak
- (○) Slovenian
- (○) Spanish
- (○) Swedish

* I am giving my contribution as

- (○) Academic/research institution
- (◉) Business association
- (○) Company/business organisation
- (○) Consumer organisation
- (○) EU citizen
- (○) Environmental organisation
- (○) Non-EU citizen
- (○) Non-governmental organisation (NGO)
- (○) Public authority
- (○) Trade union
- (○) Other

* First name

Adam

* Surname

JACOBS-DEAN

* Email (this won't be published)

ajacobs-dean@aima.org

* Organisation name

255 character(s) maximum

AIMA and MFA

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

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* Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles

- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey

- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- (•) United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

* Field of activity or sector (if applicable):

at least 1 choice(s)

- [ ] Operator of a trading venue (regulated market, MTF, OTF)
- [ ] Systematic internaliser
- [ ] Data reporting service provider
- [ ] Data vendor
- [ ] Operator of market infrastructure other than trading venue (clearing house, central security depositary, etc)
- [ ] Investment bank, broker, independent research provider, sell-side firm

- [x] Fund manager (e.g. asset manager, hedge funds, private equity funds, venture capital funds, money market funds, institutional investors), buy-side entity
- [ ] Benchmark administrator
- [ ] Corporate, issuer
- [ ] Consumer association
- [ ] Accounting, auditing, credit rating agency
- [x] Other
- [ ] Not applicable

* Please specify your activity field(s) or sector(s):

Trade associations representing alternative investment managers

* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- ( ) **Anonymous**
  Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.
- (•) **Public**
  Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

[x] I agree with the personal data protection provisions

Choose your questionnaire

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* **Please indicate whether you wish to respond to the short version (7 questions) or full version (94 questions) of the questionnaire**.

The **short version** only covers the **general aspects of the MiFID II/MiFIR regime**

The **full version** comprises 87 additional questions addressing **more technical features**.
The full questionnaire is only available in English.

( ) I want to respond only to the **short version** of the questionnaire

◉ I want to respond to the **full version** of the questionnaire

Section 1. General questions on the overall functioning of the regulatory framework

The EU established a comprehensive set of rules on investment services and activities with the aim of promoting financial markets that are fair, transparent, efficient and integrated. The first comprehensive set of rules adopted by the EU (MiFID I - Directive 2004/39/EC.) helped to increase the competitiveness of financial markets by creating a single market for investment services and activities. In the wake of the financial crisis, shortcomings were exposed. MiFID II and MiFIR, in application since 3 January 2018, reinforce the rules applicable to securities markets to increase transparency and foster competition. They also strengthen the protection of investors by introducing requirements on the organisation and conduct of actors in these markets.

After two years, the main goal of a MiFID II/MiFIR targeted review is to increase the transparency of European public markets and, linked thereto, their attractiveness for investors. The Commission aims to ensure that European Union's share and bond markets work for the people and businesses alike. All companies, both small and large, need access to the capital markets. The regulatory regime for financial markets and financial services needs to be fit for the new digital era and financial markets need to work to the benefit of everyone, especially retail clients.

Question 1. To what extent are you satisfied with your overall experience with the implementation of the MiFID II/MiFIR framework?

- ○ 1 - Very unsatisfied
- ◉ 2 - Unsatisfied
- ○ 3 - Neutral
- ○ 4 - Satisfied
- ○ 5 - Very satisfied
- ○ Don't know / no opinion / not relevant

Question 1.1 Please explain your answer to question 1 and specify in which areas would you consider the opportunity (or need) for improvements:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

AIMA and MFA welcome the review of the MiFID II framework and appreciate the opportunity to provide our perspective on market developments since its adoption. We believe the rules could be adapted to strengthen capital formation in the EU and further advance the objectives of Capital Markets Union. Specifically, we identify the following aspects of the regime for which a targeted overhaul would benefit investors:

- Market data costs: The MiFID II framework has failed to mitigate increasing market data costs in Europe, undermining European competitiveness and damaging the prospects of building a digital economy. The "reasonable commercial basis" framework in respect of data provision should be strengthened as a matter of priority to include:

• Greater emphasis on enforcing the existing framework, which already limits what trading venues can charge for data relative to the cost of compiling and publishing that data (Article 85 of CDR 2017/565 and

Article 7 of CDR 2017/567), albeit without setting explicit limits.

• More stringent requirements on the form and content of RCB disclosures, given the lack of comparability in approach at present.

• Much stronger provisions on reporting of costs to ESMA and NCAs, with explicit oversight and intervention powers for NCAs where charges are not commercially reasonable relative to costs.

- Consolidated tape: We generally support the development of post-trade consolidated tapes in the EU for equities and non-equities markets. Importantly, we believe that the CT is more likely to be useful in the context of post-trade and operational processes rather than sourcing liquidity. We strongly oppose the possibility of mandatory consumption of CT data, given that this would undermine the incentive structure for the provider of the CT. Regarding a CT and best execution, we oppose the potential use of a European Best Bid and Offer ("EBBO") reference price benchmark to gauge best execution. Use of an EBBO would place undue emphasis on price for the purposes of best execution and limit firms' flexibility in designing their execution policies.

- Investor disclosures: The MiFID II framework does not recognise the distinct information needs of professional and retail clients. We believe that professional clients and eligible counterparties should be exempted from ex ante cost information obligations in order to ensure clients receive the information that they need and want and reduce the burden on firms producing the information.

- Best execution reports: We firmly believe that best execution reports provide little value to investors. We strongly encourage the European Commission to remove the reporting requirement from the MiFID framework, at the very least for firms providing the service of portfolio management exclusively to professional clients.

- Client classification: We support changes to the existing MiFID II client classification framework to make it easier for firms to provide an appropriate range of services to high net worth individuals.

- Trade and Transaction Reporting obligations of the MiFID II framework place excessive burden on buy-side firms, without delivering supervisory authorities with optimal data. We believe reform is needed to reduce the volume of reporting and enhance overall efficiency by adjusting the parties that fulfil reporting obligations. EU-level reference data is also inadequate from the point of view of supporting timely and complete reporting and we believe there is an opportunity to reform FIRDS to make reporting more straightforward for market participants and more valuable for regulatory authorities.

- Market transparency and execution: We believe that:

o The range of securities that is subject to the share trading obligation should be limited to those with an EU ISIN to mitigate overlap with other jurisdictions' rules.

o SIs should remain eligible for satisfying the share trading obligation in order to ensure that market participants continue to benefit from having a range of execution modalities.

o The DVC should be adjusted by eliminating the 4% trading venue level threshold while maintaining of the EU-level threshold at 8% to reflect the reality that individual trading venues can have a dominant share of trading in shares subject to the DVC.

o The deferral framework is impairing post-trade transparency, as ~90% of on-venue activity in OTC derivatives is being granted a four-week deferral and ~85% of trading activity in bonds is not being published

in real-time. We suggest harmonizing deferrals across member states, reducing the number of deferrals, shortening the length of the deferral period, and capping notionals (in lieu of deferring publication of uncapped notionals).

- Post-trade name give-up: We recommend that MiFID be amended to specifically prohibit the practice of "post-trade name give-up" for financial instruments that are executed anonymously and centrally cleared.

Question 2. Please specify to what extent you agree with the statements below regarding the overall experience with the implementation of the MiFID II /MiFIR framework?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention has been successful in achieving or progressing towards its MiFID II /MiFIR objectives (fair, transparent, efficient and integrated markets).	○	◉	○	○	○	○
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	○	◉	○	○	○	○
The different components of the framework operate well together to achieve the MiFID II/MiFIR objectives.	○	◉	○	○	○	○
The MiFID II/MiFIR objectives correspond with the needs and problems in EU financial markets.	○	○	○	○	◉	○
The MiFID II/MiFIR has provided EU added value.	○	○	○	◉	○	○

Question 2.1 Please provide qualitative elements to explain your answers to question 2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our response to Question 2, we highlight our view that MiFID II / MiFIR has been successful in achieving or progressing towards its objectives of fair, transparent, efficient and integrated markets. As such we do not see the need for a radical change to the existing MIFID II transparency provisions, particularly as regards the double volume cap or the systematic internaliser regime.

We also note our view that the costs associated with MiFID II are not balanced, notably on account of the excessive reporting burden that falls on buy-side market participants. For example, we believe that the post-trade transparency framework should be changed to ensure that the sell-side entity discharges reporting obligations in all scenarios, regardless of SI status.

We also signal our disagreement with the statement that the components of the regime operate well together. This reflects our view that MiFID II has not sufficiently tackled problems in the pricing and supply of market data, harming its broader objectives of market efficiency and integration.

Finally, we note that MiFID II has not yet achieved its goal of bringing post-trade transparency to the non-equities markets. While market participants have had to absorb the costs associated with reporting, they have yet to realize the significant benefits that a more comprehensive post-trade transparency framework for non-equities can deliver. In countries where post-trade transparency has been fully implemented, academic research has found significant benefits for both retail and institutional investors, including better pricing, lower transaction costs, and enhanced liquidity.

Question 3. Do you see impediments to the effective implementation of MiFID II/MiFIR arising from national legislation or existing market practices?

- 1 - Not at all
- 2 - Not really
- 3 - Neutral
- 4 - Partially
- (●) 5 - Totally
- Don’t know / no opinion / not relevant

Question 3.1 Please explain your answer to question 3:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our view, trading venues are not complying with the spirit of provisions on the supply of market trade data. This concerns both the supply of free post-trade data and proprietary market data.

Market data has, over time, become more important to firms' activities. In part, this reflects the reality that access to accurate, timely data concerning the price and timing of trades, as well as bids and offers, is vital to succesful implementation of any investment strategy. In addition, various regulatory requirements have effectively required firms to increase their consumption of data and ability to process that data, including: requirements relating to monitoring of execution quality; regulatory reporting requirements; rules on inducements; asset valuation requirements; and data security, risk management and business continuity requirements (such as maintenance of redundant feeds and archives). This need for data is amplified by the fragmentation of trading activity across multiple venues, each with its own data products.

Despite the objectives of MiFID II and world-wide trends in declining costs of computing and data storage , many trading venues have continued to increase market data fees year-after-year, with published research highlighting an increase in fees net of inflation in the range of 30-60% since 2008 for certain venues. The increased market data fees come even in spite of the recent mergers in the exchange industry, which promised to save costs as a result of the consolidated IT networks and shared storage facilities. This in turn has had a major impact on firms of all sizes in the investment management industry, as well as their underlying investors. Given the increasing data costs, smaller firms in particular face a high barrier to entry and might in practice be prevented from accessing certain markets or implementing certain strategies as a result of data costs. This is true for both investment management firms and brokers, as fewer firms find it cost-effective to trade in certain ways or execute orders themselves because of the high cost of market data. We note that the stability of any marketplace is preserved by the presence of a diverse group of direct market participants, making their trading decisions independently of each other. We are, therefore, concerned that trading venues, through dominant market power are pricing out many market participants, leading to fewer independent decision makers as market participants either stop trading or choose to access a market through a broker's execution algorithm. This reduction in independent decision makers increases the risk of herd behaviour, as it involves more market participants executing their trades on the basis of the similar trading parameters.
When consulting on the review of MiFID I, the European Commission stressed that prices for trading data were considered as being too high. While trading venues have mounted a vigorous defence of the way in which they charge for market data, we argue that the trend of the last decade can in no way be characterized in terms of prices being brought down to a reasonable level. We believe the opposite is true: prices have increased, charging structures have become more complicated and less transparent, and the regulatory expectations for users to consume data have increased significantly. Regulatory intervention is needed as a matter of urgency, particularly as we are discussing aggregated trading data of market participants and not data that trading venues have enhanced through added analytical insights.

Question 4. Do you believe that MiFID II/MiFIR has increased pre- and post-trade transparency for financial instruments in the EU?

- ○ 1 - Not at all
- ◉ 2 - Not really
- ○ 3 - Neutral
- ○ 4 - Partially
- ○ 5 - Totally
- ○ Don't know / no opinion / not relevant

Question 4.1 Please explain your answer to question 4:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our view the impact of MiFID II has been different for equity and non-equity asset classes.

