

# Reply form: MiFIR Review

**Technical Standards related to Consolidated Tape Providers and DRSPs, and assessment criteria for the CTP selection procedure**

## Responding to this paper

ESMA invites comments on all matters in the Consultation Paper and in particular on the specific questions in this reply form. Comments are most helpful if they:

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

ESMA will consider all comments received by **28 August 2024**.

## Instructions

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

- Insert your responses to the questions in the Consultation Paper in this reply form.
- Please do not remove tags of the type <ESMA\_QUESTION\_CP2\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA\_CP2\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP2\_ABCD.

- Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

## **Publication of responses**

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

## **Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings 'Legal notice' and heading '[Data protection](#)'.

## 1. General information about respondent

|                                      |   |
|--------------------------------------|---|
| Name of the company / organisation   | German Investment Funds Association BVI |
| Activity                             | Investment Services                     |
| Are you representing an association? | <input checked="" type="checkbox"/>     |
| Country/Region                       | Germany                                 |

## 2. Questions

### Section 3 – RTS on input and output data of CTPs:

**Q1: Do you agree with grounding the assessment framework of the quality of transmission protocols on the identified categories of technical criteria?**

<ESMA\_QUESTION\_CP2\_1>  
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**Q2: Do you believe that additional categories of technical criteria should be considered for the definition of minimum requirements of the quality of transmission protocols?**

<ESMA\_QUESTION\_CP2\_2>  
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 <ESMA\_QUESTION\_CP2\_2>

**Q3: Do you agree with the proposal of introducing a single set of requirements across the three asset classes (equity, bonds, derivatives), or do you believe that different requirements should be tailored for each asset class?**

<ESMA\_QUESTION\_CP2\_3>  
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 <ESMA\_QUESTION\_CP2\_3>

**Q4: Do you consider that the proposed minimum requirements for the technical criteria related to performance are technically feasible, coherent with the objective of high-quality**

**data transmission to the CTP and in line with international standards? Please elaborate your response.**

<ESMA\_QUESTION\_CP2\_4>  
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<ESMA\_QUESTION\_CP2\_4>

**Q5: Do you consider that the proposed minimum requirements for the technical criteria related to reliability are technically feasible, coherent with the objective of high-quality data transmission to the CTP and in line with international standards? Please elaborate your response.**

<ESMA\_QUESTION\_CP2\_5>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_5>

**Q6: Do you consider that the proposed minimum requirements for the technical criteria related to security are technically feasible, coherent with the objective of high-quality data transmission to the CTP, and in line with international standards and other EU regulatory frameworks on information security (e.g. DORA)? Please elaborate your response.**

<ESMA\_QUESTION\_CP2\_6>  
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<ESMA\_QUESTION\_CP2\_6>

**Q7: Do you consider that the proposed minimum requirements for the technical criteria related to compatibility are technically feasible, coherent with the objective of high-quality data transmission to the CTP and in line with international standards? Please elaborate your response.**

<ESMA\_QUESTION\_CP2\_7>  
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<ESMA\_QUESTION\_CP2\_7>

**Q8: Do you agree with the proposed definition of “transmission of data as close to real time as technically possible”? If not, please explain.**

<ESMA\_QUESTION\_CP2\_8>

Art 7da (2) and 27h (19 (d) MiFIR require the CTP to disseminate core market data and regulatory data to users as a continuous electronic data stream on non-discriminatory terms as close to real time as technically possible. Article 27h (2) (b) says that CTPs shall adopt, publish on their website, and regularly update service level standards covering modes and speed of delivery of consolidated market data to users. BVI has maintained throughout the MiFIR debate that the buy-side can accept a latency of up to one 1 second for the dissemination of the equity and ETF CTP data to users and a longer period up to 1 minute for the bond and derivative CTP data after the data is received as close to real time as technically possible from the data contributors. The buy-side does not expect the equity/ETF consolidated tape to replace direct data feeds used by buy-side traders. The CT will be a valued complement to facilitate trades and help inform trading decisions. As such, we do not need a low latency tape. The buy-side believes that a low latency tape will needlessly drive up costs, without adding value or increasing the attractiveness of the tape. In fact, many buy-side systems, e.g. Profidata, are not set up to ingest or update data that is arriving more often than at 250 millisecond intervals. Also research by Microsoft Azure suggests that the transmission of data latency in the cloud within various Western EU trading venues is between 10 and 30 Milliseconds (MS), and to / from the USA is at about 80 to 100 MS. As the tape information gathering will be already slowed down by the cloud latency we do not see the need for a low latency (e.g. 10 MS) distribution of CTP data to users. Therefore any CTP offer to set up a low latency tape would need to be offered at a higher technology cost which in turn reduce acceptance of this CTP in the marketplace. Lower acceptance and corresponding user numbers will ultimately lead to a call for introduction of mandatory consumption of the CTP offer with the next MiFIR reform, as stated by FESE DG Rainer Riess as quoted in Politico on 1 June 2023.

**Mandatory consumption:** Still, the FESE director general said the numbers might stack up if the Commission was to pursue mandatory consumption — forcing fund managers and others to pay for the tape. “Then, I would start believing some of the numbers the Commission is putting out,” he added.

On the bond CTP side, we are sure that competition by APA/ARMs will lead the CTP to disseminate core market data and regulatory data to users as close to real time as technically possible, especially as bond data needs to be made available after 15 minutes for free by the CTP competitors which forces the bond CTP to distribute high quality data as fast as possible if it wants to make a viable offer.

We are not in a position to comment on the speed of data from the data contributors, and that of the CT itself, but we can comment on the overall speed of delivery. We do believe that the time from the trading venue matching engine (or OTC equivalent) to publication by the CT can be between 250 milliseconds to 1 second, both for pre-trade and post-trade data.

