

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
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- Slovak
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- Swedish

* I am giving my contribution as

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* First name

laetitia

* Surname

boucquey

* Email (this won't be published)

laetitia.boucquey@blackrock.com

* Organisation name

255 character(s) maximum

BlackRock

* Organisation size

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

Transparency register number

255 character(s) maximum

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

51436554494-18

* Country of origin

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

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- 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
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- Germany
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- Gibraltar
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- 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
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- Mayotte
- Mexico
- Micronesia
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- Monaco
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- Morocco
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- 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
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* Field of activity or sector (if applicable):

at least 1 choice(s)

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

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

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

Asset Management

* Publication privacy settings

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

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

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

Choose your questionnaire

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

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

The **full version** comprises 87 additional questions addressing **more technical features**.

The full questionnaire is only available in English.

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

- I want to respond to the **full version** of the questionnaire

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

The EU established a comprehensive set of rules on investment services and activities with the aim of promoting financial markets that are fair, transparent, efficient and integrated. The first comprehensive set of rules adopted by the EU ([MiFID I - Directive 2004/39/EC](#).) helped to increase the competitiveness of financial markets by creating a single market for investment services and activities. In the wake of the financial crisis, shortcomings were exposed. MiFID II and MiFIR, in application since 3 January 2018, reinforce the rules applicable to securities markets to increase transparency and foster competition. They also strengthen the protection of investors by introducing requirements on the organisation and conduct of actors in these markets.

After two years, the main goal of a MiFID II/MiFIR targeted review is to increase the transparency of European public markets and, linked thereto, their attractiveness for investors. The Commission aims to ensure that European Union's share and bond markets work for the people and businesses alike. All companies, both small and large, need access to the capital markets. The regulatory regime for financial markets and financial services needs to be fit for the new digital era and financial markets need to work to the benefit of everyone, especially retail clients.

Question 1. To what extent are you satisfied with your overall experience with the implementation of the MiFID II/MiFIR framework?

- 1 - Very unsatisfied
- 2 - Unsatisfied
- 3 - Neutral
- 4 - Satisfied
- 5 - Very satisfied
- Don't know / no opinion / not relevant

Question 1.1 Please explain your answer to question 1 and specify in which areas would you consider the opportunity (or need) for improvements:

5000 character(s) maximum

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

MiFID II / MiFIR (“the MiFID regime”) has brought several tangible benefits for European end-investors and has advanced broader policy goals to further integrate and develop European capital markets.

As an example, investors in European ETFs have benefited from the execution transparency delivered through the MiFID regime by enabling market participants and sophisticated investors to see the volume of ETF trading that occurs daily. The visibility provided since MiFID II took effect should not be underestimated - the \$2.5trn of European ETF trading that took place in 2019 has undoubtedly led to more Europeans being invested in capital markets in line with broader objectives to create EU Capital Markets Union (CMU).

However, further policy intervention and possibly legislative changes are necessary to remove the inequalities that exist between different investors types, large and small, sophisticated and retail. These inequalities exist due to the lack of common reporting standards and permitted delays, most of which can be addressed by a further development of the MiFID regime.

These delays and reporting discrepancies have prevented commercial providers from creating a centralised record of all equity, ETF and fixed income trade reports – the European consolidated tape. The result is an uneven playing field which favours the most sophisticated investors who have the capacity to aggregate data but disadvantage the retail consumer who is generally unable to assess the liquidity in Europe’s capital markets in the same way, thereby undermining the broader aims of the CMU.

Recent market volatility in light of the COVID-19 pandemic has highlighted the opacity and fragmentation of underlying bond markets, with ETFs being utilised by many investors as price discovery vehicles of choice. This only reinforces the need for a consolidated tape across fixed income and equity markets.

On the investor protection side, we welcome the continued focus on this area, and on supporting consumers in making informed interests and ensuring investment firms act in the best interests of their customers. We note, however, that the increased levels of disclosure under MiFID II have not as yet resulted in more engagement from retail investors. This is especially in true in respect of some of the more technical disclosure requirements e.g. on costs and best execution which require considerable understanding from investors of the way markets operate. Much of this regulation is designed around static paper-based disclosures and is not designed to be consumed by investors in a dynamic digital environment.

A further important point to note is that investor protection measures are product-specific, whereas end-investors are often largely agnostic about what type of investment product they buy and focus more on whether the products or solutions they are buying help them meet their financial goals. The regulation of investor disclosure regulation should adapt to reflect the increasing move away from selling products to providing investment solutions designed to meet overall financial goals.

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.
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The EU intervention has been successful in achieving or progressing towards its MiFID II /MiFIR objectives (fair, transparent, efficient and integrated markets).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve the MiFID II/MiFIR objectives.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR objectives correspond with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR has provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

5000 character(s) maximum

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

As noted in our response to question 1, there are still areas that need further work to progress the MiFID agenda - the lack of a consolidated tape being one of the most notable.

In terms of investor protection, as noted previously, we believe that the investor protection regime has not evolved to meet the needs of an increasingly digital market place and is unnecessarily paper-based. Aside from the area of payments - where there has been significant growth in digital services - consumers still value human interaction with intermediaries, but also increasingly demand that the administrative burdens on them relating to account-opening and disclosures are digitised to improve the consumer experience. A more efficient and therefore more engaging consumer experience will require the regulatory regime of the future to focus on eID, eKYC and interactive digital disclosures.

We also believe that there is increasing demand for less liquid assets to meet long term investment goals. To facilitate this demand while maintaining high levels of investor protection, we recommend revisiting the ability to include less liquid instruments such as ELTIFs in suitability assessments as well as revisiting the scope of complex products (for example, we recommend revisiting the automatic treatment of all AIFs as complex products and exchange traded product classification).

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.

See response to question 1.

Question 4. Do you believe that MiFID II/MiFIR has increased pre- and post-trade transparency for financial instruments in the EU?

- 1 - Not at all
- 2 - Not really
- 3 - Neutral
- 4 - Partially
- 5 - Totally
- Don't know / no opinion / not relevant

Question 4.1 Please explain your answer to question 4:

5000 character(s) maximum

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

See response to question 1.

Question 5. Do you believe that MiFID II/MiFIR has levelled the playing field between different categories of execution venues such as, in particular, trading venues and investment firms operating as systematic internalisers?

- 1 - Not at all
- 2 - Not really
- 3 - Neutral
- 4 - Partially
- 5 - Totally
- Don't know / no opinion / not relevant

Question 5.1 Please explain your answer to question 5:

5000 character(s) maximum

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

No comment.

Question 6. Have you identified barriers that would prevent investors from accessing the widest possible range of financial instruments meeting their investment needs?

- 1 - Not at all
- 2 - Not really
- 3 - Neutral
- 4 - Partially
- 5 - Totally
- Don't know / no opinion / not relevant

Question 6.1 If you have identified such barriers, please explain what they would be:

5000 character(s) maximum

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

See question 1.

Section 2. Specific questions on the existing regulatory framework

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

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

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

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

PART ONE: PRIORITY AREAS FOR REVIEW

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

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

I. The establishment of an EU consolidated tape¹

1. Current state of play

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

1.1. Reasons why a consolidated tape has not emerged

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

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

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

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

Question 7.1 Please explain your answers to question 7:

5000 character(s) maximum

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

It is widely recognised that the data reporting regime under MiFID I had several issues with data quality. MiFID II sought to remedy this by 'setting the conditions' for the emergence of a commercial consolidated tape (CT) solution: at present, all market participants must publish trade reports, and the data must be made available at reasonable cost. The intention behind this was to set the conditions for a CT provider to aggregate and disseminate the data in a single feed.

In practice, the data processing and cleaning required to produce a CT has proved uneconomical for commercial organisations. Although real-time post-trade data is available from trading venues and APAs, when aggregated they provide, at best, an approximation or partial view of market activity. This is a function of the fact that there is significant complexity and cost involved in aggregating, cleaning, and processing all of the relevant data; which is itself a function of the fact that while data reporting is mandatory, there is insufficient standardisation in the content of the data and the manner in which it is disseminated.

Data quality is particularly challenging for bonds and OTC transactions that do not trade on traditional exchanges. Systematic Internaliser transactions are currently also hard to understand for market participants: for example, trying to establish which SI trades constitute accessible liquidity and which are more technical in nature. The transparency of a CT would be positively impact the current confusion around how to interpret such trade data.

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

Please explain your answer:

5000 character(s) maximum

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

The policy decision to determine the appropriate coverage of the CT to facilitate the objectives of MiFID and CMU should address this question.

If the scope of the CT is – as we believe it should be – to eventually cover pre-trade information (including an EBBO) and information on fixed income, legal changes will be necessary. This is because the specific requirements for a prospective CT envisioned in MiFID II / MiFIR relate only to post-trade disclosure of equity instruments, with fixed income and pre-trade disclosure covered outside of the CT.