Regarding equities, we believe that the MiFID II / MiFIR framework has significantly increased the level of market transparency in the EU and believe that the framework is not in urgent need of modification. We would be concerned about the prospect of radical overhaul of equities transparency rules at this time, particularly as regards the reference price and negotiated trade wavers and double volume cap, given the level of resources that have already been expended by market participants in complying with the framework and given the potential for a destabilising impact on market functioning.

On the other hand, the MiFID II post-trade transparency framework for non-equities has yet to deliver meaningful transparency: only ~5% of off-venue trading activity in OTC derivatives is subject to post-trade transparency (due to the interpretation of ToTV); 90% of on-venue trading activity in OTC derivatives is being granted a four-week deferral; ~85% of trading activity in EU bonds is not being published in real-time, and full transaction details are never published for the vast majority of activity due to indefinite deferrals.

Question 5. Do you believe that MiFID II/MiFIR has levelled the playing field between different categories of execution venues such as, in particular, trading venues and investment firms operating as systematic internalisers?

- 1 - Not at all
- 2 - Not really
- 3 - Neutral
- 4 - Partially
- 5 - Totally
- Don’t know / no opinion / not relevant

Question 5.1 Please explain your answer to question 5:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While we do not have a direct perspective on the respective commercial positions of trading venues vis-à-vis systematic internalisers, we strongly support the principle that market participants should be able to choose the execution modality that best suits their needs and that SIs should remain eligible for satisfying the share trading obligation. Maintaining breadth of execution possibilities is good for the resilience of the market, particularly in stressed trading conditions.

Question 6. Have you identified barriers that would prevent investors from accessing the widest possible range of financial instruments meeting their investment needs?

- 1 - Not at all
- 2 - Not really
- 3 - Neutral
- 4 - Partially

- (●) 5 - Totally
- ( ) Don't know / no opinion / not relevant

Question 6.1 If you have identified such barriers, please explain what they would be:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The existing process to opt up from retail to professional client status is overly restrictive and could be helpfully reformed to make it easier for high net worth individuals to access a broader range of financial products that could suit their needs. Please see our response to Question 40 for our specific recommendations.

As a separate matter, EU trading venues are continuing to apply "post-trade name give-up", a practice that involves the disclosure of counterparty identities post-trade, after a transaction has been executed anonymously. This occurs in the context of cleared OTC derivatives that are executed anonymously, even though the two trading counterparties do not have any credit, operational, or legal exposure to each other.

"Post-trade name give-up" is a discriminatory practice that impedes market participant access to trading venues for the following reasons:

• It functions as a source of uncontrolled information leakage since a market participant has no control over who it will be matched with when executing through an anonymous trading protocol, such as an order book (in contrast to a request-for-quote, where a market participant will carefully chose which firms to disclose trading information to). Therefore, before using an anonymous order book with "post-trade name give-up", a buy-side firm (such as an asset manager, insurance company, or pension fund) must be comfortable potentially sharing its trading activity with every other participant on the trading venue, including other buy-side firms. This is an unattractive proposition for buy-side firms that completely undermines the anonymous nature of the trading protocol and deters access and participation.

• "Post-trade name give-up" allows dealers to monitor whether buy-side firms have started to transact in anonymous order books. This information can be used as a policing mechanism by dealers to deter buy-side access and participation.

• There is no legitimate justification for the continued use of the practice for centrally cleared instruments. Straight-through-processing rules (STP) ensure that a cleared transaction is immediately submitted to a clearinghouse, resulting in each trading counterparty facing the clearinghouse and having no credit, operational, or legal exposure to the other trading counterparty. Even in the rare event that a transaction is rejected from clearing, the STP rules provide that the transaction either is void or is to be resolved by the trading venue, meaning that there is still no reason to disclose trading counterparty identities to each other. This is why "post-trade name give-up" is not used by trading venues in other asset classes where financial instruments are centrally cleared and traded anonymously, such as equities and futures (ETDs).

Due to the discriminatory nature of "post-trade name give-up", non-dealer market participants (such as an asset managers, hedge funds, insurance companies, and pension funds) have been unable to join the trading venues offering anonymous execution of cleared OTC derivatives. This reduces pre-trade transparency regarding available bids and offers, limits choice of trading protocols, and creates information asymmetries, as only dealers have full access to all of the available trading venues in the market.

For these reasons, the U.S. CFTC has recently proposed to prohibit “post-trade name give-up” for OTC derivatives that are centrally cleared and executed anonymously. This action was specifically based on the equivalent CFTC requirement for trading venues to provide market participants with non-discriminatory /impartial access. The CFTC also engaged in market outreach prior to taking this step, and the feedback received was 13-1 in favour of prohibiting the practice, with all of the buy-side trade associations in support of prohibiting the practice and only a trade association representing the dealer community dissenting.

We recommend that MiFID also be amended to specifically prohibit the practice of “post-trade name give-up” for financial instruments that are executed anonymously and centrally cleared. This would remove a discriminatory access barrier and improve price discovery and pre-trade transparency. In addition, new liquidity providers may be able to enter the market more easily, diversifying sources of liquidity and increasing competition.

Section 2. Specific questions on the existing regulatory framework

The EU has a competitive trading environment but investors and their intermediaries often lack a consolidated view of where financial instruments are traded, how much is traded and at what price. Except for the largest or most sophisticated market players (who can purchase consolidated data pertaining to the different execution venues from data vendors or build their own aggregated view of the market), investors have no overall picture of a fragmented trading landscape: while the trading often used to be concentrated on one national exchange, notably in equities, investors can now choose between multiple competing trading venues, which results in a more fragmented and hence more complex trading landscape. At the same time, fragmentation per se should not be discarded as it is inherent to the introduction of alternative trading systems (MTFs, OTFs) which has led to a significant increase in competition between trading venues with positive effects on trading costs and increased execution quality. This section seeks stakeholders’ feedback on how to improve investors’ visibility in the current trading environment via the establishment of a consolidated tape.

In order to optimise the trading experience, a single price comparison tool consolidating trading data across the EU - referred to as the consolidated tape (‘CT’) - would help brokers to locate liquidity at the best price available in the European markets, and increase investors’ capacity to evaluate the quality of their broker’s performance in executing an order. A European CT could also be one major step towards “democratising” access to “market data” so that all investors can see what the best price is to buy or sell a particular share. A CT may not only prove useful for equities but also for exchange-traded funds (ETFs), bond or other non-equity instruments. Practical experience with a consolidated tape is already available in the United States, where a consolidated tape has been mandated for shares (consolidating pre- and post-trade data) and bonds (post-trade data).

A European CT could, for a reasonable fee, provide a real-time feed of information, not only for transactions that have taken place (post-trade information), but also for orders resting in the public markets (pre-trade information). MiFID II /MiFIR already provides for a consolidated tape framework for equity and non-equity instruments but no consolidated tape has yet emerged, for various reasons that are explored in this consultation. On 5 December 2019 ESMA submitted to the Commission a report on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments. This report included recommendations relating to the provision of market data and the establishment of a post-trade consolidated tape for equities. In the following sections the Commission, taking into account the conclusions from ESMA, welcomes views on how a European CT should be designed: what information it should consolidate (e.g. pre- and/or post-trade transparency), what financial instruments should be included (e.g. shares, bonds, derivatives), what characteristics should be retained for its optimal functioning (e.g. funding, governance, technical specifications). Finally, the last subsection analyses possible amendments to certain MiFID II /MiFIR provisions (share trading obligation and transparency requirements) with a possible link to the CT.

[1] The review clauses in Article 90 paragraphs (1)(g) and (2) of MiFID II and Article 52 paragraphs (1), (2), (3), (5) and (7) of MiFIR are covered by this section.

PART ONE: PRIORITY AREAS FOR REVIEW

The issues in PART ONE are identified by the Commission services as priority areas for the review based on the experience gathered in the two years of implementation of MiFID II/MiFIR. Many of them are listed in the review clauses of MiFID II and MiFIR which means that the Commission needs input to assess the merit of amending the provisions to make them more effective and operational. When applicable, references are made to the applicable review clause.

Other topics not listed in the review clauses stem from the many contributions received from stakeholders, including public authorities, on possible shortcomings of the existing framework. A number of questions in subsection II on investor protection in particular fall in the latter category

I. The establishment of an EU consolidated tape[1]

1. Current state of play

This section discusses the absence of a CT under the current MiFID II/MiFIR framework, the issues of availability of market data for market participants and the use cases for setting up a CT.

1.1. Reasons why a consolidated tape has not emerged

Article 65 of MIFID II provides for a framework for a post-trade CT in equity and non-equity instruments further detailed in regulatory technical standards. The framework specifies key functioning features that a potential CT should adhere to, such as the content of the information that a CT should consolidate as well as its organisational and governance arrangements.

Since no CT provider has emerged so far, there is a lack of practical experience with the CT framework under MiFID II /MiFIR. Several reasons have been put forward to explain the absence of a CT.

Question 7. What are in your view the reasons why an EU consolidated tape has not yet emerged?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Lack of financial incentives for the running a CT	◉	○	○	○	○	○

Overly strict regulatory requirements for providing a CT	◉	○	○	○	○	○
Competition by non-regulated entities such as data vendors	◉	○	○	○	○	○
Lack of sufficient data quality, in particular for OTC transactions and transactions on systematic internalisers	◉	○	○	○	○	○
Other	○	○	○	○	◉	○

Please specify what are the other reasons why an EU consolidated tape has not yet emerged?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

First, while we see value in developing post-trade consolidated tapes, neither pre-trade or post-trade consolidated tapes will solve the overarching issue of excessive pricing of real time pre-trade market data, as the sellers of this market data have continued to raise prices despite the requirement under MiFIR that this data be provided on a reasonable commercial basis. We agree with ESMA that:

"so far MiFID II has not delivered on its objective to reduce the price of market data. Prices increased, in particular for data for which there is high demand, such as non-display data. It appears that the value of the data for users is one of the key drivers for setting the price for market data."

See our response to Question 9 for our views on how to strengthen the RCB framework.

Second, regarding the reasons a CT has not yet emerged, we do not believe that overly strict regulatory requirements are the issue and believe that the CTP should be subject to robust governance arrangements and supervisory oversight.

For an EU consolidated tape to be successful, trading venues and APAs need to be required to provide the relevant data to the CTP free of charge – such mandatory contribution features in the consolidated tapes for equities, corporate bonds, municipal bonds, and OTC derivatives that exist in the United States.

The successful development of a CT for non-equities also requires addressing underlying shortcomings in the implementation of the MiFID II post-trade transparency framework. For a CT to be attractive to market participants, it needs to be comprehensive and provide timely information (which contrasts sharply to conditions today, where 90% of on-venue trading activity in OTC derivatives is being granted a four-week deferral and only ~5% of off-venue trading activity in OTC derivatives is subject to post-trade transparency).

Question 7.1 Please explain your answers to question 7:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Concerns around financial incentives, regulatory requirements, and competition by non-regulated data vendors will all largely be addressed if trading venues and APAs are required to provide the relevant data to the CTP free of charge (mandatory contribution).

Question 8. Should an EU consolidated tape be mandated under a new dedicated legal framework, what parts of the current consolidated tape framework (Article 65 of MiFID II and the relevant technical standards (Regulation (EU) 2017/571)) would you consider appropriate to incorporate in the future consolidated tape framework?

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

1.2. Availability and price of market data

In its report submitted on 5 December 2019 to the Commission, ESMA considers that so far MiFID II/MiFIR has not delivered on its objective to reduce the price of market data and the Reasonable Commercial Basis ('RCB') provisions have not delivered on their objectives to enable users to understand market data policies and how the price for market data is set.