<ESMA\_QUESTION\_CP2\_8>

### **Q9: Should ESMA consider specific rules for real-time transmission of transactions subject to deferred publication?**

<ESMA\_QUESTION\_CP2\_9>

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<ESMA\_QUESTION\_CP2\_9>

**Q10: Do you agree with the baseline proposal of adopting JSON as standards and format of data to be transmitted to the CTPs, or do you prefer alternative proposals? Please justify your answer and, if needed, provide additional advantages and disadvantages related to each proposal.**

<ESMA\_QUESTION\_CP2\_10>

Given the different properties of shares, ETF, bonds and derivative instruments, and the likelihood that there will not be a single CTP provider for all three CTs, we agree to more than one “format” for the data exchange between the data sources and the CTPs. However, while we as long standing supporters of the ISO 20022 messaging standard have a preference for the ISO XML and JSON formats, we propose that the CTP does not necessarily establish one “format” but establishes one or more joint data transmission standards that refer to lists of properties rather than any specific data transmission or schema and taxonomy formats for several reasons. Firstly, any data transmission or schema and taxonomy format data standards with all the properties of the CTP standards would satisfy all the CTP processing requirements. Second, data transmission or schema and taxonomy formats that have these properties are likely to be interoperable with each other. Interoperability is an important consideration for the CTP operation. Finally, under this approach, the CTP could take in new open-source file formats as they are developed, and maintain consistency with the CTP joint standards, provided that the new formats have the listed properties; the CTP data transmission rules would not need to be amended to specify new formats.

<ESMA\_QUESTION\_CP2\_10>

**Q11: Do you believe that the proposed standards and formats (baseline and any alternatives) are coherent with other CTP requirements (transmission protocols, real-time transmission and presentation of output data)? Please justify your answer.**

<ESMA\_QUESTION\_CP2\_11>

Please note our answer to question 10.

<ESMA\_QUESTION\_CP2\_11>

**Q12: Do you find more suitable to prescribe one single format across the 3 CTPs (equity, derivatives, bonds) or to prescribe distinct formats according for different asset classes?**

<ESMA\_QUESTION\_CP2\_12>

Please note our answer to question 10

<ESMA\_QUESTION\_CP2\_12>

**Q13: Do you support the proposals on core and regulatory data? In particular, are there other relevant fields to be added to the regulatory data? Furthermore, would you propose the inclusion of supplementary fields for input core market data beyond those intended for dissemination by the CTP?**

<ESMA\_QUESTION\_CP2\_13>  
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**Q14: Do you support the proposal of machine-readable and human-readable formats outlined in this section?**

<ESMA\_QUESTION\_CP2\_14>  
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<ESMA\_QUESTION\_CP2\_14>

**Q15: Do you agree with the proposal of data quality measures and enforcement standards for input data?**

<ESMA\_QUESTION\_CP2\_15>  
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<ESMA\_QUESTION\_CP2\_15>

**Q16: Do you agree with the proposal of data quality measures for output data?**

<ESMA\_QUESTION\_CP2\_16>  
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<ESMA\_QUESTION\_CP2\_16>

#### **Section 4 – RTS on the revenue distribution scheme of CTPs:**

**Q17: On the basis of the issue presented in the above paragraph, what do you think is the right approach to identify a trading venue and group? How could a trading venue and a group be identified? How should the links with investment firms be determined?**

<ESMA\_QUESTION\_CP2\_17>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_17>

**Q18: Do you agree with the above assessment? If not, please explain.**

<ESMA\_QUESTION\_CP2\_18>  
TYPE YOUR TEXT HERE



<ESMA\_QUESTION\_CP2\_18>

**Q19: For the identification of the venue of first admission to trading, do you prefer option (A) use of FIRDS, option (B) the CTP collects the relevant information itself? Please explain and provide any alternative option you consider more appropriate.**

<ESMA\_QUESTION\_CP2\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_19>

**Q20: Do you agree that a flag indicating that the transaction was subject to an LIS waiver should be information to be sent to (but not published by) the CTP? If not, please explain.**

<ESMA\_QUESTION\_CP2\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_20>

**Q21: Could the determination of the pre-trade volume be done differently by the CTP (e.g. proxy this volume with the pre-trade data received) but at the same time sufficiently accurately? If yes, please explain.**

<ESMA\_QUESTION\_CP2\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_21>

**Q22: Do you agree that the methodology to distribute the revenues should require the conversion of the values into percentages? If not, please explain.**

<ESMA\_QUESTION\_CP2\_22>

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<ESMA\_QUESTION\_CP2\_22>

**Q23: Do you agree with the transactions to include and exclude for the determination of the volume for criteria #1 and #2? If not, please explain.**

<ESMA\_QUESTION\_CP2\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_23>

**Q24: What would be your view on the frequency of redistribution? Which issues do you foresee in the redistribution process? How could those issues be solved? Please explain.**

<ESMA\_QUESTION\_CP2\_24>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_24>

**Q25: Do you agree with the proposed timeline for the update of the list of data contributors and the identified issues? How could the issues be solved? Please explain.**

<ESMA\_QUESTION\_CP2\_25>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_25>

**Q26: What would be your view on the issues for the first year of operations of the CTP? How could those issues be solved? Please explain.**

<ESMA\_QUESTION\_CP2\_26>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_26>

**Q27: Do you agree with ESMA preferred proposal to set the weights of the revenue redistribution scheme to 4.5, 4.0 and 1.5 for the small trading venue criterion, the young instruments criterion and the transparent instruments criterion, respectively? If not, please explain.**

<ESMA\_QUESTION\_CP2\_27>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_27>

**Q28: Would you consider appropriate that the weight (percentages) sum to 10 (100%)? If not, please explain and provide your alternative proposal for the weights (percentages).**

<ESMA\_QUESTION\_CP2\_28>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_28>

**Q29: Do you agree with the proposed (i) frequency of the determination of the weights (ii) timing of determination of the weights (iii) timing of application of the weights? If not, please explain.**

<ESMA\_QUESTION\_CP2\_29>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_29>

