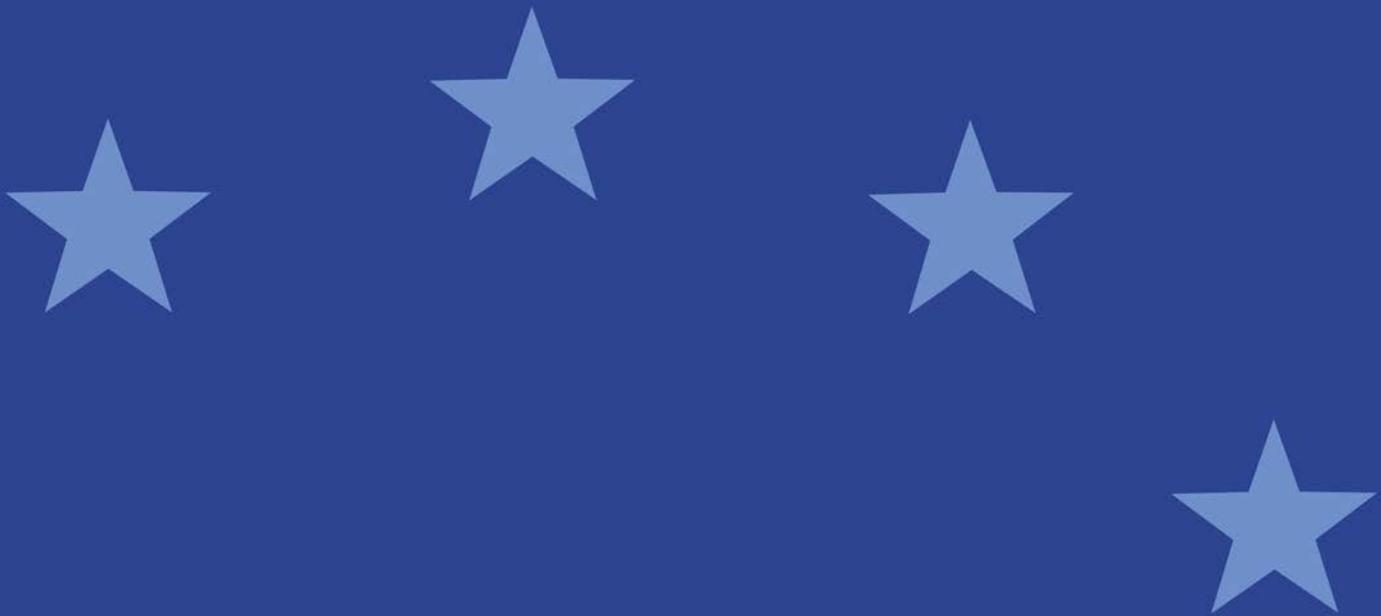


Response Form to the Consultation Paper

MiFID II/MiFIR review report on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **06 September 2019**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_MDA_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA_MDA_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_MDA_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open consultations" → "Consultation on Position limits and position management in commodities derivatives").

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).

Who should read this paper

All interested stakeholders are invited to respond to this consultation paper. This consultation paper is primarily of interest to users of market data and trading venues, but responses are also sought from any other market participant including trade associations and industry bodies, institutional and retail investors.

General information about respondent

Name of the company / organisation	BVI Bundesverband Investment und Asset Management e.V.
Activity	Other Financial service providers
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Germany

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_MDA_1>

First of all, we strongly support the intention of MiFID II/MiFIR to lower the cost of market data. In this regard we value the work of ESMA in this CP that aims to identify deficits in the application of existing regulation and to review tools that would have an impact on market data price developments such as the CT.

Digital technologies have the potential to bring about a massive upheaval in the financial sector over the next few years, even though asset management is already a largely digitized industry. Asset management will be significantly influenced by improved availability of data, algorithms, digitalization of assets, new processes in custody and settlement, and reporting. Quality data is a prerequisite for the provision of any service along the entire value chain in asset management, from research, portfolio and risk management, trading to clearing and settlement. Secure access to and availability of high-quality financial market data at all times is also indispensable in fund sales or in regulatory and customer reporting. In the future, more and more non-traditional data sources ("big data") will be integrated into the asset managers' business operations.

Financial market data are often offered by natural monopolies and oligopolies such as stock exchanges and companies with a dominant market position. These have great market power and can set one-sided conditions, since the demanders on the asset manager side rely on such data and any disruption would jeopardize their business. The use of financial market data has therefore for years been associated with regular, sometimes massive price increases and the conclusion of increasingly complex data licenses for the asset managers. With increasing cost pressure and the

change of business models to more quantitative or passive investment, data costs are becoming more and more a success factor for many asset managers.

