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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

Filip

* Surname

CHRASKA

* Email (this won't be published)

filip.chraska@eapb.eu

* Organisation name

255 character(s) maximum

European Association of Public Banks

* Organisation size

- (selected) 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.

8754829960-32

* Country of origin

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

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

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

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

* Field of activity or sector (if applicable):

at least 1 choice(s)

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

- [ ] 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):

Association gathering public financial institution across Europe

* 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

* **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

- [x] 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
- [x] 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.

Notwithstanding a MiFID II "quick fix" as a response to COVID-19, there is a general perception that the time spans between thorough reviews of a broad framework such as MiFID II have become too short leaving hardly any time for a manifold technical implementation, for market participants getting used to the updated rules, and for gaining reliable experience how new rules actually work out. Also, the MiFID II package has been a very detailed regulation on EU level which in its level of detail is largely perceived as overregulation often without accompanying justification.

The amount of information to be provided to investors has often not been perceived as helpful. This applies to pre-contractual as well as ex-ante and ex-post costs disclosures. Transaction-based information is partly overlapping, and sometimes repetitive (such as on costs or information following telephone orders). The extended information obligations have not led to more informed decisions but often created information overload and uncertainty, discouraging investment decisions. There are many investors, including retail investors, who want to decide for themselves if they wish receive certain information and who want to have the possibility to waive information. Overall, it should be more differentiated between wholesale and retail clients.

The target market requirement has excluded retail investors from a large number of investment possibilities which have a low level of complexity, if at all, where it is not apparent why there needs to be a general exclusion.

Reporting rules such as those according to Art. 26 MiFIR create an immense burden and costs including for clients without preventing market abuse or insider trading. There must be a better balance between the rules that are intended to improve the functioning of the market and the protection of market participants. Simplification of the transparency and reporting requirements would be necessary.

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.

The objective of MiFID II to improve the functioning of capital markets, their transparency and oversight, and to enhance investor protection was understandable, sensible and necessary.

However, the functioning of capital markets has become more complicated, less smooth, and market access for investors has been made more difficult. It appears that the increased administrative obligations and barriers that have been erected through requirements such as the target market determinations did not improve the investment experience but instead have led to the exclusion of a substantial number of investors to capital markets investment solutions. Investors are forced to be satisfied with only the least complicated asset classes which is a major concern in times of sustained low interest rates and also opposite to the goals of the CMU.

The telephone as a distribution channel is diminishing, providing investment advice takes significantly more time although the number of instruments to advice on has been largely limited, the effort to place an order has become more complex and is often counterintuitive.

From an implementation point of view, the costs and benefits of implementing the MiFID II framework were not adequately related. The interaction of the requirements from MiFID II with those of PRIIPs and other EU securities and markets regulation has not been tuned.

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.

MiFID II has introduced a very detailed regulatory framework and contains very granular requirements for investment firms on L2 and L3.

The MiFID framework since its inception has been a widely harmonising framework leaving hardly any room for any further requirements on Member State level. There are no known general good provisions in national investment law since MiFID codified the related rules and case law. Today, national provisions on the general good – which investment firms from another Member State have to comply with when serving clients on a cross-border basis – can be found mostly in consumer protection law but not investment law. National goldplating has diminished, however, a few rules still exist in different Member States.

With regard to different national market practices certain compliance solutions for regulatory requirements have been developed long time ago, and well before MiFID I, for example, as regards national data provider. Investment firms have set up their IT systems to such national practices which, apparently, may cause additional effort for firms from other Member States if they want to enter the relevant market.

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.

MiFID II has increased pre- and post-trade transparency, however, the added value of the achieved transparency is hard to see. In addition, the intention of MiFID II to reduce costs for market data has not worked out, costs, in contrary, have increased. Data vendors extensively interpret the “reasonable commercial basis” to the detriment of the market participants that rely on the relevant data.

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.

A level-playing field for trading venues and SIs is not necessarily appropriate since they cannot be compared. The way of trading is different and cannot be aligned through pre-trade transparency requirements. The demand that firms have towards SIs is often very specific and therefore of no use for other market participants. Where a business relationship has already been established, firms always ask for individual quotes which are usually not comparable. Firms only have business relationships with a limited number of SIs and only quotes published by these SIs are relevant for trading. A firm will not consider trading with an SI with which there has not been a business relationship before only because of the eventuality of a slightly better quote. The costs for building up a trading-relationship for only one quote would not justify this. Therefore, in contrast, there is a need to relieve SIs from unnecessary burdens such as pre- and post-trade requirements.