**Q30: Do you agree with the proposed text? Have you identified any missing points or issues?**

<ESMA\_QUESTION\_CP2\_30>  
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<ESMA\_QUESTION\_CP2\_30>

**Q31: Do you agree with ESMA's proposal on the criteria for a potential suspension of redistribution in case of serious and repeated breach by the CTP? If not, which alternative or/and additional criteria would you consider relevant?**

<ESMA\_QUESTION\_CP2\_31>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_31>

**Q32: Do you agree with ESMA's proposal on the procedure for the suspension and the resumption of redistribution? If not, which alternative approach would you consider suitable?**

<ESMA\_QUESTION\_CP2\_32>  
Additionally, the CTP should regularly publish reports on the data quality of the various data contributors to increase public pressure on them to improve data quality at each contributor and both the obligatory (equity and ETF CTP) and voluntary (Bond CTP) revenue distribution schemes should exclude any data contributor with identified data quality issues from receiving any part in the CTP revenues.  
<ESMA\_QUESTION\_CP2\_32>

**Q33: Do you agree with ESMA's proposal on the timing of the procedure for the suspension and the resumption of redistribution? If not, which alternative approach would you consider suitable?**

<ESMA\_QUESTION\_CP2\_33>  
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<ESMA\_QUESTION\_CP2\_33>

**Q34: Do you agree with ESMA’s proposal regarding a one-week timeframe for data contributors to furnish evidence of non-breaches? If you disagree, could you suggest an alternative approach that you find appropriate?**

<ESMA\_QUESTION\_CP2\_34>  
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<ESMA\_QUESTION\_CP2\_34>

**Q35: Do you agree with ESMA’s expectation on the notification to be made by the CTP to the competent authority of the data contributor once a suspension has been triggered?**

<ESMA\_QUESTION\_CP2\_35>  
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<ESMA\_QUESTION\_CP2\_35>

**Q36: Do you agree with ESMA’s proposal on the approach to the retained revenue? In your view, which rate should apply to compound the interest on retained revenue?**

<ESMA\_QUESTION\_CP2\_36>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_36>

## **Section 5 – RTS on the synchronisation of business clocks**

**Q37: Do you agree with the proposed approach on synchronisation to reference time? If not, please explain.**

<ESMA\_QUESTION\_CP2\_37>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_37>

**Q38: Do you support a timestamp granularity of 0.1 microseconds for operators of trading venues whose gateway-to-gateway latency is smaller than 1 millisecond? If not, please explain. Would you argue for an even smaller granularity? If yes, please explain.**

<ESMA\_QUESTION\_CP2\_38>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_38>

**Q39: Do you support the proposed approach on the level of accuracy for trading venue members, participants or users? If not, please explain.**

<ESMA\_QUESTION\_CP2\_39>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_39>

**Q40: Do you agree with the proposed approach on traceability to UTC? If not, please explain.**

<ESMA\_QUESTION\_CP2\_40>  
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<ESMA\_QUESTION\_CP2\_40>

**Q41: Do you agree with the proposed accuracy levels for APAs, SIs, DPEs and CTPs? If not, please explain.**

<ESMA\_QUESTION\_CP2\_41>  
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<ESMA\_QUESTION\_CP2\_41>

**Q42: Do you think that more stringent requirements should be set for SIs compared to DPEs considering they have pre-trade transparency obligations? If not, please explain.**

<ESMA\_QUESTION\_CP2\_42>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_42>

## **Section 6 – RTS/ITS on the authorisation and organisational requirements for DRSPs**

**Q43: Do you agree with the approach proposed by ESMA?**

<ESMA\_QUESTION\_CP2\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_43>

**Q44: Do you agree to include new authorisation provisions on ownership structure and internal controls for APAs and ARMs?**

<ESMA\_QUESTION\_CP2\_44>

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<ESMA\_QUESTION\_CP2\_44>

**Q45: Do you have any further comments or suggestions on the draft RTS? Please elaborate your answer.**

<ESMA\_QUESTION\_CP2\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_45>

**Q46: Do you agree with the approach proposed by ESMA?**

<ESMA\_QUESTION\_CP2\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_46>

**Q47: Do you foresee specific conflicts of interests that may arise between (i) CTP and data contributors and (ii) CTP and clients and users?**

<ESMA\_QUESTION\_CP2\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_47>

**Q48: What other elements, if any, should be included in the RTS on authorisation of CTPs?**

<ESMA\_QUESTION\_CP2\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_48>

**Q49: What other elements, if any, should be included in the RTS on authorisation of CTPs?**

<ESMA\_QUESTION\_CP2\_49>  
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<ESMA\_QUESTION\_CP2\_49>

## **Section 7 – Criteria to assess CTP applicants**

**Q50: How would you define retail investors, academics and civil society organisations for the purpose of the CTP?**

<ESMA\_QUESTION\_CP2\_50>  
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<ESMA\_QUESTION\_CP2\_50>

**Q51: What are in your view the most important elements that should be taken into account when defining the governance structure of the CTP?**

<ESMA\_QUESTION\_CP2\_51>

The final MiFIR text provides a coherent framework for the development of viable and meaningful tapes operating as true utilities in both asset classes. Our preliminary observations at this stage premised on these key principles:

- This is an opportunity to introduce a new market infrastructure utility provider which operates on the RCB principle. As a new entrant, it should be much easier to optimize the legal framework for a data provider that charges fees based on cost recovery and a reasonable margin. There is no existing data revenue model to ‘defend’ nor are there legacy licensing and fee models to perpetuate. As a recent IOSCO report highlighted that “the costs, accessibility, fairness, and consolidation of market data continue to be a major barrier to fair and efficient markets”. This is an opportunity to get the right framework in place, it should not be wasted.
- Europe’s capital markets need consolidated tapes that are a viable success operating as a market utility for all. Profit maximization should be discouraged. Adequately priced consolidated tapes, combined with a simple fee and licensing model are key to making the tapes an attractive proposition.
- Future proofing the tapes - the tapes will go through various growth phases where data quality improves, user base expands, technology evolves, and regulatory requirements change. It is critical that the CTs are legally and factually equipped to navigate through these changes, without impacting the relevance of the tape for data users, and without bringing about market distortion and reducing competitiveness. We suggest that a robust, broad-based governance framework including data contributors and data users can best ‘future-proof’ the CTs.

