

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

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| <input type="radio"/> Consumer organisation | <input type="radio"/> Non-governmental organisation (NGO) | |

* First name

Vincenza

* Surname

Valente

* Email (this won't be published)

vincenza.valente@assogestioni.it

* Organisation name

255 character(s) maximum

Assogestioni is the Italian investment management association. Our members include UCITS managers, AIFs, portfolio managers and open-ended pension schemes. We represent the interest of all Italian investment managers and the majority of foreign AM.

* 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.

89046007765-76

* Country of origin

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

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- 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
- Eswatini
- 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
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
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- Namibia
- Nauru
- Nepal
- Netherlands
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- New Zealand
- Nicaragua
- Niger
- Nigeria
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- Norfolk Island
- Northern Mariana Islands
- North Korea
- Seychelles
- 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
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* 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
- 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
- Other
- Not applicable

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

Italian Investment Management Association

* 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.

I agree with the [personal data protection provisions](#)

Choose your questionnaire

* 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.

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- 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.

Assogestioni has always supported the general objectives of the MiFID II/MiFIR regulatory framework. In the light of this, Assogestioni believes that the abovementioned discipline as a whole works and, thus, that it should only be reviewed in relation to some particular aspects - which are illustrated in the following Sections- especially to better modulate it with reference to the type of products, the type of services and the type of clients.

The Level 2 discipline of MiFID II, in defining the implementation provisions, has in fact frustrated the possibility of modulating the general discipline, preventing it from being adapted to the various concrete situations in the most efficient and effective way.

As for the Level 3 measures developed by ESMA and, in particular, the Q&As, we consider that they often proved to be ineffective, as they were published late and updated disjointedly without following a comprehensive plan, causing costs for intermediaries in terms of time and resources. In this respect, in line with the new powers of the ESAs, the stakeholders should be consulted on Q&As before they are published as final.

With regard to the implementation of the MiFID discipline by the Member States, there have also been initiatives by the national authorities that have hindered the distribution of products and, in particular, those ones that are not complex. In Italy, for example, in the context of the recommendations provided by Consob regarding the distribution of complex products, that Authority also considered UCITS within the complex products, when they are linked to a benchmark with a leverage greater than 1, going beyond MiFID II. Still (and only) in Italy, Consob has extended the MiFID rules to the case of the marketing of collective investment undertakings by an Italian asset management company (i.e. SGR) and provided very cogent rules regarding the knowledge and experience.

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).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

The different components of the framework operate well together to achieve the MiFID II/MiFIR objectives.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR objectives correspond with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR has provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.

Please see our answer to Question 1.1.

Generally speaking, the main items we would like to address to the EU Commission concern a greater balance of the products, services and clients category rules. Another area of improvement relates to data quality and data costs. MiFID II still misses to deliver a consolidated tape and the notion of "Reasonable Commercial Basis" in data cost has been largely overlooked.

We provide concrete suggestions in our answers to the specific questions below.

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.

As explained above in our answer 1.1, we actually see a number of national legislation or existing market practices that impede the effective use of passports throughout the EU, in particular in the area of distribution of financial products. In Italy, for example, in the context of the recommendations provided by Consob regarding the distribution of complex products, that Authority also considered UCITS within the complex products, when they are linked to a benchmark with a leverage greater than 1, going beyond MiFID II. Still (and only) in Italy, Consob has extended the MiFID rules to the case of the marketing of collective investment undertakings by an Italian asset management company (i.e. SGR) and provided very cogent rules regarding the knowledge and experience.

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.

Transparency, for pre- and post-trading, has been improved and could be further improved.

However, we caution the European Commission to keep in mind that transparency is not necessarily the only – nor the most important- factor to be taken into account in view of offering the best outcome for end investors (other criteria such as quality of the execution, cost or liquidity also play a significant role).

For the sake of transparency, MiFID II has forgotten to consider the role of institutional investors investing on behalf of end investors and that allows for economies of scale.

We also note an impact on data cost where the insufficient coordination allows for undue increase in data cost and insufficient transparency in the application of the principle of “Reasonable Commercial Basis”. According to a recent Cossiom survey (Cossiom’s 2019 market data exchange fees survey of buy- and sell-side institutions), over 80% of market data users have experienced substantial cost increases in the last two years. This finding is corroborated by ESMA according to whom “overall market data prices increased, in particular for data for which there is high demand” (MiFID II/MiFIR Review Report No. 1 on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments, pp. 37-38).

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.

From our perspective, MiFID II's implementation has further opened the market for new liquidity providers and new methods of trading beside the "historical ones" and has defined the different avenues to execute transactions.

We believe that the development of additional alternative venues is an excellent evolution of MiFID to the ultimate benefit of end-investors.

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 product governance requirements limit the range of products offered to investors as product governance is product based and it does not integrate enough the diversification need of a client portfolio - see our reply to Question 46 and following ones.

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 tape¹

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Overly strict regulatory requirements for providing a CT	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Competition by non-regulated entities such as data vendors	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Lack of sufficient data quality, in particular for OTC transactions and transactions on systematic internalisers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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.

A number of challenges have prevented a voluntary provider to establish a CT, among them: data costs, competition by non-regulated entities, such as data vendors, and data quality.

In the absence of actual incentives to set up a harmonised CT the potentially high costs for establishing a CT would be passed on end-user who would not demand such CT. If market data costs are unreasonably high, there would not be significant demand for real-time consolidated data and therefore no business case for a commercial solution. In addition, from a competition perspective, the activity of providing consolidated information on the market is not mandated to be regulated as a CT provider and data vendors provide some consolidated information, in particular on trading-venues. Insufficient standardisation in the content of the data, on its quality and the manner in which it is disseminated is a further entry barrier. Complexity and costs involved in aggregating, cleaning and processing all the relevant data would be uneconomical.

We would also consider that the lack of strict enforcement by ESMA and several NCAs of the rules related to the access to and the payment of data is detrimental to the creation of a CT. We consider that the absence of enforcement of the “reasonable commercial costs” principle constitutes a barrier to transparency as the cost of data may lead some market participants to refrain from seeking quotes for some instruments.

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.

The answer changes according to the information to be consolidated. If CT should be limited to equities, we would see no need for a new dedicated legal framework. But if other financial instrument other than equities should be covered, as we advocate improving post-trade transparency especially for non-equity instruments, changes to the current framework may be necessary.

In any case, we consider that the strict enforcement by ESMA and several NCAs of the rules related to the access to and the payment of data and the creation of a CT should be first set in place before reviewing its framework.

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.

We broadly agree with the targeted amendments recommended by ESMA and we support their implementation.

To date, the requirement for trading venues to provide post-trade data on a “reasonable commercial basis” has been largely ignored.

If properly enforced, this requirement could lead to buy-side market participants benefitting from better market data license terms & conditions as well as improved cost transparency and eventually fairer pricing.