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

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.

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

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

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

The promotion or introduction of a CT-Provider by regulatory intervention would not solve the deficiencies in the development of market data prices.

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.

Even if a CTP is supported by regulation including on aspects such as legal liability, no CTP will be able to provide all data needed by market participants. Nor will a CTP be able to provide data real-time or near real-time, mainly because of the fragmented European market. Market participants will still need market data services of trading venues or data vendors. The introduction of a CTP would cause significant additional costs for participants having to pay both for data supplied by the CTP and for data supplied by trading venues or other vendors.

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.

No. See answer to Q7.

1.2. Availability and price of market data

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

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

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

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

Please explain your answer:

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

We agree with bullet points 1, 2 and 4. We do not agree with bullet point 3 since this proposal would not help improving the information quality which regulated markets have disseminated so far.

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

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.

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	○	○	●	○	○	○

Please specify what other feature(s) you consider important for the creation of an EU consolidated tape?

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

We do not support the promotion or introduction of a CTP by regulatory intervention. A CTP would not solve the (evident) deficiencies in the development of market data prices.

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.

We disapprove the idea of a mandatory CT. A CT would neither be able to deliver all necessary data nor supply data in time. Therefore, market participants could not exclusively rely on CT data but would always have to buy all other necessary data from other sources.

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.

There should be no link between the CT and best execution obligations. Art. 27 MiFID II covers best execution obligations sufficiently.

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.

If there were to be a CT, a rational economic model would require for a single CTP be appointed as a result of periodic competitive tender. The CTP's business model could be to charge all providers and users of data a fee representing the share of the costs that are required by the interactions with the CTP.

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.

> If a CTP were to be established, it should be limited to post-trade data on sufficiently liquid shares admitted to trading on a regulated market in the EU. This would be a market test to better assess whether a CTP is actually needed and helpful without being overly complex and cost-intensive for market participants. Only after a positive assessment such a limited CTP could be gradually broadened to a full CTP for all pre- and post-trade data. Otherwise, the project should be abandoned altogether.

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

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

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

5000 character(s) maximum

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

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

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

Shares

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

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

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

Question 17.1 Please explain your answers to question 17:

5000 character(s) maximum

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

We do not agree that there should be a mandatory CT. But if the legislator decides to mandate a CT, it should be restricted to post-trade data for shares admitted to trading on a RM.

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.

See answer to Q17.1.

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

Please explain your answer:

5000 character(s) maximum

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

See answer to Q17.1.

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.

See answer to Q17.1.

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.

The scope of the STO is overly broad and leads to legal uncertainties which became apparent in the case of the trading of Swiss shares. Its application should focus on shares listed in the EU. Investors need to be able to access the most liquid markets. Overlapping scopes with third countries must be avoided, especially in the context of Brexit. Concerning dual listings inside and outside the EU, the current EU STO requires firms to execute transactions on EU trading venues, even if this is not the most liquid market. The STO has not had particular positive effects on liquidity and else and should ideally be repealed or at least recalibrated.

In addition, the tick size regime should be restricted to EU shares with EU ISIN. Third country shares traded on EU trading venues would remain outside the scope, so that investors would be able to trade such shares to similar prices compared to the share's home market. EU trading venues would be able to compete with trading venues outside the EU as third country shares would not be affected by larger spreads and higher costs due to the tick size calibrations, and trading volume on EU trading venues would be ensured.

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.

See answer to Q21.

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

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

Question 23.1 Please explain your answers to question 23:

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

See answer to Q21.

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.

The STO should be repealed. If it were to be kept, SIs should remain eligible execution venue since they are an additional source of liquidity and a further opportunity to execute large orders without market impact.

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.

There is no need for pre-trade data from SIs with respect to non-equity instruments since firms usually only have business relationships with a limited number of Sis, and only the specific quotes of those SIs are relevant. Where there is already an established business relationship, firms always ask for specific individual quotes which are not comparable to other quotes. A firm will hardly consider trading with an SI with which it has no business relationship only for the eventuality of one better quote.

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.

See answer to Q25.

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

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

Please explain your answer:

5000 character(s) maximum

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

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

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

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

- (x) 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.

The STO should be repealed.

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.

There is no connection between STO and CT.

4.3. Post-trade transparency regime for non-equities

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

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

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

Shortening of the 4-week deferral period for the volume information	X					
Harmonisation of national deferral regimes					X	
Keeping the current regime						X
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.

