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

Fields marked with * are mandatory.

Introduction

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

SECTION 2 will be available in English only.

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

Background of this public consultation

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

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

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

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

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

Responding to this consultation and follow up to the consultation

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

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

This consultation document contains three sections.

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

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

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

This consultation is open until 18 May 2020.

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

More information:

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

About you

* Language of my contribution

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

* I am giving my contribution as

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

* First name

Anna Katharina

* Surname

Niemitz

* Email (this won't be published)

anna.niemitz@bvi.de

* Organisation name

255 character(s) maximum

BVI

* Organisation size

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

Transparency register number

255 character(s) maximum

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

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* Country of origin

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

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

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

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

* Field of activity or sector (if applicable):

at least 1 choice(s)

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

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

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

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. Asset Managers 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 114 members manage assets more than 3 trillion euros for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 22%, Germany represents the largest fund market in the EU.

* Publication privacy settings

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

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

- [x] I agree with the personal data protection provisions

Choose your questionnaire

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

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

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

- ○ I want to respond only to the **short version** of the questionnaire
- ◉ I want to respond to the **full version** of the questionnaire

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

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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.

The implementation of the new requirements of MiFID II and MiFIR has required significant financial and human resources. We very much welcome the improvement in investor protection as the basic idea behind the amendments. The objective has been achieved to some extent – but it has also entailed severe burdens for asset managers, fund management companies, professional clients and eligible counterparties that would not have been necessary from the point of view of investor protection (see particularly our answers to questions 34, 40, 42.1). The aim should be to provide investors with relevant information and to support them in their investment decisions by providing high-quality investment advice. In doing so, however, the client must not be put under tutelage. It must be left to the investor to decide what information (see particularly our answer to question 32.1) and what type of investment advice (see particularly our answer to question 50.1) he or she wishes to receive.

Legislation as comprehensive as MiFID II and MiFIR naturally provides room for interpretation. However, this latitude is regularly restricted by binding Level 2 measures. We are aware that the preparation of a Level 2 text takes time and can be delayed. However, institutions are dependent on these Level 2 clarifications as a precondition for implementation of Level 1. For this reason, the date of mandatory application of European legal acts should in future also be linked to the publication of Level 2 measures. If this is not the case, there is a risk of costly implementation measures being conducted on a “best effort” basis in order to meet the implementation deadlines of Level 1 which will have to be amended again later in order to meet the requirements of the then issued Level 2 measures.

Furthermore, different EU legal acts should be better coordinated. For example, the different calculation methods for cost information under MiFID II and the PRIIPs Regulation are virtually impossible to explain to clients and do not lead to better information for clients. The declared goal of the EU legislator to create more cost transparency is thus not fulfilled, to the detriment of those that are supposed to be protected.

With respect to the basic concept of markets regulation, the BVI believes that stock exchanges/regulated markets (RM) are not functioning properly today and need to come back to the original idea of offering a market place where all investors, large and small, can execute trades at fair terms for everyone. The current situation is not primarily the fault of the alternative trading venues such as MTFs or SIs. From our point of view it is up to the RM to improve the existing central limit order book (CLOB) product offering which is today too often catering mainly to the needs of principal and high frequency traders only. This means that our members, who are long term investors, are faced with smaller and smaller trade sizes and additional trading and infrastructure costs, as RM pass on their investments in high frequency infrastructure, which our members do not need to fulfil the mandate given by their investor, who is ultimately the man in the street. At the same time retail investors are leaving the stock exchanges en masse, as is deplored by the RMs themselves. Stock exchanges need to revisit their business model in order to allow less latency dependant retail and institutional investors to participate more in lit market trading going forward. Especially institutional investors, such as our members, need attractive offers by the exchanges which would allow them to execute large orders on the lit markets without creating too much market impact. The EU policy focus should therefore be on the improvement of the RM CLOB product offering for all clients. Regulation should not curtail the remaining segments of the market such as MTF and SIs which are able to fulfil our members’ trading needs better than the RMs do today and which follow a different business model which is not necessarily based on improved pre-trade transparency.

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

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

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

5000 character(s) maximum

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

Please see our answers to Section 2 – Investor protection.

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.

We strongly advocate that the contractual relationship between a management company that launches a fund and a portfolio manager that the management company commissions to manage the fund under a delegation agreement pursuant to the national investment law should not be regarded as a service "portfolio management" within the meaning of MiFID. This should be made clear at Level I. UCITS Directive and AIFMD already provide comprehensive rules and conditions for delegation, in particular by stipulating that collective portfolio management may only be delegated to authorised and supervised financial market participants (see for more our answer to question 40.1).

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.

Especially bond pre- and post trade transparency is not satisfactory. The EU lacks a TRACE type disclosure mechanism as is the case in the US.

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.

No, please see Q1.1 -secondary markets

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 access to so-called complex products is made more difficult for retail clients. In principle, we welcome this, but believe that the classification of products as "complex" or "non-complex" needs to be revised. We consider ESMA's assessment incorrect that all alternative investment funds ("AIFs") are obligatory complex without recourse to an individual complexity test (see ESMA MiFID II / MIFIR Investor Protection Q&A, Section 10, Question 1). The category of AIFs covers a wide variety of fund vehicles so that an individual classification of products is necessary. Please refer to question 33.1 for more details.

Section 2. Specific questions on the existing regulatory framework

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

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

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

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

PART ONE: PRIORITY AREAS FOR REVIEW

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

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

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

1. Current state of play

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

1.1. Reasons why a consolidated tape has not emerged

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Lack of financial incentives for the running a CT	○	○	○	○	◉	○
Overly strict regulatory requirements for providing a CT	○	○	○	○	◉	○
Competition by non-regulated entities such as data vendors	○	○	○	○	◉	○
Lack of sufficient data quality, in particular for OTC transactions and transactions on systematic internalisers	○	○	○	○	◉	○
Other	○	○	○	○	○	○

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.

One obstacle in the legal framework is the obligation for the CTP to include data from all regulated markets, MTFs, OTFs and APAs (Article 65(3) MiFID II), which, however, are not obliged to contribute data to the CTP. A CTP would thus be in a weak position in negotiations and could hardly withstand (perceived unjust) price demands by regulated markets which, as we know, oppose the concept of a CTP that operates beyond a EOD tape of record.

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

Please explain your answer:

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

1.2. Availability and price of market data

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

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

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

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

Please explain your answer:

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

ESMA should take a closer look at the definition of RCB in order to have a harmonised approach for NCA's reviewing the fees of the regulated markets. The goal should be that price tables published by trading venues become easily comparable. For an effective supervision NCA's should be empowered through L1/L2

to seek information for assessing the parameters for an RCB analysis such as the actual costs for producing market data.

Currently, the requirement for trading venues to provide post-trade data on an RCB has been largely ignored. Properly enforced, this requirement could lead to buy-side market participants benefitting from better market data licensing policies as well as improved cost transparency and eventually fairer pricing.