That said, we believe the starting point of developing the CT should be real-time post-trade information for equities and equity-like products, such as ETFs. Our understanding is that this will not require new legislation, given the legal basis for this has been established in the existing MiFID regime. It may, however, require more detailed rules and guidance at Level 2 to drive the project forward.

In broad terms, disclosure of the information that a post-trade equity CT would require is already provided for under, for example, Art. 64 and Art. 65 of MiFID II. As mentioned under Question 7 and again under Question 11 below, additional focus should be on robust standards for data to be fed into and disseminated by the CT, as well as the appropriate governance and funding mechanisms of a CT.

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 share the overall assessment that efforts to reduce the price of market data, ensure prices are set on a Reasonable Commercial Basis, and make clear how prices are set have not yet succeeded. We believe the structural factors that mean demand for market data is inelastic and non-substitutable have made possible the proliferation of complex licensing and packaging of data, which, cumulatively, has raised costs associated with its consumption.

While ESMA's proposals are reasonable and would represent positive developments, we believe in seeking to improve the availability and price of market data the primary focus should be on delivering a CT; and, importantly, the terms on which it is licensed and disseminated. We believe having a single, authoritative consolidated tape that gives a comprehensive view of market activity would in itself be a significant step towards addressing market data concerns. It will, however, need to be underpinned by distribution arrangements that are straightforward and not subject to complex packaging and licensing terms.

1.3. Use cases for a consolidated tape

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

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

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

5000 character(s) maximum

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

Aside from direct benefits to market participants and investment professionals, there are wider effects that the CT would have that are important to highlight. We see the CT as integral to delivering Capital Markets Union (CMU, as highlighted earlier in the response). One aspect of this is allowing all investors, retail or institutional, to compare their own trades against most the recent market activity and measure best execution. This will improve investor confidence and bring about greater retail participation in European capital markets, as investors will have standardised data, and information on (and access to) liquidity which is currently dispersed across multiple competing trading venues in Europe.

Similarly, a CT that covers equity-like instruments – in particular, ETFs – would further enhance retail investor participation. Improving transparency and easy access to data on ETFs would bring considerable benefits to current and prospective ETF investors – and would level the playing field between retail and institutional investors, in alignment with CMU objectives of facilitating retail access to invest in European capital markets. Moreover, a CT that provided live best bids and offers across venues would also improve execution outcomes for end clients and support better venue selection. As for other asset classes and products, the CT would provide historical ETF volumes and bring comfort in size that can be executed for a given vehicle and facilitate better quality post trade best execution analysis.

Finally, it is important to note that delivering a CT – and in time a European Best Bid-Offer (EBBO) will, we believe, solve many of the outstanding issues and concerns policymakers and some market participants have with today's EU market structure. This includes many of the equity market transparency issues recently consulted on by ESMA: delivering a CT requires consideration of a range of issues, including data standardisation, data quality, latency issues, and others that are pertinent to post-trade equity transparency. Similarly, the improved transparency promised by a CT and EBBO would address many of the current concerns around the extent of 'dark' trading and role of Systematic Internalisers by including them in this framework.

Question 10.1 Please explain your answers to question 10 and also indicate to what extent the use cases would benefit from a CT:

5000 character(s) maximum

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

A CT would be a de facto utility for markets: an accurate source of near real-time information on current trading activity, and a central repository of pan-European historical trading data. This would allow any investor – retail and institutional alike – to compare their own trades against most recent market activity and measure best execution.

From an asset manager's perspective, there are several functions that have use cases for a CT – trading functions in particular; but also portfolio management, risk management, trading oversight, and compliance.

Trading teams would use the data for the purposes of trading securities – including sizing prospective orders (a CT would give investors and brokers a common reference point on market volumes, reducing mistakes and increasing efficiency); making real-time trading decisions (monitoring liquidity conditions or taking decisions about venue routing); or trading blocks (giving traders a complete liquidity picture allows block liquidity to be sources easily). All these use cases result in the ability to deliver executions more efficiently and cost effectively for end-investors.

Aside from this, portfolio managers would consume CT data to monitor and manage their portfolios, allowing portfolio managers a better view of liquidity and trading conditions before raising orders. This increases the ability and efficiency of delivering desired investment outcomes.

The data is also useful from a risk management perspective, as an input to trading oversight, transaction surveillance, and liquidity risk management – indeed data from a comprehensive CT would further enhance understanding of liquidity dynamics and related analytics.

2. General features of the consolidated tape

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

During the EC workshop, the ESMA consultation, conferences and stakeholder meetings, it became clear that a majority of market participants believe that EU financial markets would benefit from the establishment of a CT. ESMA made the following recommendations² which appear very important for the success of an EU consolidated tape:

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

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

- Whether pre-trade data should be included in CT:** the argument has been made that the US model for a consolidated quotation tape comprises pre-trade quotes because of the **order protection rule** contained in Regulation National Market System (NMS). The order protection rule eliminated the possibility of orders being executed at a suboptimal price compared to orders advertised on exchanges and it established the National Best Bid and Offer (NBBO) requirement that mandates brokers to route orders to venues that offer the best displayed price. Although some stakeholders strongly support a quotation tape, others have expressed reservations, either because there is no order protection rule in the European Union or because they do not support the establishment of such a rule in the EU which could be encouraged by the establishment of a pre-trade tape. Stakeholders also argue that a quotation tape will be very expensive and that latency issues in collecting, consolidating and disseminating transaction data from multiple venues will always lead to a co-existence of the CT and proprietary exchange data feeds.
- What should be the latency of the tape:** Many stakeholders argue that the tape should be “real-time”, implying minimum standards on latency such as a dissemination speed of between 200 and 250 milliseconds (“fast as the eye can see”). Other stakeholders support an end of day tape.
- How to fund the tape and redistribute its revenues:** stakeholders have mixed views on the optimal funding model. They also caution against some aspects of the US model, where the practice of redistribution of CT revenues has, in their view, provided market participants with an incentive to provide quotes to certain venues that rebate more tape revenue, without necessarily contributing to better execution quality.

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
High level of data quality	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Mandatory contributions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Mandatory consumption	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Full coverage	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Very high coverage (not lower than 90% of the market)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Real-time (minimum standards on latency)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

The existence of an order protection rule	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Single provider per asset class	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Strong governance framework	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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

5000 character(s) maximum

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

It will not be likely be immediately possible to deliver a CT that has all the desired features to maximise benefits for end-investors – spanning across different asset classes and providing both pre- and post-trade transparency – at once, and so a phased approach is appropriate. This could be delivered in a three-stage process:

1. Real-time post trade consolidated tape for equity / equity-like instruments
2. Extension of the real-time post trade consolidated tape to bonds and other instruments
3. Pre-trade European Best Bid and Offer (EBBO).

There are different use cases for real-time, delayed, and end-of-day feeds, but clearly the existence of a real-time feed would supersede the need for any less frequent feed and encompass the use cases of those feeds as well. As discussed under Question 10.1, there are clear efficiency and best execution benefits to trading teams having access to real-time feeds.

We see achieving high data quality for the CT as a function of pre-defined data standards, mandatory contributions to the CT, and a revenue sharing framework for contributions – all underpinned by a strong governance framework.

We discuss the specificities of data coverage under Q16, however standards should be maintained through a combination of enforcement (mandatory contributions), and incentives (a revenue sharing framework). The CT should have a pre-defined template that all relevant trading venues are required to adhere to and contribute their data in accordance with, with penalties in the wider governance or regulatory framework for non-submission or negligence leading to poor data quality.

On the other hand, as discussed under Q14, we believe the tape should be funded through user fees re-distributed to tape contributors. This model would mean incentives for ensuring high data quality can be put in place. Specifically, revenue-sharing would be contingent on data being correct and in adherence with the relevant standards. We also discuss the relevant governance framework under Q14.

Ensuring the tape has full coverage of equity and equity-like instruments in the first instance, and, over time, expanding to other asset classes such as fixed income. Comprehensive coverage is integral to the use case of the CT. Ensuring this would likely mean some expansion or alteration of the reporting requirements applied to different market participants and trading venues under the existing MiFID framework.

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.

We believe there are sufficient commercial and regulatory incentives to consume this data. Market participants are already consuming much of the data that would eventually be included in a CT, albeit in an incomplete and fragmented format. In addition, the support that the CT would provide in assessing best execution would be an additional incentive to consume the data. This means mandatory consumption would not be necessary.

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.

In the US, the Order Protection Rule (OPR) has been used as one means enforcing best execution. It has been beneficial for linking together US markets at a time when electronic trading and order routing were still in their infancy. But given the state of algorithmic trading today, and the technology available to market participants in managing order routing, the OPR may not be necessary.