ESMA recommends, in addition to working on supervisory guidance on how the RCB requirements should be complied with, a number of targeted changes to either the Level 1 or Level 2 texts to strengthen the overall concept that market data should be charged based on the costs of producing and disseminating the information:

- add a mandate to the Level 1 text empowering ESMA to develop Level 2 measures specifying the content, format and terminology of the RCB information; and
- move the provision to provide market data on the basis of costs (Article 85 of CDR 2017/565 and Article 7 of CDR 2017/567) to the Level 1 text;
- add a requirement in the Level 1 text for trading venues, APAs, SIs and CTPs to share information on the actual costs of producing and disseminating market data as well as on the margins with CAs and ESMA together with an empowerment to develop Level 2 measures specifying the frequency, content and format of such information;
- delete Article 86(2) of CDR 2017/565 and Article 8(2) of CDR 2017/567 allowing trading venues, APAs, CTPs and SIs to charge for market data proportionate to the value the data represents to users.

Question 9. Do you agree with the above targeted amendments recommended by ESMA to address market data concerns?

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

AIMA and MFA fully endorse ESMA's conclusion that MIFID II / MiFIR has not delivered on the objective of reducing costs of market data and fully agree that the RCB framework should be strengthened.

We agree that this should include:

- Greater emphasis of the fact that the existing framework already limits what trading venues can charge for data relative to the cost of compiling and publishing that data, albeit without setting explicit limits.

- Much more stringent requirements on the form and content of RCB disclosures, given the lack comparability in approach at present.

- Much stronger provisions on reporting of costs to ESMA and NCAs, with explicit oversight and intervention powers for NCAs where charges are not commercially reasonable relative to costs.

We also support the suggestion that there should be no consideration of the value of the data to the user in the regulatory framework.

We encourage the European Commission and ESMA to prioritise these changes and deliver them quickly ahead of work on a consolidated tape given the urgency of the need for reform and reality that the CT will take time to deliver and may not be immediately effective in bringing down data costs.

We also believe that a review clause should be introduced that acknowledges that there may be a need for more robust intervention, including possible revenue capping, if trading venues do not respond appropriately. In this regard, we would reiterate that the matter of whether costs are too high is settled (and indeed has been for many years): the key test in future will be: have costs fallen.

1.3. Use cases for a consolidated tape

Question 10. What do you consider to be the use cases for an EU consolidated tape?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N.A.
Transaction cost analysis (TCA)	○	○	○	◉	○	○
Ensuring best execution	◉	○	○	○	○	○

Documenting best execution	◉	○	○	○	○	○
Better control of order & execution management	○	○	◉	○	○	○
Regulatory reporting requirements	○	○	◉	○	○	○
Market surveillance	○	○	◉	○	○	○
Liquidity risk management	○	○	◉	○	○	○
Making market data accessible at a reasonable cost	○	○	◉	○	○	○
Identify available liquidity	◉	○	○	○	○	○
Portfolio valuation	○	○	◉	○	○	○
Other	○	○	○	○	○	○

Question 10.1 Please explain your answers to question 10 and also indicate to what extent the use cases would benefit from a CT:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our response to Question 10, we note our disagreement with the statement that the CT could provide a basis for monitoring and documentation of execution quality. This reflects our view that the CT should be seen as one available tool among many and should not be viewed as the only measure against which best execution should be assessed. There should be no requirement that firms use CT data when fulfilling their best execution obligation. Many firms may already have access to all necessary price data and, therefore, mandatory consumption would lead to an unnecessary increase in costs.

We believe that the CT is more likely to be useful in the context of post-trade and operational processes rather than sourcing liquidity. In particular, we do not believe that a pre-trade CT for equities would be useful for sourcing liquidity as firms already have access to price data. A CT instead could be helpful for firms in relation to post-trade and operational processes rather than on a pre-trade basis.

We are neutral on the possibility of using the CT in the context of discharging regulatory reporting requirements, unless those requirements are properly designed to ensure coherence across the CT design and the parameters of regulatory reporting requirements. We note that this is a broader issue relating to the effective design of reporting requirements under MiFID II and other sectoral legislation.

More broadly, we note that the use case for a CT will vary by asset class, such that any analysis of its use cases should consider the different applications for equity and non-equity CTs.

2. General features of the consolidated tape

This section discusses the general features of a future European CT. The specific scope of the CT in terms of financial instruments (shares, bonds, derivatives) and type of transparency (pre- and/or post-trade) are addressed in the following section.

During the EC workshop, the ESMA consultation, conferences and stakeholder meetings, it became clear that a majority of market participants believe that EU financial markets would benefit from the establishment of a CT. ESMA made the following recommendations[2] which appear very important for the success of an EU consolidated tape:

- ensuring a **high level of data quality** (supervisory guidance complemented with amendments of the Level 1 and 2 texts);
- **mandatory contributions**: trading venues and APAs should provide trading data to the CT free of charge;
- CT to **share revenues with contributing entities** (on the basis of an allocation key that rewards price forming trades);
- contribution of users to funding of the CT, e.g. via **mandatory consumption** of the CT by users to ensure user contributions to the funding of the CT
- **full coverage**: The CT should consolidate 100% of the transactions across all asset classes (with possible targeted exceptions);
- **operation of the CT on an exclusive basis**: ESMA recommends that a CT is appointed for a period of 5-7 years after a competitive appointment process;
- **strong governance framework** to ensure the neutrality of the CT provider, a high level of transparency and accountability and include provisions ensuring the continuity of service.

The EC workshop, conferences and stakeholder meetings revealed that opinions remained divergent on a variety of issues, notably:

- **Whether pre-trade data should be included in CT**: the argument has been made that the US model for a consolidated quotation tape comprises pre-trade quotes because of the **order protection rule** contained in Regulation National Market System (NMS). The order protection rule eliminated the possibility of orders being executed at a suboptimal price compared to orders advertised on exchanges and it established the National Best Bid and Offer (NBBO) requirement that mandates brokers to route orders to venues that offer the best displayed price. Although some stakeholders strongly support a quotation tape, others have expressed reservations, either because there is no order protection rule in the European Union or because they do not support the establishment of such a rule in the EU which could be encouraged by the establishment of a pre-trade tape. Stakeholders also argue that a quotation tape will be very expensive and that latency issues in collecting, consolidating and disseminating transaction data from multiple venues will always lead to a co-existence of the CT and proprietary exchange data feeds.
- **What should be the latency of the tape**: Many stakeholders argue that the tape should be “real-time”, implying minimum standards on latency such as a dissemination speed of between 200 and 250 milliseconds (“fast as the eye can see”). Other stakeholders support an end of day tape.
- **How to fund the tape and redistribute its revenues**: stakeholders have mixed views on the optimal funding model. They also caution against some aspects of the US model, where the practice of redistribution of CT revenues has, in their view, provided market participants with an incentive to provide quotes to certain venues that rebate more tape revenue, without necessarily contributing to better execution quality.

[2] ESMA recommendations are limited to an equity post-trade CT (as foreseen in their legal mandate). The current section however is not limited to pre-trade transparency and equity instruments and stakeholders should express their view on the appropriate scope of transparency (pre- and/or post-trade) and financial instruments covered.

Question 11. Which of the following features, as described above, do you consider important for the creation of an EU consolidated tape?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
High level of data quality	○	○	◉	○	○	○
Mandatory contributions	○	○	○	○	◉	○
Mandatory consumption	◉	○	○	○	○	○
Full coverage	○	○	○	○	◉	○
Very high coverage (not lower than 90% of the market)	○	◉	○	○	○	○
Real-time (minimum standards on latency)	○	○	○	○	◉	○
The existence of an order protection rule	○	◉	○	○	○	○
Single provider per asset class	○	○	○	○	◉	○
Strong governance framework	○	○	○	○	◉	○
Other	○	○	○	○	○	○

Question 11.1 Please explain your answers to question 11 and provide if possible detailed suggestions on how the above success factors should be implemented (e.g. how data quality should be improved; what should be the optimal latency and coverage; what should the governance framework include; the optimal number of providers):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

First, mandatory consumption of CT data would detract from effective CTP governance, as it would fundamentally diminish the incentives for the CTP to offer a high-quality service to users. Many firms may already have access to all necessary price data and, therefore, mandatory consumption would lead to an unnecessary increase in costs.

We believe the following are important in the context of delivery of a post-trade CT:

- A post-trade CT will deliver the most tangible benefits to investors in the near-term with the least start-up costs.

- Post-trade CTs can be set up independently and separately for different asset classes (i.e. separate CTs for each of equities, bonds, and OTC derivatives) and in parallel.

- A post-trade CT should be comprehensive, in that it should consolidate all trading activity in a particular instrument, both on-venue and off-venue.

- A post-trade CT should operate as close to real-time as possible, with only targeted and limited deferrals for large size trades. A successful CT will need to aggregate and disseminate information about the majority of market activity in near real-time in order to deliver benefits to investors.

- A post-trade CT should be offered at a low cost, if not free of charge, to ensure it is accessible to all investors.

- The post-trade CTs in the United States for both equities (e.g. the SIP) and non-equities (e.g. TRACE for corporate bonds, EMMA for municipal bonds, and the DTCC DDR for OTC derivatives) each are comprehensive, real-time, and low cost (or free of charge).

- While improving known data quality issues remain essential, they are not a reason to delay establishing a real-time post-trade CT and a CT will help drive further data standardization.

Question 12. If you support mandatory consumption of the tape, how would you recommend to structure such mandatory consumption?

Please explain your answer and provide if possible detailed suggestions on which users should be mandated to consume the tape and how this should be organised:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 13. In your view, what link should there be between the CT and best execution obligations?

Please explain your answer and provide if possible detailed suggestions (e.g. simplifying the best execution reporting through the use of an EBBO reference price benchmark):

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We strongly oppose the potential use of a European Best Bid and Offer ("EBBO") reference price benchmark to gauge best execution. Given that price is merely one of the permitted execution factors prescribed by MiFID (the others being cost, speed, likelihood of execution and settlement, size, nature and any other consideration relevant to the execution of the order), use of an EBBO may place undue emphasis / weight on price for the purposes of best execution and limit the flexibility of firms in designing their best execution policies.

Question 14. Do you agree with the following features in relation to the provision, governance and funding of the consolidated tape?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The CT should be funded on the basis of user fees	○	○	○	◉	○	○
Fees should be differentiated according to type of use	○	○	◉	○	○	○

Revenue should be redistributed among contributing venues	○	○	○	◉	○	○
In redistributing revenue, price-forming trades should be compensated at a higher rate than other trades	○	○	◉	○	○	○
The position of CTP should be put up for tender every 5-7 years	○	○	○	◉	○	○
Other	○	○	○	○	○	○

Question 14.1 Please explain your answers to question 14 and provide if possible detailed suggestions on how the above features should be implemented (e.g. according to which methodology the CT revenues should be redistributed; how price forming trades should be rewarded, alternative funding models):

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

3. The scope of the consolidated tape

3.1. Pre- and post-trade transparency and asset class coverage

This section discusses the scope of the CT: what asset classes should be covered and what trade transparency data it should include. This section also discusses how to delineate, within an asset class, the exact scope of financial instruments that should be included in the CT.

Question 15. For which asset classes do you consider that an EU consolidated tape should be created?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N.A.
Shares pre-trade[3]	◉	○	○	○	○	○

Shares post-trade	○	○	○	○	◉	○
ETFs pre-trade	◉	○	○	○	○	○
ETFs post-trade	○	○	○	○	◉	○
Corporate bonds pre-trade	◉	○	○	○	○	○
Corporate bonds post-trade	○	○	○	○	◉	○
Government bonds pre-trade	◉	○	○	○	○	○
Government bonds post-trade	○	○	○	○	◉	○
Interest rate swaps pre-trade	◉	○	○	○	○	○
Interest rate swaps post-trade	○	○	○	○	◉	○
Credit default swaps pre-trade	◉	○	○	○	○	○
Credit default swaps post-trade	○	○	○	○	◉	○
Other	○	○	○	○	○	○

[3] Pre-trade would not be executable but delivered at the same latency as the post-trade data. Pre-trade market data is understood to be order book quote data for at least the five best bid and offer price levels. Post-trade market data is understood to be transaction data.

Question 15.1 Please explain your answers to question 15:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe that the Commission should target a post-trade consolidated tape for all key equity and non-equity asset classes. We also believe that developing a post-trade equities consolidated tape is the most readily achievable first step and would help pave the way for additional CTs to be established for other asset classes.