> Deferrals should remain as they allow market participants to close their positions for reasonable prices. If they were abolished, there is a high risk of market disruptions. In principle, the rules for deferrals are well-balanced. A European solution would be helpful but should be the same for trading venues and OTC.

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	2	3	4	5	

	(disagree)	(rather not agree)	(neutral)	(rather agree)	(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.

The acquisition of new and the maintainance and expansion of existing IT systems and hardware usually is the third biggest cost driver. Depending on project size and size of the bank it could also be the biggest.
Organisational requirements are usually the biggest cost driver.
Staff training usually is the second biggest cost driver.
The costs incurred through the implementation of various processes and through reports, suitability report /product governance, best execution and taping are in no relation to the benefit for investors. Investors have no easier investment decisions as a result.

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.

In practice banks deliver target markets for their products while corporates hardly define a target market. If a distributor wants to sell shares and corporate bonds he has to define (and review) the target market. In order to provide investment advice, the distributor has to define a complete target market, which causes high efforts. That is why fewer shares and corporate bonds are subject to investment advice.

This could be avoided if the requirement to define a target market for simple products like shares and non-PRIIPs-bonds would be dropped (irrespective if the manufacturer is a bank or a corporate).

With regard to the cost and charges requirements many simple products do not contain product costs. This means that the ex ante information a client is provided with would be nearly the same irrespective of the share or the corporate bonds he wants to purchase. Many clients complain that they receive redundant cost information that delays the order process but has no added value for them.

It is very positive that ESMA has clarified that cost information on products without product costs (like shares and many bonds) can be provided via standardised grids so that the client does not need to be bothered by redundant transaction-based information. For reasons of legal certainty, a similar clarification should be made on L1 or 2.

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
- (x) 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.

MiFID II has introduced very detailed requirements that seek to promote investor protection. There is no need for any further amendments. To the contrary, many investors feel overprotected and ask for the ability to opt out of the strict requirements they see as unnecessary administrative burdens.

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.

Apart from the need to exempt professional clients and eligible counterparties (see below Q34.1) in respect of retail clients investment firms should be allowed under certain conditions to provide ex-ante cost information after the provision of the investment service. At least they should be allowed to do so in case of distance communication (the concrete provision should be harmonised with the provision in PRIIPs).

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.

Professional clients and ECPs should be exempted without specific conditions. Especially the obligation to inform professional clients and ECPs on the costs of the transaction causes high costs for distributors. Notably for banks or institutional clients there is no added value in the information since both client categories do not lack any information. Where professional clients and ECPs are on the same level as financial institutions, they know the conditions and prices of various financial service providers. They either compare different prices of various service providers by using electronic trading platforms (e.g. Swift, Bloomberg, FIX, etc.) or they request offers from different financial service providers.

In this context, it is important to mention that the legislator allows investment firms to assume that professional clients have the necessary level of knowledge and experience. This shows that also the legislator is of the view that professional clients generally have a sufficient level of knowledge and experience. Therefore, many information requirements only apply to retail clients (i.e. in PRIIPs).

Furthermore, transactions of professional clients and ECPs are often subject to great time pressure (secondary trading) and are largely closed electronically or by telephone. Providing a transaction-based ex ante-information would significantly delay the transaction, which in many cases will lead to unintended price fluctuations.

Another “problem” with using electronic trading platforms is that platform providers are not under the scope of MiFID II. This means any changes cannot be done by users (which are subject of MiFID II). Hence the distributors would have to include the platform providers in their implementation plan since only the platform providers determine the technical and contractual conditions.

That is why most professional clients and ECPs do not want to be provided with detailed cost information which can be time consuming and result in the order being delayed which would not be in their interests.

An opt-in option or an expansion of such options would not provide a sufficient remedy. ESMA's proposals for extended opt-out solutions for professional clients and ECPs in its TA on costs and charges disclosures are insufficient. The effort for the practical implementation and permanent monitoring of individual opt-ins or opt-outs would be too high. A general exception for these client categories would therefore preferable. The exception for ECPs and professional clients should also extend to the ex-post cost information obligation.

As regards retail clients, investment firms should be allowed under conditions to provide ex-ante cost information after the provision of the investment service. At least they should be allowed to do so in case of distance communication. For retail clients, it is not always in the client’s interest to provide cost information in advance. This applies in particular to cases in which prior provision in the form of a permanent data medium is not possible (no e-mail available), but also if orders are urgent or if the client places a large number of orders during a call. A simple opt-out option would be impractical and insufficient.