1.3. Use cases for a consolidated tape

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Transaction cost analysis (TCA)	○	○	○	○	◉	○
Ensuring best execution	○	○	○	○	○	○
Documenting best execution	○	○	◉	○	○	○
Better control of order & execution management	○	○	○	○	○	○
Regulatory reporting requirements	○	○	○	○	○	○
Market surveillance	○	○	○	◉	○	○
Liquidity risk management	○	○	○	◉	○	○
Making market data accessible at a reasonable cost	○	○	○	○	○	○
Identify available liquidity	○	○	○	◉	○	○
Portfolio valuation	○	○	○	◉	○	○
Other	○	○	○	○	◉	○

Please specify what are the other use cases for an EU consolidated tape that you identified?

5000 character(s) maximum

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

A CTP could also function as the data source for a CMU-Index (pan-European index for SME to foster SME capital market access) since the RMs will contribute the data for each SME to the CTP.

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.

A CT could provide valuable information for several applications such as TCA, market analysis and research and portfolio valuation. For fixed income instruments, which so far work on the basis of RFQ, a post-trade CT would improve transparency significantly.

2. General features of the consolidated tape

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

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

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

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

- **Whether pre-trade data should be included in CT**: the argument has been made that the US model for a consolidated quotation tape comprises pre-trade quotes because of the **order protection rule** contained in Regulation National Market System (NMS). The order protection rule eliminated the possibility of orders being

executed at a suboptimal price compared to orders advertised on exchanges and it established the National Best Bid and Offer (NBBO) requirement that mandates brokers to route orders to venues that offer the best displayed price. Although some stakeholders strongly support a quotation tape, others have expressed reservations, either because there is no order protection rule in the European Union or because they do not support the establishment of such a rule in the EU which could be encouraged by the establishment of a pre-trade tape. Stakeholders also argue that a quotation tape will be very expensive and that latency issues in collecting, consolidating and disseminating transaction data from multiple venues will always lead to a co-existence of the CT and proprietary exchange data feeds.

- **What should be the latency of the tape**: Many stakeholders argue that the tape should be "real-time", implying minimum standards on latency such as a dissemination speed of between 200 and 250 milliseconds ("fast as the eye can see"). Other stakeholders support an end of day tape.
- **How to fund the tape and redistribute its revenues**: stakeholders have mixed views on the optimal funding model. They also caution against some aspects of the US model, where the practice of redistribution of CT revenues has, in their view, provided market participants with an incentive to provide quotes to certain venues that rebate more tape revenue, without necessarily contributing to better execution quality.

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

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

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

Strong governance framework	○	○	○	○	◉	○
Other	○	○	○	○	○	○

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

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

The CTP will be most successful if it provides high quality data stemming from a full coverage of venues which for practical considerations requires mandatory contributions. We do not consider a mandatory consumption as necessary, as each market participant can individually assess the advantages of the CT and subscribe to the CT data feed. Voluntary consumption will also insure that the CTP services are aligned with the interest of the market.

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

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

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

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

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

5000 character(s) maximum

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

What is crucial is that the CT should provide for appropriate information on volumes and data, to make sure that TCAs are meaningful.

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The CT should be funded on the basis of user fees	○	○	○	○	◉	○
Fees should be differentiated according to type of use	○	○	○	◉	○	○
Revenue should be redistributed among contributing venues	○	○	○	◉	○	○
In redistributing revenue, price-forming trades should be compensated at a higher rate than other trades	○	○	○	◉	○	○
The position of CTP should be put up for tender every 5-7 years	○	○	○	◉	○	○
Other	○	○	○	○	○	○

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

5000 character(s) maximum

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

Funding of the CT by user fees, not a mandatory consumption, requires regulatory guidance on RCB as the basis for CTP fees (cf. Answer 9).

3. The scope of the consolidated tape

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Shares pre-trade[3]	○	◉	○	○	○	○
Shares post-trade	○	○	○	○	◉	○
ETFs pre-trade	○	◉	○	○	○	○
ETFs post-trade	○	○	○	○	◉	○
Corporate bonds pre-trade	○	◉	○	○	○	○
Corporate bonds post-trade	○	○	○	○	◉	○
Government bonds pre-trade	○	◉	○	○	○	○
Government bonds post-trade	○	○	○	○	◉	○
Interest rate swaps pre-trade	○	◉	○	○	○	○

Interest rate swaps post-trade	○	○	○	○	◉	○
Credit default swaps pre-trade	○	◉	○	○	○	○
Credit default swaps post-trade	○	○	○	○	◉	○
Other	○	○	○	○	○	○

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

Question 15.1 Please explain your answers to question 15:

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

For institutional professional investors like our members pre-trade data is available from commercial data vendors. Therefore, in order to reduce complexity when setting up the CT, pre-trade data is not of priority. However, we admit that for retail investors the situation is different.
A post-trade CT with low latency (seconds) would be valuable to obtain a broad market overview and it could be used for analysis and compliance purposes (e.g. risk management). As for fixed income instruments, post-trade CT data would already improve transparency significantly. For fixed income trades, mechanisms should be considered to avoid market impact of larger orders and illiquid assets. The current regime of deferred publication would have to be reviewed as deferral time periods of more than a few days would contradict the idea of the CT and its economic viability.

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

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

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

5000 character(s) maximum

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

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

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

Shares

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

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

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

Please specify what other shares should in your view be included in the Official List of shares defining the scope of the EU consolidated tape?

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

We suggest to also include shares traded on SIs.

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.

Full and equal treatment for all types of trading venues.

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.

We favour a broad scope which includes all shares (as a minimum all EU-ISINs plus double listings).

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

Please explain your answer:

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

ETFs, Bonds, Derivatives and other financial instruments

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

Please explain your answer and provide details by asset class:

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

We would include all EU-ISINs, double listings and those bonds with an XS code. Alternatively, the determination could be made by including those instruments which are settled on an EU CSD. The inclusion of ETFs in the CT would improve transparency as a significant part of ETF costs is not reflected in the ETFs' management fees but are embedded in their bid/ask spreads.

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.

In principal, we understand that the STO intends to concentrate liquidity of EU shares within the EU. However, as the practical case of Swiss shares has shown, the concept of STO has its limits where large pools of liquidity for certain shares are outside of the EU. As STO is linked to equivalence decisions, most prominently regarding the UK and Switzerland, we are concerned that the subject is not driven by financial market supervision but becomes a political pawn with potential down sides to be borne by the market participants.

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.

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

	1	2	3	4	5	

	(disagree)	(rather not agree)	(neutral)	(rather agree)	(fully agree)	N. A.
Maintain the STO (status quo)	◉	○	○	○	○	○
Maintain the STO with adjustments (please specify)	○	◉	○	○	○	○
Repeal the STO altogether	○	○	○	○	◉	○

Question 23.1 Please explain your answers to question 23:

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

The STO was intended to promote the competitiveness of EU exchanges as well as investor protection by allowing investors to access liquidity through regulated trading venues only. In practice, however, the equivalence process is unwieldy and cannot keep pace with market developments. For the sake of best execution and the benefit of the end investors, the markets with the best prices and least transaction costs should be accessible. The Swiss case is an example that the STO actually has detrimental effects on costs.