In addition, we ask the EC to apply its Level 4 enforcement powers, in making sure that Member States and their relevant National Competent Authorities (NCAs) already apply the existing provisions of MiFID II. We consider that it is not enough for ESMA to publish annual enforcement reports and we would encourage the European Commission to act legally and politically vis-à-vis Member States that do not apply the existing MiFID II requirements on their territories.

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)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring best execution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Documenting best execution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Better control of order & execution management	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Regulatory reporting requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Market surveillance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Liquidity risk management	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Making market data accessible at a reasonable cost	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Identify available liquidity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Portfolio valuation	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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.

The requirement for trading venues to provide post-trade data on a “reasonable commercial basis” has been largely ignored. If properly enforced, this requirement could lead to buy-side market participants benefitting from better market data license terms & conditions as well as improved cost transparency and eventually fairer pricing.

A single-source centralised CT provider model with low fees could support all market participant to have a clear understanding as to what has been traded, where, and the liquidity. A CT would be a de facto utility for markets: an accurate source of nearly real-time information on current trading activity and a central repository of pan-European historical trading data. Giving access to a unique source of data would reduce reporting errors, avoid duplication of data feeds and provide the necessary transparency.

Focusing on non-equity instruments, up to now, there isn’t a consolidated view of volumes. With a CT, there will be one. This will contribute to a better understanding of volumes traded and allow formation of a true picture of liquid instruments. We believe it is important to enlarge the scope of the CT.

From an asset manager’s perspective, there are several functions that might benefit from a CT – in particular trading functions, but also portfolio management, risk management, trading oversight and compliance.

However, we support a voluntary use based consolidated tape to the extent that it is properly constructed and governed. We cautions that a mandatory consumption by data consumers of a CT could actually worsen the market data problems considerably if the CT providers’ governance and operations requirements are not adequately calibrated, as data consumers would use inadequate CT providers data and therefore they may be forced to continue to use the other market data sources as well.

Finally, since the demand of market data is inelastic, it is important that the use of market data through a CT is not subject to complex packing and licensing terms.

In line with the above, we would therefore suggest to the EC to:

- Increase supervision by ESMA/NCA,
- Change to existing laws (if needed),
- Impose transparency on cost,
- Impose best practices on high impact data license.

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 recommendations² 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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Mandatory contributions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Mandatory consumption	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Full coverage	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Very high coverage (not lower than 90% of the market)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Real-time (minimum standards on latency)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The existence of an order protection rule	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Single provider per asset class	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Strong governance framework	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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.

For a central repository of pan-European trading data success factors might be: high quality data, pre-defined data standards, mandatory contributions to the tape together with a strong governance framework.

If properly enforced, there would be enough incentives to consume these data and a mandatory consumption of a CT would not be necessary. Management companies are consuming much of the data that would eventually be included in a consolidated tape, albeit in an incomplete and fragmented format. Moreover, as the tape would provide further benefit, this would be an additional incentive to consume the data.

We would also like to remember that data vendors in the last few years have significantly increased the cost of market data knowing that supervised entities should pay for said data in order to meet their regulatory obligations (e.g. best execution). Such regulatory obligations, while intended to benefit investors, have allowed data vendors to increase their service costs which ultimately leads to increased costs for investors (ESMA's report). As such, we do not support mandatory consumption of the CT.

As regard the number of providers, we believe that the CT should be provided by a single provider. We see little benefit in establishing competing CT providers who provide the same product. A single centralised source of data will assist the market by eliminating existing fragmented infrastructure and connectivity. Giving access to a unique source of data would reduce reporting errors, avoid duplication of data feeds and provide the necessary transparency. It will provide an opportunity to optimise data quality, and to ensure that data standard choices deliver greater efficiency and higher data quality. The CT should have an appropriate governance, avoiding conflict of interests and operate with low or minimum cost fee model. All these features could be well addressed if the CT is managed and operated by ESMA.

As part of the process to develop the CT, it is desirable for the data to be provided in a standardised format with standardised keys (for example a common set of values for classifying types of trades etc.) The tape will require a clear list of data fields, a clear description of how to populate these fields (with standardised values where appropriate), and enforcement of these standards. Enforcing greater consistency between providers of reference data would provide meaningful benefit in the consolidation and onward provision of market data.

It is clearly crucial that there is some minimum for information content in the template, such as size, price, and type-of-trade flags, to name a few. Multi-printing of block trade activity is also a particular problem which arises from confusion on how to aggregate data properly; a single CT would set standards and mitigate double-printing.

Regarding the identifier to be used, we deem it crucial to retain and reinforce the use of ISIN codes to identify securities. This will encourage the electronic automation and the mitigation of operating risk in what is currently a very manual and error prone process. It will also encourage greater transparency in the new issue allocation process.

A successful CT should be implemented very carefully and be phased-in as follows:

1. Phase 1, focusing first on post-trade:
 - a. covering all asset classes, not only equity instruments;
 - b. streamlined through:
 - i. the use of ISIN codes;
 - ii. ISO 20022;
 - c. based on existing reporting and infrastructures;
 - d. managed and operated by a unique source, ESMA;
2. Phase 2, adding disclosed pre-trade data.

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.

The consumption of the CT should be facultative, not mandatory. Please see our response to Q11.

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.

What is crucial is that the CT should provide for appropriate information on volumes and data, to make sure that TCAs are meaningful. We do not believe it to be beneficial to explicitly link consumption of the CT to regulatory obligations such as best execution. This could lead to an increase of market data costs (please see our reply to Q11).

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Fees should be differentiated according to type of use	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Revenue should be redistributed among contributing venues	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
In redistributing revenue, price-forming trades should be compensated at a higher rate than other trades	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The position of CTP should be put up for tender every 5-7 years	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Please specify what other important feature(s) for the funding and governance of the CT you did identify?

5000 character(s) maximum

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

If a CT would not be publicly operated, another important consideration is the terms on which the CT is licensed and distributed. As noted, the recent increase in the cost of market data is attributable to increasingly complex licensing terms and restrictions on use cases of the data. For the CT to be successful, it will be important that these problems are avoided.

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.

The tape should be delivered widely and at reasonable costs. To avoid conflict of interests and to ensure fair access to the CT, and therefore improving the level playing field among market actors, we believe that a single CT should be publicly operated, preferably by ESMA.

We consider that:

- a CT should be offered at a low cost (if not free of charge) to ensure it is accessible to all investors;
- mandatory consumption is not necessary for a successful CT;
- users of the service should equally bear the cost of the CT.

Should ESMA not operate such CT, a single CT provider should be mandated and overseen by ESMA. The tape would require robust governance arrangements to maintain its ongoing quality and effectiveness in stabilising market data costs. The tape will need simple, straightforward, and user-friendly licensing terms – and avoid mirroring some current market practises. The governance body should consist of the regulatory community, including ESMA, as well as a broad range of market participants including trading venues,

market infrastructure providers, and buy- and sell-sides. It should be tasked with ensuring that the business model of the tape is economically appropriate and sustainable. Ongoing monitoring should be conducted to ensure that there is no deterioration in quality or access to the tape. The provision of a quality CT should be the primary aim of the CT provider.