Another aspect is the need of paper-based information. This relates also to the Commission's **Green Deal**, the **Sustain able 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
- [x] 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.

Paper reduction must be supported. MiFID has a preference for information to be provided on paper rather than electronically. The latter is only allowed under further requirements which should be abolished. This would be in line with the ESMA TA on costs and charges disclosures, where ESMA has proposed that electronic communication becomes the default option, if the client has access to electronic information.

There is a general tendency to promote ecological sustainability by reducing the use of paper. By introducing a phase-out of paper under MiFID II, the EU would further promote sustainability. However, still many of our clients do not use e-mail or online banking. Therefore, paper-based information needs to be provided for some time. It would be a step forward if documents only had to be printed out where it is the client's explicit wish.

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	●	○	○

Please specify in which other way could a phase-out of paper-based information be implemented?

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

General phase-out as soon as possible (within the next 5 years). The legal framework should foster the replacement of paperwork by electronic information. However, paper-based information should also be made available beyond this period, provided that electronic provision is not possible, for example because the client does not have electronic communication media or an electronic mailbox.

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 easiest way to implement a phase-out of paper would be that the current legal preference of paper-based information is replaced by a preference of electronic information (e-information instead of paperwork as the rule). This is in line with the ESMA TA on costs and charges which suggests that electronic communication becomes the default option, if the client has access to electronic information.

In particular with a view to the expected transition process and with regard to clients for whom electronic information is not possible or who are not familiar with electronic communication, possibility of providing information on paper should remain.

This should be done as soon as possible.

A transition to the provision of electronic information should not lead to new requirements which would hinder practical implementation, and currently existing obstructive requirements should be deleted. For example, the requirement that the investment firm must be able to demonstrate that a client has accessed account statements at least once per quarter has prevented providers from implementing electronic client reporting.

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?

- (x) 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.

There is a significant number of professional and free information sources that are based on user needs. Since these sources compete with each other it would be extremely difficult to create a unified database that meets customer needs while being sufficiently understandable and user-friendly. Due to the very granular range of financial instruments and the different investor preferences within the EU, the potential benefits of an EU-wide database are very limited, making comparability at European level almost impossible.

This has led to bilateral agreements between manufacturers and distributors or the establishment of big data bases where manufacturers can provide information on the costs of their products. The IT systems of manufacturers and distributors have been adapted to these solutions. Since they have been established long ago, there is no need for an EU-wide database.

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	( )	( )	( )	( )	( )	(x)

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.

For the reasons mentioned in under Q37.1 there is no need for an EU-wide database. With regard to PRIIPs and funds, manufacturers are obliged to provide a KID/KIID that contains information on product costs. These documents have to be published on the website of the manufacturer.

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.

Since distributors have already implemented solutions in order to receive information on the costs of the products they distribute, there is no need for an EU-wide database – irrespective who has developed such a tool.

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].

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[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.

> Information is meant to convey knowledge. For knowledgeable clients, this is unnecessary. Experienced customers might feel hampered by the administrative burden involved in their securities transactions.

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.

The (financial) threshold with regard to professional clients on request could be lowered. The current threshold of EUR 500,000 constitutes a considerable hurdle for retail clients who would like to be treated as professional clients (and fulfil another requirement of Annex II of MiFID II for professional clients).

The portfolio and its value do not bear any relation to an investor's experience. Focus on client experience is desirable. Examples where client experience can be presumed are SPVs and clients who have a market overview of products from different financial service providers. We believe that the fulfilment of one of the three criteria should suffice for a someone to be classified as a professional client.

- the person has transacted sufficient deals of commensurate volume
- the person has invested assets in excess of EUR 500,000 or, where applicable, lower threshold value (see above)
- the person has professionally/occupationally acquired financial market knowledge / has regular dealings with the relevant financial instruments (e.g., an investment advisor has adequate knowledge of the products to be sold).

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.

With reference to response of Q41.1 we do not see the necessity to introduce a new category of semi-professional clients, the additional bureaucratic burden should be avoided. We see advantages in amending the requirements to be classified as a professional investor, which depend on experience in financial markets instead of the value of his portfolio.

If facilitations would solely be feasible by introducing a new category of semi-professional clients, see responses Q43 – Q45.1.

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.

Ability ot opt-out and the possibility to provide the information after the transaction for the following requirements: suitability test, information on costs and charges, taping, information sheets. For the assessment of appropriateness, the same rules as for professional investors should apply by assuming that the client has sufficient experience.