The BVI advocates a revision of the existing EU regulations for the provision and use of financial market data on appropriate commercial terms, e.g. in MiFID/MiFIR, CRA-VO, and an implementation of data user effectively protective regulations, e.g. in the BMR and the EU regulations on regulatory reporting. Data charges should be determined on the basis of the marginal cost of producing and disseminating the data.

Stock exchanges should focus on their public law mandate to provide a trading and settlement infrastructure ("utility"). The profit-oriented business at the expense of market participants, especially market data users, should be restricted. The obvious cross-subsidisation of the expensive infrastructure for high-speed trading by the successful market data business should be avoided. While the two business areas should be sufficiently separated, the regulator should prevent that the data business evades the cost rules for regulated marketplace providers, e.g. avoidance of regulation through outsourcing.

BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Fund companies act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's more than 100 members manage assets of some 3 trillion euros for private investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 22% in the EU Germany represents the largest fund market as well as the second fastest growing market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

<ESMA_COMMENT_MDA_1>

Questions

Q1 : Have prices of market data increased or decreased since the application of MiFID II/MiFIR? Please provide quantitative evidence to support your answer and specify whether you are referring to equity and/or non-equity instruments.

<ESMA_QUESTION_MDA_1>

The perception of our members is that overall prices have risen. More specific, we are aware of several cases where users have been confronted with up to three-digit percentage price increases for market data services.

For example, our local German exchange Deutsche Boerse raised the fees for non-display licences for Xetra Ultra Internal, Stoxx Indices Internal and Eurex Ultra Internal in the period from July 2017 (pre MiFID II) to July 2019 by between 199% to 517% while inflation rate in the same time period is just 1,6%.

<ESMA_QUESTION_MDA_1>

Q2 : If you are of the view that prices have increased, what are the underlying reasons for this development?

<ESMA_QUESTION_MDA_2>

The existing regulations on the provision and use of market data at appropriate commercial conditions have not yet resulted in any cost reductions or improved cost transparency for users. On the contrary, complex price models emerged and additional products and licenses have been introduced which has led to increased overall procurement costs for data. Exchanges make no secret of the fact that market data has become an even more significant source of revenue in recent years.

<ESMA_QUESTION_MDA_2>

Q3 : Following the application of MiFID II/MiFIR, are there any market data services for which new fees have been introduced (i.e. either data services that were free of charge until the application of MiFID II or any new types of market data services)?

<ESMA_QUESTION_MDA_3>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MDA_3>

Q4 : Do you observe other practices that may directly or indirectly impact the price for market data (e.g. complex market data policies, use of non-disclosure agreements)? Please explain and provide evidence.

<ESMA_QUESTION_MDA_4>

Complex price models emerged and additional products and licenses have been introduced which has led to increased overall procurement costs for data (cf. European IPUG / COSSIOM Market Data Survey on Exchange Fees 2019, Q's 12-13, 21-24).

As a consequence of the rising degree of complexity of market data policy and pricing (and presumably not unintended by the data providers) the comparability of products and prices has become considerably more difficult.

Licensing models have become more fragmented which means that the rights of use of data are more restrictive differentiating between the circumstances of the use of the same data. For example, multiple licencing fees may apply for the the same data if used for internal analysis, client reporting and also regulatory purposes.

<ESMA_QUESTION_MDA_4>

Q5 : Do you agree that trading venues/APAs/SIs comply with the requirement of making available the information with respect to the RCB provisions? If not, please explain which information is missing in your view and for what type of entity.

<ESMA_QUESTION_MDA_5>

From our point of view it is hardly possible to assess whether calculations are in line with RCB provisions due to a lack of transparency regarding the calculation basis. Some trading venues seem to believe that it is sufficient to comply with the RCB provisions by simply repeating the legal text. <ESMA_QUESTION_MDA_5>

Q6 : Do you share ESMA's assessment on the quality of the RCB information disclosed by trading venues, APAs and SIs? If there are areas in which you disagree with ESMA's assessment, please explain.

<ESMA_QUESTION_MDA_6>

We agree with ESMA's assessment that the parameters for the RCB calculation often are not transparent (cf. answer 5).<ESMA_QUESTION_MDA_6>

Q7 : Do you agree that the usability and comparability of the RCB information disclosed could be improved by issuing supervisory guidance? If yes, please specify in which areas you would consider further guidance most useful, including possible solutions to improve the usability and comparability of the information.

<ESMA_QUESTION_MDA_7>

Users should be provided with annually recalculable, meaningful written information on the true costs, the method of pricing, including the cost calculation methods used and the specific principles by which direct and variable costs are to be apportioned pro rata between the creation and dissemination of data and other services (possibly provided by third parties).<ESMA_QUESTION_MDA_7>

Q8 : Do you think that the current RCB approach (transparency plus) can deliver on the objective to reduce the price of market data or should it be replaced by an alternative approach such as a revenue cap or LRIC+ model? Please justify your position and provide examples of possible alternatives.

