

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

Fields marked with * are mandatory.

Introduction

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

SECTION 2 will be available in English only.

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

Background of this public consultation

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

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

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

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

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

Responding to this consultation and follow up to the consultation

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

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

This consultation document contains three sections.

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

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

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

This consultation is open until 18 May 2020.

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

More information:

- [on this consultation](#)
- [on the consultation document](#)
- [on the protection of personal data regime for this consultation](#)

About you

* Language of my contribution

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

* I am giving my contribution as

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| <input type="radio"/> Consumer organisation | <input type="radio"/> Non-governmental organisation (NGO) | |

* First name

Ayesha

* Surname

Ghafoor

* Email (this won't be published)

ayesha.z.ghafoor@barclays.com

* Organisation name

255 character(s) maximum

Barclays PLC

* 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.

72390466359-39

* Country of origin

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

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- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
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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
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
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- Montenegro
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- Morocco
- Mozambique
- Myanmar /Burma
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- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
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Nevis | <input type="radio"/> Zimbabwe |
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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):

Financial Services

* 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.

Barclays fully supports the core objectives of MiFID II/MiFIR; increasing investor protection, ensuring effective systems and controls are in place, as well as improving transparency, without creating undue risk to the market. However, taking into account the magnitude and broad product scope of MiFID II there are areas where we consider that the overall experience of market participants has not reflected the intended policy goals, and there are opportunities for improvement. In particular, there are problems associated with the implementation of reporting and transparency rules in the absence of the right market infrastructure. The implementation of the Share Trading Obligation, and, to a lesser extent, the Derivative Trading Obligation have the potential to lead to, a reduction in the range of execution venues available to EU investors and reduced access to the most active pools of liquidity for certain instruments. We also believe there are opportunities to better calibrate the investor protection regime to remove or streamline components which do not add value for wholesale market participants, while retaining protections for less sophisticated investors. We elaborate further on these points below in the relevant sections of the consultation.

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention has been successful in achieving or progressing towards its MiFID II /MiFIR objectives (fair, transparent, efficient and integrated markets).	<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 checked="" 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 the MiFID II/MiFIR objectives.	<input type="radio"/>	<input checked="" type="radio"/>	<input 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 type="radio"/>	<input checked="" 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.

MiFID II/MiFIR has been successful to some degree in achieving its intentions, but we believe that in light of the wide ranging product scope, technical implementation has proved ineffective in a number of key areas which we expand upon below. The cost of implementing MiFID II/MiFIR was extremely high but overall we believe the cost has not so far been justified by changes or benefits which have been passed on to end investors, or resulted in all cases in more transparent and integrated markets.

We do not believe MiFID II/MiFIR has delivered appropriate and meaningful transparency for all products. The regime has significantly increased transparency in the widest range of non-equity instruments by comparison with any regulation ever introduced. However due to the wide scope of the regulation, there have been challenges in terms of the implementation across a number of different product sets, and the technical implementation does not currently make sense for all different products.

We have also seen the share and derivative trading obligations introduce greater fragmentation in the market. In particular, the design and scope of the trading obligations, taken in conjunction with uncertainty around the application of the third country equivalence regime for trading venues, have led to a reduction in liquidity and choice of execution venue for EU investors.

Further, while the investor protection rules have been positive in a number of respects, this has principally been in respect of retail clients, and we believe that in a number of areas the rules have added cost and complexity, but no benefit, when applied to wholesale markets and participants. For instance, costs and charges have not delivered benefit to the wholesale investors.

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.

Yes, we see impediments due to the lack of harmonisation across the EU. Our experience corroborates that of ESMA's, which notes in its consultation paper on transparency in non-equities that the use of transparency waivers and deferrals varies across NCAs. Multiple regimes also exist for Equities. We would support the removal of national discretion and advocate for harmonisation and consistency on transparency waivers and deferrals across Member States, calibrated to ensure market participants are not exposed to undue risk.

We also note that the application of DEA access varies by Member State, with different interpretations with regards to third country firms' access to DEA Services. As only EU MiFID Investment Firms can provide DEA access, we believe it should not also be mandated that DEA users be MiFID regulated. This would avoid regulatory divergence between member states in respect of third country firms as well as maximizing the opportunity for non-EEA firms to invest in EEA markets while still guaranteeing proper supervision of DEA activities in the EU.

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.

Yes, MiFID II/MiFIR has increased pre and post trade transparency, but the extremely broad scope of instruments included within the rules has meant that there have been implementation issues in trying to apply the same rule to very different types of transactions, particularly in post trade transparency. This has led to data quality issues and resulted in ineffective transparency, as well as a misleading representation of the market landscape. We would welcome a tighter scope of application of the transparency requirements to ensure more effective delivery and meaningful transparency, by ensuring only truly accessible liquidity in liquid instruments is included.

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.

We believe that a comparison of the obligations applicable to different forms of execution venue should not be characterised as a search for a level playing field, as this can understate the key factor that different forms of execution venue serve different functions, offering valuable services and modes of execution to EU markets. We believe the focus should be on achieving good outcomes for investors, including by ensuring support for a wide range of execution methods, rather than narrowly focusing on lit venues, and the overall market and investor choice is served best by the availability of a range of options appropriately defined and supported under MiFID II/MiFIR. Systematic Internalisers and multilateral trading venues do not provide the same service or undertake the same responsibilities or risk profiles. Trading venues form a price and provide a range of other services to market participants but are not party to any of the transactions on their order book or executed through their systems. SIs, however, bear the risk whether they execute on behalf clients or trade on their own account.