A previous version of the MiFID/R regulation laid out provisions for a Consolidated Tape. However, no CT provider emerged under those conditions, leaving Europe’s fragmented markets without a much-needed investor tool to attract capital into Europe. As we are going into this process, again, with our eyes wide open,

it would be reckless not to include in the founding structure a **water-tight governance structure**. We believe that the surest and only way of mitigating against fundamental conflicts of interest, is through a well-thought-out governance structure. With a broad and empowered representation, the governing body will only be able to act in the interests of investors at large, and European capital markets more broadly.

This should be the over-riding mission of the CTP, and only a carefully balanced governance structure can help it deliver on these goals.

Given some of the well-documented disadvantages that European capital markets face vis-à-vis the United States, it is imperative that the CT deliver on its objectives and that the CT become and remain a critical source of data for the well-functioning of our capital markets. This means that the CT should continue to evolve, always responding to the needs of a broad cross section of participants.

Looking forward, the consolidated tapes will go through various growth phases where data quality improves, user base expands, technology evolves, and regulatory requirements change. It is critical that the CTs are legally and factually equipped to navigate through these changes, without impacting the relevance of the tape for data users, and without bringing about market distortion and reducing competitiveness. With trading venues and exchanges involved in the delivery of the tape, **there is always the risk that the sale of proprietary market data is given priority over the more fundamental and broad-reaching objectives of the tape**. Conflict of interest policies are important, but ultimately only a well-balanced governing body can grow the CT into a success story.

The technical ability to receive, consolidate and disseminate, applicable, pre-trade and post-trade data for shares and ETFs and post-trade data for bonds and OTC derivatives is key for the CTP applicants.

We suggest a governance model along the following lines:

The CT should be governed in such a way that it reflects the interests of all stakeholders (data contributors and users)

- Broad representation on a dedicated governance body/board, including data users (buy-side, sell-side and other users), data contributors, and vendors.
- Advisory body/board representation should be proportionate, i.e. no segment dominates (different communities such as data contributors and data users have equal voting rights).
- A permanent voting rights representation for EC and ESMA.

The advisory body/board should have voting rights on decisions relating to:

- Pricing policies/fees
- Revenue sharing scheme (if applicable)
- Simple, easy to use licensing policies
- Data content, standardisation
- Data quality
- Speed and connectivity
- Futureproof the tape- it needs to continue to meet market demand to grow.



A robust Conflict of Interest Policy should be supporting the governance scheme.

On the technology side CTPs should provide open, neutral, and transparent data platforms on which trading data is made available to all users and by all required providers and owners required to share data under MiFIR. The purpose of the CTPs is to let the core markets data flow and thereby increase the visibility, liquidity, and attractiveness of EU capital markets. The regulatory aim of the equity and bond CTPs is not to substitute not perceived losses in listing fees, trading fees or data revenues of data sources (trading venues, SIs) and data collectors (APA, ARM). CTPs can be used in this sense also to facilitate connected, federated data spaces in Europe (and beyond) as envisaged by the Digital Union efforts. Core technical aspects should include requirements for seamless integration, straight-through processing, and adhering to global data standards. Also facilitating a potential replacement of the current CT provider by using open-source software where possible and require a legal commitment to make the software/ CTP data available for free to enable ESMA more easily appoint a replacement CTP if needed. For a real-life example of such open-source code provision, please see the ESG-data sharing platform Dataland:

<https://dataland.com/documents/swagger-ui/index.html>

One aspect which should not be overlooked at is the long-term financial viability of the CTPs. The CTPs will constitute a long-term infrastructure which provider we would not expect to change every five years. A tender with unclear or uncommitted funding or firms making losses is less acceptable than a profitable, well capitalized firm. On this basis the CTPs should be founded as essentially not-for-profit or limited-profit organizations which are strongly based on a cost of production plus reasonable margin (RCB) principle (Art.13), see also our answer to Q 52. Application of the RCB principle does not prevent that certain stakeholder such as the data providers get a fair share of revenues through distribution of revenues which have not been used for cost recovery, especially the margin-based revenues allowed by Art13.

We suggest that the proposal below.

#### *Article 4*

##### *Corporate governance*

*(Articles 27da(2)(d) of Regulation (EU) No 600/2014)*

*1. A selected applicant seeking authorisation to operate a consolidated tape shall include in its application for authorisation information on the internal corporate governance policies and the procedures which govern its management body, senior management, and, where established, committees. Without prejudice to the provisions of Article 7, the interests of investors are best served through a direct representation on the governing body of the CT.*

*2. The information set out in paragraph 1 shall include:*

*a. a description of the CT governing body, which shall be composed of the CTP itself, trading venues, broker-dealers, institutional investors, retail investor and issuers. Each category of stakeholder shall have a single seat on the board of the CT, with voting rights and a right of veto on the following matters:*

- i. Pricing policies/fees
- ii. Revenue sharing scheme (if applicable)
- iii. Simple, easy to use licensing policies
- iv. Data content and data standardization
- v. Data quality
- vi. Speed and connectivity
- vii. Future development of the tape-

**b. a description of the processes for selection, appointment, performance evaluation and removal of senior management and members of the management body;**

*c. a description of the reporting lines and the frequency of reporting to the senior management and the management body;*

*d. a description of the policies and procedures on access to documents by members of the management body.*

<ESMA\_QUESTION\_CP2\_51>

**Q52: Should the CTP include representation of other stakeholders within their governance structure?**

<ESMA\_QUESTION\_CP2\_52>

Yes, see our response to question 51.