Indeed, the CT use case is potentially greater for asset classes that are less standardised and more fragmented in their trading profile, which is true of a broad range of fixed income products. In this context, a CT (or multiple CTs) could provide a valuable consolidated view of market activity that is not available today. However, that same lack of standardisation means that the hurdles are higher to deliver an effective CT.

At the same time, it is crucially important that work to develop a CT is not seen as obviating the need for overhaul of rules on the pricing of market data – it is important to progress the two in tandem.

Another important element in the design of the CT will be to determine the exact content of the information that a pre- and/or post-trade CT should consolidate in relation to the information already disseminated under the MiFIR pre- and post-trade transparency requirements. While Article 65 of MIFID II and the relevant regulatory technical standards specify the exact content of the post-trade information a CT should consolidate under the current framework, there is no such specification for pre-trade information.

Question 16. In your view, what information published under the MiFID II /MiFIR pre- and post-trade transparency should be consolidated in the tape (all information or a subset, any additional information)?

Please explain your answer, distinguishing if necessary by asset class and pre- and post-trade. Please also explain, if relevant, how you would identify the relevant types of transactions or trading interests to be consolidated by a CT:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

3.2. The Official List of financial instruments in scope of the CT

To provide market participants with legal clarity, a CT would benefit from a list setting out, within a given asset class, the exact scope of financial instruments that need to be reported to the CT. This section discusses, for each asset class, how to best create an "**Official List**" of financial instruments that would feature in the CT, having regard to the feasibility of producing such a list.

Shares

There are different categories of shares traded on EU trading venues, including: (i) shares admitted to trading on a Regulated Market (RM) - for which a prospectus is mandatory; (ii) shares admitted to trading on an Multilateral Trading Facility (MTF) (e.g. small cap company listed on the small cap MTF) with a prospectus approved in an EU Member State; (iii) shares traded on an EU MTF without a prospectus approved in a EU Member State (e.g. US blue chip company listed on a US exchange but also traded on a EU MTF). While the first two categories have a clear EU footprint and should be considered for inclusion in the CT, the inclusion of the latter category is more questionable because it consists of thousands of international shares for which the admission's venue or the main centre of liquidity is not in the EU.

Question 17. What shares should in your view be included in the Official List of shares defining the scope of the EU consolidated tape?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Shares admitted to trading on a RM	○	○	○	○	◉	○
Shares admitted to trading on an MTF with a prospectus approved in an EU Member State	○	○	○	○	◉	○
Other	○	○	○	○	○	○

Question 17.1 Please explain your answers to question 17:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Limiting the instruments that are subject to the CT to only those that are admitted to trading on EU trading venues could limit the potential benefits of the CT. APAs would, in effect, be required to segregate post-trade data for instruments that are admitted to trading on EU trading venues, and subject to the CT, from data for those instruments that are only traded on EU trading venues. This additional requirement would likely lead APAs to object to providing post-trade data free of charge to CTPs, which is critical for a low cost comprehensive real-time CT.

Also, a significant number of instruments now trade on MTFs. By limiting the scope of the CT to instruments that are only admitted to trading on EU trading venues, this would reduce the CT's coverage of market trading activity.

Question 18. In your view, should the Official List take into account any additional criteria (e.g. liquidity filter to capture only sufficiently liquid shares) to capture the relevant subset of shares traded in the EU for inclusion in the consolidated tape?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 19. What flexibility should be provided to permit the inclusion in the EU consolidated tape of shares not (or not only) admitted to an EU regulated market or EU MTF?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ETFs, Bonds, Derivatives and other financial instruments

Question 20. What do you consider to be the most appropriate way of determining the Official List of ETFs, bonds and derivatives defining the scope of the EU consolidated tape?

Please explain your answer and provide details by asset class:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

4. Other MiFID II/MiFIR provisions with a link to the consolidated tape

4.1. Equity trading and price formation

The share trading obligation ('STO') requires that EU investment firms only trade shares on eligible execution venues, unless the trades are non-systematic, ad-hoc, irregular and infrequent ("*de minimis*" exception) or do not contribute to the price discovery process. The STO can pose an issue when EU investment firms wish to trade international shares admitted to a stock exchange outside the EU as not all stock exchanges outside the EU are recognised as equivalent. The European Commission recognised as equivalent certain stock exchanges located in the United States, Hong Kong and Australia, with the consequence that those stock exchanges are eligible execution venues for fulfilling the STO. In addition, ESMA provided, in coordination with the Commission, further guidance on the scope of the STO.

Question 21. What is your appraisal of the impact of the share trading obligation on the transparency of share trading and the competitiveness of EU exchanges and market participants?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 22. Do you believe there is sufficient clarity on the scope of the trades included or exempted from the STO, in particular having regards to shares not (or not only) admitted to an EU regulated market or EU MTF?

- (●) 1 - Not at all
- ( ) 2 - Not really
- ( ) 3 - Neutral
- ( ) 4 - Partially
- ( ) 5 - Totally
- ( ) Don't know / no opinion / not relevant

Question 22.1 Please explain your answer to question 22:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We strongly believe that the share trading obligation under Article 23 of MiFIR should exclude third-country shares that have a secondary pool of liquidity on an EU trading venue. In order to achieve this, we encourage adoption of the ISIN approach identified by ESMA in its 'Consultation on MiFID II/ MiFIR review report on the transparency regime for equity and equity-like instruments, the double volume cap mechanism and the trading obligations for shares'. Of the alternative approaches to identifying third country shares as proposed by ESMA, we consider the ISIN approach to have the benefit of simplicity and is likely to be the most effective. We would not support supplementing this approach with the inclusion of non-EU ISIN prefixed shares for which its issuer had actively sought for those shares to be admitted on an EU trading venue.

Question 23. What is your evaluation of the general policy options listed below as regards the future of the STO?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Maintain the STO (status quo)	( )	(●)	( )	( )	( )	( )
Maintain the STO with adjustments (please specify)	( )	( )	( )	( )	(●)	( )
Repeal the STO altogether	( )	( )	(●)	( )	( )	( )

Question 23.1 Please explain your answers to question 23:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As noted in our response to Question 22, the STO should be reformed to remove shares with non-EU ISINs from its scope.

In the absence of a mechanism to comprehensively and accurately identify third country shares, the European Commission may wish to consider the utility of retaining the STO. Given the practical difficulties with constructing a STO that achieves the objectives of greater transparency and best execution for investors, we agree with the recent German Finance Ministry position paper which says that “the intended benefits and the shortcomings of the [share trading obligation] should be thoroughly analysed”. We further agree with the German Finance Ministry that the STO could be repealed if necessary. In our view, if the share trading obligation is not clearly facilitating best execution for investors, policymakers should reconsider whether a robustly enforced best execution principle would be more effective than retaining the share trading obligation.

Price formation is an important aspect of equity trading which is recognised with the requirement under the STO to execute price-forming trades on eligible venues. At the same time, there is a debate about the status of systematic internalisers (‘SIs’) as eligible venues under the STO.

Question 24. Do you consider that the status of systematic internalisers, which are eligible venues for compliance with the STO, should be revisited and how?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
SIs should keep the same current status under the STO	○	○	○	○	◉	○
SIs should no longer be eligible execution venues under the STO	◉	○	○	○	○	○
Other	○	○	○	○	○	○

Question 24.1 Please explain your answers to question 24:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As noted in our response to Question 24, we believe that it is crucial to maintain the current status of SIs as eligible ways of satisfying the shares trading obligation, both with a view to ensuring that firms can achieve best execution and to ensure the broader resilience of the market. The ability to directly purchase shares from an SI, rather than on a trading venue, adds optionality to the manner in which a firm may execute its trades. In particular, the ability to execute a share trade on the basis of a quote obtained from an SI produces an advantage for the SI’s client with respect to price certainty and execution certainty that is not always present when placing an order on a trading venue.

Question 25. Do you consider that other aspects of the regulatory framework applying to systematic internalisers should be revisited and how?

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 26. What would you consider to be appropriate steps to ensure a level-playing field between trading venues and systematic internalisers?

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

More generally, there are questions raised as to whether the current MiFID II/MiFIR framework is sufficiently conducive of the price discovery process in equity trading, in light of various elements of complexity (e.g. fragmentation of trading, multiplicity of order types, exceptions to transparency requirements, variety of trading protocols).

Question 27. In your view, what would merit attention to further promote the price discovery process in equity trading?

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

4.2. Aligning the scope of the STO and of the transparency regime with the scope of the consolidated tape

For shares, in light of the strong parallel between the scope of the STO and the scope of the CT (see section “Official List”), there may be merit in aligning the two. At the same time, should the scope of the STO be the same as the scope of the CT, special consideration should be given to the treatment of international shares.

Question 28. Do you believe that the scope of the STO should be aligned with the scope of the consolidated tape?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 28.1 Please explain your answer to question 28:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Similarly, both for equity and non-equity instruments, there may also be merit in aligning, where possible, the scope of financial instruments covered by the CT with the scope of financial instruments subject to the transparency regime.

Question 29. Do you consider, for asset classes where a consolidated tape would be mandated, that the scope of financial instruments subject to pre- and post-trade requirements should be aligned with the list of instruments in scope of the consolidated tape?

- 1 - Disagree
- 2 - Rather not agree

- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 29.1 Please explain your answer to question 29:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

4.3. Post-trade transparency regime for non-equities

For non-equity instruments, MiFID II/MiFIR currently allows a deferred publication of up to 2 days for post-trade information (including information on the transaction price), with the possibility of an extended period of deferral of 4 weeks for the disclosure of the volume of the transaction. In addition, national competent authorities have exercised their discretion available under Article 11(3) of MiFIR. This resulted in a fragmented post-trade transparency regime within the Union. Stakeholders raised concerns that the length of deferrals and the complexity of the regime would hamper the success of a CT.

Question 30. Which of the following measures could in your view be appropriate to ensure the availability of data of sufficient value and quality to create a consolidated tape for bonds and derivatives?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Abolition of post-trade transparency deferrals	○	◉	○	○	○	○
Shortening of the 2-day deferral period for the price information	○	○	○	○	◉	○
Shortening of the 4-week deferral period for the volume information	○	○	○	○	◉	○
Harmonisation of national deferral regimes	○	○	○	○	◉	○
Keeping the current regime	◉	○	○	○	○	○

Other	○	○	○	○	◉	○

Please specify what other measures could in your view be appropriate to ensure the availability of data of sufficient value and quality to create a consolidated tape for bonds and derivatives?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Publication of trade data by Approved Publication Arrangements (APAs): In the non-equity space, one of the key elements of MiFID II was to improve transparency by ensuring that APAs would publish post-trade transparency data in an easily accessible way and at a reasonable cost based on the principle of reasonable commercial basis. However, we have seen APAs engaging in practices that are contrary to the objectives of the legislation, including imposing restrictions on access to data, publishing information in a format that prevents users from reading, using and copying the information, deleting data shortly after publication, not publishing data on transactions benefiting from a publication deferral and requiring market participants to submit search queries in order to access data. These practices appear motivated in part by a desire to compel market participants to subscribe to expensive data packages in order to obtain MiFID II transparency data that should be provided free of charge. ESMA has issued Q&As clarifying that these practices run counter to the objectives of MiFID II. APAs have, however, been slow in complying and therefore we believe that legislative change might be warranted to further address these practices.

Traded on a Trading Venue (Derivatives): The concept of Traded on a Trading Venue (ToTV) is relevant in the context of determining whether certain derivatives are subject to the MiFID II transparency requirements. The very granular approach developed by ESMA in the ToTV assessment has created an incentive for certain market participants to duplicate ISIN codes for economically equivalent derivatives in order to engage in bilateral OTC trading that remains outside the transparency regime of MiFID II. As a result, many derivatives continue to be traded in the OTC space, undermining the intention of the Derivatives Trading Obligation (DTO). We believe that changes should be introduced to the ESMA assessment around ToTV to ensure that instruments that are economically identical to derivatives traded on MTFs and OTFs are also subject to the MiFID II transparency regime.