An OPR in Europe would first require a pre-trade consolidated tape and EBBO, otherwise venues or market participants would be required to subscribe to every trading venue directly. Additionally, the success of any OPR would be conditional on solving the latency challenges associated with a pre-trade feed. As we have seen in the US, any pre-trade feed covering a geographically dispersed area will have some degree of latency. An enforced OPR leaves market participants who rely on a pre-trade feed with some latency vulnerable to being front-run by other participants with access to faster feeds. Additionally, brokers may consciously exclude certain venues from their routing if they believe that such executions provide a signal to the market, detrimental to the overall execution quality of the order. For a large order, for example, it would be essential to avoid executions which might make the first child execution look cheaper but would raise costs for all subsequent child executions.

We believe brokers already have a very natural incentive to route to the venue displaying the best price. Hence, we see little benefit of an OPR, but believe it could lead to high complexity and implementation cost on the downside.

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

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

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

5000 character(s) maximum

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

Another important consideration is the terms on which the CT is licensed and distributed. As noted, the recent increase in the cost of market data is attributable to increasingly complex licensing terms and restrictions on use cases of the data. For the CT to be successful, it will be important that similar problems are avoided. We discuss further this under Q14.1

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.

We believe a single consolidated tape provider (CTP) should be mandated and overseen by ESMA. We recommend that potential providers tender for a specific initial amount of time, with the contract open to be re-tendered after an appropriate period. ESMA would specify the request for proposal (RFP) appropriately with clear delivery guidelines, latency requirements, and other technical specifications.

We believe the CT could be delivered widely and at reasonable cost. Our preference is for it to be funded by a cost-plus-margin fee charged to users, with a portion of the revenue generated used to compensate trading venues for the data they input to the CT. Revenue sharing arrangements would clearly need to differ for the post- and pre-trade feeds; for the latter, some consideration would need to be given to price-formation – and a greater share of quote revenue could be given to venues that more frequently represent the EBBO.

The CT would require robust governance arrangements to maintain its ongoing quality and effectiveness in stabilising market data costs. To be additive to current arrangements, the CT will need simple, straightforward, and user-friendly licensing terms – and avoid mirroring some current market practises. The governance body should consist of the regulatory community, including ESMA, as well as a broad range of market participants including trading venues, market infrastructure providers, and the buy- and sell-sides. It should be tasked with ensuring the business model of the tape is economically appropriate and sustainable and conduct ongoing monitoring to ensure that there is no deterioration in quality or access to the tape.

With the right governance in place, independently overseen and enforced, it is a secondary matter what type of entity provides the consolidated tape. We could see trading venues, data-savvy market participants or data vendors entering into competition for the consolidated tape mandate. However, it should be a single provider: we see little benefit in establishing competing consolidated tape providers who provide the same product.

3. The scope of the consolidated tape

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Shares pre-trade ³	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Shares post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
ETFs pre-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

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

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.

To maximise the benefit of the CT, all instruments that are in scope for the various trade reporting regulations under MiFID II and MiFIR should be in scope. For example, equities, “equity-like products” such as ETFs, but also other Exchange Traded Products (such as Exchange Traded Notes and Commodities) should be included, as well as bonds. As the scope of data fields can vary across instruments – for example for bonds and equities – we see the case for separate feeds rather than one single CT.

Given the differences embedded in the products and related market structures, a phased approach would be preferable where an equity / ETF consolidated post-trade tape is rolled out first before expanding into other asset classes such as bonds and then considering a pre-trade EBBO. We generally also support the extension of a CT beyond equities, ETFs, and bonds; however this is a lower priority and should be considered in the final phase.

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

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

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

5000 character(s) maximum

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

As part of the process to develop the CT, execution venues need to contribute to the consolidated tape provider which will then process and aggregate their data. It is desirable for the data to be provided in a standardised format with standardised keys (for example a common set of values for classifying types of trades etc.) The tape will require a clear list of data fields, a clear description of how to populate these fields (with standardised values where appropriate), and enforcement of these standards.

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

The MMT (Market Model Typology) is one attempt at standardisation, and it is supported by a broad range of industry participants. We would expect that cross-industry consultation would need to be carried out by ESMA in advance of defining technical standards and issuing a mandate for the tape.

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Shares admitted to trading on an MTF with a prospectus approved in an EU Member State	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Question 17.1 Please explain your answers to question 17:

5000 character(s) maximum

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

As discussed under Q14 and Q15, comprehensive coverage is central to the success of a CT. We believe the criteria for the Official List of shares should reflect the full scope of shares trading on EU trading venues, irrespective of listing location of the share itself. An accurate representation of trading activity within the EU, defined broadly, should be the aim.

Question 18. In your view, should the Official List take into account any additional criteria (e.g. liquidity filter to capture only sufficiently liquid shares) to capture the relevant subset of shares traded in the EU for inclusion in the consolidated tape?

Please explain your answer:

5000 character(s) maximum

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

See answers to questions 17 and 17.1.

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.

As mentioned under Q17 / Q17.1, the priority in this area should be to reflect the full scope of shares trading on EU venues. Clearly, this is complicated where shares have cross-listings or trading activity taking place in other jurisdictions. Switzerland and likely the UK are examples of these. For market participants, a full tape that consolidates EU, UK, and Swiss data would be highly desirable, but even without UK and Switzerland, an EU tape would be very useful. That said, it would also be positive if three separate tapes – EU, UK and Swiss – operating according to common standards could emerge, which would then be easy to aggregate. It is likely that CT users could filter out UK / Swiss volume if they cannot access it – however we would keep the information in the tape even if we were not able to access all liquidity – but this information would nonetheless be beneficial to the price discovery process.

ETFs, Bonds, Derivatives and other financial instruments

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

Please explain your answer and provide details by asset class:

5000 character(s) maximum

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

As discussed under Q17, Q18, and Q19, the guiding principle for determining the Official List of each asset class should be to capture the range of instruments that provide an accurate and complete representation of trading activity within in the EU.

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.

We continue to question the merits of public policy that mandates a shift liquidity from "dark" to "lit markets". From the market quality standpoint, we would reframe the debate on the contributions to liquidity and benefit to the end-investor (and in turn, the Capital Markets Union). Regulatory intervention that attempts to restrict and shift trading from one model to another, in this case from dark to lit markets, risks reducing market liquidity and increasing costs without improving price discovery. A CT and EBBO are more effective tools to strengthen transparency and price discovery.

The share trading obligation (STO) adds complexity to EU market structure. It is hard to recognize any liquidity benefits it has brought to European markets – if anything, its restrictive approach reduces the liquidity available to investors. In the long run, measures like the STO harm the attractiveness and competitiveness of secondary markets in Europe, particularly for global investors.

Question 22. Do you believe there is sufficient clarity on the scope of the trades included or exempted from the STO, in particular having regards to shares not (or not only) admitted to an EU regulated market or EU MTF?

- 1 - Not at all
- 2 - Not really
- 3 - Neutral
- 4 - Partially
- 5 - Totally
- Don't know / no opinion / not relevant

Question 22.1 Please explain your answer to question 22:

5000 character(s) maximum

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

The STO has created confusion over whether shares with primary listings outside of the EEA must be traded on EEA venues. This requirement could force firms trading non-EEA stocks to execute trades away from the primary, lower-cost, source of liquidity –to the detriment of EU investors. We recommend that regulators clarify that the STO is limited to stocks with primary liquidity in the EEA.

Under the STO MIFID investment firms are only allowed execute shares which are tradable on European trading venues (ToTV), on ‘third-country’ (non-EU) trading venues in countries deemed equivalent, or through a Systematic Internaliser. This has led to confusion around the treatment of shares with primary listings outside of the EEA, particularly where there are delays in equivalence decisions. Without clarification, investment firms trading non-EEA stocks with EEA listings (such as Apple) may be forced to execute differently for European clients than for US clients. This puts European end-investors at a disadvantage.

For most non-EEA stocks, there will be better trading outcomes if trades take place where the stock has its primary listing, where liquidity is typically concentrated. In these scenarios, application of the STO could impede execution quality. While Apple may be a straightforward case, there are other examples where it is less obvious whether European liquidity is non-systematic, ad hoc, irregular and infrequent (i.e. subject to the ‘infrequent exemption’).

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Maintain the STO (status quo)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Maintain the STO with adjustments (please specify)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Repeal the STO altogether	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 23.1 Please explain your answers to question 23:

5000 character(s) maximum

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

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

If this were not possible, at a minimum we would recommend that the European Commission clarifies that STO should be limited only to stocks with significant liquidity in the EEA. European end-investors otherwise face a disadvantage relative to those in other countries. Brexit may further exacerbate this challenge for market participants and European end-investors.