Inspiration on the set-up of a dedicated governance body/board besides any board required by company law could be drawn from existing organizations such as GLEIF; DTIF, and ANNA DSB. In these three cases there is a private operating company / foundation which is subject to oversight by either a pure regulatory (GLEIF) or a mixed product committee (DTIF/ DSB) representing the market participants. We strongly believe that all CTPs will gain most support from most market participants if they are construed as much as possible as open public-private partnerships based on the model of the Global Legal Entity Identifier Foundation GLEIF which is issuing the LEI identifier, or the Digital Token Identifier Foundation (DTIF) and the Derivative Service Bureau (DSB) which issue the DTI, the OTC-ISIN and UPI, respectively. Established by the Financial Stability Board in June 2014, the Global Legal Entity Identifier Foundation (GLEIF) is tasked to support the implementation and use of the Legal Entity Identifier (LEI). The foundation is backed and overseen by the Regulatory Oversight Committee, representing public authorities from around the globe that have come together to jointly drive forward transparency within the global financial markets. GLEIF is a supra-national not-for-profit organization:

<https://www.gleif.org/en/about/this-is-gleif>

The model of a not-for-profit foundation is also possible in a purely private environment. An example is the DTI Foundation for token identification. The DTI Foundation (DTIF) is a non-profit division of Etrading Software, a financial technology firm with a mission of solving market-wide problems by building market infrastructures for the new digital economy. As Registration Authority (RA) for the ISO 24165 standard, the DTIF's mission is to provide the golden source reference data for the unique identification of digital tokens. DTIF issues and maintains DTIs on a non-profit, cost-recovery model, to increase transparency in the digital asset space through the creation of a core reference data set based on open data principles and available as a public good. The Product Advisory Committee of DTIF represents a broad range of market participants and stakeholders:

file:///C:/Users/siebel/Downloads/FAQ%20on%20DTI.pdf

If a not-for-profit entity / foundation is not be required by ESMA, good governance including all stakeholders is possible through an appropriate structure based on committees protected by the statutory documents of the CTP. An example is the Derivatives Service Bureau which is a global numbering agency for OTC derivatives serving the needs of market participants through the allocation of International Securities Identification Numbers (ISIN), Unique Product Identifiers (UPI), the Classification of Financial Instruments (CFI) and Financial Instrument Short Name (FISN). These are globally recognized and adopted ISO standards for identifying, classifying and describing financial instruments. In 2019, the Financial Stability Board (FSB) designated the DSB as both the service provider for the UPI system for OTC Derivatives and the operator of the UPI reference data library. The UPI is used for identifying OTC Derivative products in Transaction Reporting data and to help assess systemic risk and detect market abuse:

<https://www.anna-dsb.com/about-us/> .

Focusing on the governance of DSB, the Product Committee (PC) is an industry group that works beside the Board of the Derivatives Service Bureau. The PC oversees the definitions of a broad range of OTC derivatives and how they translate into data requirements for allocation of identifiers. They also support the development and inclusion of descriptive taxonomies used to identify OTC derivatives. The PC is made up of voting members (Buy-Side Institutions (Max. 3), Sell-Side Institutions (Max. 3), Custodians (Max. 3), Trading Venues (Max. 3), Vendors (Max. 3)), Non-Voting Members (able to attend meetings and contribute but not vote - trade associations (Max. 5: representing a broad constituency of asset classes member roles), and Observing Members (able to attend meetings and contribute but not vote -regulators and / or policy makers):

[https://www.anna-dsb.com/download/dsb-pc-charter-revision-for-term-3-2021-23\\_final/](https://www.anna-dsb.com/download/dsb-pc-charter-revision-for-term-3-2021-23_final/)

In the three cases mentioned above there is a private operating company / foundation which is subject to oversight by either a pure regulatory (GLEIF) or a mixed membership product committee (DSB/DTI) representing all the market participants. On such product committee, obviously ESMA should be directly represented beside market participants stakeholders.

<ESMA\_QUESTION\_CP2\_52>

**Q53: Do you agree with the proposed approach on the assessment of necessity of joint application?**

<ESMA\_QUESTION\_CP2\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_53>

**Q54: Which minimum requirements on identifying and addressing potential conflicts of interest would you consider relevant?**

<ESMA\_QUESTION\_CP2\_54>

TYPE YOUR TEXT HERE

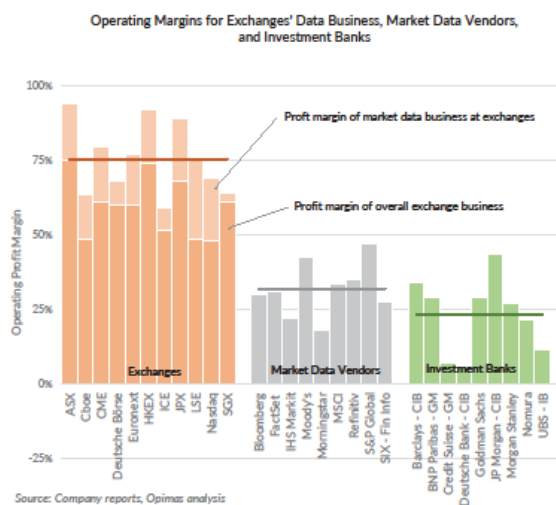
<ESMA\_QUESTION\_CP2\_54>

**Q55: To score the applicants on their development expenditure and operating costs, ESMA intends to look at the costs the applicant will need to cover on an annual basis. Do you agree with this approach? If not, which alternative approach would you deem more appropriate?**