As second best option we would support a limitation of the STO to EU-ISINs. An exception could be foreseen, possibly upon request by the issuer and assessment by ESMA, for those EU shares that have either no relevant liquidity on EU trading venues or where a fragmentation of liquidity would otherwise have an adverse market effect, e.g. certain double listings (STO discussion in context of Brexit has been a practical example).

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

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

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

Other						

Question 24.1 Please explain your answers to question 24:

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

SIs provide critical liquidity to markets. We want to stress that this is even more important in difficult market situations, as we have seen recently. From the perspective of our members, which represent the buy-side, a variety of types of execution, e.g. trading venues, auctions and SIs, best serves the interest of the industry to maintain flexibility and different options when trading. The primary objective is to keep trading costs as low as possible for the benefit of the investors and to ensure best in class execution for large trades.

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

Please explain your answer:

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

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

Please explain your answer:

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

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

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

Please explain your answer:

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

We advocate that pre-trade transparency waivers are maintained as an effective means of meeting the needs of institutional investors, such as fund managers, to be able to place orders without market impact, thus avoiding adverse signaling effects which might be exploited to the disadvantage of the investors. For the investment fund industry which manages large retail funds, the average orders commonly have six-digit euro values which are not always above the LIS threshold but significantly above regular lit market sizes. Therefore, not only the LIS waiver needs to be maintained. An additional practical aspect to be considered is that orders which would qualify for LIS are for technical reasons often split into smaller orders to be able to make use of different pools of liquidity. Today, for those cases the RP waiver is used. We consider the existing waiver regime to be generally suitable but see potential improvement by allowing RM to integrate certain waivers in the CLOB for the benefit of a level playing field between RM, MTF and SI.

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.

We do not suggest to align the scope of the CT to the STO, as the STO should be abolished or its application at least limited (cf. Answers 20. and 23.1).

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

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

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

Question 29.1 Please explain your answer to question 29:

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

4.3. Post-trade transparency regime for non-equities

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

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

		2		4	5	

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

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.

The shorting of deferral periods would enable better price information on bonds and derivatives. However, to allow for the necessary risk taking by market makers and broker /dealers volume information on the prices subject to shorter or no deferral periods in the future could be withheld in full or partially, e,g. by informing only about a minimum size level of the given trade (“above XXX Euros”). Investors would already be helped with the information that a trade has been executed at a certain price.

II. Investor protection[4]

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

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

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

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

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

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

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

Quantitative elements for question 31.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 31.1:

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

In principle, the measures introduced by MiFID II are suitable for fostering investor protection. In particular, meaningful cost information for retail clients serve the purpose of transparency and is therefore welcome. However, some of these requirements have gone beyond the objective. After all, a overflow of information is just as detrimental for clients as restricting their freedom of decision as to whether they even desire certain information. According to a study by the Ruhr University Bochum [https://die-dk.de/media/files/Auswirkungsstudie_MiFID_II_Prof_Paul.pdf], clients sometimes feel overwhelmed by the sheer mass of information and would like to be able to abstain from certain information. Another study commissioned by the German supervisory authority BaFin comes to a similar conclusion. Clients would like to have the option of waiving certain information, for example in the case of the suitability report. The range of the information is also viewed critically by clients in this study. However, MiFID II does not provide flexibility with regard to a waiver. Such flexibility would be in the interest of the individual client and would ensure adequate investor protection. Particularly in the case of professional clients and eligible counterparties, many requirements are excessive and superfluous. A different level of protection must apply to these clients, and the existing requirements, such as those on cost information under Article 50 (1) MiFID II, are not sufficient to meet the wishes and needs for waivers in practice. In principle, investor protection must not lead to investors being patronised. Blanket regulations do not always do justice to the individual interests of clients.

The implementation costs and the ongoing costs of monitoring the compliance with regulatory requirements were and are enormous. This can also have an indirect impact on clients, as institutions adapt their strategy and long-term focusing. In particular, the high demands placed on advisory service are cost-intensive, which can lead investment firms to limit their range of products and services and concentrate on less complex products, as the advisory service effort is greater for complex products. This particularly affects retail clients, who invest smaller amounts than professional clients. However, this limits retail clients' access to the capital market. The goal of the Capital Market Union will not be achieved (see study by Ruhr University Bochum). Higher costs occurring with the investment firms can also have a negative impact on the costs to be borne by customers. Further information on costs can be found in the above-mentioned study.

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

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

1. Easier access to simple and transparent products

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

Question 32.1 Please explain your answer to question 32:

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

It is crucial to review and reduce overregulation of the past:

- MiFID II and the PRIIPs Regulation need to be harmonised with regard to cost information. It is virtually impossible to explain contradictory cost information on one and the same product to a client. This takes the underlying concept of cost information as a means of investor protection ad absurdum. The declared goal of the EU legislator to create more cost transparency is thus not fulfilled.
- The restrictive requirements for the provision of ex-ante cost information deter customers and finally lead to less customer participation in the capital market.
- It must also be easier to acquire financial instruments by using the Internet, telephone and fax – this is particularly important for customers in more rural areas.
- A mandatory provision of cost information prior to the execution of an order by telephone leads to dissatisfaction and lack of understanding among clients. In addition, clients currently have to put up with delays or receive information of similar types several times in the case of several purchases.
- The independent waiver of the provision of information (cost information, sales documents like KID and prospectus) by clients or the subsequent provision of this information at the request of the client is not possible.

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.

We are of the opinion that the existing requirements for the purchase of complex products adequately protect customers. In the context of investment advice, complex products may only be recommended to clients if they are suitable for them (Article 25(2) MiFID II). Even in the case of an “execution only” order, the product envisaged must be appropriate for the client (Article 25(3) MiFID II). Since individual knowledge and experience are relevant, individual clients are adequately protected. In principle, an “execution only” order is also possible if the product appears to be inappropriate, but in such cases clients are warned. Here, the regulatory goals of investor protection and autonomy are well-balanced.

However, we consider ESMA's assessment incorrect that all alternative investment funds ("AIFs") are obligatory complex without recourse to an individual complexity test (see ESMA MiFID II / MIFIR Investor Protection Q&A, Section 10, Question 1). ESMA refers to Recital 80 of MiFID II, according to which AIF "shares" are generally to be regarded as complex. However, this and the relevant rule in Art. 25(4)(a)(i) MiFID II, which explicitly mentions AIFs, only prevent shares in AIFs from being considered as non-complex solely because they are listed on a stock exchange. Otherwise, the legislator would not only have spoken of "shares in AIF" but – as elsewhere – of "shares or units in AIF". Moreover, the legislator would have structurally transformed this regime into a regime together with that applicable to UCITS and not into that applicable to listed shares. This is because listed shares in AIFs are in practice rather the exception than the rule.
In effect, the blanket classification is also inappropriate. The category of AIFs covers a wide variety of fund vehicles, ranging from strictly regulated and supervised mutual funds which differ from UCITS investment policies only in certain details (e.g. so called „Gemischte Sondervermögen“ under the German investment law (“Kapitalanlagegesetzbuch”)), to funds for professional investors which are not subject to investment restrictions (including hedge funds). In order to take account of this diversity and not to bring AIFs in a worse position than investment products without risk spreading and prudential supervision, but with issuer risks (e. g. equities), AIFs should have access to the complexity test under Art. 57 of the MiFID II Implementing Regulation. This would allow an individual classification based on the characteristics of the respective product.
In addition, ESMA uses the complexity classification which, under MiFID, is only relevant for the admissibility of the execution orders (execution only) (cf. Art. 25(4)(a) MiFID II) as a starting point for many other interpretations, such as the suitability guidelines, where investment firms have to examine equivalent products with regard to complexity. As a result, the – often highly volatile – share of a German Real Estate Investment Trust (REIT) which is not considered to be an AIF, just because as a share it is not complex per se, may be given preference in distribution over a unit or share in a diversified, supervised open-ended real estate fund.