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
SIs should keep the same current status under the STO	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
SIs should no longer be eligible execution venues under the STO	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Question 24.1 Please explain your answers to question 24:

5000 character(s) maximum

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

Assuming the STO is not repealed, it is important that the same status as today is retained for SIs. If SIs were no longer eligible execution venues under the STO this would effectively exclude SIs from transacting in equities within the EU – a detrimental outcome for EU capital markets or for end-investors.

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

Venue choice is driven primarily by factors such as cost, efficiency, suitability for the transaction in question. For large orders, Systematic Internalisers provide essential liquidity. The execution of such large orders on lit venues would often lead to significantly worse execution outcomes. It is essential that the SI regime's role for providing risk transfer is retained. We believe it would be a step backwards if SIs should no longer be eligible execution venues under the STO.

We do understand that there is concern around the role that SIs play in the market ecosystem and questions around transparency, particularly from stock exchanges competing for the same pools of liquidity and trading activity. These concerns would be best addressed by a CT that allows for a more accurate empirical picture of the different types of SI activity. Additionally, the role of SIs for small executions below SMS could be re-thought. However, it is crucial to retain SI liquidity provision and risk transfer for large trades.

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

Please explain your answer:

5000 character(s) maximum

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

No comment.

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.

No comment.

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.

As noted earlier in the response, real-time trade information strengthens price discovery and optimal venue choice, in line with best execution requirements, whilst also promoting investor confidence in quoted prices and execution quality across electronic execution venues.

A European Best Bid and Offer (EBBO) arrangement could strengthen pre-trade pricing information and therefore price discovery. To level the playing field between all execution venues with pre-trade quoting, we recommend a holistic approach to EBBO contribution (such as the inclusion of Systematic Internaliser quotes not covered by Large-in-Scale waivers). This would mitigate any concerns that Systematic Internaliser activity is detrimental to price discovery, making a shift to exchanges redundant, and retaining neutrality in execution venue choice.

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

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

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

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

Question 28.1 Please explain your answer to question 28:

5000 character(s) maximum

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

To maximise the benefit of the CT, all instruments that are in scope for the various trade reporting regulations under MiFID II and MiFIR should be in scope. These would include instruments subject to the

STO but the scope requirements for the tape should be much wider. For example, equities not subject to the STO but trading on a European venue, “equity-like products” such as ETFs, but also other Exchange Traded Products (such as Exchange Traded Notes and Commodities) should be included, as well as bonds. However, as the scope of data fields can vary across instruments – for example for bonds and equities – we see the case for separate feeds rather than one single tape.

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.

See response to question 28.1.

4.3. Post-trade transparency regime for non-equities

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

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

		2				
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	1 (disagree)	(rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Abolition of post-trade transparency deferrals	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shortening of the 2-day deferral period for the price information	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shortening of the 4-week deferral period for the volume information	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Harmonisation of national deferral regimes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Keeping the current regime	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Question 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.

Please see the ICMA document: "EU Consolidated Tape for Bond Markets - Final report for the European Commission" ICMA MiFID II Consolidated Tape Taskforce (April 2020), to which BlackRock contributed.

We would like to re-iterate that post-trade deferrals provide an important protection for broker-dealers who are providing liquidity. If they were abolished this could harm liquidity provision as market makers will be less willing to provide liquidity as they fear that other market participants would have immediate visibility of their positions. For details see the ICMA publication.

II. Investor protection⁴

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

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

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

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

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

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

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

Quantitative elements for question 31.1:

	Estimate (in €)
Benefits	N/A
Costs	N/A

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.

Increased disclosure has not necessarily resulted in more engagement from retail investors, and investment by European citizens in European capital market remains low compared to the US (see ECMI TaskForce on Asset Allocation). We note some of the more technical disclosure requirements, such as those on implicit transaction costs, require considerable understanding from investors of the way markets operate.

Investor protection measures are product-specific, whereas end-investors are often largely agnostic about what type of investment product they buy and focus more on the whether the products or solutions they are buying help them meet the financial goals they are trying to achieve. Retail investors in particular place significant emphasis on trust in the intermediary (including brand reputation), the quality and trustworthiness of the advice they receive, and overall value for money. Furthermore, regulation needs to facilitate the value for money consumers receive from investment solutions designed to meet overall goals, frequently constructed using standardised models allocating to underlying products.

Disclosure regulation should adapt to reflect the move away from selling individual products towards providing multi-product solutions. Where consumers are sold standardised investment solutions, we recommend disclosure and reporting on key issues such as cost, performance and risk is made primarily at the portfolio level rather than at the level of the underlying building blocks. We would also encourage the development of more effective risk presentations for longer term investment solutions; focusing on risk over time rather than on volatility at a point in time. There is currently also much focus on ensuring consumers' Environmental Social Governance (ESG) preferences are correctly represented in products they purchase by and on developing eco/sustainability labels to avoid greenwashing. In this context we also recommend more focus on how risk and ESG preferences will be aggregated at the level of a standardised portfolio offering.

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

	Yes	No	N.A.
Product and governance requirements	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs and charges requirements	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conduct requirements	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

1. Easier access to simple and transparent products

The CMU is striving to improve the funding of the EU economy and to foster retail investments into capital markets. The Commission is therefore trying to improve the direct access to simple investment products (e.g. certain plain-vanilla

bonds, index ETFs and UCITS funds). On the other hand, adequate protection has to be provided to retail investors as regards all products, but in particular complex products.

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.

Product and governance requirements:

- We emphasise the importance of taking overall portfolio construction into account when determining whether the target market of a fund meets the needs of investor particularly in terms of risk appetite. At a portfolio level, the principles of risk diversification over the full time horizon of the client frequently lead portfolio managers or advisors to recommend a partial allocation to an instrument which, if held in its entirety, would not be suitable for an individual client. This emphasizes the importance of assessing target market and risk at the level of the whole portfolio.
- We also call for a reassessment of the blanket treatment of all Alternative Investment Funds (AIFs) as complex instruments. Many member states have retail AIFs which are designed to be suitable for retail investors in their jurisdiction. Furthermore, a lack of liquidity should not lead to an automatic categorization of a fund as complex. Rather, the suitability process should consider the investor's ability to give up regular liquidity for all or part of their portfolio. In such cases a fund which does not offer regular liquidity such as an European long-term investment fund (ELTIF) may often constitute a suitable investment choice for an investor who does not need immediate access to liquidity from all of their portfolio.

Costs and charges requirements:

- Need for a common framework for the disclosure of the transaction costs which moves away from the arrival price or slippage methodologies:

As we noted in our 2018 ViewPoint, *Disclosing Transaction Costs - The need for a common framework* (Available at: <https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-disclosing-transaction-costs-august-2018.pdf>), we are faced with requests to provide costs and charges information particularly in relation to transaction costs, on the products we manage in a variety of different formats and using different methodologies. We recommend moving away from the slippage methodology to a modified half-spread methodology, with additional disclosure on the governance firms have put in place to manage transaction costs, reflecting existing governance requirements for best execution.

- Use of the European MiFID Template (EMT):

We also note that the asset management industry and distributors have built a comprehensive infrastructure for transmitting costs and charges information using the EMT. This is subject to a formal governance process under the umbrella of FinDatEx between EFAMA, EBF, Insurance Europe, ESG, EACB and EUSIPA. The templates have been agreed after extensive discussion by all parties and after significant testing of fields and delivery mechanisms. We encourage ESMA to work with FinDatEx to ensure that any recommended changes to the current disclosure regime can be fully integrated into industry standard templates with sufficient lead time for appropriate testing. As such, we recommend minimising the use of ESMA Q&A to address issues of costs disclosure as this process brings uncertainty into what are now highly automated delivery mechanisms.

- Use of country or client specific reporting templates especially for professional clients:

We note that, in addition, in a number of jurisdictions institutional clients require specific reporting on costs and charges by using specific costs templates (for example, there are a number of pension fund templates in jurisdictions such as the UK and Netherlands designed to meet the needs of specific client segments, such as pension funds). We therefore support the ability to disapply the cost disclosure requirements for professional clients and eligible counterparties to

allow them to receive disclosures which comply with alternative national regulatory requirements or standard industry templates.

Question 33. Do you agree that the MiFID II/MiFIR requirements provide adequate protection for retail investors regarding complex products?

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

Question 33.1 Please explain your answer to question 33:

5000 character(s) maximum

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

We support revisiting MiFID II's distinction between complex and non-complex products, especially in relation to AIFs. This should involve reviewing whether certain AIFs that are aimed at retail investors should be considered to be non-complex within the meaning of article 57 of the MiFID II Delegated Regulation.

2. Relevance and accessibility of adequate information

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

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

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

	Yes	No	N. A.
Professional clients and ECPs should be exempted without specific conditions.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Only ECPs should be able to opt-out unilaterally.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Professional clients and ECPs should be able to opt-out if specific conditions are met.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

All client categories should be able to opt out if specific conditions are met.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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.