Exchanges, other trading venues and data vendors have been using the mandatory regulatory reporting requirements as an opportunity to increase their prices directly and/or through the “slicing and dicing” of their data licenses. In addition, some data providers are forcing the data users to acquire the information they need in bundled packages. Such type of market practices should be avoided.

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	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shares post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
ETFs pre-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
ETFs post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Corporate bonds pre-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Corporate bonds post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Government bonds pre-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Government bonds post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Interest rate swaps pre-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Interest rate swaps post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Credit default swaps pre-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Credit default swaps post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

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.

Please specify for which other asset classes you consider that an EU consolidated tape should be created?

5000 character(s) maximum

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

To maximise the benefit of the tape, the CT should cover all financial instruments defined in the Annex 1 of MiFID II.

We insist on the fact that spot FX are not and should not begin to be considered as a financial instrument (see also our reply to Section VIII).

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.

In line with our reply to Q11, a successful CT should be covering all asset classes and be populated based as much as possible on existing reporting (MiFID II, SFTR, EMIR Refit) and should be accessible using existing infrastructures (CCPs, exchanges and venues). This would also allow to reduce the development costs of the CT.

Given the differences embedded in the products and related market structures, a phased approach would be preferable. First on post-trade covering all asset classes, then on pre-trade.

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.

As explained in our reply to Q11, we consider that pre-trade transaction reporting on a CT should be implemented in a second phase.

Should the first phase be successfully implemented, we consider that the transparency for pre-trade would improve as the quality of the post-trade data is the base ground for trade formation.

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?

		2				
	1		3	4	5	

	(disagree)	(rather not agree)	(neutral)	(rather agree)	(fully agree)	N. A.
Shares admitted to trading on a RM	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Shares admitted to trading on an MTF with a prospectus approved in an EU Member State	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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.

We believe that a comprehensive coverage is central to the success of a CT (see also our reply to Q15). The criteria for the Official List of shares should reflect the full scope of shares trading on EU trading venues, irrespective of listing location of the share itself. An accurate representation of trading activity within the EU, broadly defined, should be the aim.

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.

No, we do not see the need for adding any criterion. See answer to Q17.1.

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.

Non-EU trading venues should be allowed to voluntarily contribute to the EU CT. For market participants, a full tape which consolidates EU, UK, and Switzerland data would be highly desirable, but even without UK and Switzerland, an EU tape would be very useful. It would also be positive if three separate tapes – EU, UK and Switzerland – operating according to common standards could emerge, which would then be easy to aggregate.

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.

As explained in greater detail in our reply to Q11 and Q15.1, a successful CT should cover all asset classes, should be populated based on existing reporting and should be accessible using existing infrastructures.

We strongly agree for the inclusion of bonds as well as derivatives and other financial instruments in CT. Speaking of bond instruments, up to today there still isn't a consolidated view of volumes. With a CT, there will be one. This will contribute to a better understanding of volumes traded and allow the formation of a true picture of the liquidity of instruments. Therefore, we believe it is important to enlarge the scope of the CT.

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.

From our perspective, MiFID II's implementation has further opened the market for new liquidity providers and new methods of trading beside the "historical ones" and has defined the different avenues to execute transactions.

We believe that the development of additional alternative venues is an excellent evolution of MiFID to the ultimate benefit of end-investors but the STO adds complexity to the EU market structure and could ultimately detract from an effective price discovery process.

Regulatory intervention that attempts to restrict and shift trading from one model to another, in this case from dark to lit markets, risks reducing market liquidity and increasing costs without improving price discovery. We must consider that overly transparent markets may lead to higher costs (e.g. in case of the need for quotes for large position) and that exceptions for block trades should be kept avoiding other market participants will move ahead the portfolio manager.

Regarding the STO, we encourage the EC to remove this obligation, to ensure a level playing field with third countries and to avoid fragmenting liquidity (please see also our reply to Q23.1).

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.

The STO has created confusion over whether shares with primary listings outside of the EEA must be traded on EEA venues. Under the STO, MiFID investment firms are only allowed execute shares which are tradable on European trading venues (TOTV) on regulated EU trading venues, on 'third-country' (non-EU) trading venues in countries deemed equivalent, or through a Systematic Internaliser. This has led to confusion around the treatment of shares with primary listings outside of the EEA, particularly where there are delays

in equivalence decisions. However, the ESMA Q&A has improved its clarity.

In any case, in line with our reply to Q21 we recommend the removal of the STO obligation to ensure a legal playing field with third countries and to avoid fragmenting liquidity.

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)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Maintain the STO with adjustments (please specify)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Repeal the STO altogether	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

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.

There is little benefit to the STO from the market quality, depth or liquidity perspectives. In fact, the complexity associated with STO is under certain circumstances, actively detrimental to Europe’s end-investors. Our preference is therefore for the STO to be repealed.

We support the removal of STO and the DVC mechanism. Both requirements do not result in positive outcomes for market participants but end up creating a complex market structure in Europe to the benefit of primary exchanges only and the detriment of end-users.

Therefore, we would encourage the EC to remove the STO, to ensure legal playing field with other countries and to avoid fragmenting liquidity.

Especially in the context of the UK’s withdrawal from the EU and the UK’s subsequent “onshoring” of the MiFIR Article 23 trading obligation, the overlapping scopes of the EU and UK trading obligations for shares creates an inherent and unnecessary market tension, and risks restricting cross-border capital flows and market activities, and splitting liquidity pools.

As such, we believe that, where the EU’s trading obligation for shares overlaps in a significant manner with that of a third country jurisdiction, the EU should explore every avenue available to avoid competing regulatory obligations for investment firms operating cross-border, and minimise potential implications such as those outlined above.

Should the STO be maintained, then we would recommend limiting its scope to those shares whose primary listing is in the EU. However, even for this EU-only STO, the best execution should be overriding the STO.

In addition, we consider that the suppression of STO should trigger the revision of the TO in its entirety (including for DTO, at least for NFC+ and SFCs to ensure a regulatory alignment between MiFID II/MiFIR and EMIR Refit).

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
SIs should no longer be eligible execution venues under the STO	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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.

We do not support changes to the role of the SIs. SIs play a critical positive role, from a buy-side perspective. We therefore recommend that SIs are maintained as eligible execution places especially if the STO is maintained as:

- SI provide critical liquidity to markets;
- portfolio managers need to retain access to diversified venues with different level of transparency, to guarantee the access to liquidity;
- the suggested proposal would be against competition as exchanges would have de facto monopolies.