<ESMA\_QUESTION\_CP2\_55>

The proposed approach seemed reasonable and seemed to accommodate for newer entrants who may have higher upfront costs, but similar running costs in the future to a more established player. Nevertheless, one aspect which should not be overlooked at is the long-term financial viability of the CTPs. The CTPs will constitute a long-term infrastructure which provider we would not expect to change every five years. A tender with unclear or uncommitted funding or firms making losses is less acceptable than a profitable, well capitalized firm or sponsor of the CTP applicant. On this basis the CTPs should be founded as essentially not-for-profit or limited-profit organizations which are strongly based on a cost of production plus reasonable margin (RCB) principle (Art.13), see also our answer to Q 52. Application of the RCB principle does not prevent that certain stakeholders such as the data providers get a fair share of revenues through distribution of revenues which have not been earmarked for cost recovery, especially the margin-based revenues allowed by Art13. Considering also the applicable RCB principle (Art 13 MiFIR) the CTP may charge the cost to develop the consolidated tape and the costs of operating the consolidated tape on an ongoing basis towards the user basis. This could include funding costs (loan interest) and taxes borne by the CTP. Additionally, under Art 13 MiFIR the CTP could charge a reasonable margin. Consultant Opimas established operating profit margins for market data providers (in 2020) as follows: *“Disentangling exchanges’ financial reports is no mean feat, as they are not designed to allow revenues and profits from market data to be readily extracted. ...the level of profitability of market data at exchanges is remarkably high, hovering around 76%. This is more than twice what market data vendors, such as Bloomberg or LSEG (Refinitiv) earn, and more than three times major investment banks.”*

The market data businesses at exchanges have profit margins more than twice non-exchange data providers and more than three times investment banks...



Source: Opimas, Exchanges and Market Data How Much Money Is Being Made?, February 2020

The operating profit margin calculation is the percentage of operating profit derived from total revenue. A 76% operating profit margin for exchange market data operations is equal to EUR 0.76 operating profit for every EUR 1 of revenue obtained from data users. We are of the opinion that the stated operating margins of 76% on average within the exchange market data segment are excessive and clearly point to a monopoly situation and a distortion of competition. Therefore, we suggest establishing at the outset a basis for the reasonable margin under Art 13 MiFIR for CTPs based the level of margins within a competitive industry, e.g., the non-exchange data industry such as ESG data. For example, the common industry platform for sharing ESG data, Dataland, must operate on a fixed “cost+ 15%” basis to allow that data gets cheaper the more parties use it. After the initial setting of the Art 13 MiFIR margin any increase / decrease of the reasonable margin the CTP may charge shall change in line with inflation only. Revenues exceeding the RCB cost plus reasonable margin basis not needed for revenue sharing should be redistributed to the CTP users through direct paybacks or discounts on future prices.

Finally, the CTP should regularly publish reports on the data quality of the various data contributors to increase public pressure on them to improve data quality at each contributor and both the obligatory (equity and ETF CTP) and voluntary (Bond CTP) revenue distribution schemes should exclude any data contributor with identified data quality issues from receiving any part in the CTP revenues.

<ESMA\_QUESTION\_CP2\_55>

**Q56: The simplicity of the fee structure and licensing models can be scored by taking into account the number of tiers, fee types and licensing models. Does this accurately reflect simplicity? If not, would you propose a different approach to assess simplicity? Please elaborate.**

<ESMA\_QUESTION\_CP2\_56>

There should be a very simple fee structure and license model based essentially on the classification of the CTP clients as either « non-professional » (mainly natural persons other than employees of professional users) and « professional » users (mainly on legal entity), see Q34.

As stated above the level of fees as established by the pricing policy of the CTP should be strictly based on the RCB principle under Art 13 MiFIR. Fees should be set based on a simple system and not be based on multiple terms. Especially, any pricing based on the value created using CTP data should be discouraged, cf. recital to Art 13 MiFIR. The CTP pricing policy needs to set fees only for professional subscribers because free access to retail investors, academics, civil society organizations and competent authorities is provided for in the law, cf. Art 27h (1) (b) MiFIR. For simplicity reasons we suggest preferring pricing policies which provide for fees based on the legal entity of the user (enterprise license fee). A preferable single – one size fits all - enterprise fee should not be considered discriminatory. If fees are linked to the legal entity, then groups with many companies automatically pay more than the groups with fewer firms, and thereby smaller firms will ultimately pay less than larger firms. Further differentiation of fees, e.g. volume discounts, should be evaluated carefully, as this may reopen the possibility to introduce value based pricing in disguise.

The simple fee should ideally cover both the human and the computer CTP data usage at the enterprise level. In this case, display data redistribution of CTP prices to retail clients by a broker should not count separately as it facilitates retail participation in EU capital markets. A special fee may, however, apply in other cases where a user replicates and redistributes the whole CTP database, and is becoming essentially a competitor to the CTP. We expressly urge ESMA to discourage the usage of the human users and device count methods in display / non-display fee situations as this metrics are very difficult to administer in practice and usually lead to an excessive cost burden for the user company.

On the license side, CTPs should be preferred which disallow complicated value creation-based licenses in favor of license models which allow for the free use of the CTP data paid for by the user for all internal and external applications and business cases thereby supporting increased visibility, trading, and attractiveness of EU capital markets. The Creative Commons Organization (CCO) license is the global standard for such data usage licenses. Creative Commons is a nonprofit organization that enables the sharing and use of creativity and knowledge through free legal tools. For example, the GLEIF makes all data available under the CCO license and endorsed the International Open Data Charter. The Charter defines open data as “digital data that is made available with the technical and legal characteristics necessary for it to be freely used, reused, and redistributed by anyone, anytime, anywhere”.