<ESMA_QUESTION_MDA_8>

We are of the opinion that a regulated trading venue should not be allowed to charge the cost of operation of the trading systems and general exchange overhead expenditure as part of the market data costs. A LRIC+ model that provides a cost based revenue cap could be an efficient and easy to implement measure (For the design of a revenue based cost cap, please see Copenhagen Economics, A Guideline to a Cost Benchmark for Market Data, 4 July 2019).

However, we recognize that trading venues are inhomogenous in terms of sizes and profiles. While large trading venues represent the most liquid markets and may therefore use their market power to dictate pricing of data, smaller trading venues do not have such leverage. Further, the intention of MiFID II to foster a pluralistic market should be considered when assessing a suitable mechanism for price regulation. As large trading venues benefit from fixed costs depression due to economies of scale, a well-balanced approach should take into account considerations of proportionality in order to avoid competitive disadvantages occurring for smaller trading venues.

<ESMA_QUESTION_MDA_8>

Q9 : Do you consider that a revenue cap model as presented above might be a feasible approach to reduce the cost of market data? Which elements would be key for successfully implementing such a model?

<ESMA_QUESTION_MDA_9>

We support the idea to explore a revenue cap model as one of the means to reduce market data costs.<ESMA_QUESTION_MDA_9>

Q10 : Did data disaggregation result in lower costs for market data for data users? If not, please explain why?

<ESMA_QUESTION_MDA_10>

We are of the opinion that the disaggregation of certain data, combined with the bundling of data services, has actually led to price increases. The data offering was not geared to the needs of the users but to the expansion of licensing.

<ESMA_QUESTION_MDA_10>

Q11 : Why has there been only little demand in disaggregated data?

<ESMA_QUESTION_MDA_11>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MDA_11>

Q12 : Do trading venues and APAs comply with the requirement to make available data free of charge 15 minutes after publication? If not, please explain in which areas you have identified deficiencies

<ESMA_QUESTION_MDA_12>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MDA_12>

Q13 : Do you consider it necessary to provide further supervisory guidance in this area (for instance by reviewing Q&As 9 and/or 10) Please justify your position and explain in which area further guidance may be needed? Please differentiate between pre- and post-trade data.

<ESMA_QUESTION_MDA_13>

ESMA should clarify that the data has to be made available as non-display data / machine-readable. As pointed out in paragraph 98 of the CP, the free-of-charge data has to be provided not only to retail users but also professionals which rely on machine-readable data.<ESMA_QUESTION_MDA_13>

Q14 : Do you agree that the identified reasons, in particular the regulatory framework and competition by non-regulated entities, make it unattractive to operate an equity CT?

<ESMA_QUESTION_MDA_14>

We share the view that a CT faces multiple challenges. However, we believe that the reasons identified by ESMA already contain solution approaches for the CT to become a success story. For example, a CT should not have a latency disadvantage, so distribution of real-time data ahead of the CT has to be prevented. Further, a clear regulation of the terms and prices for the delivery of market data to the CTP is necessary. In fact, as the CTP must obtain the data from the trading venues and APAs, it is crucial for the success of the CT that the business model of the CTP cannot be torpedoed by potentially exaggerated price demands of a view data providers. Again, the need for a stricter regulation of (reasonable) pricing (RCB vs. LRIC+ model) for market data becomes apparent.<ESMA_QUESTION_MDA_14>

Q15 : Do you consider that further elements hinder the establishment of an equity CT? If yes, please explain which elements are missing and why they matter.

<ESMA_QUESTION_MDA_15>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MDA_15>

Q16 : Please explain what CTP would best meet the needs of users and the market?

<ESMA_QUESTION_MDA_16>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MDA_16>

Q17 : Do you agree that real-time post-trade data is available from both trading venues and APAs as well as data vendors and that the data is currently not covering 100% of the market, i.e. including all equity trading venues in the EU and all APAs reporting transactions in equity instruments? If not, please explain.

<ESMA_QUESTION_MDA_17>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MDA_17>

Q18 : Do you agree that post-trade data is provided on a timely basis and meets the requirements set out in MiFID II/MiFIR and in the level 2 provisions? If not, please explain.

<ESMA_QUESTION_MDA_18>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_MDA_18>

Q19 : Do you agree with the issues on the content of data and the use different data standards identified or do you consider that important issues are missing and/or not correctly presented?

<ESMA_QUESTION_MDA_19>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MDA_19>

Q20 : Do you agree that the observed deficiencies make it challenging to consolidate data in a real-time data feed? If yes, how could those deficiencies best be tackled in your view?

<ESMA_QUESTION_MDA_20>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MDA_20>

Q21 : What are the risks of not having a CTP and the benefits of having one?