Since the implementation of MiFID I, EU markets have significantly matured, as increased integration and competition in capital markets have generated a market ecosystem with multiple trading venues which cater for the needs of a various range of investors. SIs are a part of this ecosystem and serve numerous purposes – one of which is execution of large trades.

Asset managers need to retain access to diversified venues with different level of transparency, to guarantee the access to liquidity. From an anti-competition viewpoint, we fear that primary exchanges may end up with de facto monopolies without SIs.

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.

We believe that there is already a level playing field between trading venues and SIs, and therefore there is no need to change. If there should be some concern around the role that SIs play, it could be best addressed by re-thinking the role of SIs, how pre-trade transparency should apply to them, and how their trading activity can be integrated into a CT.

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.

No, we believe that an alignment between the scope of the STO and of the transparency regime is not necessary. As mentioned in our reply to Q18 the Official List of shares should reflect the full scope of shares trading on EU trading venues, irrespective of listing location of the share itself. In addition, as discussed in our replies to Q21, Q23 and Q26, we do not support the continuation of the STO.

Instruments included in the CT should be much wider than the instruments subject to the STO.

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.

We agree, but we consider that pre-trade could phase-in on a later phase, as we consider that good information on post-trade is sufficient on a first phase.

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	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shortening of the 2-day deferral period for the price information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shortening of the 4-week deferral period for the volume information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Harmonisation of national deferral regimes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Keeping the current regime	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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.

We do not believe that the post-trade transparency referral needs to be abolished, however we believe it is a priority to harmonize the different deferral rules in European countries. In addition, since financial data are more useful if timely, we believe that the current deferral periods for price and volume are too long and do not facilitate market efficiency and price formation. Therefore, we suggest more work to find appropriate solution in shortening the deferral periods.

II. Investor protection⁴

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.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more investor protection.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More investor protection corresponds with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The investor protection rules in MiFID II/MiFIR have provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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	No response.
Costs	No response.

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.

As mentioned in the response to the Question 1.1, Assogestioni has always supported the general objectives of the MiFID II/MiFIR regulatory framework. In the light of this, Assogestioni believes that the abovementioned discipline as a whole works and, thus, that it should only be reviewed in relation to some particular aspects - which are illustrated below - especially to better modulate it with reference to the type of products, the type of services and the type of clients.

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	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs and charges requirements	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Conduct requirements	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.

Please specify which other MiFID II/MiFIR requirements should be amended:

5000 character(s) maximum

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

Assogestioni considers first of all that the notion of “simple product” should coincide with the notion of “non-complex product”, in order to avoid introducing a further sub-category which would have the effect of creating uncertainty in the regulatory framework, to the detriment of investors themselves.

Secondly, Assogestioni considers it appropriate to review art. 25, par. 4 of MiFID II and art. 57 of the MiFID II Delegated Regulation.

MiFID II classifies products as complex, non-complex and complex on a case-by-case basis. Non-structured UCITS are classified as non-complex. ESMA, in its Q&A of the 8th of June 2017, classifies all AIFs as complex products. This is the consequence of a lack of clarity in art.25, par.4 of MiFID II. Consequently, for

the sake of a clearer and more harmonized legislation, which must not leave room for over-interpretation, we believe that it is necessary to amend art. 25, par.4 of MiFID II. Indeed, art. 57 of the MiFID II Delegated Regulation sets out conditions regarding liquidity, limits on potential losses and public availability of information in order to qualify a product as a non-complex product. These conditions are compatible with certain AIFs and must be respected to classify these AIFs as non-complex products.

Assogestioni also considers it appropriate to review the criteria for assessing the non-complexity of the products referred to in art. 57 of the MiFID II Delegated Regulation in order to include products aimed at retail investors that are normatively defined at European or national level (in terms of investment limits, access and redemption modalities), such as retail AIFs (regulated at European or national level), when these ones are not “structured”. Furthermore, a lack of liquidity should not lead to an automatic categorization of a fund as complex. Rather the suitability process should consider the investor’s ability to give up regular liquidity for all or part of his portfolio. In such cases a fund which does not offer regular liquidity such as an ELTIF may often constitute a suitable investment choice for an investor who does not need immediate access to liquidity from all of his portfolio.

Taking into consideration our comments made above, please find our concrete suggestions in Question 32.1 below.

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.

With regards to specific amendments, we see a need for targeted changes to product and governance requirements.

Product and governance requirements:

In order to increase the accessibility to simple products (rectius, not complex products) by retail clients, it is considered necessary to revise the discipline on product governance, providing for its disapplication or, alternatively, its “strong” simplification.

In fact, if the purpose of the discipline about product governance is to reduce the cases of “mis-selling” - i.e. investments that have proved to be completely inadequate for the client who made them, because they are not coherent with the client’s risk appetite or investment objectives - these risks clearly do not exist in the case of non-complex products that are structurally suitable for retail clients. Therefore, the necessity to apply the rules on product governance can be only justified with regard to the category of complex products. Moreover, it is the concept of complexity by itself that, depending on various factors, needs to be considered, both in a design and distribution phase, in order to adapt the product to the “best interest” for the final client.

If the proposal to disapply the product governance rules for non-complex products is not considered admissible, we require, at least, in the second place, to recognize its simplified application, allowing the manufacturer not to identify the target market, considering that these products are already addressed to the mass retail market.

Such a solution, among other things, would be compatible with Recital 18 of the MiFID II Delegated Directive, which specifies, inter alia, that: “[...] those rules may be applied in a proportionate manner, depending on the complexity of the product and the degree to which publicly available information can be obtained, taking into account the nature of the instrument, the investment service and the target market. Proportionality means that these rules could be relatively simple for certain simple, products distributed on

an execution-only basis where such products would be compatible with the needs and characteristics of the mass retail market". It should also be considered that for simple products that are provided with investment advice, the risks of "mis-selling" towards clients are appropriately overseen by the correct application of the rules on the assessment of suitability, with the consequence that the application of the product governance rules is a redoubling of requirements and an operational burdening for intermediaries. Moreover, with regard to non-complex products, ESMA, in the Guidelines on product governance, specifies that (for the purposes of the determination of the target market by the distributors) product information may also be retrieved through multiple sources of information published for regulatory purposes for such products and therefore without the need for the manufacturer to define a target market.

If, on the other hand, a (although simplified) definition of the target market by the manufacturer is deemed necessary, then it is essential that the Level 2 measures recognise the possibility that the potential negative target market attributed by the manufacturer to the categories "financial situation", "risk tolerance" and "clients objectives and needs" can be "redefined" by the distributor within the actual target market with a view to diversifying the risks of the overall portfolio, consistently with the portfolio approach adopted for the suitability assessment. In this case the consequence is that no feedback will have to be made from the distributor to the manufacturer. Any feedback from the distributor to the manufacturer should relate (only) to deviations from the negative target market related to client type and knowledge and experience.

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

Question 33.1 Please explain your answer to question 33:

5000 character(s) maximum

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

Please see our response to the Question 32.