<https://www.gleif.org/en/about/open-data>

The data contributors may be demanding that their license models should be applied by the CTP when dealing with its users. We strongly urge ESMA not to follow such demands. ESMA should not allow CTP licenses or disclaimers as they exist on the ESMA operated ERP ratings platform which suggest that the data contributors may retain any IP rights in the data provided to the CTP. It is well established that so-called simple data that lack creative value such as numbers as in individual prices / market data as such are not protected by copyright under the Berne convention. This is noted in the European Commission's 2011 decision in the Standard & Poor's case (ref: COMP/39.592) in which BVI was a complainant. It involved the charging of licensing fees for US International Securities Identification Numbers (ISINs). Standard & Poor asserted that they owned copyright over both the ISIN databases and the individual numbers. An ISIN is essentially a reference number. There is some structure and rationale to the numbering system, but the number assigned to a security is built from a country code, the issuer code, the issue code, and then a final check digit applicable to the entire sequence. In paragraph 39 of the decision, the European Commission "took the preliminary view that S&P does not own copyrights in respect of US ISINs, either as a database or in respect of the individual numbers". Also, in paragraph 42, the Commission cited several examples and said: "Relevant national precedents found that individual numbers are too trivial or not original enough to constitute material that can be subject to copyright". Therefore also (exchange closing) prices, which are a record of fact or are the product of a mathematical adjustment to a fact, are not protected by copyright in the EU. Data contributors may, however, rely on or IP protection of their TV, ARM or APA operated market data database under the following conditions:

“(a) Copyright – to attract copyright, a database must be an original literary work of the author's own intellectual creation; effort must have been spent on the selection and arrangement of the data; and sufficient judgement and skill must have been exercised in the process of creation. Specifically looking to the two parties to the bond or share trade, it is the buy-side customer who expends more effort in this regard as they are responsible for the investment decision and ultimate execution of the trade, and so it is more likely that the buy-side customer holds the copyright.

(b) Database right – aggregating transaction data from numerous counterparties, anonymizing that Data, standardizing it and reformatting it would be seen as the requisite effort to create a CTP database, which does not copy, extract or re-use a substantial part of any other TV, APA or ARM Database”, cf. Witherstech; Trading data and the law – an assessment of the parties' rights. Looking specifically at EU closing prices, another study says: “(court) decisions set a high bar for database protection in EU member states. It is unlikely that any extraction of closing prices from a stock exchange site will infringe rights under the EU Directive and applicable domestic legislation because:

- There is no originality in the selection and arrangement of closing price data in any stock exchange database.
- Only minimal investment is incurred in identifying and obtaining closing price data, and any subsequent compilation and related technology investments are irrelevant.
- Dissemination of closing prices is an activity undertaken primarily to meet the exchange's core mandate, and that makes it unlikely that the investment tests for database protection can be sustained.
- The sui generis database right can only be enforced when unauthorized extraction and redistribution seriously prejudice the exchange's investment, but the investment. in a content licensing business operated by an exchange in addition to its core mandate is not relevant to that determination”, cf. EDI Closing Prices and Other Stock Exchange Data: Copyright and Competition Law Issues.

A similar assessment should apply to the EU based contributor databases. It also needs to be considered that all data contributors are required by law to deliver the required market and reference data for free to the CTP. This rule should not be impaired by IP right claims of the data contributors to the CTPs.

Finally, any value added services of the CTP such as index production ( EU all shares index) or providing in depth liquidity and market research which are clearly separate from the core mandate of CTPs to receive, consolidate and disseminate, applicable, pre-trade and post-trade data for shares and ETFs and post-trade data for bonds and OTC derivatives should be priced and licensed in a similar way like the CTP core service. From our point of view variations of the legally required CTP services, e.g., labelled descriptions of bonds or making data available on mobile phone are part of the core service to receive, consolidate and disseminate trade data, and therefore should not be priced separately.

Regarding redistribution of market data, the number of professional clients shall be determined based primarily on the legal entity using the data. To the extent that a legal entity is redistributing the data it needs to disclose the names or number of the legal entities it is redistributing the data to to enable the market data provider to license these legal entities directly. To the extent that a legal entity is redistributing the data, and it elects to disclose only the number of the legal entities it is redistributing the data to, the redistribution legal entity must take out the required number of licenses for these legal entities. The disclosure of the number of non-professional clients to which a professional client is redistributing data can be based on a reasonable estimate. Basing the professional user numbers on the number of legal entities using the data provides for an easy to administer and fair system of cost attribution as larger groups with multiple legal entities pay more than small groups with a single or small number of legal entities. By identifying the professional users based on their LEI, there is no argument on whether a certain department or other unit within a group is a legal entity is or not. For non-professional clients a reasonable fact-based estimate of the number of data users should be sufficient. Establishing the exact number of natural person users is a considerable and in part futile effort because of the volatility of the numbers as well as administrative hurdles (GDPR / no data source on the number of TV viewers watching on screen price feeds). Already the establishment of the number of natural person users within legal entities for the purposes of calculating today's display user licenses is a nightmare as evidenced by the administration of e.g. Bloomberg user IDs. Within financial service firms.

<ESMA\_QUESTION\_CP2\_56>

**Q57: The approach proposed for the assessment of the ability of CTP applicants to process data is grounded on the assessment of the technological infrastructure in ensuring scalability, low-latency, accuracy and security throughout the data lifecycle. Do you agree with this approach, or would you consider additional elements to be assessed?**

<ESMA\_QUESTION\_CP2\_57>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_57>



**Q58: Which is the minimum speed of dissemination you would consider appropriate for the CTP? Please distinguish between asset classes (and for the case of the equity CTP, between pre- and post-trade date).**

<ESMA\_QUESTION\_CP2\_58>

We are not in a position to comment on the speed of data from the data contributors, and that of the CT itself, but we can comment on the overall speed of delivery. We do believe that the time from the trading venue matching engine (or OTC equivalent) to publication by the equity CT can be between 250milliseconds to 1 second, both for pre-trade and post-trade data. Please see our answer to Q8 for details.<ESMA\_QUESTION\_CP2\_58>

**Q59: The proposed approach to data quality would reward additional commitments and measures that CTP applicants intend to put in place. Do you agree with this approach ? What additional commitments and measures would you consider appropriate?**

<ESMA\_QUESTION\_CP2\_59>

Beyond Art 27da (2) Art 27h (f) MiFIR requires CTP to have systems in place that can effectively check the completeness of the data provided, identify obvious errors, and request the re-submission of data. An important part of data quality will be standardization of the post trade bond tape will be using the FIX Trading Community's "MMT" typography. The importance of accurately identifying addressable liquidity and accurately showing what has traded, with no duplications or omissions is critical in reducing systemic market risk. Asset managers use this data to calculate liquidity and calculations, and it is essential this data is correct. We ask ESMA to consider only tender bids which indeed ensure a focus of the CTP on improving data quality by additional voluntary measures. The GLEIF offers insights how such a data quality program could look like at

<https://www.gleif.org/en/lei-data/gleif-data-quality-management/proactive-management> .