Question 30.1 Please explain your answer to question 30:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Given the very limited amount of post-trade data that is currently available given the shortcomings in the implementation of the MiFID II post-trade transparency framework for non-equities, the following issues must also be addressed to ensure that a post-trade CT will be successful:

- Deferral periods should be significantly shortened
- The dissemination of the notional amount of large-size trades should be capped
- The publication of post-trade price data on an aggregated basis across multiple transactions should be removed

- Deferrals should be harmonised across member states

II. Investor protection[4]

Investor protection rules should strike the right balance between boosting participation in capital markets and ensuring that the interests of investors are safeguarded at all times during the investment process. Maintaining a high level of transparency is one important element to enhance the trust of investors into the financial market.

In December 2019, the Council conclusions on the Deepening of the Capital Markets Union invited the Commission to consider introducing new categories of clients and optimising requirements for simple financial instruments where this is proportionate and justified, as well as ensuring that the information available to investors is not excessive or overlapping in quantity and content.

Based on, but not limited to, the review requirements laid down in Article 90 of MiFID II, this consultation therefore aims at getting a more precise picture of the challenges that different categories of investors are confronted with when purchasing financial instruments in the EU, in order to evaluate where adjustments would be needed.

[4] The review clause in Article 90 paragraph (1)(h) of MiFID II is covered by this section.

Question 31. Please specify to what extent you agree with the statements below regarding the experience with the implementation of the investor protection rules?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention has been successful in achieving or progressing towards more investor protection.	○	◉	○	○	○	○
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	○	◉	○	○	○	○
The different components of the framework operate well together to achieve more investor protection.	○	◉	○	○	○	○
More investor protection corresponds with the needs and problems in EU financial markets.	○	◉	○	○	○	○

The investor protection rules in MiFID II/MiFIR have provided EU added value.	○	◉	○	○	○	○

Question 31.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

Quantitative elements for question 31.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 31.1:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Our response to Question 31 reflects the fact that our members serve a primarily institutional investor base and the investor protection rules in many cases are designed for retail investors. One important example is information requirements. Institutional investors are distinct from retail investors as they have specific information needs and will as part of the investment process ensure that their investment managers are able to satisfy these appropriately. They do not typically rely on the MiFID II protections to obtain the information they want, leading to an unhelpful outcome where investment managers are producing information to satisfy parallel regulatory and investor requirements. We comment further on this in our response to Question 34.

Question 32. Which MiFID II/MiFIR requirements should be amended in order to ensure that simple investment products are more easily accessible to retail clients?

	Yes	No	N.A.
Product and governance requirements	○	○	○
Costs and charges requirements	○	○	○
Conduct requirements	○	○	○
Other	○	○	○

1. Easier access to simple and transparent products

The CMU is striving to improve the funding of the EU economy and to foster retail investments into capital markets. The Commission is therefore trying to improve the direct access to simple investment products (e.g. certain plain-vanilla bonds, index ETFs and UCITS funds). On the other hand, adequate protection has to be provided to retail investors as regards all products, but in particular complex products.

Question 32.1 Please explain your answer to question 32:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 33. Do you agree that the MiFID II/MiFIR requirements provide adequate protection for retail investors regarding complex products?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

2. Relevance and accessibility of adequate information

Information should be short, simple, comparable, and thereby easy to understand for investors. One challenge that has been raised with the Commission are the diverging requirements on the information documents across sectors.

One aspect is the usefulness of information documents received by professional clients and eligible counterparties (‘ECPs’) before making a transaction (‘ex-ante cost disclosure’). Currently, the ex-ante cost information on execution services apply to retail, professional and eligible clients alike. With regard to wholesale transactions a wide range of stakeholders consider certain information requirements a mere administrative burden as they claim to be aware of the current market and pricing conditions.

Question 34. Should all clients, namely retail, professional clients per se and on request and ECPs be allowed to opt-out unilaterally from ex-ante cost information obligations, and if so, under which conditions?

	Yes	No	N. A.
Professional clients and ECPs should be exempted without specific conditions.	◉	○	○
Only ECPs should be able to opt-out unilaterally.	○	○	◉
Professional clients and ECPs should be able to opt-out if specific conditions are met.	○	○	◉
All client categories should be able to opt out if specific conditions are met.	○	○	◉
Other	◉	○	○

Please specify what is your other view on whether all clients, namely retail, professional clients per se and on request and ECPs should be allowed to opt-out unilaterally from ex-ante cost information obligations?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We strongly believe that professional clients and eligible counterparties should be exempted from ex ante cost information obligations in order to reduce the burden on firms producing the information and to ensure

clients receive the information that they need and want – institutional investors already undertake extensive due diligence of potential investment managers as part of the allocation process, including detailed examination of costs, such that explicit regulatory requirements provide no extra protection and generate unnecessary costs.

Question 34.1 Please explain your answer to question 34 and in particular the conditions that should apply:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Another aspect is the need of paper-based information. This relates also to the Commission's **Green Deal**, the **Sustainable Finance Agenda** and the consideration that more and more people use online tools to access financial markets. Currently, MiFID II/MiFIR requires all information to be provided in a “durable medium”, which includes electronic formats (e.g. e-mail) but also paper-based information.

Question 35. Would you generally support a phase-out of paper based information?

- 1 - Do not support
- 2 - Rather not support
- 3 - Neutral
- 4 - Rather support
- 5 - Support completely
- Don’t know / no opinion / not relevant

Question 35.1 Please explain your answer to question 35:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 36. How could a phase-out of paper-based information be implemented?

	Yes	No	N. A.
General phase-out within the next 5 years	○	○	○
General phase out within the next 10 years	○	○	○
For retail clients, an explicit opt-out of the client shall be required.	○	○	○
For retail clients, a general phase out shall apply only if the retail client did not expressively require paper based information	○	○	○
Other	○	○	○

Question 36.1 Please explain your answer to question 36 and indicate the timing for such phase-out, the cost savings potentially generated within your firm and whether operational conditions should be attached to it:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Some retail investors deplore the lack of comparability of the cost information and the absence of an EU-wide database to obtain information on existing investment products.

Question 37. Would you support the development of an EU-wide database (e. g. administered by ESMA) allowing for the comparison between different types of investment products accessible across the EU?

- ○ 1 - Do not support
- ◉ 2 - Rather not support
- ○ 3 - Neutral
- ○ 4 - Rather support
- ○ 5 - Support completely
- ○ Don’t know / no opinion / not relevant

Question 37.1 Please explain your answer to question 37:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe that this would be a costly exercise and it is not clear to us that it would result in a useful tool for investors. To the extent the Commission proceeds with this idea, we would strongly recommend that it exclude products that are not intended for retail distribution. As noted above, requirements for products that are intended for retail distribution often impose unnecessary costs on firms and unhelpful information if they are applied to products that are intended for institutional investors.

Question 38. In your view, which products should be prioritised to be included in an EU-wide database?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
All transferable securities	○	○	○	○	○	○
All products that have a PRIIPs KID/ UICTS KIID	○	○	○	○	○	○
Only PRIIPs	○	○	○	○	○	○
Other	○	○	○	○	○	○

Question 38.1 Please explain your answer to question 38:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 39. Do you agree that ESMA would be well placed to develop such a tool?

- ○ 1 - Disagree
- ○ 2 - Rather not agree
- ○ 3 - Neutral
- ○ 4 - Rather agree
- ○ 5 - Fully agree
- ○ Don’t know / no opinion / not relevant

Question 39.1 Please explain your answer to question 39:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

3. Client profiling and classification

MiFID II/MiFIR currently differentiates between retail clients, professional clients and eligible counterparties. In line with the procedure and conditions laid down in the Annex of MiFID II, retail clients can already "opt-up" to be treated as professional clients. Some stakeholders indicated that the creation of an additional client category ('semi-professional investors') might be necessary in order to encourage the participations of wealthy or knowledgeable investors in the capital market. In addition, other concepts related to this classification of investors can be found in the draft Crowdfunding Regulation which further developed the concept of sophisticated investors[5].The CMU-Next group suggested a new category of experienced High Net Worth ("HNW") investors with tailor made investor protection rules[6].

[5] According to the draft of the Crowdfunding Regulation (to be finalised in technical trilogues) a sophisticated investor has either personal gross income of at least EUR 60 000 per fiscal year or a financial instrument portfolio, defined as including cash deposits and financial assets, that exceeds EUR 100 000.

[6] According to the CMU-NEXT group "HNW investors" could be defined as those that have sufficient experience and financial means to understand the risk attached to a more proportionate investor protection regime.

Question 40. Do you consider that MiFID II/MiFIR can be overly protective for retail clients who have sufficient experience with financial markets and who could find themselves constrained by existing client classification rules?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- (•) 5 - Fully agree
- Don't know / no opinion / not relevant

Question 40.1 Please explain your answer to question 40:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The opt-up framework as it operates today is overly restrictive. In particular, we note that the qualitative test of having "carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters" is unlikely to be meaningful in the context of making a discretionary investment mandate to an investment manager, given these take many months to agree and typically involve large capital investments.

Problems also arise on account of the interaction between requirements in different sectoral legislation. In particular, where AIFMs require co-investment by staff that are identified risk takers, it is not always possible

for them to treat those staff as professional clients, triggering PRIIPs obligations which were evidently not intended to protect portfolio managers at investment firms.

According, we see merit in:

- Adding to the list of professional clients natural and personals and non-institutional investors with a committed investment amount of EUR 5,000,000
- Adding to the list of professional clients identified risk takers and other employees of the firm making the classification decision.
- Adding to the list of elective professional clients those clients with a committed investment amount with the investment firm of at least EUR 100,000.
- Amending the opt-up process for elective professionals so that only one of the tests of Annex II.1 must be met (while maintaining the qualitative test of the third sub paragraph in Annex II.1).

This would in our view better accommodate semi-professional investors in the MiFID framework, noting that this outcome could also be achieved by a new distinct category within the MiFID client classification framework if changes to the existing categories were found to be unworkable.

It is also worth noting that our members are not looking to service clients that should properly be treated as retail clients.

Question 41. With regards to professional clients on request, should the threshold for the client's instrument portfolio of EUR 500 000 (See Annex II of MiFID II) be lowered?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 41.1 Please explain your answer to question 41:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Our suggestion would be to add a new criterion referring to the client's committed investment amount with the investment firm in question (i.e. rather than their overall portfolio). We would suggest this be set at EUR 100,000.

Question 42. Would you see benefits in the creation of a new category of semi-professionals clients that would be subject to lighter rules?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
-

4 - Rather agree
5 - Fully agree
Don’t know / no opinion / not relevant

Question 42.1 Please explain your answer to question 42:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We think the focus should be on expanding the existing categories of per se and elective professionals to accommodate a wider range of experienced and sophisticated investors, while simultaneously reducing the disclosure burden for firms that service such clients.

However, if the existing framework cannot be adapted in this way, then we believe that there would be merit in creating a new category of semi-professional clients to introduce greater flexibility into the MiFID framework.

Question 43. What investor protection rules should be mitigated or adjusted for semi-professionals clients?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Suitability or appropriateness test	○	○	◉	○	○	○
Information provided on costs and charges	○	○	○	○	◉	○
Product governance	○	○	◉	○	○	○
Other	○	○	○	○	○	○

Question 43.1 Please explain your answer to question 43:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 44. How would your answer to question 43 change your current operations, both in terms of time and resources allocated to the distribution

p r o c e s s ?

Please specify which changes are one-off and which changes are recurrent:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 45. What should be the applicable criteria to classify a client as a semi-professional client?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Semi-professional clients should possess a minimum investable portfolio of a certain amount (please specify and justify below).	○	○	○	○	○	○
Semi-professional clients should be identified by a stricter financial knowledge test.	○	○	○	○	○	○
Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise.	○	○	○	○	○	○
Semi-professional clients should be subject to a one-off in-depth suitability test that would not need to be repeated at the time of the investment.	○	○	○	○	○	○
Other	○	○	○	○	○	○

Question 45.1 Please explain your answer to question 45 and in particular the minimum amount that a retail client should hold and any other applicable criteria you would find relevant to delineate between retail and semi-professional investors:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

4. Product Oversight, Governance and Inducements

The product oversight and governance requirements shall ensure that products are manufactured and distributed to meet the clients' needs. Before any product is sold, the target market for that product needs to be identified. Product manufacturers and distributors should thus be well aware of all product features and the clients for which they are suited. To do so, distributors should use the information obtained from manufacturers as well as the information which they have on their own clients to identify the actual (positive and negative) target market and their distribution strategy.