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.

Retail investors that could be categorised as semi-professional investors do not see any use of above-mentioned information. They are interested in current security prices and prefer quick order processing.

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.

One-Off: Information to client.
Recurrent:
Saving time – orders can be processed quicker, especially for orders via telephone, and investment advise can be carried out quicker.
Saving resources – Opt-out for any information and taping.

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).			X			
Semi-professional clients should be identified by a stricter financial knowledge test.	X					
Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise.					X	
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.	X					
Other					X	

Please specify what other criteria should be the one applicable to classify a client as a semi-professional client:

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

Other: transaction frequency.

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.

A financial knowledge test is not necessary for professional investors as well.

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.

MiFID II has introduced comprehensive product governance requirements for both manufacturers and distributors. These requirements have further increased investor protection. Due to the enhanced product governance process and the fulfilment of the regulatory burden, the client is sometimes offered a slimmed-down product range in advisory sessions. This applies in particular to shares/equities and corporate bonds, whose manufacturers do not regularly define a target market. This must then be done by the distributors, whereby in investment advisory service a comprehensive target market is required, which must be continuously updated. This means that in advisory sessions often only a few shares and bonds from the corporate sector are offered. This is at odds with the CMU's plans to bring investors closer to the capital markets. The legislator should take this as an opportunity to provide for an explicit exemption for shares and plain vanilla bonds from the target market provision already laid down in the current Delegated Directive 2017/593, which in Recital 18 mentions that certain simple investment products are compatible with the needs and characteristics of the mass retail market.

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

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.

The product governance requirements are an effective tool to prevent that investors purchase products that are not targeted for them. The requirements can prevent misselling. The risk of misselling only comprises with regard to retail investors. Therefore, the product governance requirements should not apply to transactions with professional clients and eligible counterparties.

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?

- (x) 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.

There should be no ban on distributors selling a product to a negative market if the client insists. The decision on how to cope with target market deviations (and purchases into the negative market) should be up to the distributor. Client wishes should – after drawing attention to a negative target market   be respected.

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
- (x) 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.

The MiFID II provisions on inducements provide a “double” approach in order to ensure that inducements are used for the benefit of clients only.

Investments firms have to accurately disclose to the client the exact and concrete amount of inducements received prior to executing an order. The disclosure of inducements has to be combined with the ex ante cost disclosure. Thus, every retail client is aware of all costs relating to his investment and of all benefits (= inducements) his advisor or distributor receives. The ex-ante cost disclosure (including the disclosure of inducements) reveals easily understandable and comprehensively for the retail client all costs and inducements. Hence, every retail client is able to assess the impact of the inducement on the investment advice and to take his investment decision on an informed basis.

MiFID II makes sure that investment firms can only keep the inducements received if they use them to enhance the quality of the services provided to their clients. Art. 11-13 of the MiFID Delegated Directive (EU) 2017/593 provide detailed case groups in which the inducement is regarded as quality enhancing. Thus, there is no scope for investment firms to interpret this condition widely or to bypass the condition of quality enhancement.

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?

- (x) 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.

There should not be a ban on inducements to improve access to “investment advice on an independent basis”. Fee-based advice is no valid alternative because it is usually only accessible to wealthy clients.

Moreover, inducements facilitate enhancing the quality of the services for clients. Thus, inducements finance numerous measures which are cost-free for clients and offer them added value.

A ban on inducements would undermine the economic viability of investment advisors to provide their services to customers, and significantly reduce the widespread availability of investment advice. Large sections of the population would lose access to qualified investment advice. This would particularly concern retail investors with small portfolios which need investment advice the most. This is especially critical against the background of permanently low interest rates because clients with the need of investment advice (low income/ poor financial education) will not make use of fee-based investment advice.

A ban on inducements would also have severe competitive effects, distorting the intended level playing field in favour of fee-based investment advice. This would favour one specific business model, which has not proven to be successful in practice. The current advisory model is established and there is no evidence that the quality of advice is better or worse in the one or the other model.

From a client's perspective, a ban on inducements would lead to higher costs for on-going investment advice. Investment advice often does not result in a transaction; however, the fee of independent investment advice becomes due anyway.

Different practices reflect the healthy diversity of the Single Market and do not contradict the general goal of investor protection, which is ensured by manifold MIFID II rules.

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?

- (x) 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.

The question of certification concerns solely evidence of the necessary technical expertise, not the expertise itself. Along with certification, however, other suitable forms of evidence could be considered, such as external or internal training and university/college qualifications. Certification is only one of several suitable forms of evidence.