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.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Only ECPs should be able to opt-out unilaterally.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Professional clients and ECPs should be able to opt-out if specific conditions are met.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
All client categories should be able to opt out if specific conditions are met.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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 do believe that the MiFID II is not sufficiently modulated having regard to the type of client, even though Recital 86 of MiFID II provides for measures to protect investors should be adapted to the particularities of each category of investors (retail, professional and eligible counterparty) and Recital 63 of the MiFID II Delegated Regulation underlines that the information requirements should take account of the status of a client as either retail, professional or eligible counterparty.

The aforementioned greater modulation should be guaranteed not only with regard to the ex-ante information on costs, but also in relation to the information ex-post and to the rules set out below. In particular, we believe that at least:

- a) professional clients per se and those upon request should be allowed to exercise the opt-out from the disclosure not only ex-ante but also ex-post about costs, regardless of the service provided and the underlying financial instruments or should be provided the general disapplication with the possibility to opt-in;
- b) professional investors per se should be allowed to exercise the opt-out from the periodic statement on portfolio management pursuant to art. 60 of the MiFID II Delegated Regulation;
- c) having regard the professional clients per se, it should be deleted the requirement of a written agreement for each investment service (as provided for at art. 58 of the MiFID II Delegated Regulation);
- d) the “10% depreciation alert” (as provided for at art. 62, par. 1, of the MiFID II Delegated Regulation) should be deleted for both types of professional clients (per se and upon request), being a communication

that does not provide any added value for these types of clients but increases the operating costs necessary to comply with it. This deletion should apply also with reference to retail clients (please see Section III);

e) it should be allowed to professional clients per se to exercise the opt-out from the suitability test or, in the second place, to provide for the non-application of some rules about the suitability assessment provided by the MiFID II Delegated Regulation;

f) the rules on product governance shall not be applied in case of products intended for professional clients per se.

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.

Please see our response to the Question above.

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.

Regarding the proposal to initiate a process aimed at eliminating the paper-based information, we do believe that this proposal should be supported. We believe, in fact, that, in the context of the information given to the client, the necessary documentation can be provided through means alternative to paper-based support but equally valid, such as sending the same via e-mail in pdf format. This method would make it possible to avoid the creation of complex databases, accessible only through the firm's website or apps. However, the opportunity to maintain databases on the asset managers' website, as a “single” point of collection of

information that is easily accessible for the final investor, could be considered.

In any case, even if we acknowledge the merit of initiating a phase of progressive removal of the paper-based support as the default way to provide the clients with the due information, we believe that within this process a detailed assessments should be made in order to consider the various situation that are present on the market nowadays, primarily the type of clients to whom the information is directed. Indeed, it should not be forgotten that not all investors are to be considered accustomed to the use of technology or IT tools such as the use of e-mail. Therefore, it is believed that the possibility to have a paper-based disclosure should be maintained, if the client requests it.

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	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
General phase out within the next 10 years	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
For retail clients, an explicit opt-out of the client shall be required.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
For retail clients, a general phase out shall apply only if the retail client did not expressly require paper based information	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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.

Please, see our answer to the Question 35.1.

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.

With regard to the creation of a database at European level that allows the comparison among the different types of investment products, it is believed that it should be postponed after a careful evaluation of a cost /benefit analysis linked to its introduction.

In particular, it would be necessary to understand more in detail the general aim, the added value, the content and the governance of this database. In order to fully evaluate the potential costs and benefits of this project it is essential to identify the aim of the database and, consequently, the potential users (supervisors, intermediaries or retail final investors) and the developers (public ESMA solution or a third-party commercial solution). It should be ensured that the development of this database does not lead to an increase in reporting obligations for firms. Instead, a one-off reporting portal from which the data can be further disclosed to the interested parties would be preferable.

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
All products that have a PRIIPs KID/ UICIS KIID	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Only PRIIPs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.

Please see our response to the Question 37.1.

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 investors⁵. The CMU-Next group suggested a new category of experienced High Net Worth (“HNW”) investors with tailor made investor protection rules⁶.

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.

We understand that certain types of retail clients with sufficient experience in financial markets, including (but not limited to) high-net-worth individuals, certain non-IORP pension funds and family offices feel constrained by the existing client classification rules.

Assogestioni fully agrees with the need of introducing measures to encourage these clients to participate to the capital markets. At the same time, Assogestioni considers that it is necessary to avoid a large number of amendments to MiFID II because this would require a huge use of resources by the intermediaries for its implementation and monitoring.

In order to reconcile the above-mentioned needs, the European Commission might consider the following:

- a) extend the category of professional clients per se, that should at least include (i) the institutions of occupational retirement, as they have similar characteristics to pension funds, given that, in many cases, they have experienced staff holding managerial positions and they also invest in complex instruments; (ii) natural persons with certain portfolio requirements (in line with what provided for legal entities) and knowledge/experience;
- b) introduce an ad hoc category of semi-professional clients with the only purpose of having access to financial products with a higher risk level, given that, even if they are not professional clients, they still have a relevant financial portfolio and they are supported by a qualified intermediary in their investment choices: this justifies that they could be considered equal to professional clients only to subscribe these kind of products. In this perspective the semi-professional client's category could be identified in those who undertake to invest, in the context of the provision of the investment advice, an amount of not less than 100,000 euro and this amount does not exceed, at the time of investment, a certain percentage (10-20%) of their financial portfolio, that includes financial instruments, insurance investment products and bank deposits. The others conduct of business rules (namely those not waived for access purposes) provided for retail clients (or professional clients upon request) should be applied to this new category;
- c) review the category of professional clients upon request as shown below, providing that at least two of the following criteria must be met:
 - (i) the client has carried out transactions of a significant size on the market with a frequency of 20 operations in the previous 12 months;
 - (ii) the value of the client's portfolio of financial instruments, insurance investment products and bank deposits, is higher than 500.000 euro;
 - (iii) the client works or has worked in the financial sector for at least one year in a professional position that assume the knowledge of the transactions or is holding a master-level diploma (or higher) in economics or finance;
 - (iv) the client has purchased or subscribed, during the previous 12 months, a financial instrument which value is not less than 100.000 euro.

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.

Please see our response to the Question 40.1.

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.

Please see our response to Question 40.1.

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

		2		4	5	
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	1 (irrelevant)	(rather not relevant)	3 (neutral)	(rather relevant)	(fully relevant)	N. A.
Suitability or appropriateness test	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Information provided on costs and charges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Product governance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.

Please, see our response to the Question 40.1.

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.

Please, see our response to the Question 40.1.

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).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Semi-professional clients should be identified by a stricter financial knowledge test.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.

Please see our suggestions in the response to the Question 40.1.

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.