We are in favour of offering professional clients and eligible counterparties (ECPs) the possibility to opt out of all cost information obligations or alternatively allowing them to switch off the cost disclosure requirements completely (opt-out) regardless of the investment service being provided and of the underlying financial instrument. This would allow clients to choose another domestic regulatory regime or industry standard for cost disclosure and avoid multiple levels of reporting. We note that professional clients often have specific requirements to meet regulatory or internal risk control requirements. The FinDatEx project, for example, includes specific reporting for insurance companies subject to Solvency II. It may, however, make sense to allow elective professional clients to choose to retain certain retail standards of disclosures.

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

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

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

Question 35.1 Please explain your answer to question 35:

5000 character(s) maximum

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

While digital services are developing apace, much of the legislative framework has been conceived on the basis of face to face communication and paper-based disclosures, with digital delivery treated as an add on rather than the primary source of communication.

The regulatory framework for investment products and services must adapt to allow for innovation and recognise the changes digital services bring. Rather than deluge consumers with reams of paper and disclosures, we believe the future of disclosures should incorporate a greater number of more intuitive digital tools, to increase point of sale engagement and education on key concepts such as cost, performance, and

risk.

We also suggest that these key concepts should be viewable in a number of different ways, given that consumers process key information differently. Provided the base data for the disclosure is consistent, consumers should be able to select between a number of different formats rather than being forced to consume data on a one-size fits all basis.

Paper-based disclosures (even if sent via pdf) should be seen as a legal record of the consumer's final decision rather than acting as a static document to be read at the start of their decision-making process. However, we do believe that there must always be an option for investors (opt-in) to receive paper-based documents as not all investors utilise technology in the same way.

The scheduled review of legislation should avoid creating barriers and incentivise effective digital engagement – and at the very least we need to recognise that a pdf of a paper document does not constitute effective digital engagement. We believe that much can be achieved quickly through the publication of best practices and guidelines by the European Supervisory Authorities (ESAs) to provide greater certainty for compliance. This approach will avoid a fundamental rewrite of the existing disclosure requirements.

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

	Yes	No	N. A.
General phase-out within the next 5 years	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
General phase out within the next 10 years	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
For retail clients, an explicit opt-out of the client shall be required.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
For retail clients, a general phase out shall apply only if the retail client did not expressly require paper based information	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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

5000 character(s) maximum

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

BlackRock has long advocated for the electronic delivery of fund documents as the default mechanism for communication with investors. For example, we produce around 50,000 UCITS KIDs a year in multiple languages, and we use our website as our primary delivery mechanism. We have also consistently advocated for key information disclosure documents (UCITS, PRIIPs and PEPP) to be designed on a digitally friendly rather than on a paper-basis.

We believe that a general phase-out of paper-based information should be a priority for all asset managers and distributors given the rapid changes in the use of technology and the sustainability challenges our society faces. However, as mentioned in our response to question 36, we strongly recommend keeping an opt-in option for clients that do wish paper-based information.

Some retail investors deplore the lack of comparability of the cost information and the absence of an EU-wide database to obtain information on existing investment products.

Question 37. Would you support the development of an EU-wide database (e.g. administered by ESMA) allowing for the comparison between different types of investment products accessible across the EU?

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

Question 37.1 Please explain your answer to question 37:

5000 character(s) maximum

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

Overall, we are supportive of the increased transparency and comparability of data that a European wide database (which includes information of products and costs) could bring. We also believe that having one comparable set of data could also help address the issue of the different methodologies and disclosures currently used to disclose costs to investors.

We also see benefits in introducing a database to facilitate the access to existing information. Currently investors have to look for information on individual websites set up in different ways by individual fund managers, where the retrieval of information may not be very intuitive. There is therefore considerable 'attrition' that needs to be overcome in order to access the information.

However, we would like to understand in more detail the overall objective, content and governance of such a database. To be able to fully assess potential costs and benefits of this project it is imperative to understand the objective of this database and consequently the users (supervisors, third party intermediaries or end retail investors) and developers (ESMA public solution or a third-party commercial solution). As noted in our response to question 34.1, professional investors often require reporting using a specific industry or national template, and so are likely to see less utility in a pan-European database. We are also keen to ensure that the development of such a database does not lead to increased or multiple reporting obligations on firms. We would prefer a one-time reporting portal from where data can be further disseminated to interested parties.

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

--	--	--	--	--	--	--	--

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
All transferable securities	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
All products that have a PRIIPs KID/ UCITS KIID	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Only PRIIPs	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please specify what other products should be prioritised?

5000 character(s) maximum

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

It is important to clarify that UCITS currently report on costs using a different methodology to that used in PRIIPs. It still has to be clarified whether professional investors in UCITS will still need to receive the existing UCITS KIID once retail investors start receiving the PRIIPs KID from the start of 2022. At the very least share classes designed for professional investors or other institutional holders should be exempt from the disclosure requirements given the different cost disclosure requirements of these investors (see answer to question 37.1).

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.

We would recommend consulting the respective future users of this database as to what products would be best included. At an intermediary level, it is particularly important to identify whether the intermediary users of the FinDatEx would see a central data base as additive to the cost data they already from providers using the pre-existing standard industry templates such as the European PRIIPs Template (EPT) or the EMT.

At a first stage of development, we would recommend including PRIIPs (following the adoption of updated RTS) to minimise development of reporting for redundant standards; and at a second stage UCITS, when they have fully transitioned to the updated PRIIPs standard. As the transition of UCITS to the PRIIPs KID standard will represent a major piece of industry infrastructure development, we recommend that UCITS only move to the new disclosure standard once the new PRIIPs KIDs have been fully adopted.

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.

ESMA has many priorities including the potential development of a European consolidated tape. While we are supportive of ESMA involvement in the development of the cost disclosure tool, other developers may be more appropriately resourced. In addition, the question of funding such a tool remains unresolved. It is not clear if it will be funded as an industry/consumer utility or whether a commercial charge be made - and on what basis. Given the increase in industry data costs in recent years we recommend further consultation with industry and other users on how the development costs are intended to be allocated before commencing work on a project of such nature.

3. Client profiling and classification

MiFID II/MiFIR currently differentiates between retail clients, professional clients and eligible counterparties. In line with the procedure and conditions laid down in the Annex of MiFID II, retail clients can already “opt-up” to be treated as professional clients. Some stakeholders indicated that the creation of an additional client category (‘semi-professional investors’) might be necessary in order to encourage the participations of wealthy or knowledgeable investors in the capital market. In addition, other concepts related to this classification of investors can be found in the draft Crowdfunding Regulation which further developed the concept of sophisticated investors⁵. The CMU-Next group suggested a new category of experienced High Net Worth (“HNW”) investors with tailor made investor protection rules⁶.

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

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

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

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

Question 40.1 Please explain your answer to question 40:

5000 character(s) maximum

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

We believe that the MiFID constraints affect experienced retail clients in a number of different ways. While we are aware that a new semi-professional investor definition could be one way to address these issues, we are also aware that the whole process of reclassification inherent in the introduction of a fourth level of client categorisation brings with it a number of operational complexities, and the burden of repapering clients with new contracts shortly after the significant changes brought in by MiFID II. We could see this new category addressing the investment needs of certain types of investor such as family offices and charities, but our experience tells us that they can usually categorise under the large undertaking tests. We therefore recommend further cost-benefit assessment of the number of clients who would benefit from such change. We also note for clients investing in alternative assets (particularly on a buy and hold basis) may not pass the number of quantitative transactions required in a year to be classified as a professional investor.

We believe that the various issues could be addressed by targeted changes within the existing framework by:

1. Reviewing the conditions for opting up to professional client status – particularly in terms of the knowledge and experience required. This is particularly the case for certain types of retail clients with sufficient experience with financial markets, including (but not limited to) high-net-worth individuals, certain non-IORP pension funds and family offices.
2. Reviewing the application of the complex product definition to AIFs, to allow the easier inclusion of retail AIFs in the portfolios of clients with a long term investment horizon, especially if their portfolio contains sufficient liquid assets to address short term potential liquidity needs, as noted in our response to question 32.
3. Reviewing the suitability requirements for advised and discretionary managed portfolios regarding the inclusion of complex products when they have the potential to improve investment outcomes at the level of the client's overall investment portfolio. Currently the MiFID II rules encourage distributors to select a non-complex product over a complex product which provides a disincentive to invest in long-term products with limited liquidity such as AIFs. As noted above, reassessing the interplay between product complexity and suitability could encourage greater investment into long-term products, especially for those clients who already have a suitable balance of liquid assets in their portfolio to their meet short term needs.

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.

Distributor feedback we have received is that of the three tests for opt-up the financial assets test is the least onerous, rather it is the knowledge and experience tests which are too tightly drawn.