The type of certification has to be determined on a case-by-case basis. Deciding factors are pre-qualifications of an employee and further professional training. A general certification obligation would be disproportionate.

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

- (x) 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.

Even the mandatory obligation of an exam would not sufficiently recognise employees’ qualifications or the varying scope of necessary further training.

The existing requirements already comprehensively cover the relevant aspects regarding the necessary technical knowledge. Theoretical knowledge must therefore be complemented by practical experience under the supervision and responsibility of a qualified member of staff over a period of at least six months on a full-time equivalent basis.

Hence, theoretical knowledge and practical experience are inseparably linked. An employee has the necessary technical expertise only when both can be demonstrated to the necessary extent. By working under the supervision and responsibility of a qualified employee, the necessary theoretical knowledge and the ability to properly apply this knowledge can be demonstrated in practice.

Compliance with the requirements for the necessary technical expertise is monitored by the compliance department and reviewed by internal and external audits. The same applies if further training is required, particularly due to new regulatory requirements or changes in the services offered by the firm.

There should not be an EU-wide regulation on examination, instead, it should be differentiated more. Requiring at least six months’ prior practical activity on a full-time equivalent basis may in individual cases be too long. This applies particularly to employees who provide information on investment products, investment services and ancillary services, especially if they are allowed to provide information only on a sub-segment basis. However, the same should apply to investment advisors, especially if they are only allowed to advise on state-promoted investment products, since state support/promotion covers only selected product types and the eligibility criteria for state promotion also determine under which premises such products may be recommended to customers.

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
- (x) 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.

The existing requirements for handling ex-ante cost disclosures in telephone trading pose practical problems. Clients expect their orders to be accepted and executed without delay. Providing mandatory ex-ante cost information in a durable medium lead to time lags and administrative burden. In some cases, information on costs in durable media cannot be provided promptly because of postal delivery times. Clients not always can or want to use the internet but the telephone instead. Such clients are predominantly experienced in securities transactions and make recurring transactions. Similar problems arise if orders are received by letter, fax or a transmission medium where provision of ex-ante information on costs is not possible.

Telephone orders are becoming less attractive for banks and investors and the share of orders placed in branches increased accordingly. There should be a similar regulatory treatment as for KIDs under the PRIIPs Regulation or with regard to the suitability statement that allow for an exemption to provide cost information after the transaction in certain cases.

For professional clients and ECPs, the problems posed are greater since the vast majority of tansactions are executed via distance communication and a quick execution is essential for the parties involved. Transactions with professional clients and ECPs should therefore be generally exempted so that these categories of client would not have to be provided with any ex-ante information on costs in telephone trading.

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

- (x) 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.

Many clients do not want their calls to be recorded. There are no practical reasons in favour of a taping requirement. Misunderstandings in the placing of orders have been and will be corrected in practice without the need for a taping requirement. The requirement should be dropped or investors should be enabled to opt out.

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.

Investment firms are obliged to maintain best execution principles. They provide these principles as client information. The reporting obligations require that investment firms publish on their websites a report on the quality of execution of client orders as well as a report of the top five investment firms and top five execution venues in terms of trading volumes. And in order to make it possible to make meaningful comparisons and analyse the choice of top five execution venues it is necessary that information is published by investment firms specifically in respect of each class of financial instruments. Therefore, investors already have access to both quantitatively and qualitatively good information on the quality of execution of client orders.

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	○	○	●	○	○	○

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

5000 character(s) maximum

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

There is no need of major amendments. Entries should only be required if values are available. There should be no "N.A." entries.

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.

See answer to Q55.

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
- (selected) 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.

The preparation of reports is costly. Firms must process data manually. Frequently, several employees are responsible for preparing and publishing the reports.

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.

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[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.

There is little investor interest and little coverage by research departments in equity trading markets for small, stock-exchange listed companies. MiFID II has significantly reduced research coverage of SMEs. Without corporate sponsoring, however, there is hardly any interest from firms for SME research. The consequences resulting from sustainability regulations will curtail coverage still further, since the criteria for sustainability are very granular and the requirements tight. SME research should therefore be removed from the MiFID II regulations. This removal should build on SME attributes and not to the EU growth market.