There is a debate around the efficiency of these requirements. Some stakeholders criticise that the necessary information was not available for all products (e.g. funds). Others even argue that this approach adds little benefit to the suitability assessment undertaken at individual level. Similar doubts are mentioned with regards to the review of the target market, in particular for products that don't change their payment profile. Concerns are raised that the current application of the product governance rules might result in a further reduction of the products offered.

Question 46. Do you consider that the product governance requirements prevent retail clients from accessing products that would in principle be appropriate or suitable for them?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 46.1 Please explain your answer to question 46:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 47. Should the product governance rules under MiFID II/MiFIR be simplified?

	Yes	No	N. A.
It should only apply to products to which retail clients can have access (i.e. not for non-equities securities that are only eligible for qualified investors or that have a minimum denomination of EUR 100.000).	○	○	○
It should apply only to complex products.	○	○	○
Other changes should be envisaged – please specify below.	○	○	○
Simplification means that MiFID II/MiFIR product governance rules should be extended to other products.	○	○	○
Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.	○	○	○
The regime is adequately calibrated and overall, correctly applied.	○	○	○

Question 47.1 Please explain your answer to question 47:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Further, even though ESMA clarified in its guidelines that the sale of products outside the actual target market is possible in so far as this can "be justified by the individual facts of the case", distributors seem reluctant to do so even if the client insists. This consultation is therefore assessing if and how the product governance regime could be improved.

Question 48. In your view, should an investment firm continue to be allowed to sell a product to a negative target market if the client insists?

- ○ Yes
- ○ Yes, but in that case the firm should provide a written explanation that the client was duly informed but wished to acquire the product nevertheless.
- ○ No
- ○ Don't know / no opinion / not relevant

Question 48.1 Please explain your answer to question 48:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

MiFID II/MiFIR establishes strict rules for investment firms to accept inducements, in particular as regards the conditions to fulfil the quality enhancement test and as regards disclosures of fees, commissions and non-monetary benefits.

Question 49. Do you believe that the current rules on inducements are adequately calibrated to ensure that investment firms act in the best interest of their clients?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 49.1 Please explain your answer to question 49:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Some consumer associations have stated that inducement rules inducements under MiFID II/MiFIR are not sufficiently dissuasive to prevent conflicts of interest in the distribution process. They consider that financial advisers are incentivised to sell products for which they receive commissions instead of recommending the most suitable products for their clients. Therefore, some are calling for a ban on inducements.

Question 50. Would you see merits in establishing an outright ban on inducements to improve access to independent investment advice?

- 1 - Disagree
- 2 - Rather not agree
-

3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 50.1 Please explain your answer to question 50:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As regards the criteria for the assessment of knowledge and competence required under Article 25(1) of MiFID II, ESMA ’s guidelines established minimum standards promoting greater convergence in the knowledge and competence of staff providing investment advice or information about financial instruments and services. Nonetheless, due to the diversified national educational and professional systems, there are still various options on on how to test the relevant knowledge and competences across Member States.

Question 51. Would you see merit in setting-up a certification requirement for staff providing investment advice and other relevant information?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 51.1 Please explain your answer to question 51:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 52. Would you see merit in setting out an EU-wide framework for such a certification based on an exam?

- 1 - Disagree
- 2 - Rather not agree

- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 52.1 Please explain your answer to question 52:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We support the existing approach for each EU member state to decide whether to impose exam requirements for investment staff. Firms already must ensure that senior managers, portfolio managers and material risk takers are “fit and proper” to perform their roles. The imposition of exams and new certification requirements for investment staff will increase costs and operational burden for firms with little, if any, added benefit.

5. Distance communication

Provision of investment services via telephone requires ex-ante information on costs and charges (please consider also ESMA’s guidance on this matter). When a client wants to place an order on the phone, the service provider is obliged to send the cost details before the transaction is executed, a requirement which may delay the immediate execution of the order. Further, MiFID II/MiFIR requires all telephone communications between the investment firm and its clients that may result in transactions to be recorded. Due to this requirement, several banks argue to have ceased to provide telephone banking services altogether.

Question 53. To reduce execution delays, should it be stipulated that in case of distant communication (phone in particular) the cost information can also be provided after the transaction is executed?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 53.1 Please explain your answer to question 53:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 54. Are taping and record-keeping requirements necessary tools to reduce the risk of products mis-selling over the phone?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 54.1 Please explain your answer to question 54:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The telephone recording requirements are designed primarily to address concerns of mis-selling in the context of retail clients but also apply to firms that provide services to institutional clients. Mis-selling is not likely to be a major concern in the context of institutional investment management services, where extensive due diligence is undertaken by prospective investors. We would therefore support a reduction in the scope of telephone recording requirements for firms that do not serve retail clients, in order to reduce the compliance burden on those firms.

6. Reporting on best execution

Investment firms shall execute orders on terms most favourable to the client. The framework includes reporting obligations on data relating to the quality of execution of transactions whose content, format and periodicity are detailed in Delegated Regulation 2017/575 (also known as ‘RTS 27’). The best execution framework also includes reporting obligations for investment firms on the top five execution venues in terms of trading volumes where they executed client orders and information on the quality of information. Delegated regulation 2017/576 (also known as ‘RTS 28’) specifies the content and format of that information.

Question 55. Do you believe that the best execution reports are of sufficiently good quality to provide investors with useful information on the quality of execution of their transactions?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 55.1 Please explain your answer to question 55:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Our members firmly believe that best execution reports provide little value to investors and have seen little if any investor interest in the information that is published. Indeed, it is not clear that an investor could make meaningful comparisons between firms on the basis of this data, even if it were inclined to do so. Our members note that the only external interest in this information comes from the broker community and we do

not believe that it was the intention of the reporting framework to provide brokers with additional information about their commercial standing vis-à-vis existing clients. Given the significant time that is expended on producing the information and the difficulty of extracting useable insights from information from reports published by trading venues, we strongly encourage the European Commission to remove the reporting requirement from the MiFID framework, at the very least for firms providing the service of portfolio management exclusively to professional clients.

Question 56. What could be done to improve the quality of the best execution reports issued by investment firms?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Comprehensiveness	◉	○	○	○	○	○
Format of the data	◉	○	○	○	○	○
Quality of data	◉	○	○	○	○	○
Other	○	○	○	○	○	○

Question 56.1 Please explain your answer to question 56:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In line with our response to Question 55.1, we do not believe that reports serve a meaningful purpose and as such believe that adjustments to the format, quality or coverage of the data would be unlikely to make any meaningful impact on investor interest in the information; indeed, changes would merely introduce additional costs as firms would have to redesign information collection and reporting processes.

Question 57. Do you believe there is the right balance in terms of costs between generating these best execution reports and the benefits for investors?

- (●) 1 - Disagree
- ( ) 2 - Rather not agree
- ( ) 3 - Neutral
- ( ) 4 - Rather agree
- ( ) 5 - Fully agree
- ( ) Don't know / no opinion / not relevant

Question 57.1 Please explain your answer to question 57:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Firms expend significant time and resource on compilation of RTS 28 reports, which is not warranted in light of the minimal value they provide to investors.

III. Research unbundling rules and SME research coverage[7]

New rules on unbundling of research and execution services have been introduced in MiFID II/MiFIR, principally to increase the transparency of research prices, prevent conflict of interests and ensure that research costs are incurred in the best interests of the client. In particular, unbundling of research rules were put in place to ensure that the cost of research funded by client is not linked to the volume or value of other services or benefits or used to cover any other purposes, such as execution services.

[7] The review clause in Article 90 paragraph (1)(h) of MiFID II is covered by this section.

Question 58. What is your overall assessment of the effect of unbundling on the quantity, quality and pricing of research?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Over the last years, research coverage relating to Small and Medium-size Enterprises ('SMEs') seems to suffer an overall decline. One alleged reason for this decline is the introduction of the unbundling rules. Less coverage of SMEs may lead to less SME investments, less secondary trading liquidity and less IPOs on Union's financial markets. This sub-section places a strong focus on how to foster research coverage on SMEs. There is a need to consider what can be done to increase its production, facilitate its dissemination and improve its quality.

1. Increase the production of research on SMEs

1.1. EU Rules on research

The absence of a harmonised definition of the notion of "research" has led to confusion amongst market participants. In addition, Article 13 of delegated Directive 2017/593 introduced rules on inducement in relation to research. Market participants argue that this has led to an overall decline of research coverage, in particular on SMEs. Several options could be tested: one option would be to revise the scope of Article 13 by authorising bundling exclusively for providers of SME research. Alternatively, independent research providers (not providing any execution services to clients) could be allowed to provide research to investment firms without these firms being subject to the rules of Article 13 for this research.

Furthermore, several market participants argue that providers price research below costs. If the actual costs incurred to produce research do not match the price at which the research is sold, it may have a negative impact on the research ecosystem. Some argue that pricing of research should be subject to the rules on reasonable commercial basis.

Finally, several market participants also pointed out that rules on free trial periods of research services are not sufficiently clear (ESMA also drafted a Q&A on trial periods).

Question 59. How would you value the proposals listed below in order to increase the production of SME research?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.

Introduce a specific definition of research in MiFID II level 1						
Authorise bundling for SME research exclusively						
Exclude independent research providers' research from Article 13 of delegated Directive 2017 /593						
Prevent underpricing in research						
Amend rules on free trial periods of research						
Other						

Question 59.1 Please explain your answer to question 59 and in particular if you believe preventing underpricing in research and amending rules on free trial periods of research are relevant:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

1.2. Alternative ways of financing SMEs research

Alternative ways of financing research could help foster more SME research coverage. Operators of regulated markets and SME growth markets could be encouraged to set up programs to finance research on SMEs whose financial instruments are admitted on their markets. Another option would be to fund, at least partially, SME research with public money.

Question 60. Do you consider that a program set up by a market operator to finance SME research would improve research coverage?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
-

Don’t know / no opinion / not relevant

Question 61. If SME research were to be subsidised through a partially public funding program, can you please specify which market players (providers, SMEs, etc.) should benefit from such funding, under which form, and which criteria and conditions should apply to this program:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The growing use of artificial intelligence and machine learning in financial services can help to foster the production of research on SMEs. In particular, algorithms can automate collection of publically available data and deliver it in a format that meets the analysts’ needs. This can make equity research, including on SMEs, less costly and more relevant.

Question 62. Do you agree that the use of artificial intelligence could help to foster the production of SME research?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

1.3. Promote access to research on SMEs and increase quality of research

The lack of access to SME research deprives issuers from visibility and financing opportunities. However, access to SME research can be improved by creating a EU-wide SME research database.

The creation of an EU database compiling research on SMEs would ensure the widest possible access to research material. Via this public EU-wide database, anyone could access and download research on SMEs for free. Such a tool would allow investors to access research in a more efficient manner and at a lower cost, while improving SMEs visibility.

Question 63. Do you agree that the creation of a public EU-wide SME research database would facilitate access to research material on SMEs?

- 1 - Disagree
- 2 - Rather not agree

- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 64. Do you agree that ESMA would be well placed to develop such a database?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 64.1 Please explain your answer to question 64:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Where issuer-sponsored research meets the conditions of Article 12 of Delegated Directive (EU) 2017/593, it can qualify as an acceptable minor non-monetary benefit. One condition is that the relationship between the third party firm and the issuer is clearly disclosed and that the information is made available at the same time to any investment firm wishing to receive it or to the general public. However, issuers and providers of investment research consider that the conditions listed under Article 12 would in most cases not apply to issuer-sponsored research. As a result, issuer-sponsored research would not qualify as acceptable minor non-monetary benefit.