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.

We believe that call for a semi-professional category is driven by three failings in the current system, as noted in our response to question 40.1. These three issues include (1) the complexity of opting up certain retail clients to professional client status where we believe a more simplified process could work especially if it removes the quantitative trading obligation; (2) the automatic treatment of all AIFs as complex products; and (3) the construction of the suitability test for advised and discretionary managed portfolios. If these issues are addressed, then we see no need for a fourth category of investor type.

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Information provided on costs and charges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Product governance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Question 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.

Following on from our answers to question 42 and 42.1, we believe that the focus should be on the process for opting up to those retail clients to professional client status, particularly those that might be considered 'semi-professional clients' for the purpose of this consultation. We would also suggest that professional

clients could be allowed to opt-out of the suitability, costs and charges disclosures to allow for a more tailored and proportional approach to these non-retail clients. Many professional clients have extensive internal due diligence and/or industry standard costs reporting standards that they follow. As such they should be able to opt out and follow these in preference to the MiFID retail standard.

Question 44. How would your answer to question 43 change your current operations, both in terms of time and resources allocated to the distribution p r o c e s s ?

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

5000 character(s) maximum

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

Facilitating the professional client opt up process would be more cost effective than introducing a brand-new client categorization - which would require a reassessment of all clients which have not successful opted up to professional client status.

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

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

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.

We believe that the number of transactions which a client has to undertake per quarter penalizes sophisticated long-term investors who have a buy or hold strategy (especially those investing in alternative assets) and/or use the services of a professional advisor or consultation for the purposes of portfolio construction. Furthermore, the number of transactions conducted may very well depend on underlying market volatility and the need to hedge or reallocate positions on the basis of market movements.

While experience in the financial sector does constitute relevant experience, we believe there are a number of other examples firms could use to establish experience. We support a more flexible approach which would allow firms to assess client experience on the basis of a number of criteria. For example, it is a very different process to assess the experience of a high net worth individual who may or may not have a retained advisor or discretionary portfolio manager, in comparison to a trustee of a local authority pension fund who has access to sophisticated advice from a specialist pensions consultant.

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.

No comment.

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.

The appropriateness of products should be assessed in the context of the level of risk diversification in a client's investment portfolio. While a product, in isolation, may not be compatible with the client's risk profile, when taken within the context of the overall portfolio the product may help to generate greater return or provide hedging against longer terms risk such as inflation. We recommend including the principle of diversification, where the Implementing Regulations sets out the target market requirements, rather than in the ESMA guidelines as is currently the case.

In line with our answer to question 32, we would recommend aligning the product governance rules and suitability or appropriateness testing for AIFs authorized for retail distribution.

Complementary to the product governance rules, we are also strongly in favor of product classification for Exchange Traded Products (ETPs). The rapid growth of ETF assets under management demonstrates that both retail and institutional investors have found ETFs to be an attractive investment product. However, along with this growth, the market has seen a proliferation of more structurally complex ETPs, as well as ETPs with different risk profiles and more narrowly tailored investment objectives. Examples of these more complex ETPs include products such as exchange traded notes ("ETNs"), and levered and inverse ETPs. In our view, there is a need for clearer identification and categorization of ETPs, in order to help ensure that investors understand that certain ETPs have greater embedded market and structural risks and more complexity than others. Specifically, we believe that certain ETPs with complex structures and/or certain embedded risks should be identified and categorized by exchanges at the data feed level (via exchange listing rules or otherwise) as exchange-traded notes ("ETNs"), exchange-traded commodities ("ETCs") or exchange-traded instruments ("ETIs") rather than as ETFs.

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

	Yes	No	N. A.
It should only apply to products to which retail clients can have access (i.e. not for non-equities securities that are only eligible for qualified investors or that have a minimum denomination of EUR 100.000).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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

Question 47.1 Please explain your answer to question 47:

5000 character(s) maximum

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

We believe a more effective balance should be struck in relation to the application of the product governance requirements for portfolio management services rendered to professional clients. The relevant requirements should take account of the fact that portfolio management services are rendered on the basis of investment guidelines that are agreed between the asset manager and sophisticated clients. As such, requiring the determination of a target market for the financial instruments included in the client's portfolio, and mandating that records be kept of the reliance on the diversification/hedging exemption and of potential distributions into financial instruments' negative target market, would not appear to elevate the level of protection enjoyed by the client in a way that is proportionate to the administrative burden created for investment firms. This is particularly notable when considering that portfolio management services are subject to suitability requirements, which arguably provide the highest degree of investor protection.

As noted in question 32, we also believe that the treatment of retail AIFs as complex products needs to be reassessed. And as noted in our response to question 46, it would also be beneficial to have further work on ETPs to clarify which are complex and non-complex.

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

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

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

Question 48.1 Please explain your answer to question 48:

5000 character(s) maximum

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

We see cases where an investment firm may wish to sell a product to a negative target market if the client insists. In this case, clients still need to be informed and confirm their decision in writing for recordkeeping purposes.

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

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

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

Question 49.1 Please explain your answer to question 49:

5000 character(s) maximum

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

No comment.

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

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

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

○ Don't know / no opinion / not relevant

Question 50.1 Please explain your answer to question 50:

5000 character(s) maximum

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

Multiple surveys, including BlackRock's Investor Pulse surveys, repeatedly show that too many savers sit on the side-lines of capital markets and do not invest their cash, even when held for long term savings goals. And this is the case despite multiple legislative and regulatory initiatives on disclosures, reporting, and regulation of products and intermediaries - including restrictions on the payment of inducements - to drive a greater alignment of interests. Our challenge today is to create the right incentive structures for millions of European citizens with cash savings to invest in a risk-diversified manner, in a way that improves trust and confidence in long term investment solutions, and builds on the existing high levels of consumer protection.

In recent years the economics of advisory models have significantly changed as a result of 3 key drivers:

- Regulation promoting a greater alignment of interests and driving a move away from commission-based sales and cross-subsidisation, opening up access to a greater range of products to the cost-conscious consumer. Both MiFID and IDD have introduced significant product governance and suitability assessments and have standardised the way firms talk to consumers about cost, performance and risk;
- Technology driving more standardisation of investment and administration processes. The success of mobile banking apps is driving consumer demands for increased digital communication and reporting tools to supplement traditional face to face meetings;
- Prolonged low interest rates driving a far greater focus on costs and ongoing margin compression.

Taken together, these trends have driven traditional distribution channels to increasingly focus on building standardised solutions using a set of core investment building blocks for their advisory clients, reflecting a series of different risk preferences. These solutions are increasingly offered within a discretionary management contract (where inducements are not payable) allowing automatic rebalancing, rather than a pure advisory mandate. We believe that the commoditization of financial advice and the growth in off the shelf discretionary portfolio management services to retail customers is a long-term trend which needs to be factored into future policy developments, such as any decision to ban inducements.

It is also essential to consider the affordability of advice for consumers in an environment where they have to pay for the service directly. Any such plan would need to consider the impact in changes to business models for the advisors concerned, and the availability of advice across different income groups (to ensure that advice does not become the purview of individuals with a certain level of net wealth). It is also worth considering ways in which the provision of advice could be standardised or subsidised (e.g. in the workplace or through personal training budgets – for example, are KYC and fact finds necessary for all products and services?) Auto-enrolment into workplace pensions, for example, has been seen to be an effective way of bringing many people to invest for the future; but to be effective raises a very different set of consumer protection issues - such as product governance, design and oversight.

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

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

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

Question 51.1 Please explain your answer to question 51:

5000 character(s) maximum

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

We are not against a certification requirement but would like to understand how that would fit with existing frameworks and interact with local requirements.

We note that there is a knowledge and competency framework under MiFID, regional requirements, and detailed ESMA guidelines - all to ensure that staff providing investment advice are properly trained and knowledgeable. Investment advice inevitably includes assessing national tax regimes, and so a portion of national certification will need to remain in place as a complement to any push to develop pan European standards or certification.

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

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

Question 52.1 Please explain your answer to question 52:

5000 character(s) maximum

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

We see that there could be benefits in an EU-wide framework. As noted in our answer to question 51.1, however, it is generally difficult to divorce investment advice from the investor's domestic tax position. Any move to an EU-wide certification will have to contain a national component authority in order to properly address the needs of individual investors.

5. Distance communication

Provision of investment services via telephone requires ex-ante information on costs and charges (please consider also ESMA's guidance on this matter). When a client wants to place an order on the phone, the service provider is obliged to

send the cost details before the transaction is executed, a requirement which may delay the immediate execution of the order. Further, MiFID II/MiFIR requires all telephone communications between the investment firm and its clients that may result in transactions to be recorded. Due to this requirement, several banks argue to have ceased to provide telephone banking services altogether.