The classification of products as complex at Level 1 should therefore be clarified in the sense that non-UCITS collective investment undertakings, albeit not per se non-complex, are subject to the individual complexity assessment according to Level 2.

2. Relevance and accessibility of adequate information

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

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

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

	Yes	No	N. A.

Professional clients and ECPs should be exempted without specific conditions.	◉	○	○
Only ECPs should be able to opt-out unilaterally.	○	○	◉
Professional clients and ECPs should be able to opt-out if specific conditions are met.	○	○	◉
All client categories should be able to opt out if specific conditions are met.	○	○	◉
Other	◉	○	○

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

5000 character(s) maximum

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

There should be no obligation to provide ex-ante cost information to eligible counterparties and professional clients. Such standardised cost information does not provide added value for these types of clients, as they either know the cost structure or request the information they need directly from their business partners. Retail clients should be given the opportunity to abstain from the ex-ante cost information. However, in order to take account of investor protection, it should not be possible for retail clients to waive this information generally, but only in the specific case of purchase. This must apply irrespective of the method of purchase (on-site, internet, telephone, etc.). Retail clients must be informed that investment firms are generally obliged to provide them with cost information and that the client must explicitly express his or her wish to waive this requirement. This must be documented by the investment firm.
However, we consider a limitation to cost information alone is too short-sighted at this point, so that we are extending our response to further obligations: With MiFID II, the legislator has extended many rules aiming at the protection of retail investors to professional investors. According to the memorandum to the EU Commission's draft legislation, this was prompted in particular by transactions in complex products conducted by local authorities and municipalities and by the idea that professional clients and eligible counterparties should also be provided with better information and documentation for the services they receive (see preamble of the EU Commission's legislative proposal on MiFID II Section 3.4.8, https://ec.europa.eu/transparency/regdoc/rep/1/2011/EN/1-2011-656-EN-F1-1.pdf). In addition to the classification of municipal and regional authorities as maximum professional clients “on request” (cf. Annex II.II of MiFID II), the level of protection for professional clients was equated with the level of protection for retail clients, which was strengthened by MiFID II, in many areas (such as reporting obligations and organisational requirements). But this general change in the level of protection does not do justice to practice and the wishes of investors. As a result, it leads to certain client groups or certain business areas being treated equally despite completely different business activities. Experience shows that it is necessary to take account of the different types of institutional investors.
Professional clients “per se” within the meaning of MiFID face investment firms or management companies which provide MiFID services as equal partners. These investors are not dependent on the law to provide detailed transparency requirements or rules of conduct. Rather, they themselves demand from the investment firm or the management company the information they need to fulfil their own obligations or which they consider necessary to evaluate their investments. This information is regularly tailored so specifically to the individual needs of investors that it provides more valuable information than can be required by law. As a consequence, these investors, like the management companies, perceive the standardised information under MiFID II as an additional administrative burden.

Professional clients find certain rules of conduct, which can be useful for inexperienced private clients, hindering. These include, for example, restrictions on the simulation of past performance in the context of client information (Art. 44 MiFID Implementing Regulation). This restriction is intended to prevent clients from being lured with a strategy that the investment firm has established based on the past performance of the financial instruments. This may be reasonable for private investors, but not for professional investors who themselves have a clear idea of investment strategies and demand concrete calculations from the investment firm or the management company in order to be able to discuss and evaluate them.
With eligible counterparties, MiFID II offers the possibility of a further gradation - but only as an option for Member States and only for certain services. For financial portfolio management and investment advice, MiFID II does not provide for any easing of obligations towards eligible counterparties. In practice, however, many of the detailed requirements for relations between professional market participants are perceived as extremely disruptive in their many daily transactions.
We therefore propose to significantly expand the gradation options for transactions with eligible counterparties. In any case, the existing facilitations should also apply to the services of investment advice and financial portfolio management, at least with the possibility to opt out.

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

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

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

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

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

Question 35.1 Please explain your answer to question 35:

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

From the aspect of sustainability and in light of the increasing importance of digital documents and the use of computers and smartphones, a reduction of paper-based information is to be welcomed. However, the changeover from the standard case "information of paper" to the standard case of "electronic provision" (other durable medium or website) to the possible abolishment of paper-based information documents should take place gradually and clients-oriented. A sufficiently long transitional period must be ensured.

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

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

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

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

The answer options are unclear from our point of view. For example, the question arises as to what is meant by a "general phase out".

Art. 3 MiFID II Delegated Regulation makes clear that the paper-based information has so far been regarded as the standard case. If the information is to be provided on a durable medium other than paper, the client must be explicitly given the choice of receiving the information in paper or on another durable medium and must explicitly choose the latter. The customer even has to give his explicit consent for the provision on a website.

These specifications no longer correspond to the current technical conditions and the wishes of the clients. Therefore, electronic provision (usually as a pdf document or (if practicable) on a webside) should be defined as the standard case in the future.

For those clients who wish to continue to receive the information in paper, this option must of course remain available. However, paper-based information should only be provided if the client explicitly requests so.

The question of a general abolishment of the provision of paper-based information within a fixed period of

time cannot be answered at present. We suggest to first redefine the standard case as proposed and to check after 5 years how it works in practice.

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.

The introductory remarks to the question point out that clients criticise the lack of comparability of cost information. However, the EU-wide database proposed here does not solve this problem, but would be counterproductive in terms of cost information.

A mere cross-product comparison of costs is not feasible due to the different concepts of financial instruments. Such a tool would be more likely to harm than benefit investors. Even if the cost factor is taken into account in the decision-making process, other criteria, such as the risk and return potential of the product, need to play a major role, especially for retail clients. However, this varies considerably between the different products. A focus on costs alone is therefore unlikely to do justice to investor protection. If a comparison is to be made via a database, it should be a qualitative comparison and not just a comparison of costs. In addition, given the diversity of existing information media (especially legal sales documents for PRIIPs and funds), there is also a risk of an "information overload". It is doubtful whether investors who do not use the information means that already exist today would consult another source of information. Thus, the creation of a further database in addition to the existing information media seems rather unsuitable. A sufficient distinction should also be made between the supervisory obligations of ESMA and the comparison portals already created by the market.