Question 65. In your opinion, does issuer-sponsored research qualify as acceptable minor non-monetary benefit as defined by Article 12 of Delegated Directive (EU) 2017/593?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 65.1 Please explain your answer to question 65:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 66. In your opinion, does issuer-sponsored research qualify as investment research as defined in Article 36 of Delegated Regulation (EU) 2017/565?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 66.1 Please explain your answer to question 66:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In addition, Article 37 of Delegated Regulation (EU) 2017/565 provides rules on conflict of interests for investment research and marketing communication. Investment research is defined in Article 36 of delegated regulation 2017/565. However, issuers and providers of investment research consider that the definition of Article 36 would in most cases not apply to issuer-sponsored research which as a result, would not qualify as investment research. As a consequence, the rules on conflict of interests applicable to marketing documentation would apply to issuer-sponsored research.

Question 67. Do you consider that rules applicable to issuer-sponsored research should be amended?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 68. Considering the various policy options tested in questions 59 to 67, which would be most effective and have most impact to foster SME research?

	1 (least effective)	2 (rather not effective)	3 (neutral)	4 (rather effective)	5 (most effective)	N. A.
Introduce a specific definition of research in MiFID level 1	○	○	○	○	○	○
Authorise bundling for SME research exclusively	○	○	○	○	○	○
Amend Article 13 of delegated Directive 2017/593 to exclude independent research providers' research from Article 13 of delegated Directive 2017/593	○	○	○	○	○	○
Prevent underpricing of research	○	○	○	○	○	○
Amend rules on free trial periods of research	○	○	○	○	○	○
Create a program to finance SME research set up by market operators	○	○	○	○	○	○
Fund SME research partially with public money	○	○	○	○	○	○
Promote research on SME produced by artificial intelligence	○	○	○	○	○	○
Create an EU-wide database on SME research	○	○	○	○	○	○
Amend rules on issuer-sponsored research	○	○	○	○	○	○
Other	○	○	○	○	○	○

Question 68.1 Please explain your answer to question 68:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

IV. Commodity markets[8]

As part of the effort to foster more **commodity derivatives trading denominated in euros**, rules on pre-trade transparency and on position limits could be recalibrated (to establish for instance higher levels of open interest before the limit is triggered) to facilitate nascent euro-denominated commodity derivatives contracts. For example, Level 1 could contain a specific requirement that a nascent market must benefit from more relaxed (higher) limits before a positon has to be closed. Another option would be to allow for trades negotiated over the counter (i.e. not on a trading venue) to be brought to an electronic exchange in order to gradually familiarise commodity traders with the beneficial features of “on venue” electronic trading.

ESMA has already conducted a consultation on position limits and position management. The report will be presented to the Commission at the end of Q1 2020. From a previous ESMA call for evidence, the commodity markets regime seems to have not had an impact on market abuse regulation, orderly pricing or settlement conditions. ESMA stresses that the associated position reporting data, combined with other data sources such as transaction reporting allows competent authorities to better identify, and sanction, market manipulation. Furthermore, the Commission has identified in its Staff Working Document on strengthening the International Role of the Euro that “There is potential to further increase the share of euro-denominated transactions in energy commodities, in particular in the sector of natural gas”.

The most significant topic seems the current position limit regime for illiquid and nascent commodity markets. The position limit regime is thought to work well for liquid markets. However, illiquid and nascent markets are not sufficiently accommodated. ESMA also questioned whether there should be a position limit exemption for financial counterparties under mandatory liquidity provision obligations. ESMA would also like to foster convergence in the implementation of position management controls.

Another aspect mentioned in the Commission consultation on the international role of the euro is a more finely calibrated system of pre-trade transparency applicable to commodity derivatives. Such a system would lead to a swifter transition of these markets from the currently prevalent OTC trading to electronic platforms.

[8] The review clause in Article 90 paragraph (1)(f) of MiFID II is covered by this section.

Question 69. Please specify to what extent you agree with the statements below regarding the experience with the implementation of the position limit framework and pre-trade transparency?

	1	2	3	4	5	

	(disagree)	(rather not agree)	(neutral)	(rather agree)	(fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards improving the functioning and transparency of commodity markets and address excessive commodity price volatility.	○	◉	○	○	○	○
The MiFID II/MiFIR costs and benefits with regard to commodity markets are balanced (in particular regarding the regulatory burden).	○	○	◉	○	○	○
The different components of the framework operate well together to achieve the improvement of the functioning and transparency of commodity markets and address excessive commodity price volatility.	○	◉	○	○	○	○
The improvement of the functioning and transparency of commodity markets and address excessive commodity price volatility correspond with the needs and problems in EU financial markets.	○	◉	○	○	○	○
The position limit framework and pre-trade transparency regime for commodity markets has provided EU added value.	○	◉	○	○	○	○

Question 69.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

Quantitative elements for question 69.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 69.1:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

1. Position limits for illiquid and nascent commodity markets

The lack of flexibility of the **position limit** framework for commodity hedging contracts (notably for new contracts covering natural gas and oil) is a constraint on the emergence euro-denominated commodity markets that allow hedging the increasing risk resulting from climate change. The current de minimis threshold of 2,500 lots for those contracts with a total combined open interest not exceeding 10,000 lots, is seen as too restrictive especially when the open interest in such contracts approaches the threshold of 10,000 lots.

Question 70. Can you provide examples of the materiality of the above mentioned problem?

- ○ Yes, I can provide 1 or more example(s)
- ○ No, I cannot provide any example

Question 71. Please indicate the scope you consider most appropriate for the position limit regime:

	1 (most appropriate)	2 (neutral)	3 (least appropriate)	N.A.
Current scope	○	○	◉	○
A designated list of 'critical' contracts similar to the US regime	◉	○	○	○
Other	○	○	○	○

Question 71.1 Please explain your answer to question 71:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We agree that position limits can have a negative impact on the viability of new and illiquid contracts, which has broader consequences for innovation and competition in commodities markets. This reflects the fact that the number of participants entering into new commodity derivative contracts tends to be low in the period

soon after their launch, such that limits are more likely to restrict participants in their trading activities, thereby leading to a reduction in open interest.

We therefore strongly support the suggestion that limits could be placed only on designated contracts. This would be straightforward from both a supervisory and compliance standpoint and also recognizes that in practice position limits are not effective in mitigating the potential for market disorder or abusive behaviour. We believe that this approach would also best advance the goal of regulatory consistency when it comes to the imposition of position limits, notably by bringing the European position limits framework closer to that of the U.S. Commodity Futures Trading Commission CFTC).

Question 72. If you believe there is a need to change the scope along a designated list of 'critical' contracts similar to the US regime, please specify which of the following criteria could be used.

For each of these criteria, please specify the appropriate threshold and how many contracts would be designated 'critical'.

- ☐ Open interest
- ☐ Type and variety of participants
- ☐ Other criterion:
- ☐ There is no need to change the scope

Question 72.1 Please explain your answer to question 72:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA has questioned stakeholders on the actual impact of position management controls. Stakeholder views expressed to the ESMA consultation appear diverse, if not diverging. This may reflect significant dissimilarities in the way position management systems are understood and executed by trading venues. This suggests that further clarification on the roles and responsibilities by trading venues is needed.

Question 73. Do you agree that there is a need to foster convergence in how position management controls are implemented?

- ○ 1 - Disagree
- ○ 2 - Rather not agree
- ○ 3 - Neutral
- ○ 4 - Rather agree
- ○ 5 - Fully agree
- ○ Don't know / no opinion / not relevant

Question 73.1 Please explain your answer to question 73:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 74. For which contracts would you consider a position limit exemption for a financial counterparty under mandatory liquidity provision obligations?

This exemption would mirror the exclusion of the related transactions from the ancillary activity test.

	Yes	No	N.A.
Nascent	◯	◯	◯
Illiquid	◯	◯	◯
Other	◯	◯	◯

Question 74.1 Please explain your answer to question 74:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 75. For which counterparty do you consider a hedging exemption appropriate in relation to positions which are objectively measurable as reducing risks?

	Yes	No	N.A.

A financial counterparty belonging to a predominantly commercial group that hedges positions held by a non-financial entity belonging to the same group	○	○	○
A financial counterparty	○	○	○
Other	○	○	○

Question 75.1 Please explain your answer to question 75:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2. Pre-trade transparency

MiFIR RTS 2 (Commission Delegated Regulation (EU) No 2017/583) sets out the large-in-scale (LIS) levels are based on notional values. In order to translate the notional value into a block threshold, exchanges have to convert the notional value to lots by dividing it by the price of a futures or options contract in a certain historical period.

Some stakeholders argue that the current provisions of RTS2 lead to low LIS thresholds for highly liquid instruments and high LIS thresholds for illiquid contracts. This situation makes it allegedly hard for trading venues to accommodate markets with significant price volatility. This hinders their potential to offer niche instruments or develop new and/or fast moving markets.

Question 76. Do you consider that pre-trade transparency for commodity derivatives functions well?

- ○ 1 - Disagree
- ○ 2 - Rather not agree
- ○ 3 - Neutral
- ◉ 4 - Rather agree
- ○ 5 - Fully agree
- ○ Don’t know / no opinion / not relevant

Question 76.1 Please explain your answer to question 76:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We would be concerned about any move to adjust the large-in-scale waiver in this context, which we believe has worked well and given that this could undermine the ability of end investors to trade in a manner that protects them from the market moving against them.

PART TWO: AREAS IDENTIFIED AS NON-PRIORITY FOR THE REVIEW

This section seeks to gather evidence from market participants on areas for which the Commission does not identify at this stage any need to review the legislation currently in place. Therefore, PART TWO does not contain policy options. However, should sufficient evidence demonstrate the need to introduce certain adjustments, the Commission may decide to put forward proposals also on the topics listed below. As in the first section, certain questions are directly linked to the review clauses in MiFID II/MiFIR while others are questions raised independently of the mandatory review clause.

V. Derivatives Trading Obligation[9]

Based on the G20 commitment, MiFIR article 28 introduced the move of trading in standardised OTC derivative contracts to be traded on exchanges or electronic trading platforms. The trading obligation established for those derivatives (DTO) should allow for efficient competition between eligible trading venues. ESMA has determined two classes of derivatives (IRS and CDS) subject to the DTO. These classes are a subset of the EMIR clearing obligation.

The Commission invites market participants to share any issues relevant with regard to the functioning of the DTO regime, the scope of the obligation and the access to the relevant trading venues for DTO products.

[9] The review clause in Article 52 paragraph (6) of MiFIR is covered by this section.

Question 77. To what extent do you agree with the statements below regarding the experience with the implementation of the derivatives trading obligation?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards more transparency and competition in trading of instruments subject to the DTO.	○	○	○	◉	○	○
The MiFID II/MiFIR costs and benefits with regard to the DTO are balanced (in particular regarding the regulatory burden).	○	○	○	◉	○	○

The different components of the framework operate well together to achieve more transparency and competition in trading of instruments subject to the DTO.	○	○	○	◉	○	○
More transparency and competition in trading of instruments subject to the DTO corresponds with the needs and problems in EU financial markets.	○	○	◉	○	○	○
The DTO has provided EU added value.	○	○	○	◉	○	○

Question 77.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

Quantitative elements for question 77.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 77.1:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 78. Do you believe that some adjustments to the DTO regime should be introduced, in particular having regards to EU and non-EU market making activities of investment firms?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 79. Do you agree that the current scope of the DTO is appropriate?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- (●) 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 79.1 Please explain your answer to question 79:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The introduction of EMIR Refit has not been accompanied by direct amendments to MiFIR, which leads to a misalignment between the scope of counterparties subject to the clearing obligation (CO) under EMIR and the derivatives trading obligation (DTO) under MiFIR. ESMA consulted in Q4 2019 on the need for an adjustment of MiFIR, receiving broad support for such an amendment and ESMA published their report on 7 February 2020.

Question 80. Do you agree that there is a need to adjust the DTO regime to align it with the EMIR Refit changes with regard to the clearing obligation for small financial counterparties and non-financial counterparties?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 80.1 Please explain your answer to question 80:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

VI. Multilateral systems

According to MiFID II/MiFIR, a ‘multilateral system’ means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system. MiFID II/MiFIR also requires all multilateral systems in financial instruments to operate as a regulated trading venue - being either a regulated market or a multilateral trading facility (MTF) or an organised trading facility (OTF) - bringing together multiple third-party buying and selling interests in a way that results in a contract.