Because of the lack of proportionality, we believe that the current Level 2 framework is preventing retail clients from properly accessing suitable products. Furthermore, governance principles, such as the identified target market, cannot be looked at in isolation, but rather in connection with the entire MiFID II investor protection framework. Some national retail AIFs could, for example, be considered as suitable for retail

investors and thus be sold execution-only (i.e. without advice or appropriateness test). However, as explicitly established in the ESMA's Q&As, any type of AIF should be considered as complex under MiFID II (whether falling under a national retail scheme or not).

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).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
It should apply only to complex products.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other changes should be envisaged – please specify below.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Simplification means that MiFID II/MiFIR product governance rules should be extended to other products.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The regime is adequately calibrated and overall, correctly applied.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

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.

According to Assogestioni, (i) the rules on product governance should only apply to products to which retail clients can have access (and therefore it should not be applicable in the case of products intended for professional clients); (ii) the rules on product governance should only apply to complex products; (iii) the principle of portfolio diversification should be included in the MiFID II Delegated Regulation; (iv) the Level 2 measures should also provide that in the case of the portfolio management service, considering the specific characteristics of the portfolio management service (management mandate), the definition of the actual and potential target market should not be made with reference to the individual financial instruments selected by the asset manager, but with reference to the global set of financial instruments that define the investment strategy and, thus, at the level of management line as defined in the management contract.

In general, Assogestioni considers that the suitability of the products should be assessed on the basis of risk diversification within a client's investment portfolio. While a product, by itself, may not be compatible with the client's risk profile, if it is considered in the context of the overall portfolio that product may contribute to generate a higher return or provide a hedge against long-term risk.

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.

We do believe that the choice should be maintained on the top of investors. Therefore, we agree that, if the client insists, investment firms should continue to be allowed to sell a product to a negative target market. At the same time, we do believe that in this case, it is essential to keep record of the client will and that he was duly informed but wished to acquire the product nevertheless.

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.

Assogestioni believes that the current rules on inducements are adequately calibrated to ensure that the investment firms act in the best interest of their clients. MiFID II has introduced numerous changes, including a more rigorous management of conflicts of interest and disclosure requirements, as well as rules on product governance and suitability assessment. Overall, therefore, we believe that the current rules are well balanced, as they force distributors to act in the best interest of their clients. Consequently, changes to the

Level 1 regulatory framework are not considered necessary. Furthermore, we believe that any change to the inducement regime should be aligned with the IDD, that provides for less stringent rules in relation to inducements, which could lead to prefer insurance products compared to financial products.

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.

Assogestioni expresses a complete disagreement about the opportunity to introduce an outright ban on inducements to encourage access to independent investment advice. Indeed, although access to independent investment advice is important, it must also be considered that non-independent advice is the most prevalent form of distribution across Europe. The ban on inducements would have substantial and far-reaching consequences in terms of global access to investment advice for all the European citizens. The experience in other countries, which have chosen to ban inducements, has shown that such a ban has led to negative effects, as it has effectively prevented retail investors from accessing to advice.

In the Final Report containing the technical advice on inducements and costs and charges, recently published, ESMA also represented to the European Commission the need to deepen the European distribution panorama before considering the introduction into MiFID II of an outright ban on inducements. More in detail, ESMA deems that the Commission should assess: (i) the impact that the MiFID II rules concerning inducements have had on the distribution of retail investment products within the Union; (ii) the effects that an outright ban on inducements could have on the various distribution models existing in the Union and (iii) the actions that could be taken to mitigate the risk of unwanted consequences that an outright ban on inducements could cause.

Therefore, any hasty decision to “dismantle” the current distribution model should be avoided, without valid alternatives. In particular, we believe that additional time is needed to study the effects of MiFID II, which entered into force only in 2018, and the overall quality of the advice with respect to insurance investment products.

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 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.

Assogestioni does not believe that there is a need to review the current framework. In fact, on the basis of the already existing ESMA Guidelines: (a) intermediaries must ensure that the personnel providing relevant services to clients are assessed on the basis of appropriate qualifications and adequate experience in the provision of such services and (b) the competent national authorities have the task of publishing a list of specific appropriate qualifications that meet the criteria of the above mentioned Guidelines and the characteristics that an appropriate qualification shall meet in order to comply with those criteria.

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.

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.

When a client wishes to place an order over the phone, the service provider is required to send the cost details before the execution of the transaction; this is a requirement that can delay the immediate execution of the order. In addition, the current regulation provides that all the telephone communications between the investment firm and its clients that may concern a transaction are recorded.

On this point, we do believe that believes that: (i) in order to reduce the delay in the execution, it should be provided that, in the case of distance communications (in particular by telephone), information on costs can be provided even after the execution of the transaction; (ii) since registration and filing requirements are necessary tools to reduce the risk of "mis-selling" via telephone, their existence should not be questioned.

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.

We do believe that, since registration and filing requirements are necessary tools to reduce the risk of “mis-selling” via telephone, their existence should not be questioned.

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.

The response in relation to the RTS 27 Report (data to be published by execution venues on the quality of execution of transactions) and RTS 28 Report (data to be published by investment firms on the top five execution venues for all executed client orders per class of financial instruments regarding retail and professional client) hugely vary among our members.

Whilst our members find values on RTS 27 Report, low level of interest is found in RTS 28 Report from their end-investor.

We believe that the best execution reports to be provided pursuant to RTS 28 are not qualitatively adequate to provide to end-investors understandable information. For a retail investor, information requested are overly complex compared to his interest or technical-specialized (e.g. aggressive orders). Instead, for an institutional investor, the regulatory format could not reflect the data of interest or how they would prefer the data to be reported.

We would remind that the transactions are rarely originated by end clients but rather via professional intermediaries that should be able to “translate” their clients’ requirements into investments and be able to explain the principles applied to manage their assets. In that perspective, we therefore question the EC’s approach to request that detailed information.

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	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Format of the data	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Quality of data	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Please specify what else could be done to improve the quality of the best execution reports issued by investment firms:

5000 character(s) maximum

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

We believe that the RTS 28 Report should be understandable for the end investor, in particular for a retail investor.

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.

Should RTS 28 Report to be retained, it should be based on the information available today, but in a simpler and more intuitive way for end investors. More information or unnecessary data does not mean better comprehensibility, rather they could have the opposite effect. To be very clear on this point, it is recommended not to include new data. It is important to keep in mind that a change to the report has a similar cost to create it.

To avoid useless costs and to improve best execution reporting, for retail and institutional investors, the information to be represented in RTS 28 Report could be limited to:

- the main relevant class of financial instruments;
- the reporting of the top five counterparties ranked in term of trading volumes with information on the proportion of volume traded as a percentage of total.

We believe that end investors could benefit more from a simple report without excessive granularity in investment classification of orders and on type of asset class (such as, for example, proportions of orders executed as percentage of total in the asset class, percentage of passive, aggressive or directed orders).

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.

Even when the data quality is good, a low level of interest is found in RTS 28 Report by end- retail /institutional investor. Reporting costs do not outweigh their benefits.