For example, the GLEIF publishes monthly the following data quality reports on the overall level of data quality achieved in the Global LEI System as well as data contributors (LEI issuer) data quality reports: which analyze the level of data quality achieved by the individual LEI issuing organizations.

<https://www.gleif.org/en/lei-data/gleif-data-quality-management/quality-reports> .

The same way as GLEIF the CTP should regularly publish reports on the data quality of the various data contributors to increase public pressure on them to improve data quality at each contributor. Additionally, both the obligatory (equity and ETF CTP) and voluntary (Bond CTP) revenue distribution schemes should exclude any data contributor with identified data quality issues from receiving any part in the CTP revenues. Especially the bond CTP needs to ensure that SIs and investment firms improve today's still bad data quality of bond data. The data issues associated with bond data have been identified and described in sufficient detail to address them in general terms in six FINBOURNE CTP white papers.

<https://www.finbourne.com/insights/category/reports-and-whitepapers>

Furthermore, CTPs shall be encouraged to provide for a Data Challenge Facility that provides any user of CTP data with the opportunity to substantiate doubts regarding the integrity or the accuracy and completeness of the CTP data. It should also allow for the indication of possible duplicate entries or any lack of timely response (deferrals) similar to the GLEIF challenge facility existing already today.

<https://www.gleif.org/en/lei-data/gleif-data-quality-management/challenge-lei-data#>

Please refer also to our answers above for the revenue sharing system for the shares and ETF CTP according to Art 27h (5) MiFIR. We urge ESMA not to support tenders which require overly complicated revenue distribution schemes which may be based on the value created by the data user. We are specifically concerned by requests of some market participants in favor of “value creation recognition” revenue sharing schemes at the ESMA workshop.

<ESMA\_QUESTION\_CP2\_59>

**Q60: The proposed approach to modern interface and connectivity is grounded on the assessment of the interface technology in terms of reliability, scalability, low latency and security. Do you agree with this approach, or would you consider additional elements to be assessed?**

<ESMA\_QUESTION\_CP2\_60>

Yes, if the additional criteria mentioned in our answers above are considered. The CTP should provide for both display / GUI i.e., human on screen usage of CTP data as well as non-display / API i.e., computer to computer data feeds to the user company. On operational and cyber reliability, it should be sufficient to state that the CTP is governed by DORA as any other ICT provider. It may be that the CTP itself could be deemed a critical ICT provider which would increase the administrative and financial burden and put the CTP under DORA supervision. On the other hand, each CTP user needs to decide whether the CTP ICT service used is “important” for the firm concerned or not. We can see a situation where firms will say that the CTP is used only as an add-on to other data providers and therefore is not considered as providing an “important” function under DORA. This decision will reduce the administrative burden in the user firm side.

<ESMA\_QUESTION\_CP2\_60>

**Q61: Do you agree with the proposed approach to record keeping, based on the provision of document supporting intended compliance?**

<ESMA\_QUESTION\_CP2\_61>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_61>

**Q62: The proposed approach to resilience, business continuity and cyber risks is grounded in assessing mandatory DORA requirements applicable to CTPs as a first step (selection**

critereon), to then reward additional commitments and measures CTPs applicants intended to put in place to mitigate and address outages and cyber-risk . Do you agree with this approach? What additional commitments and measures would you consider appropriate?

<ESMA\_QUESTION\_CP2\_62>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_62>

**Q63: Do you agree with the use of the Power Utilisation Effectiveness (PUE) as the metric to assess the energy consumption of the CTP? If not, which alternative approach would you favour?**

<ESMA\_QUESTION\_CP2\_63>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_63>

## **Annex II – Cost Benefit Analysis:**

**Q64: What costs do you expect in order to comply with the proposed minimum requirements for the quality of transmission protocols? What benefits do you expect? Please indicate to what role (data contributor, CTP, or CT user) your response refers.**

<ESMA\_QUESTION\_CP2\_64>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_64>

**Q65: What costs do you expect in order to comply with the proposed data format for input and output data? What benefits do you expect? Please indicate to what role (data contributor, CTP, CT user) your response refers.**

<ESMA\_QUESTION\_CP2\_65>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_65>

**Q66: Do you expect the benefits from the proposed real time data transmission requirement for input data to outweigh the operational costs borne by data contributors?**

<ESMA\_QUESTION\_CP2\_66>  
TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_66>

**Q67: Do you think that the input and output data fields strike a balance between reporting burden for data contributors/CTPs and benefits for CT users?**

<ESMA\_QUESTION\_CP2\_67>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_67>

**Q68: Do you think that the proposed data quality requirements are sufficient to achieve the CT's objectives without generating excessive compliance burdens? Please explain.**

<ESMA\_QUESTION\_CP2\_68>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_68>

**Q69: Which costs do you expect to implement the revenue distribution scheme? Please differentiate between one-off and on-going costs, between fixed and variable costs as well as between direct and indirect costs.**

<ESMA\_QUESTION\_CP2\_69>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_69>

**Q70: Which costs do you expect to implement the suspension and the resumption of the revenue distribution scheme? Please differentiate between one-off and on-going costs, between fixed and variable costs as well as between direct and indirect costs.**

<ESMA\_QUESTION\_CP2\_70>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP2\_70>