Question 53. To reduce execution delays, should it be stipulated that in case of distant communication (phone in particular) the cost information can also be provided after the transaction is executed?

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

Question 53.1 Please explain your answer to question 53:

5000 character(s) maximum

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

In many instances it is impossible or impractical to provide the client with the ex-ante cost information before a transaction is executed. It should be possible to provide this information once the transaction has been executed. As noted in our answer to question 34.1, professional investors should be able to opt out of this information, especially if they have elected to choose alternative measures of cost reporting.

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

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

Question 54.1 Please explain your answer to question 54:

5000 character(s) maximum

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

We do not see the benefit of phasing out the record-keeping systems which have already been put in place; it would be uneconomical to scrap these systems now that they are up and running. The systems also allow for a review of conversations, in the case of customer complaints.

6. Reporting on best execution

Investment firms shall execute orders on terms most favourable to the client. The framework includes reporting obligations on data relating to the quality of execution of transactions whose content, format and periodicity are detailed in Delegated Regulation 2017/575 (also known as 'RTS 27'). The best execution framework also includes reporting obligations for investment firms on the top five execution venues in terms of trading volumes where they executed client orders and information on the quality of information. Delegated regulation 2017/576 (also known as 'RTS 28') specifies the content and format of that information.

Question 55. Do you believe that the best execution reports are of sufficiently good quality to provide investors with useful information on the quality of execution of their transactions?

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

Question 55.1 Please explain your answer to question 55:

5000 character(s) maximum

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

The lack of an intuitive reporting format means we find there is a low level of interest from clients in the reports generated, and where we do receive client feedback there is confusion on how to read and interpret the data reported - as the regulatory format does not reflect how clients would prefer the data to be reported.

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Comprehensiveness	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Format of the data	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Quality of data	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

5000 character(s) maximum

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

If the reports are to be retained there should be greater focus on reporting the data in a way which is which is more intuitive for investors.

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.

No comment.

Question 57. Do you believe there is the right balance in terms of costs between generating these best execution reports and the benefits for investors?

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

Question 57.1 Please explain your answer to question 57:

5000 character(s) maximum

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

If reports are to be retained they should allow market participants more flexibility in their choice of methodology. This would allow market participants to represent trading activity in a way that is consistent with their own monitoring of best execution and more meaningful for clients.

III. Research unbundling rules and SME research coverage⁷

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

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

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

5000 character(s) maximum

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

BlackRock has not noticed a material change in the availability of investment research covering SMEs since the implementation of MiFID II. These comments reflect the internal definition of SMEs we use which covers companies with a market capitalisation of € 5 billion or less. We note that there are more granular breakdowns of the SME market such as those set out in the Commission's previous research on SME research. We do not currently use these for our internal monitoring and retain a broader SME definition.

Using the broader definition of research, we have not noticed a material change in the availability of research since the introduction of MiFID II. We are aware that a number of external research teams have restructured but at this stage it is too early to say whether the changes represent a fundamental change in the market for research.

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

1. Increase the production of research on SMEs

1.1. EU Rules on research

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

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

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

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

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

Please specify what other proposals you would have in order to increase the production of SME research:

5000 character(s) maximum

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

In assessing the value of research provided we differentiate between different types of providers when assessing value from both a quantitative and qualitative angle.

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.

We would welcome further clarification on the ability to include qualitative criteria when assessing the value of research, especially in respect of the contribution of independent research to the wider investment ecosystem. We believe this will become increasingly important as the demand for ESG research from independent research houses increases to meet both client and regulatory demands for the integration of ESG criteria into investment processes and the disclosure of ESG criteria.

1.2. Alternative ways of financing SMEs research

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

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

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

Question 60.1 Please explain your answer to question 60:

5000 character(s) maximum

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

No comment.

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.

No comment.

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

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

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

Question 62.1 Please explain your answer to question 62:

5000 character(s) maximum

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

As set out in our ViewPoint: Artificial Intelligence (AI) and Machine learning (ML) in asset management (<https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-artificial-intelligence-machine-learning-asset-management-october-2019.pdf>) we note that in the design of any model intended to augment human functions, it is critical that the appropriate investment, trading and risk professionals be closely involved in the creation and ongoing oversight of the technology.

- All data inputs should be robustly tested to ensure models are performing analysis on accurate data sets, and periodic review procedures should be in place to ensure that no investment process is out-of-date.

- Analysts, portfolio managers and risk managers should be able to interpret both the inputs and outputs of the model to review any investment decision and adjust in new market environments. The more complex the ML technique used by the model, the higher the risk of obscuring the interpretability of results.

In addition to basic financial information provided by company filings, there is now a broad range of other information that can signal a company's future performance. We have seen much development in AI and ML tools to compile, cleanse, and analyse the universe of data available, including analyst reports, macroeconomic data (e.g., GDP growth, unemployment) as well as newer "alternative" data sources. Examples of alternative data include GPS and satellite imagery to see where consumers are going, internet searches and tweets to see what people are researching and talking about, and employee satisfaction data, all of which can be accessed online today. These data points can help better assess individual companies and sectoral trends. As the volume of real-time data available increases beyond the capacity of individuals to analyse and understand it, the ability to compile, cleanse, and evaluate that data is increasingly important. AI and ML enable asset managers and analysts to find patterns in this data at scale, potentially identifying signals for generating returns for clients.

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

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

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

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

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

Question 63.1 Please explain your answer to question 63:

5000 character(s) maximum

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

No comment.

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.

ESMA is likely to have a number of priorities as a result of recommendations from the High-Level Forum on Capital Markets Union. Any mandate to develop such a data base should be costed and prioritized in the context of wider demands on ESMA's IT capacity.

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

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

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

Question 65.1 Please explain your answer to question 65:

5000 character(s) maximum

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

We note that debt management offices issuing government securities typically include in their primary dealership agreements an obligation on primary dealers to provide them with macroeconomic research, or to issue research on their debt. SMEs issuers could consider a similar approach in their agreements with their primary broker.

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.

The key requirement to consider will be whether “the research or information is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation”.

It seems logical that conflicts of interest rules apply and that provided appropriate disclosure is given we could consume the material on that basis. From an investment perspective such material retains an intrinsic value as it gives us a description of the company’s activities as a basis for further research and analysis.

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

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

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

Question 67.1 Please explain your answer to question 67:

5000 character(s) maximum

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

No comment.

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

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

Question 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.

No comment.

IV. Commodity markets⁸

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

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

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

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

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

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

	1	2	3	4	5	
--	---	---	---	---	---	--

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

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

Quantitative elements for question 69.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 69.1:

5000 character(s) maximum

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

No comment.

1. Position limits for illiquid and nascent commodity markets

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

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

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

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

	1 (most appropriate)	2 (neutral)	3 (least appropriate)	N. A.
Current scope	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
A designated list of 'critical' contracts similar to the US regime	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Question 71.1 Please explain your answer to question 71:

5000 character(s) maximum

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

Position limits can have a negative impact on the viability of new and illiquid contracts, which has broader consequences for innovation and competition in commodities markets. This reflects the fact that the number of participants entering into new commodity derivative contracts tends to be low in the period soon after their

launch, such that limits are more likely to restrict participants in their trading activities, thereby leading to a reduction in open interest.

We therefore support the suggestion that limits could be placed only on designated contracts. This would be straightforward from both a supervisory and compliance standpoint, and recognises that in practice position limits are not effective in mitigating the potential for market disorder or abusive behaviour. We believe that this approach would also best advance the goal of regulatory consistency when it comes to the imposition of position limits, notably by bringing the European position limits framework closer to that of the U.S. Commodity Futures Trading Commission (CFTC).

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

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

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

Question 72.1 Please explain your answer to question 72:

5000 character(s) maximum

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

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

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

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

Question 73.1 Please explain your answer to question 73:

5000 character(s) maximum

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

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

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

	Yes	No	N.A.
Nascent	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Illiquid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 74.1 Please explain your answer to question 74:

5000 character(s) maximum

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

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

	Yes	No	N. A.

A financial counterparty belonging to a predominantly commercial group that hedges positions held by a non-financial entity belonging to the same group	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A financial counterparty	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 75.1 Please explain your answer to question 75:

5000 character(s) maximum

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

2. Pre-trade transparency

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

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

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

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

Question 76.1 Please explain your answer to question 76:

5000 character(s) maximum

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

We would be concerned about any move to adjust the large-in-scale waiver in this context, given that this could undermine the ability of investors to trade in a manner that protects them from the market moving against them.

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

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

V. Derivatives Trading Obligation⁹

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

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards more transparency and competition in trading of instruments subject to the DTO.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits with regard to the DTO are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

The different components of the framework operate well together to achieve more transparency and competition in trading of instruments subject to the DTO.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
More transparency and competition in trading of instruments subject to the DTO corresponds with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The DTO has provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Quantitative elements for question 77.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 77.1:

5000 character(s) maximum

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

No comment.