<ESMA_QUESTION_MDA_21>
We are supportive of a CT provided it is properly constructed and governed. A too timid implementation (e.g. no regulation to prevent latency) or insufficient regulatory support of the conceptual model, on the other hand, could have negative effects. If the users CTP governance and operations requirements are not met, it might actually worsen the market data problems considerably, as data consumers will have to use inadequate CTP data and thereby may be forced to continue to use the other market data sources as well. A CTP as such will solely not solve the market data market failure – as is obvious when looking at the current problems in the US.<ESMA_QUESTION_MDA_21>

Q22 : Would you be supportive of an industry-led initiative to further improve data quality and the use of harmonised standards or would you prefer ESMA guidance? Please explain.

<ESMA_QUESTION_MDA_22>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MDA_22>

Q23 : In addition to the standardisation of the reporting and format, as described before, did you identify any further relevant data quality issue to be considered for the successful establishment of CTPs?

<ESMA_QUESTION_MDA_23>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MDA_23>

Q24 : Do you agree that the mandatory contribution from trading venues and APAs to a CTP would favour the establishment of CT?

<ESMA_QUESTION_MDA_24>

In order for the CTP to fulfil its designated role, a mandatory contribution of data to the CTP is essential. <ESMA_QUESTION_MDA_24>

Q25 : Do you have preferences between the option of (i) requiring trading venues and APAs to contribute data to the CT, or, in alternative (ii) setting forth criteria to determine the price that CTPs should pay to TVs and APAs for the data? If so, please explain why.

<ESMA_QUESTION_MDA_25>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MDA_25>

Q26 : Do you agree that the mandatory consumption could favour the establishment of a CT? If not, please explain your concerns associated with the mandatory consumption.

<ESMA_QUESTION_MDA_26>

As a CTP will have a monopolistic role, we believe it should operate under a regulatory framework that considers the business model in terms of viability. This includes the regulation of the costs for collected data (e.g. mandatory contribution of trading venues and APAs) as well as the costs for the delivery of CT data to market data users. For example, as part of the tender process, the prospective operator will set out its proposed approach to recovering its costs and an agreed return from the sale of CT data. This approach will be formally approved as part of the winning bid. The incumbent CT operator must seek the approval of the pricing authority for any change to its approach to recovering these costs in its fee structure. If the CTP is properly constructed, it should be sufficiently attractive for market data users and would make a mandatory consumption unnecessary. Therefore, we do not support a mandatory consumption.<ESMA_QUESTION_MDA_26>

Q27 : Would mandatory consumption impact other rules in MiFID II and if yes, how?

<ESMA_QUESTION_MDA_27>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MDA_27>

Q28 : Do you consider it necessary that the CT covers all trading venues and APAs and the whole scope of equity instruments or would you be supportive of limiting the coverage of the CT? Please provide reasons for your preference and explain your preferred approach.

<ESMA_QUESTION_MDA_28>

The CT should be designed as a holistic provider covering all trading venues and APAs and the whole scope of equity instruments. At a next stage, the CT could also

incorporate non-equities, but take into account specifics on best execution of block trades. <ESMA_QUESTION_MDA_28>

Q29 : Do you agree with ESMA's preferred model of real-time CT? If you consider that, on the contrary, the delayed or tape of record CT are preferable, please indicate the reasons of your preference.

<ESMA_QUESTION_MDA_29>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MDA_29>

Q30 : Are there any measures (either technical or regulatory) that can be taken in order to mitigate the latency impacts?

<ESMA_QUESTION_MDA_30>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MDA_30>

Q31 : Do you agree that the CT should be operated on an exclusive basis? To what extent should other entities (e.g. APA or data vendors) be allowed to compete with the CTP?

<ESMA_QUESTION_MDA_31>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MDA_31>

Q32 : Should the contract duration of an appointed CTP be limited? If yes, to how many years?

<ESMA_QUESTION_MDA_32>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MDA_32>

Q33 : Please indicate what would be, in your view and on the basis of your experience with TVs and data vendors, a fair monthly or annual fee to be charged by a CTP for the real-time consolidation per user?

<ESMA_QUESTION_MDA_33>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MDA_33>

Q34 : Would you agree with the abovementioned model for the CT to charge for the provision of consolidated data and redistribute part of the revenues to contributing entities? If not please explain.

<ESMA_QUESTION_MDA_34>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MDA_34>

Q35 : How would Brexit impact the establishment of a CT? Would an EU27 CTP consolidating only EU27 transactions be of added value or would a CT that lacks UK data not be perceived as attractive?

<ESMA_QUESTION_MDA_35>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MDA_35>

Q36 : In your view, how would an EU27 CT impact the level playing field between the EU27 and the UK? Please explain.

<ESMA_QUESTION_MDA_36>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MDA_36>