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

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

All products that have a PRIIPs KID/ UICTS KIID						
Only PRIIPs						
Other						

Question 38.1 Please explain your answer to question 38:

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

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

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

Question 39.1 Please explain your answer to question 39:

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

3. Client profiling and classification

MiFID II/MiFIR currently differentiates between retail clients, professional clients and eligible counterparties. In line with the procedure and conditions laid down in the Annex of MiFID II, retail clients can already “opt-up” to be treated as professional clients. Some stakeholders indicated that the creation of an additional client category (‘semi-professional investors’) might be necessary in order to encourage the participations of wealthy or knowledgeable investors in the

capital market. In addition, other concepts related to this classification of investors can be found in the draft Crowdfunding Regulation which further developed the concept of sophisticated investors[5].The CMU-Next group suggested a new category of experienced High Net Worth ("HNW") investors with tailor made investor protection rules[6].

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

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

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

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

Question 40.1 Please explain your answer to question 40:

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

A broad variety of different investors are covered by the term „retail client". These may be investors who have no or just little experience with the capital markets, others are experienced traders who observe the market continuously and know exactly what financial instruments they want to acquire, when and why. From the point of view of the latter group, recurring information of the same kind, such as cost information, is superfluous, creates unnecessary costs and can even be time-killing, e.g. in the telephone business. We therefore advocate for giving retail clients the freedom to decide whether they want to receive certain information or not. As we have already stated several times, we believe that investor protection should not mean restricting customers' freedom of choice too much.

In this context we would also like to point out that the obligations may be excessive not only towards retail clients, but also in relation to professional clients. How little the current MiFID II standards account for the practices and needs of business transactions between per se professional clients is particularly evident in the delegation of fund management functions. This concerns the contractual relationship between a fund management company that launches a fund and a financial portfolio manager that the management company commissions to manage the fund. According to the German Investment Law ("Kapitalanlagegesetzbuch"), the activity of the financial portfolio manager is classified as a service of (individual) portfolio management within the meaning of Article 4(1)(8) MiFID, which leads to a number of problems.

Since in the context of portfolio management rules of MiFID II facilitations do not apply to eligible counterparties, and many detailed requirements cannot be waived even by professional clients, the portfolio manager often has the same obligations to the management company as to private clients. This applies in particular to the information and reports to be provided under MiFID II, for which management companies

have no application. The exchange of information between the management company and the portfolio manager is stipulated in the outsourcing contract in accordance with the investment law requirements. The classification of the delegated fund management as a service of portfolio management within the meaning of MiFID also hinders the commissioning of service providers from third countries, to which the requirements for "reverse solicitation" in terms of MiFIR then apply. According to the interpretation of ESMA, it is de facto impossible in the context of reverse solicitation to offer investment advice for a fund portfolio ("advisory services") or to provide information about the range of services offered in third countries through group companies in the EU.
This makes it more difficult for management companies to make use of the available expertise for the management of funds with an investment focus on global markets or markets outside the EU (see Art 46 (5) subparagraph 3 MiFIR and ESMA Q&A On MiFID II and MiFIR investor protection and intermediaries topics, Section 13 Questions 1 – 3.

Furthermore, in this context we strongly advocate that the contractual relationship between a management company that launches a fund and a portfolio manager that the management company commissions to manage the fund under a delegation agreement pursuant to the national investment law should not be regarded as a service portfolio management within the meaning of MiFID. This should be made clear at Level I. UCITS Directive and AIFMD already provide comprehensive rules and conditions for delegation, in particular by stipulating that collective portfolio management may only be delegated to authorised and supervised financial market participants.

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.

See our answer to question 45.1
If a new client category is introduced, it would be feasible to align it with existing rules in other pieces of legislation. As already explained above, Art. 6 of the EuSEF Regulation and Art. 6 of the EuVECA Regulation contain requirements for clients that are situated between professional and retail clients. In our opinion, a minimum investment amount of 100,000 euros and a written declaration that the investor is aware of the risk associated with the envisaged commitment or investment serve as sufficient criteria for differentiation. Compliance with these criteria need to be checked in each individual case. In addition, as stipulated under question 45, a one-off suitability test could be introduced to classify semi-professional clients.
As explained in question 42.1, in addition or as an alternative to the introduction of a new client category of "semi-professional clients", a revision of the criteria for the classification of professional clients "on request" should be considered.
Paragraph II of Annex II to MiFID II sets out three criteria, two of which must be complied with in order to

classify a client as a professional client “on request“. These criteria have turned out to be problematic in practice in various ways:
Criterion 1:
“The client has carried out transactions in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters.”
In the case of illiquid assets, for example, it is nearly impossible to meet this criterion, so it is not suitable for the classification of a client as a professional client ”on request”.
Criterion 2:
“The size of the client’s financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500,000.”
We are of the opinion that the sum of EUR 500,000 should be lowered. Even a financial portfolio of EUR 200,000 is significantly higher than what an average retail investor would normally invest.
Criterion 3:
“The client work or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.”
The third criterion is clearly too narrow. There are a large number of clients who do not qualify as working in the "financial sector", but who undoubtedly have professional expertise equivalent to that. Family offices, pension funds, asset managers, corporate treasurers, municipal treasurers, pension funds and foundations, among others, should be given sufficient consideration here.
We therefore recommend extending the options of proving the necessary expertise. For example, the criterion could be supplemented with „… or has worked in fields that involve financial expertise for at least 3 years or has managed a portfolio of more than EUR 200.000 over the last five years or is holding an academic degree in economics or finance.”
In this context, we suggest revising the criteria for professional clients “per se“ (Paragraph I of Annex II to MiFID II).
Criterion 2 says: „Large undertakings meeting two of the following size requirements on a company basis: …. “
We propose replacing the term „undertakings“ with „entities“. Currently it is not clear whether all large entities would fall under this type of investors. This would e.g. clarify that large family offices would fall under this category.
Criterion 3 says: „National and regional governments, including public bodies that manage public debt at national or regional level…“
It is not clear why this should be limited to management of public debt. We propose to add the following: „National and regional governments, including public bodies and that manage public debt or funds at national or regional level…”
Criterion 4 says: “Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.”
The category is generally very broad, but due to the additional sentence it is unclear what type of investors could be covered. We suggest a clear threshold which would also cover e.g. large family offices. The wording of the criterion should be as follows: “Other institutional investors whose main activity is to invest in financial instruments, managing a portfolio of at least EUR 10 Million.”

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.

Certain institutional investors cover a very broad spectrum of clients. In the case of pension funds, foundations and family offices, for example, treatment as professional clients within the meaning of MiFID II would make sense under certain conditions, but they do not always meet the requirements for upgrading to a professional client “on request“. Furthermore, in the case of illiquid assets it is nearly impossible to carry out an average of 10 transactions of significant size per quarter over the preceding four quarters. The existing MiFID classification of clients into retail, professional and, where appropriate, eligible counterparties does not provide an adequate and satisfying level of flexibility. On the contrary, European requirements in the EuSEF and EuVECA Regulations already show that there is a need for further differentiation of investor types. A new category of a "semi-professional investor" would therefore be a possible solution. The classification of investors should be based on the requirements of the EuSEF/EuVECA Regulations. In any case, varying definitions in the different legal requirements must be avoided.
Alternatively, the requirements for professional clients “on request“ could be revised. In many cases, there is a concern that mistakes will be made in the process of upgrading to a professional client „on request“, leading to liability risks, as the criteria are not sufficiently clearly defined. For this reason, the possibility of upgrading is often not used, although it would also be in the interest of potentially professional clients “on request“. Pension funds, pension schemes, foundations and family offices should be able to be classified as professional clients “on request“. This could also be achieved by revising the existing criteria.