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.

Adjustments to the DTO will likely be necessary considering Brexit. The decisions taken by the EU and UK in relation to the level of mutual deference to or equivalence with each other's regimes will determine the structure of derivatives markets in Europe and, by extension, on the practical functioning of the DTO after 2021.

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.

This is a work in progress. A high proportion of EU derivatives transactions continue to be executed OTC, limiting the potential of the DTO by itself to deliver a high degree of market transparency. By contrast, the number of the contracts subject to the US SEF regime is substantially greater than the scope of the EU's DTO. In the EU, the types of derivatives contracts to which the DTO applies are stipulated by the legislation regardless of the liquidity available for those instruments. Consequently, there are multiple instruments in the EU that enjoy liquid markets without the obligation to trade on a multilateral platform. This essentially allows the EU market to be characterised by a high proportion of OTC trading.

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.

The changes introduced by EMIR Refit, which exempt certain counterparties from the clearing obligation, have created a misalignment with the DTO under MiFID II. Common market practice effectively reimposes the clearing obligation on exempted counterparties under EMIR Refit in cases where the contracts being traded are subject to the DTO as most trading venues require mandatory clearing of trades executed on their platform – so in these circumstances clearing becomes de-facto mandatory despite the exemption. This essentially negates any benefit that the exemption from the clearing obligation was intended to bring and undermines the policy intent of EMIR Refit to render the framework more proportionate and less burdensome.

Accordingly, SIFMA believes that the scope of the DTO should be aligned with the more targeted application of the clearing obligation since EMIR Refit. In practical terms, this would mean exempting counterparties not subject to the CO from the DTO where appropriate.

VI. Multilateral systems

According to MiFID II/MiFIR, a 'multilateral system' means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system. MiFID II/MiFIR also requires all

multilateral systems in financial instruments to operate as a regulated trading venue - being either a regulated market or a multilateral trading facility (MTF) or an organised trading facility (OTF) - bringing together multiple third-party buying and selling interests in a way that results in a contract.

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

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

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

Question 81.1 Please explain your answer to question 81:

5000 character(s) maximum

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

VII. Double Volume Cap¹⁰

MiFID II/MiFIR introduced a Double Volume Cap ('DVC') to curb "dark" trading by limiting, per platform and at EU level, the use of certain waivers from pre-trade transparency. Some stakeholders have criticized the DVC as a too complex process failing to reduce off-exchange trading in the EU. For instance, according to a 2019 Oxera study, the equity market share of systematic internalisers has risen to 25% since application of the DVC while the share of on venue trading is declining. For example, the market share of CAC40 shares trading on the primary stock exchange (Euronext) fell from 75% in 2009 to 62% in 2018 and Oslo Børs's market share of trading on OBX-listed shares dropped from 95%

in 2009 to 62% in 2018. The proportion of public order book trading on the primary exchange in major equity indices has declined to between 30% and 45% of overall on-venue trading. The Commission services are seeking stakeholder's views on their experience with the DVC and its impact on the transparency in share trading.

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards the objective of more transparency in share trading.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more transparency in share trading.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More transparency in share trading correspond with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The DVC has provided EU added value	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Quantitative elements for question 82.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 82.1:

5000 character(s) maximum

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

BlackRock has consistently advocated for market structure regulation to pivot towards a focus on overall benefits to individual savers, Europe's end-investors. Mechanisms such as the 'Double Volume Cap' (DVC) place restrictions on 'dark' trading venues, assuming they detract from price formation and liquidity provision.

We do not share the assumption that lit trading is preferable to dark, or that restricting dark trading will shift volume to lit alternatives. Disruptive attempts to shift trading from dark to lit markets by regulation risk reducing market liquidity and increasing costs without improving price discovery.

Following the introduction of the DVC, we observed an immediate drop of "dark MTF liquidity" by 3.5% of total volume share, "lit markets" remained largely unchanged, the SI share rose 2.6%, and Periodic Auctions by 0.8%. The results are qualitatively similar for longer time periods, with a further rise of Periodic Auctions. This reflects the complex interactions in the equity ecosystem; dark executions migrate to multiple execution venues best suited for the properties of each.

While we agree with the need for transparency, we believe this should be achieved by appropriate reporting. A real-time CT with appropriate size-dependent reporting delays would achieve this.

VIII. Non-discriminatory access¹¹

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

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

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

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

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

Yes

- No
- Don't know / no opinion / not relevant

Question 83.1 Please explain your answer to question 83:

5000 character(s) maximum

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

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

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

Question 84.1 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.

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 emergence of new business models. The digital transformation can bring huge benefits for the investors as well as efficiencies for industry. To promote digital finance in the EU while properly addressing the new risks it may bring, the Commission is considering proposing a new Digital Finance strategy building on the work done in the context of the FinTech action plan and on horizontal public consultations. The Commission recently published [two public consultations focusing on crypto assets and operational resilience in the financial sector](#), and may consult later this year on further topics in the context of the future Digital Finance strategy.

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

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

Please explain your answer:

5000 character(s) maximum

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

Technology has been integrated into asset management for decades with a variety of uses. Given the evolution of technology broadly in society, it is not surprising that there continue to be new technologies and use cases in asset management. The types of technologies being utilized today including AI and ML build on the existing systems and technology infrastructure.

Broadly speaking, we break asset management technology into three main categories:

- User experience and interfaces
- Operational efficiency
- Investment processes

In each of these areas, technology helps improve efficiency, manage risk, and enhance decision making. Importantly, all of these technologies involve people and subject matter experts who provide oversight and consider the outputs of technologies for more informed decision making. In the following sections, we take a closer look into each category, considering AI and ML techniques that can be applied in asset management

broadly and how they are being deployed specifically within BlackRock.

For more details please consult our ViewPoint: Artificial intelligence and machine learning in asset management. (<https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-artificial-intelligence-machine-learning-asset-management-october-2019.pdf>)

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.

As noted in our comments on retail disclosure we do not believe that that provided a paper-based document in pdf still counts as a technology neutral tool as it does not provide the level of interaction and engagement that good technology can provide. Paper-based documents historically were produced to support discussions by a consumer with a physical intermediary so static data presentations, e.g. in pdf format, in fact reduce the amount of interaction consumers have before they can make important investment decision. In our ViewPoint: Digital Investment Advice (<https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-digital-investment-advice-september-2016.pdf>) we set out a number of recommendations on what constitutes effective engagement.

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.

We stress the importance of delivering the Consolidated Tape as a new technology that would bring benefits to equity and fixed income markets. If our full ambition for the CT – pre- and post-trade across equity and fixed income – is achieved this will have significant benefits for transparency and efficiency in markets, which we have detailed in the relevant section above.

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.

No comment.

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

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

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

Question 90.1 Please explain your answer to question 90:

5000 character(s) maximum

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

As noted in our answer to question 35, we believe that many of the existing disclosure requirements are based on static paper-based standards which hinders the promotion of dynamic, interactive digital solutions.

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

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

Question 91.1 Please explain your answer to question 91:

5000 character(s) maximum

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

At BlackRock we strongly believe that digital distribution can dramatically increase retail clients' engagement. To better suit delivering of services through robo-advice or other digital technologies, the definition of advice needs to be adapted to the provision of digital investment services (e.g. attention span when using digital devices is very short). Harmonised KYC standards across countries is also a key component of the development of digital advice. Additional tools to further help the take-off of digital advice includes building a digital identity using a personalised and portable fact find. This portable fact finds should be supported by open banking application programming interfaces (API).

X. Foreign exchange (FX)

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

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

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

Question 92.1 Please explain your answer to question 92:

5000 character(s) maximum

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

In recent years, measures have been taken to improve the overall framework to minimise the impact of misbehaviours.

First, the 2018 FX Global Code of conduct, which was brought in following some of the publicly documented misbehaviours in the market. This code will be reviewed in 2020. We would therefore caution against adopting far-reaching changes to regulatory treating of FX spot contracts.

Secondly, the regulatory framework for dealing with market misbehaviours – the EU Market Abuse Regulation (MAR) – may not be well suited in its current shape for the FX spot market. To be able to fully apply MAR would require trading platforms to update their systems and to move a large proportion of current market transactions onto such platforms. It would also require all non-financial participants in the market to adopt this regime. This would require a lot of investment by these businesses.

Thirdly, considering the sheer volume of daily transactions in the FX spot market, the volume of MAR reporting to supervisors would grow exponentially, which may add significant burdens on the existing systems.

In general, we would caution against including FX spot contracts in the definition of ‘financial instrument’ under MiFID II until the full implications under MAR as well as EMIR have become clear. Therefore, we would urge against such an amendment.

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.

No comment.

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.

No comment.

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.

No comment.

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 \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

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

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

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

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