Some trading venues express concerns due to emerging trends which allow alternative type of electronic platforms to offer very similar functionality to a multilateral system for the matching of multiple buying and selling interests. These electronic platforms are not authorised as regulated trading venues, hence they do not have to comply with the associated regulatory requirements, notably in terms of reporting obligations or business rules to manage clients’ relationships. The main argument advanced against regulation of these electronic systems is that they match trading interests on a bilateral basis and not via a multilateral system. However, according to traditional trading venues, this alternative electronic protocol may cause competitive distortions, effectively creating a level playing field distortion against the regulated trading venues which are bound by MIFID II/MiFIR provisions. There is a debate whether MiFID II /MiFIR should therefore take a more functional approach and define the operation of a trading facility in broader terms than the current definition of trading venues or multilateral system as to encompass these systems and ensure fair treatment for market players.

Question 81. Do you consider that the concept of multilateral system under MiFID II/MiFIR is uniformly understood (at EU or at national level) and ensures a level playing field between the different categories of market players?

- 1 - Disagree
- 2 - Rather not agree
-

3 - Neutral
4 - Rather agree
5 - Fully agree
Don’t know / no opinion / not relevant

VII. Double Volume Cap[10]

MiFID II/MiFIR introduced a Double Volume Cap (‘DVC’) to curb “dark” trading by limiting, per platform and at EU level, the use of certain waivers from pre-trade transparency. Some stakeholders have criticized the DVC as a too complex process failing to reduce off-exchange trading in the EU. For instance, according to a 2019 Oxera study, the equity market share of systematic internalisers has risen to 25% since application of the DVC while the share of on venue trading is declining. For example, the market share of CAC40 shares trading on the primary stock exchange (Euronext) fell from 75% in 2009 to 62% in 2018 and Oslo Børs’s market share of trading on OBX-listed shares dropped from 95% in 2009 to 62% in 2018. The proportion of public order book trading on the primary exchange in major equity indices has declined to between 30% and 45% of overall on-venue trading. The Commission services are seeking stakeholder’ s views on their experience with the DVC and its impact on the transparency in share trading.

[10] The review clauses in Article 52 paragraphs (1), (2) and (3) of MiFIR are covered by this section.

Question 82. Please specify to what extent you agree with the statements below regarding the experience with the implementation of the Double Volume Cap?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards the objective of more transparency in share trading.	○	○	◉	○	○	○
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	○	○	◉	○	○	○
The different components of the framework operate well together to achieve more transparency in share trading.	○	○	◉	○	○	○

More transparency in share trading correspond with the needs and problems in EU financial markets.	○	○	◉	○	○	○
The DVC has provided EU added value	○	○	◉	○	○	○

Question 82.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

Quantitative elements for question 82.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 82.1:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We would caution against radical changes to the existing DVC given the potential to destabilize markets and given the significant resources that have already been expended by industry to operationalize the MiFID II requirements. In terms of targeted adjustments, we would support elimination of the 4% trading venue level threshold and maintenance of the EU-level threshold at 8% to reflect the reality that individual trading venues can have a dominant share of trading in shares subject to the DVC.

VIII. Non-discriminatory access[11]

MiFIR introduces an open access regime to trade and clear financial instruments on a non-discriminatory and transparent basis. The key purpose of MiFIR open access provisions is to facilitate competition among trading venues and central counterparties and prevent any discriminatory treatments. It aims at creating more choice for investors, lowering costs for trade execution, clearing margins and data fees. Open access might therefore bring opportunities for new entrants in the market to compete with traditional providers. Furthermore, it could potentially help fostering financial innovation, developing alternative business models which could allow cost efficiency gains in trading and clearing operational processes compared to the current situation.

MiFIR open access provisions provide safeguards to preserve financial stability without adversely affecting systemic risk. The relevant competent authority of a trading venue or a central counterparty shall grant open access requests only under specific conditions, notably that open access would not threaten the smooth and orderly functioning of the markets. MiFIR open access rules also added multiple temporary transitions periods and opt-outs (Article 35 and 36 of MiFIR) for an exemption from the application of access rights, with the majority of opt-outs ending on 3 July 2020.

The Commission will have to submit to the European Parliament and to the Council reports on the application and impact of certain open access provisions. With this in mind, the Commission would like to gather feedback from market stakeholders which could be useful for the preparation of the reports.

[11] The review clauses Article 52 paragraphs (9), (10) and (11) of MiFIR are covered by this section.

Question 83. Do you see any particular operational or technical issues in applying open access requirements which should be addressed?

- Yes
- No
- Don’t know / no opinion / not relevant

Question 84. Do you think that the open access regime will effectively introduce cost efficiencies or other benefits in the trading and clearing areas?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree

- Don’t know / no opinion / not relevant

Question 85. Are you aware of any market trends or developments (at EU level or at national level) which are a good or bad example of open access among financial market infrastructures?

Please explain your reasoning and specify which countries:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

IX. Digitalisation and new technologies

Technology neutrality is one of the guiding principles of the Commission’s policies and one of the key objectives of the Commission’s Fintech Action Plan. A technology-neutral approach means that legislation should not mandate market participants to use a particular type of technology. It is therefore crucial to address obstacles or identify gaps in existing EU laws which could prevent the take-up of financial innovation or leave certain of the risks brought by these innovations unaddressed.

Furthermore, it is evident that digitalisation and new technologies are transforming the financial industry across sectors, impacting the way financial services are produced and delivered, with possible emergency of new business models. The digital transformation can bring huge benefits for the investors as well as efficiencies for industry. To promote digital finance in the EU while properly addressing the new risks it may bring, the Commission is considering proposing a new Digital Finance strategy building on the work done in the context of the FinTech action plan and on horizontal public consultations. The Commission recently published two public consultations focusing on crypto assets and operational resilience in the financial sector, and may consult later this year on further topics in the context of the future Digital Finance strategy.

In that context, and to avoid overlapping, this consultation will only focus on targeted aspects, which are not covered by these horizontal consultations. The Commission will of course take into consideration any relevant input received in the horizontal consultations in its future policy work on the MiFID II/MiFIR framework.

Question 86. Where do you see the main developments in your sector: use of new technologies to provide or deliver services, emergence of new business models, more decentralised value chain services delivery involving more cooperation between traditional regulated entities and new entrants or other?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 87. Do you think there are particular elements in the existing framework which are not in accordance with the principle of technology neutrality and which should be addressed?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 88. Where do you think digitalisation and new technologies would bring most benefits in the trading lifecycle (ranging from the issuance to secondary trading)?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 89. Do you consider that digitalisation and new technologies will significantly impact the role of EU trading venues in the future (5/10 years time)?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 89.1 Please explain your answer to question 89:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The online environment puts a strong focus on providing products to customers as fast as possible, with as few barriers as possible. As far as financial services are concerned, this might endanger retail clients if they do not take enough time to reflect on purchasing complex financial products. On the other hand, making the product quick and easy to purchase (e.g. speedy or ‘one-click’ products) makes it easier for clients to buy and sell at least simple investment products online. Taking all of the above into consideration, the Commission would like to gather feedback on whether certain rules in the MiFID II/MiFIR framework on marketing and provision of information to clients should be adjusted to better suit the provision of services online.

Question 90. Do you believe that certain product governance and distribution provisions of the MiFID II/MiFIR framework should be adapted to better suit digital and online offers of investment services and products?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 90.1 Please explain your answer to question 90:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 91. Do you believe that certain provisions on investment services (such as investment advice) should be adapted to better suit delivering of services through robo-advice or other digital technologies?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 91.1 Please explain your answer to question 91:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

X. Foreign exchange (FX)

Spot FX contract are not financial instruments under MiFID II/MiFIR. Some stakeholders and competent authorities raised concerns as regards the regulatory gap and requested the Commission to analyse if policy action would be needed.

Question 92. Do you believe that the current regulatory framework is adequately calibrated to prevent misbehaviours in the area of spot foreign exchange (FX) transactions?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 93. Which supervisory powers do you think national competent authorities should be granted in the area of spot FX trading to address improper business and trading conduct on that market?

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We recognise the potential for abuse in the spot FX market and consider that misconduct in the spot FX market has the potential to contribute to abusive behaviour or disorderly trading in other related markets. However, we do not believe that a change in the scope of MiFID II would be the most effective way to address potential issues in the spot FX market. In this regard, we note that the spot FX market exhibits different structural characteristics to markets on which transferable securities are traded, with pricing determined on the relationship and creditworthiness of the counterparties rather than the interaction of supply and demand.

Section 3. Additional comments

You are kindly invited to make additional comments on this consultation if you consider that some areas have not been covered above.

Please, where possible, include examples and evidence.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 94. Have you detected any issues beyond those raised in previous sections that would merit further consideration in the context of the review of MiFID II/MiFIR framework, in particular as regards to the objective of investor protection, financial stability and market integrity?

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Implementation of and on-going compliance with trade and transaction reporting obligations has been one of the greatest compliance challenges associated with MiFID II for our members, requiring significant one-off and on-going investment in reporting systems. Our members report, depending upon their size, that they may have multiple information technology and other employees daily working on transaction reporting in order to comply with ESMA's transaction reporting specifications. Under the current requirements, transaction reporting is and will remain highly resource intensive.
Transaction reporting has become very burdensome for a few reasons. First, ESMA requires a tremendous level of detailed data points across its [65] prescribed reporting fields. Many of these fields can only be populated based on information received from the sell-side (e.g., capacity in which the order was executed, time of execution, whether the transaction was executed with a systematic internaliser, etc.), which information is generally transmitted to the buy-side via FIX messages in a format that is not easily convertible into the ESMA-prescribed format.

Second, as the industry has not developed a standard protocol, each sell-side investment firm has developed its own FIX message specification requirements, which adds to the complexity for our investment manager members (i.e., buy-side investment firms) in compiling data from the sell-side, interpreting and recompiling the data in a format consistent with the ESMA guidelines, reconciling the data with its own internal trading records, and producing a daily transaction reporting file for submission to an ARM (for onward submission to relevant NCA). In some cases, our members must utilize the services of one or more third-party vendors to assist in this arduous task.
Third, the variety of market structures across different financial instruments and the manner in which orders are traded in each market (e.g., voice, FIX message, etc.) only add to the burdensome nature of transaction reporting. Even within a particular market, such as cash equities, a single order can be filled in parts (i.e., a "fill"), resulting in multiple transaction reports for a single trade. For example, consider the case of a 100,000 share order that an investment manager seeks to place in a particular equity security. In seeking best execution, the investment manager may choose to split this order by sending it to ten different investment firms as individual 10,000 share orders. Each investment firm filling the 10,000 share order may, in turn, seek to obtain best execution by breaking up the order into multiple smaller transactions, including transactions as small as five, ten or fifteen share transactions. Thus, for a single order of 100,000 shares, an investment manager may literally file hundreds or even thousands of transaction reports, potentially filing many thousands of individual transaction reports in the course of a week. Due to the complexity and burdensome nature of transaction reporting, we are concerned that NCAs are not receiving accurate or meaningful data. These challenges are further compounded by limitations in terms of the FIRDS database, which can make it difficult for investment managers to determine whether a particular instrument is subject to a reporting obligation.
We urge the European Commission to review whether the manner in which the transaction reporting obligations have been implemented can be simplified to reduce the burden on the private sector and ensure that NCAs receive more accurate and meaningful data.

In general our preference is for a reporting model where the sell-side is the primary reporting party given that sell-side firms typically have the scale necessary to be able to carry the costs associated with maintaining the operational infrastructure necessary for reporting; for buy-side firms, maintaining such systems represents a disproportionate burden given their scale and the significant duplication inherent in rules that require both sides of the transaction to make reports.

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

The maximum file size is 1 MB.
You can upload several files.
Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Useful links

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

More on this consultation (https://ec.europa.eu/info/publications/finance-consultations-2020-mifid-2-mifir-review_e

Specific privacy statement (https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en)

Consultation document (https://ec.europa.eu/info/files/2020-mifid-2-mifir-review-consultation-document_en)

Contact

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