III. Research unbundling rules and SME research coverage⁷

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	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Authorise bundling for SME research exclusively	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exclude independent research providers' research from Article 13 of delegated Directive 2017 /593	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prevent underpricing in research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Amend rules on free trial periods of research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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.

Generally speaking, the research should be market driven and its quality should not be dependent by bundling or unbundling.

As regard pricing, we are still in a “price discovery” stage in the European market, but this is maturing as

more information on price and service become available.

The EC proposals to exclude independent research providers' research from Article 13 of delegated Directive 2017/593 and to amend rules on free trial periods of research may also be helpful. In the latter case, the current 3-months period might be not enough to develop a clear view on the value of a specific research provider. Therefore, it could be some merit in extending it or putting a cap on the number of free trials without any time limit.

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 60.1 Please explain your answer to question 60:

5000 character(s) maximum

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

A program set up by a market operator might be helpful. In any case, it should be driven by market factors and there should be no mandatory financing, neither through taxes nor contributions.

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.

A program set up by a market operator might be helpful. However, we caution against a partially public funding program, for example through new taxes, as it is not clear enough and might generate more complications.

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

Question 62.1 Please explain your answer to question 62:

5000 character(s) maximum

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

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 63.1 If you do agree that the creation of a public EU-wide SME research database would facilitate access to research material on SMEs, please specify under which conditions this database should operate:

5000 character(s) maximum

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

An EU database would facilitate access to SME research from Member and third-country states. This would get a better visibility at international level.

We suggest two conditions in the setting up of this database:

- access to the database must be free of charge; and
- the content of this database should be limited to issuer-sponsored research only.

We see merit in having a public EU-wide SME research database as it would facilitate access to research material on SME. Nevertheless, the costs of creating and operating this database should not be supported by investors, whether in the form of contributions or taxes.

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.

A centralised authority would be the best option as a repository for such a database and we agree that ESMA is well placed to develop such database.

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.

We believe that issuer-sponsored research falls within the definition of an acceptable minor non-monetary benefit as defined by Article 12 of the Delegated Directive (EU) 2017-593:

“(…)³. The following benefits shall qualify as acceptable minor non-monetary benefits only if they are: (...)
(b) written material from a third party (...) where the third party firm is contractually engaged and paid by the issuer to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any investment firms wishing to receive it or to the general public;”

However, as some market participant believe that the conditions listed under Article 12 would in most cases not apply to issuer-sponsored research, we recommend clarifying this aspect and, if necessary, remedying it. To make issuer-sponsored research a useful tool for the SMEs market, it has to qualify as acceptable minor non-monetary benefit. This ensures the accessibility of the research to investors as well as the transparency on the "sponsored" character of this research.

We also suggest to clearly qualifying this type of research as “issuer sponsored-research”.

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.

We do not believe that issuer-sponsored research must be qualified as investment research as defined in Article 36 of Delegated Regulation (UE) 2017/565.

It seems logical that conflicts of interest rules apply and that provided appropriate disclosure is given, our members could consume it. Such material retains an intrinsic value as it gives a description of the company's activities as a basis for further research and analysis.

Considering sponsored research into the Article 36 would restrict its access to the business clientele of one analyst provider, thus preventing it from a wider circulating.

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 67.1 Please explain your answer to question 67:

5000 character(s) maximum

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

There is no need to amend the rules applicable to issuer-sponsored research.

However, it may be useful to get further ESMA guidance/Q&A on disclosure of any potential conflicts of interest.

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	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Authorise bundling for SME research exclusively	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Amend Article 13 of delegated Directive 2017/593 to exclude independent research providers' research from Article 13 of delegated Directive 2017/593	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prevent underpricing of research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Amend rules on free trial periods of research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Create a program to finance SME research set up by market operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Fund SME research partially with public money	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Promote research on SME produced by artificial intelligence	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Create an EU-wide database on SME research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Amend rules on issuer-sponsored research	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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.

Please, see our previous responses.

IV. Commodity markets⁸

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 position 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.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits with regard to commodity markets are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The position limit framework and pre-trade transparency regime for commodity markets has provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A designated list of 'critical' contracts similar to the US regime	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Illiquid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A financial counterparty	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

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 Obligation⁹

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.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits with regard to the DTO are balanced (in particular regarding the regulatory burden).	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more transparency and competition in trading of instruments subject to the DTO.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More transparency and competition in trading of instruments subject to the DTO corresponds with the needs and problems in EU financial markets.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The DTO has provided EU added value.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.

We consider that the critical point is to ensure the alignment of the trading (MiFID II) and clearing (EMIR) obligations, which is being tackled by the convergence between the two pieces of legislation.

We consider that, thanks to the successful implementation of the EMIR clearing obligation and the risk mitigations techniques, the DTO should be entirely removed.

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

If you do believe that some adjustments to the DTO regime should be introduced, please explain which adjustments would be needed and with which degree of urgency:

5000 character(s) maximum

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

We encourage the EC to entirely remove the DTO regime while guaranteeing equivalence with other third countries.

Should it be maintained, we consider that at least two aspects of the existing regime must be improved:

- aligning trading and clearing regimes and scopes;
- ensuring equivalence with the UK's and US' regime applicable to derivatives.

We share ESMA's analysis and fully supports ESMA's conclusions on the necessity of aligning the DTO under MiFIR with changes to the CO made under EMIR Refit.

However, we would encourage the Commission to remove the DTO before it becomes enforceable. We consider that maintaining a misalignment would be contradictory with the goal of EMIR Refit of more proportionate, less burdensome regulation.

Should the Commission decide to maintain the DTO, we would recommend to:

- suppress the DTO for SFC and NFC, to ensure alignment with EMIR Refit, and
- automatically suspend the DTO when the CO is suspended.

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.

As mentioned in our reply to 77-78.1 questions, we would support the removal of DTO.

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.

We believe that DTO should be entirely removed. Should the Commission decide to maintain it, we would recommend to:

- suppress the DTO for SFC and NFC, to ensure alignment with EMIR Refit, and
- automatically suspend the DTO when the CO is suspended.

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

Question 81.1 Please explain your answer to question 81:

5000 character(s) maximum

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

VII. Double Volume Cap¹⁰

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.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more transparency in share trading.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More transparency in share trading correspond with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The DVC has provided EU added value	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.

In line with our reply to Q23.1, we support the removal of the DVC mechanism. Artificial barriers to investors' choice resulting in a complex market structure of little benefit should be avoided.

VIII. Non-discriminatory access¹¹

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 83.1 Please explain your answer to question 83:

5000 character(s) maximum

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

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 84.1 If you do think that the open access regime will effectively introduce cost efficiencies or other benefits in the trading and clearing areas, please indicate the specific areas (such as type of specific financial instruments) where, in your opinion, open access could afford most cost efficiencies or other benefits when compared to the current situation:

5000 character(s) maximum

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

Per se, open access helps to create more competition, which is beneficial to clients.