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					X	
Exclude independent research providers' research from Article 13 of delegated Directive 2017/593						
Prevent underpricing in research						
Amend rules on free trial periods of research						
Other						

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

5000 character(s) maximum

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

1.2. Alternative ways of financing SMEs research

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

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

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

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

5000 character(s) maximum

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

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

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

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

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

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

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

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

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

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

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

Question 64.1 Please explain your answer to question 64:

5000 character(s) maximum

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

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

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

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

Question 65.1 Please explain your answer to question 65:

5000 character(s) maximum

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

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

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

Question 66.1 Please explain your answer to question 66:

5000 character(s) maximum

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

In addition, Article 37 of Delegated Regulation (EU) 2017/565 provides rules on conflict of interests for investment research and marketing communication. Investment research is defined in Article 36 of delegated regulation 2017/565.

However, issuers and providers of investment research consider that the definition of Article 36 would in most cases not apply to issuer-sponsored research which as a result, would not qualify as investment research. As a consequence, the rules on conflict of interests applicable to marketing documentation would apply to issuer-sponsored research.

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

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

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

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

Question 68.1 Please explain your answer to question 68:

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

IV. Commodity markets[8]

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

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

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

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

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

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

	1	2	3	4	5	

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

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

Quantitative elements for question 69.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 69.1:

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

1. Position limits for illiquid and nascent commodity markets

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

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

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

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

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

Question 71.1 Please explain your answer to question 71:

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

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.

> Irrespective of the introduction of the Derivatives Trading Obligation the derivatives markets in recent years tended towards trading platforms.

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

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

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

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

> The DTO is a contribution to more transparency of the derivatives market. It was implemented adequately and proportionately.
>
> However, following the REFIT, EMIR and MiFIR are not aligned, which had been the original idea when creating the DTO according to MIFIR. Aligning them would be necessary.

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.

See answer to Q78.

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.

See answer to Q78.

VI. Multilateral systems

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

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

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

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

Question 81.1 If your response to question 81 is rather positive, please also indicate if, in your opinion, the current definition of multilateral system is adequately reflecting the actual functioning of the market:

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

> There are no tendencies to circumvent regulatory provisions resulting in competitive distortions and distorting a level playing field. All market participants and trading venues are clearly defined and comprehensively regulated. There needs to remain a small level of technical scope for action in order to not prohibit technological progress.

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.

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[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.

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.

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[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?

- (x) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Question 83.1 If you do see any particular operational or technical issues in applying open access requirements which should be addressed, please specify for which financial instrument(s) this would apply and explain your reasoning:

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

A non-discriminatory access for derivatives is almost non-existent. Both technically and contractually, onboarding at a clearing house or trading venue is extremely complex due to the different parties involved in this transfer and cost-intensive. There is no simple, cost-effective transfer of existing transactions.

Since it is not possible to transfer existing trades easily and cost-effectively, it is still very difficult to switch from one CCPs to another.

Additonally, in the case of a transfer, two opposing transactions must be transferred from a bilateral contractual relationship to a trilateral one. There are not always enough market participants available for this purpose, so that such a transfer is almost impossible. In practise, a switch of CCPs is only possible for new contracts.

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

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

Question 84.1 Please explain your answer to question 84:

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

See answer to Q83, 83.1.

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.

FinTech is transforming the business models of financial service providers. New entities are entering the market with business models in which the production and delivery of banking products and services are based on technology-enabled innovation. These entities are characterised by leaner structures, little or no high street presence, greater use of outsourcing and the use of technological innovation to deliver standard banking services. Incumbent banks are increasing investment in technological innovation by establishing horizontal units within their organisations, partnering with third parties offering specialised services, and acquiring fintech start-ups.

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.

No. Otherwise, a quota should be introduced in which decisions and pro-cesses based on an algorithm are controlled and reported and have been overridden by a natural person. A further point to add to the govern-ance, risk, management and compliance level is to ensure that banks have governance structures in place that provide for human responsibility and accountability.

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.

The proposition of having no intermediaries in a DLT solution has attracted the interest of some institutions to explore and test potential applications. Apart from use in crypto-asset applications, most institutions noted that DLT solutions in payments may still need time for implementation.

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
- [x] 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.

It is important, that there is the same level of investor protection regarding to digital distribution types as in branch business.

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
- [x] 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.

It is important that there is the same level of investor protection in digital distribution types as in branch business.

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
- (x) 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.

The current regulatory framework is adequately calibrated to prevent misbehaviours in the area of spot FX transactions. There is no need to include spot FX in MiFID/MiFIR. The FX current spot market is already mostly transacted via platforms, what is very efficient. Therefore, liquidity and transparency are adequately established.

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.

None, since the market ist very transparent and liquid.