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

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

Please specify what other investor protection rules should be mitigated or adjusted for semi-professionals clients?

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

Question 43 is ambiguous. We understand it this way: How important is it to provide relief for semi-professional investors in the above-mentioned aspects?
Standardised information on costs and fees is of secondary relevance for semi-professional clients. In our understanding, semi-professional clients would be brought closer to the professional clients “on request“. In contrast to retail clients, there is no need for a standardised information on costs incurred, since semi-professional clients know the cost structures or can obtain the information, they need directly from their business partners. In addition, recurring cost information is an obstacle and delays the execution of client orders. Therefore, they are superfluous in relation to semi-professional investors (as well as to professional investors).
For the ex-ante cost information under Art. 50 MiFID II Delegated Regulation and the additional reporting obligations for portfolio management under Art. 62 (1) MiFID II Delegated Regulation, at least an opting-out mechanism should therefore be introduced so that semi-professional clients can decide for themselves what information they wish to receive.

Question 43.1 Please explain your answer to question 43:

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

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

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

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

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

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

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

5000 character(s) maximum

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

If a new client category is introduced, it would be feasible to align it with existing rules in other pieces of legislation. As already explained above, Art. 6 of the EuSEF Regulation and Art. 6 of the EuVECA Regulation contain requirements for clients that are situated between professional and retail clients. In our opinion, a minimum investment amount of 100,000 euros and a written declaration that the investor is aware of the risk associated with the envisaged commitment or investment serve as sufficient criteria for differentiation. Compliance with these criteria need to be checked in each individual case. In addition, as stipulated under question 45, a one-off suitability test could be introduced to classify semi-professional clients.

As explained in question 42.1, in addition or as an alternative to the introduction of a new client category of "semi-professional clients", a revision of the criteria for the classification of professional clients “on request“ should be considered.

Paragraph II of Annex II to MiFID II sets out three criteria, two of which must be complied with in order to classify a client as a professional client “on request“. These criteria have turned out to be problematic in practice in various ways:

Criterion 1:

“The client has carried out transactions in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters.”

In the case of illiquid assets, for example, it is nearly impossible to meet this criterion, so it is not suitable for the classification of a client as a professional client ”on request”.

Criterion 2:

“The size of the client’s financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500,000.”

We are of the opinion that the sum of EUR 500,000 should be lowered. Even a financial portfolio of EUR 200,000 is significantly higher than what an average retail investor would normally invest.

Criterion 3:

“The client work or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.”

The third criterion is clearly too narrow. There are a large number of clients who do not qualify as working in the "financial sector", but who undoubtedly have professional expertise equivalent to that. Family offices, pension funds, asset managers, corporate treasurers, municipal treasurers, pension funds and foundations, among others, should be given sufficient consideration here.

We therefore recommend extending the options of proving the necessary expertise. For example, the criterion could be supplemented with „… or has worked in fields that involve financial expertise for at least 3 years or has managed a portfolio of more than EUR 200.000 over the last five years or is holding an academic degree in economics or finance.”

In this context, we suggest revising the criteria for professional clients “per se“ (Paragraph I of Annex II to MiFID II).

Criterion 2 says: „Large undertakings meeting two of the following size requirements on a company basis: …. “

We propose replacing the term „undertakings“ with „entities“. Currently it is not clear whether all large entities would fall under this type of investors. This would e.g. clarify that large family offices would fall under this category.

Criterion 3 says: „National and regional governments, including public bodies that manage public debt at national or regional level…“
It is not clear why this should be limited to management of public debt. We propose to add the following: „National and regional governments, including public bodies and that manage public debt or funds at national or regional level…”
Criterion 4 says: “Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.”
The category is generally very broad, but due to the additional sentence it is unclear what type of investors could be covered. We suggest a clear threshold which would also cover e.g. large family offices. The wording of the criterion should be as follows: “Other institutional investors whose main activity is to invest in financial instruments, managing a portfolio of at least EUR 10 Million.”

4. Product Oversight, Governance and Inducements

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

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

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

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

Question 46.1 Please explain your answer to question 46:

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

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

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

Question 47.1 Please explain your answer to question 47:

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

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

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

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

Question 48.1 Please explain your answer to question 48:

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

The possibility of distribution in the negative target market should be maintained, as this allows greater account to be taken of individual investor interests and wishes. A target market can only ever be defined in abstract terms. However, as already explained, there are also major differences within the various client categories, especially if a private customer, due to his knowledge and experience, comes very close to the group of professional clients. Clients should be able to make their own decisions about their investments, taking into account sufficient information and advice from distributors. Distribution in the negative target market safeguards this freedom of decision.

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

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

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

Question 49.1 Please explain your answer to question 49:

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

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

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

- (•) 1 - Disagree
- 2 - Rather not agree

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

Question 50.1 Please explain your answer to question 50:

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

The background for this approach is the assumption that commission-based investment advice is of poorer quality than fee-based investment advice (in the Consultation so-called independent investment advice) because the commissions paid to the advisor may lead to a conflict of interest. We do not share this view; on the contrary, both advisory models must continue to coexist.
An investment advice is not automatically better just because it is paid with a fee instead of a commission. The idea of strengthening fee-based investment advice stems from a time when it was not sufficiently clear to clients where and which commissions flow. As a result of the new disclosure requirements introduced by MiFID II, the type and amount of commissions are now clearly presented to the clients so that they can make their decisions freely in the knowledge of this. It goes without saying that the interests of the client are also taken into account by the advisor in any commission-based investment advice: on the one hand, this is stipulated in Art. 27 MiFID II Delegated Regulation in conjunction with Art. 16, 23 and 24 MiFID II; on the other hand, the advisor also has an interest on her or his own in advising the clients in line with their interests because after all she/he wants the client to come back. Furthermore, „fee-based advisors“ are not free of conflicts of interest. For example, an advisor might restructure a portfolio because he or she can generate additional fee-based advice.
Clients should be free to decide which type of investment advice they wish to make use of. The fact that clients often do not want to receive investment advice on a fee basis is not recognised. In Germany for example the demand of this type of investment advice as an alternative is very low. If one type is abolished in order to promote the other, clients are deprived of their freedom of choice. Here too, however, it is true that clients being patronised does not equal protection of clients.
Commission-based investment advice can be very beneficial for retail investors, particularly for those with smaller amounts of money. Since commissions are based on the investment amount, the advice can be offered to investors with small amounts as well as to investors with higher amounts – on average, this makes economic sense for the advisor. With fee-based investment advice, on the other hand, it is to be expected that advisors will concentrate on wealthy clients and that access to advice for less wealthy clients will therefore be cut off. From the point of view of many clients, fee-based investment advice is also likely to be extremely expensive in relation to the concrete investment amount, because the calculated fee is not based on the investment amount.
It is to be feared that retail investors with smaller amounts will no longer make use of an investment advice service of their own accord. This would counteract one of the objectives of the CM, namely to facilitate access to the markets for all clients. Retail investors might be tempted to invest money by way of execution-only instead of following individual advice tailored to their needs. This entails a considerable risk, especially for inexperienced investors.
These assumptions are supported by the Final Report of the Financial Advice Market Review of the FCA published in March 2016. For example:
„However, advice is expensive and is not always cost-effective for consumers, particularly
those seeking help in relation to smaller amounts of money or with simpler needs.“ (p. 5)
„Additionally, the costs of supplying face-to-face advice are significant, meaning most firms are unable to provide advice at a price many consumers would consider reasonable. As a result, many consumers who want to receive this kind of support are left without it unless they are able and willing to pay for advice.“ (p. 6)