However, the changing landscape of the market infrastructure and the inelastic demand for market data from the buy-side industry has led to unintended consequence: the increase in market data prices.

According to a recent Cossiom survey (Cossiom survey - 2019 Market Data Exchange Fees Survey), over 80% of market data users have experienced substantial cost increases in the last two years. In addition, a recent ESMA report confirm this finding by pointing to the fact that “overall market data prices increased, in particular for data for which there is high demand” (MiFID II/MiFIR Review Report No. 1 on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments, pt. 37-38).

Similar trends can be observed in the index and rating data space and we clearly see a risk that the ESG cost data will meet the same fate.

It is therefore essential to avoid excessive burden and costs which will be ultimately passed over to users and end clients. Please see our suggestion in our reply to Section 3.

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.

As detailed in our reply to Q84, the increase of data costs is a negative example indirectly coming from open access. In some cases, the price increases have reached 400% since 2017, as highlighted by ESMA

(Steven Maijoor, Chair of ESMA, ESMA (2018): MiFID II implementation – Achievements and Current Priorities, p. 5).

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 emergence 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.

Collective asset management has been using new technologies for years, integrating them into its own processes, in a multiplicity of different uses. This phenomenon can be viewed as confirmed, considering the evolution of new technologies and their widespread diffusion in the society. Many types of new technologies currently used, such as artificial intelligence or machine learning, actually rely on existing infrastructures and technological systems.

Generally speaking, it can be claimed that the use of new technologies in collective asset management has developed with regard to three aspects: (i) the interaction with users, (ii) the operational efficiency, (iii) the investment processes. With reference to each of these three aspects, new technologies have helped to improve efficiency, manage risks and enhance decision-making. It is important to highlight that all new

technologies imply the involvement of people and experts who monitor and evaluate the effects deriving from the use of these technologies, for the purpose of a more informed decision-making process.

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.

See our response to Question 86.

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.

We agree that more can be done to adapt the MiFID II framework for digital distribution and online offers of investment services and products. However, any proposals must provide the same level of investor protection no matter the type of distribution being used.

Last year, EFAMA and other EU financial associations founded 'Financial Data Exchange' (or 'FinDatEx' for short) to ensure that – among other things – standards for the exchange of cost and target market information existed to allow for the important flow of information between product manufacturers and distributors. This information is now codified in the 'European MiFID Template' that is available for free to all market participants. FinDatEx is currently working on standardising the target market feedback from

distributors to manufacturers.

Given the huge amount of work such projects entail, we would certainly value more proactive input on this from the European Commission and the ESAs to ensure that the work being carried out is reflective of the MiFID II framework.

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.

Digital distribution can greatly increase the involvement of retail clients. To better adapt to the provision of services through robo-advice or other digital technologies, however, the definition of advice must be adapted to the provision of digital investment services (for example, consider that the attention span is very short when using digital tools). The fact of having harmonized KYC standards in all Countries is also a key factor in the development of digital advice. Additional tools suitable to assist the development of digital advice include building a digital identity that employs a personalized and portable process to collect information. Such a process should be supported by application programming interfaces (API) used in open banking contexts.

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 92.1 Please explain your answer to question 92:

5000 character(s) maximum

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

We support the definitions of FX instruments as defined in MiFID II Annex and exclude FX spot from the list of financial instruments.

In general, we would caution against including FX spot contracts in the definition of 'financial instrument' under MiFID II, as it is a means of payment.

Therefore we consider it inappropriate to modify the scope or definition of spot FX contracts because:

- spot FX should not be included in the scope of MiFID and should remain considered as a means of payment. To the contrary considering them as financial instruments could impact the calculation of thresholds in other legislations, such as EMIR;
- as ESMA rightly notes the FX Global Code of Conduct ('the Code') developed by central banks and market participants from sixteen jurisdictions around the globe has already achieved progress in promoting higher standards in the wholesale FX market.

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.

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

1) Simplification of the discipline about the assessment of suitability in the case of portfolio management:

Art. 54, par. 11 of the MiFID II Delegated Regulation, provides for “When providing investment advice or portfolio management services that involve switching investments, either by selling an instrument and buying another or by exercising a right to make a change in regard to an existing instrument, investment firms shall collect the necessary information on the client’s existing investments and the recommended new investments and shall undertake an analysis of the costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are greater than the costs.”

In this regard, we ask to the Commission to consider the possibility to avoid this analysis in the case the switch takes place in the context of portfolio management. In fact, by definition, the investment decision is made by the manager who operates in accordance with the mandate received from the client, to whom he is bound by fiduciary obligations. In this context, the main management issues are already addressed by provisions such as the rules on conflicts of interest and on inducements. Moreover, the organizational requirements already demand the adoption of an investment process (i.e. policies and procedures) which clearly describes all the decisional-making phases, from the strategic asset allocation to the tactical one, in order to ensure that the investment decision are taken only in the client’s best interest, in line with the conflict of interest policy. Given that, in case of portfolio management, we believe that the analysis of costs and benefits provided for at art. 54, par. 11 of the MiFID II Delegated Regulation, should be considered always respected on the basis of the investment process and the conflict of interest policy adopted, regardless of the use of “common portfolio strategies” or “customized mandates”.

2) Elimination of the obligation to report losses greater than 10%:

The current reporting requirement for portfolio managers in the case of a 10% depreciation of the portfolio (Delegated Regulation’s Recital 95 and art. 62, par. 1, and ESMA’s ‘investor protection’ Q&As on “post-sale reporting”) should be deleted. Professional investors do not need this information and retail client often misinterpret this alert as an indication to sell or withdraw money from the portfolio. While this requirement’s well-meaning intention was to provide transparency, especially in times of crisis, it increases the short-termism and is mostly in contradiction with the long-term view of the portfolio manager. Additionally, the current rules assume the feasibility of daily valuations for all types of underlyings. This is not possible. The European Commission should also consider whether these ‘10% warnings’ are in contrast to the notion of long-term investing for retail investors, effectively encouraging pro-cyclical behaviours.

3) Alignment of the MiFID II rules of conduct with those ones provided by the IDD directive:

The rules of conduct of the directive on the distribution of insurance products should be aligned with those ones of the MiFID II, especially with reference to the discipline on inducements and the discipline about the information on costs and charges.

4) Investigate the role and costs charged by “Data Providers”:

Source, quality and price of data are critical factors for the correct evaluation and execution of many activities. While CT may solve part of the issue related to the oligopoly power of market data providers, we believe that other types of data providers are progressively taking advantage of a similar oligopoly power, as an example, ESG data providers, index providers and rating providers.

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.

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

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[More on this consultation \(https://ec.europa.eu/info/publications/finance-consultations-2020-mifid-2-mifir-review_en\)](https://ec.europa.eu/info/publications/finance-consultations-2020-mifid-2-mifir-review_en)

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

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

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