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.

Art. 26 MiFIR: The obligation to report SFTs with central banks causes reporting entities a lot of problems. Neither lend the fields in Table 2 of Annex I of CDR 2017/590 to reporting an SFT in a meaningful way nor do they offer CAs any added value or additional insight. Reports pursuant to Article 26 of MiFIR are intended to enable supervisors to detect insider trading and market abuse. However, reports of SFTs with centrql banks have no relevance to the monitoring of such market activities. Only certain securities are eligible for refinancing operations with central banks. It is inconceivable that a central bank or a bank seeking liquidity would deliberately use a repo agreement with eligible securities to manipulate the market in these securities or to exploit insider knowledge. In addition, SFTs are primarily based on the prices of the relevant repo or securities lending market. Also in this respect, they are irrelevant when monitoring for potential market abuse. Recital 12 of the SFTR does not seek to establish market transparency with respect to these transactions. On the contrary, central banks may even refuse to disclose information to CAs. There is a lack of consistency between the SFTR and MiFIR in this regard. Therefore, the reporting requirement under Article 26 MiFIR for SFTs with members of the ESCB should be deleted by amending Article 2 CDR 2017 /590.

Reporting of corporate actions is not necessary for market supervision purposes, as there are long periods of time between the announcement of a corporate action, the client's instruction and the procurement of ownership of the securities - unlike in the case of acquisition or disposal. Furthermore, the conditions are set by the issuer. In practice, permanent implementation problems occur, since the decision as to which corporate actions requires a reporting obligation is very complex and cannot be made systemwise.

Moreover, the length of the process from the initiation of a corporate action to its completion is problematic. As a consequence, reporting firms have to run manual processes. In addition, various reporting data are unavailable. The reporting firms cannot procure such data themselves, as they often only react in the process (e.g., missing LEI of the company initiating the corporate action). It should therefore be legally ensured that there is no obligation to report corporate actions.

Art. 2(1) d) ii) MIFID II: This exemption for undertakings engaged exclusively in own-account activities is currently only applicable to "non-financial entities". Apart from the associated conceptual vagueness, this differentiation is neither necessary nor appropriate. The decisive factor should be the activity profile of the undertaking with regard to transactions in financial instruments. In particular, the restriction to proprietary trading means that there is no client contact, which is the ratio for many of the obligations under MiFID II /MiFIR. The term "non-financial" in Art. 2(1) d) ii) MIFID II should therefore be deleted.

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.

Exemption from ex-post cost disclosure requirements for ECPs and professional clients: An exemption should be introduced so that ex-ante and also ex-post cost disclosure requirements no longer apply to ECPs and professional clients. Professional clients and ECPs are familiar with the way how capital markets function. They have significantly more knowledge and experience than retail clients. This view is reflected in MiFID II insofar as no assessment of appropriateness has to be carried out for these types of clients. MiFID II rightly assumes that these clients have the necessary knowledge and experience. Given the expertise of ECPs and professional clients, the provision of annual ex-post cost information about costs and charges generates a lot of unnecessary bureaucracy for those preparing the information but also for the recipients, who have to review and manage documents. Experience shows that these clients feel over-informed and unnecessarily burdened. In view of Article 59 CDR 2017/565, clients already have all relevant information at their disposal about the costs incurred. An annual summary of ex-post cost information is therefore merely a duplication of information already received.

There should also be an exemption from information requirements which do not benefit these clients, particularly client information about the investment firm and its services, the financial instruments and proposed investment strategies and execution venues.

Requirements under MiFID and PRIIPs must be harmonised: The different requirements under MiFID and PRIIPs have the consequence that investors receive contradicting information in the respective documents. In the KID product costs are dsplayed including inducements and in the ex-ante information without inducements. This aspect was also recently highlighted by ESMA in its TA on inducements and costs and charges disclosures. Harmonisation should be achieved in such a manner that for products for which MiFID cost information is obligatory no (additional) cost details are necessary as part of the PRIIPs-KID.

Statements of client financial instruments or client funds in accordance with Article 63 MiFID II CDR 2017 /565: Besides the information requirements with regard to costs and inducements, there are other information and reporting requirements under MiFID II. Particularly costly is the requirement to send clients at least on a quarterly basis a statement in a durable medium of the financial instruments or funds they hold for them. Given that clients are widely able to view their portfolio online or contact their investment advisor where necessary, providing them with such statements is not necessary. Such a statement cannot be sent to many clients electronically, as they do not have an electronic mailbox.

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)

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