The report shows that fee-based investment advice does not solve but also creates new problems. Commission-based investment advice also offers another advantage: Clients can obtain advice from different advisors several times without incurring additional costs. Clients who have to pay a fee would certainly not do that. In addition, clients can decide against an investment after receiving advice without incurring any costs.
Abolishment of commission-based investment advice would also create a further distortion of competition compared with insurance distribution regulation, where commission-based advice is still permitted - even under less stringent regulatory conditions than under MiFID II.
The coexistence of commission-based investment advice and fee-based investment advice is proven and tested, creates choice for clients and ensures that all clients have access to high-quality investment advice. Knowing all the costs involved, the mature investor can decide which type of investment advice he/she wants to take advantage of. We therefore expressly oppose a ban on commission-based investment advice.

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

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

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

Question 51.1 Please explain your answer to question 51:

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

Already today in Germany the staff of investment firms providing investment advice and other relevant information have to complete a bank or insurance-related vocational education or academic studies and are subject to ongoing training and qualification requirements. In Germany, therefore, the staff must already meet certain qualifications; an additional certificate is not necessary. Supervision is carried out by the National Competent Authority BaFin.
We do not see any need for an EU-wide framework for a uniform certification, neither do we see any benefit. A test or exam can be very superficial, then such a certification would have no added value. An in-depth exam, on the other hand, makes only limited sense: although the same legal framework conditions apply within Europe, there are differences in the Member States. Open-ended real estate funds can be mentioned as an example for the German market. These funds, which are in strong demand in Germany, play a subordinate role in other EU member states. Hence, the focus of the necessary qualifications of the staff providing investment advice and other relevant information can vary greatly within the EU.

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.

See our answer to question 51.1.
Already today in Germany the staff of investment firms providing investment advice and other relevant information have to complete a bank or insurance-related vocational education or academic studies and are subject to ongoing training and qualification requirements. In Germany, therefore, the staff must already meet certain qualifications; an additional certificate is not necessary. Supervision is carried out by the National Competent Authority BaFin.
We do not see any need for an EU-wide framework for a uniform certification, neither do we see any benefit. A test or exam can be very superficial, then such a certification would have no added value. An in-depth exam, on the other hand, makes only limited sense: although the same legal framework conditions apply within Europe, there are differences in the Member States. Open-ended real estate funds can be mentioned as an example for the German market. These funds, which are in strong demand in Germany, play a subordinate role in other EU member states. Hence, the focus of the necessary qualifications of the staff providing investment advice and other relevant information can vary greatly within the EU.

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.

See also our answer to question 31.1. In the case of distance communication, it should be possible to provide the cost information retrospectively. This applies mainly to telephone orders, but also to orders by letter or fax.
ESMA has already included the case of an order by telephone in the Q&A on MiFID II and MiFIR investor protection and intermediaries topics, Section 9, Question 28, 29 May 2019. A corresponding provision should be made at Level 1.
Clients use the telephone precisely because an order can be placed and executed in a relatively short time. Thus, for example, conversations are also possible when clients are on the road. Since the time delays caused by the prior provision of cost information are sometimes enormous, the retrospective provision should not be regulated too restrictively. Of course investment firms should inform their clients that they are generally obliged to provide the cost information before executing an order. However, clients should be given the opportunity to decide whether they wish to receive the cost information before or after the order is executed. For reasons of legal certainty, this must in principle be the case, regardless of the financial instrument in question or whether a client has provided an e-mail address or has an electronic mailbox to receive information. If the client wishes so, the information can also be provided orally. The client's decision as to whether he wishes to have the information made available subsequently must be documented.
In cases where a specific order is received by letter, e-mail or fax, it is not necessary to provide the ex-ante cost information. The client has already made his investment decision and has not given the investment firm the opportunity to provide him or her with the cost information before placing the order.
This is already common practice in Germany and is also represented by the German supervisory authority BaFin with regard to the provision of the legal sales documents under the German investment law (“Kapitalanlagegesetzbuch”) set (https://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/FAQ/faq_kagb_vertrieb_erwerb_130604.html, see no. 3.2).

Beyond the possibility of the retrospectively provision, however, we are also of the opinion that a client must be able to completely waive the cost information, among other things (see also question 34).

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.

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.

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

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

Question 56.1 Please explain your answer to question 56:

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

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.

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

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

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

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

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

The asset management industry has implemented the unbundling rules introduced by MiFID II with considerable cost and efforts. As a result, the research budgets of asset management companies have been cut, the scope of research has been narrowed and the sell-side has adjusted its research offering. One aspect is that rules for passing on research costs to the client are unduly complicated. There is growing market consensus that equity research focuses on liquid stocks in indices with high trading volumes. In contrast, banks and securities firms are reducing their research on small caps. As a result, financing conditions on the capital market will deteriorate forwards, especially for SME.
For fixed-income research, which in terms of volume only accounts for a fraction of the volume of equity research anyway, and which is not remunerated via transaction costs due to the spread pricing customary in the market, the application of the unbundling rules has only led to additional costs for asset managers. Asset managers now have to make additional payments beyond the spread, without the latter having been reduced by the research cost share. In effect, banks and investment firms have only received a new source of income.
The EU should therefore review the unbundling rules focusing on market practice how research costs are allocated and ensure appropriate research coverage on SME as well as exempting bond research.

Research coverage of SME could be improved in particular by issuer sponsored research. Regulatory barriers to such research should be reduced as much as possible. BVI and other associations together with the local stock exchange produced educational material on issuer sponsored research already back in 2017 which is available at: https://www.dvfa.de/fileadmin/downloads/Verband/MiFID_II /Market_Trends_MiFID_II_und_Research.pdf

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

1. Increase the production of research on SMEs

1.1. EU Rules on research

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

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

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

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Introduce a specific definition of research in MiFID II level 1	○	○	○	◉	○	○
Authorise bundling for SME research exclusively	○	○	○	◉	○	○
Exclude independent research providers' research from Article 13 of delegated Directive 2017 /593	○	○	○	◉	○	○
Prevent underpricing in research	○	◉	○	○	○	○
Amend rules on free trial periods of research	○	◉	○	○	○	○
Other	○	○	○	○	○	○

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

5000 character(s) maximum

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

Research coverage of SME could be improved in particular by issuer sponsored research. Regulatory barriers to such research should be reduced as much as possible. BVI and other associations together with the local stock exchange produced educational material on issuer sponsored research already back in 2017 which is available at: https://www.dvfa.de/fileadmin/downloads/Verband/MiFID_II /Market_Trends_MiFID_II_und_Research.pdf

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 If you do consider that a program set up by a market operator to finance SME research would improve research coverage, please specify under which conditions such a program could be implemented:

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

For a possible example, see the provision of SME research by Scale, the SME segment of Deutsche Börse.

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

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

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

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

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

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

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

Question 64.1 Please explain your answer to question 64:

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

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

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

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

Question 65.1 Please explain your answer to question 65:

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

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

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

Question 66.1 Please explain your answer to question 66:

5000 character(s) maximum

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

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

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

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

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

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

Question 68.1 Please explain your answer to question 68:

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

IV. Commodity markets[8]

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

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

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

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

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

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

	1	2	3	4	5	

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

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

Quantitative elements for question 69.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 69.1:

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

1. Position limits for illiquid and nascent commodity markets

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

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

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

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

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

Question 71.1 Please explain your answer to question 71:

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

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

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

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

Question 72.1 Please explain your answer to question 72:

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

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

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

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

Question 73.1 Please explain your answer to question 73:

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

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

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

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

Question 74.1 Please explain your answer to question 74:

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

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

	Yes	No	N.A.
A financial counterparty belonging to a predominantly commercial group that hedges positions held by a non-financial entity belonging to the same group	○	○	○
A financial counterparty	○	○	○
Other	○	○	○

Question 75.1 Please explain your answer to question 75:

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

2. Pre-trade transparency

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

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

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

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

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

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

V. Derivatives Trading Obligation[9]

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

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

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

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

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

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

Quantitative elements for question 77.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 77.1:

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

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

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

Question 78.1 Please explain your answer to question 78:

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

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

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

Question 79.1 Please explain your answer to question 79:

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

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

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

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

Question 80.1 Please explain your answer to question 80:

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

VI. Multilateral systems

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

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

/MiFIR should therefore take a more functional approach and define the operation of a trading facility in broader terms than the current definition of trading venues or multilateral system as to encompass these systems and ensure fair treatment for market players.

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

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

VII. Double Volume Cap[10]

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards the objective of more transparency in share trading.						

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

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

Quantitative elements for question 82.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 82.1:

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

We suggest the removal of the DVC mechanism as it is a burdensome regulation that failed to provide significant improvement for lit market trading. The mechanism does not result in positive outcomes for end-users nor improved price formation and contributes to complexity in European market structure.

VIII. Non-discriminatory access[11]

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

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

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

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

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

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

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

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

- Don’t know / no opinion / not relevant

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

Please explain your reasoning and specify which countries:

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

IX. Digitalisation and new technologies

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

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

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

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

Please explain your answer:

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

The introduction of services based on distributed leger technology (DLT) / Blockchain will certainly have a significant impact on the current market structure and value chain. The potential of DLT applications allows us to rethink the existing financial market ecosystem. While today certain market participants (e.g. CSD) provide benefits for the market, in a DLT ecosystem those functions will change, and certain roles might become obsolete. In this context we provided feedback to the EC consultation on a framework for markets in crypto-assets.

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.

EU law should at least provide for some minimum of harmonization of contract and securities laws to facilitate the issuance of digital financial instruments by, inter alia, prohibiting paper-based financial instrument requirements or physical registration requirements with e.g. a notary public or land registers in the medium term to allow for fully digitalized value chains. The definition of ‘financial instruments’ should consider crypto-assets. The EU should insure that standards for crypto-token are sufficiently detailed to allow for clear identification of tokens which represent “financial Instruments”, “deposits”, “currencies” or other investment categories mentioned in EU financial services regulation.

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

Please explain your answer:

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

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

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

Question 89.1 Please explain your answer to question 89:

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

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

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

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

Question 90.1 Please explain your answer to question 90:

5000 character(s) maximum

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

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

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

Question 91.1 Please explain your answer to question 91:

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

X. Foreign exchange (FX)

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

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

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

Question 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 strongly believe that the current regulatory framework is adequately calibrated to prevent misbehaviour in the area of spot FX transactions. Therefore, we do not consider it as necessary to extend the scope of MiFID/MiFIR to spot FX transactions. Instead, we support the usage of the FX Global Code of Conduct in the FX market as the code is designed to promote a fair, liquid, open and transparent foreign exchange market. Some or our members implemented the Code or are in an advanced status of implementation. The past incidents of misbehaviour in the FX market were largely driven by FX traders within sell-side banks. Buy-Side firms were not involved in misbehavior within the FX spot market.

The Buy-Side was initially of the opinion that the Code should be mainly implemented by credit institutions and broker/dealers. Therefore, at the beginning of the creation of the FX Code, the active involvement of the Buy-Side was low. However, more and more (EU) Buy Side firms have actively engaged, implemented the Code and have already signed the adherence to the Code. We believe that more Buy Side engagement in the reform of the Code is strongly necessary. However, in any case, we see the need to amend the Code at least under the upcoming review of the Code in 2020 by the Global FX Committee.

Concerning the current version of the code, there is a feeling within the Buy Side that there was not enough feedback sought from this important part of the market and that the code was largely put together with other market participants. This should be rectified within the Code Refresh. We suggest that the Refresh should have an overarching set of principles that all market participants sign up to and then develop sections for each relevant sector of the market e.g. Sell Side, Buy Side, ELP, Corporate etc. Furthermore, relevant sectors could be additionally flagged for implementation by the relevant market participants. Such suggestions could further increase Buy Side industry adoption and enhance legal certainty which requirements each sector needs to implement. Until now it is not clear for market participants what signing to the code means, i.e. tenor, what attestation to the current version means when a Refresh/new Code is brought out, i.e. are you automatically attesting, do you need to re-attest, what happens if you don’t agree /wish to/cannot currently attest to.

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.

Please see our answer to question 92.1. We do not consider it as necessary to grant national competent authorities with further supervisory tools to address some form of misbehaviour within the FX spot market. Instead, we support the usage of the FX Global Code of Conduct in the FX market as the code is designed to promote a fair, liquid, open and transparent foreign exchange market. Furthermore, the Buy-Side adherence rate to the FX Global Code will further improve over the time as more and more market participants will require the usage of the Code as a prerequisite to conclude FX spot transactions globally.

Section 3. Additional comments

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

Please, where possible, include examples and evidence.

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

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

Please explain your answer:

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

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

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

Useful links

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)
More on this consultation (https://ec.europa.eu/info/publications/finance-consultations-2020-mifid-2-mifir-review_e
Specific privacy statement (https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en)
Consultation document (https://ec.europa.eu/info/files/2020-mifid-2-mifir-review-consultation-document_en)

Contact

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