We believe SI activity is beneficial to the market as a whole, complementary to other methods of execution as well as contributing to orderly markets and robust price formation mechanisms. Barclays operates a number of activities under the SI regime, which we believe provide our clients with valuable services that cannot be replaced by trading on a lit order book or trading venues. High touch and program trading activities provide clients with access to our balance sheet and upon transaction transfer the market risk of the transaction to Barclays as an SI. When trading through this type of service, clients seek immediacy of execution at a fair price (derived from both market conditions and the nature of the transaction). In turn, SIs build an inventory on risk, the vast majority of which is unwound on trading venues, often in closing auctions. SIs bear a real risk to the consequences of effecting transactions, whether they execute on behalf of clients or trade on their own account.

Implementation of MiFID should strike a balance between the objective of meaningful transparency whilst limiting the risks for SIs and therefore limiting the unintended consequences for the ultimate clients and/or the market of increased costs and/or reduced liquidity. To this end, we believe certain obligations currently applied to SIs should be removed where they go further than the pre-trade rules required on multilateral venues; the obligation to make the firm quotes 'available to other clients' (Article 18(5)) and 'enter into transactions' under the published conditions with clients to whom the quote(s) are made available (Article 18 (6) & 18(7)).

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:

There are a number of areas where the implementation of MiIFD II/MiFIR has led to limitations on investor access to instruments meeting their needs.

Firstly, the scope and application of the share and derivative trading obligations, when coupled with the uncertainty around equivalence decisions in respect of third country trading venues, has had a negative impact on client access to instruments and on liquidity. Under the trading obligations, EU investors can face restrictions in accessing significant pools of liquidity. Under the share trading obligation, issues remain with the scope of instruments caught. Under the derivative trading obligation, we would also highlight that not all EU clients can or will become members of all available venues so in reality their choice of execution venue is limited once a trading obligation is introduced.

A second barrier is the cost of market data. Trading Venues do not always publish their data for free in line with regulatory requirements, and in instances where they do publish it is not in a readable format.

Further, we believe the current rules setting out the criteria that must be met for a client that would otherwise be deemed retail to opt-up to Professional status are overly limiting, having the effect of reducing access to “professional only” products by clients for whom they may be suitable. We provide further details in subsequent responses below.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Overly strict regulatory requirements for providing a CT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Competition by non-regulated entities such as data vendors	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

5000 character(s) maximum

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

The consolidated tape (CT) has suffered from a lack of a clear definition which has inhibited progress on an industry understanding on the features and governance of a consolidated tape. It is important that market stakeholders clearly understand the scope of trades to be included, the target consumer(s) of the tape and how a CT will be funded in order to facilitate further progress. We refer the Commission to our answer to Question 8 where we propose a framework for the CT.

One further significant barrier to the emergence of an EU CT has been the high number of trading venues and APAs that a consolidated tape provider (CTP) would need to connect to. As ESMA has noted in its Consultation Paper on non-equities transparency, 279 entities reported non-equity data to its reference data system in 2018.

Aggregate data streams are costly to obtain from providers, some of whom charge for this access. Further, there is room for improvement in the standardisation of data across venues so it can be more easily and accurately aggregated. We would welcome mandating the use of an open common industry standard such as FIX, in order that the data is cheaper, better quality and more effective.

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.

The core benefit of a CT is to provide high quality consolidated data at an affordable price to a broad range of investors. However, the current experience has meant that the market data providers are able to control prices based on usage, which discourages new usage and innovation. Under current market data pricing policies a CTP could expect to pay considerable sums to maintain multiple data feeds and the right to distribute them, meaning that the cost of providing a CT, and hence the cost to users to access the consolidated data, would be unreasonably high.

One benefit of better and more granular data quality would be to identify what is addressable liquidity within the consolidated tape. Given the breadth and scope of transparency, a huge amount of data is published which is not addressable in nature and if mandated effectively, industry driven standards could help deliver more efficient and clear data. This would be of benefit for identifying and assessing market structural changes.

It should be noted that an affordable CT is unlikely to deliver the data suitable for all market participants, in particular wholesale entities requiring low latency, depth of order book or using algorithms and smart order routers. As such it would likely be an additional rather than an alternative data source. In light of this, consumption of a CT should not be mandated, as this would entrench and amplify current market data price inefficiencies, with investors compelled to pay for a CT while also still required to pay for direct access to underlying venue data, in effect paying for the same data twice.

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.

A large part of the current legal framework can be of use for the implementation of a CT, and in particular we believe that Article 65 of MiFID II captures the minimum requirements relevant to the establishment of a CT. Adjustments would be required if the tape was to be extended to include some level of pre-trade transparency as currently article 65 only refers to article 6 and 20 of MiFIR and therefore limits it to post trade aggregation.

More fundamental amendments may be necessary in the regulatory technical standards (RTS) in order to further define the operation and scope of the CT. The current RTS cover the operation of both APAs and CTPs. We believe they should be differentiated as they do not fulfill the same function.

In particular we would support the inclusion in the RTS of the intended coverage of the CT for the relevant instruments, the governance arrangements for the CTP, and the obligations and conditions under which different market participants must provide the CTP with the necessary data to consolidate.

To ensure appropriate oversight and control of the development and cost model for a CTP, one option could be the establishment of a Self-Regulatory Organisation (SRO) per asset class appointed to deliver and manage the CT. This SRO would be required to have a strong governance framework ensuring that interest of market data users and providers are fairly represented. EU regulated entities could be mandated to adhere and contribute to the establishment of the CTP under the governance of the SRO, on the basis that any adhesion fee was reasonable and proportionate. For instance a annual membership fee of a few thousands euros a year may be acceptable to most market participants. Considering there are more than 17,000 entities currently on the ESMA register, even a low membership fee spread across a broad base could lead to significant funding for a CTP. Membership contribution should not be extended to require mandatory consumption of the tape.

We believe that the initial focus of achieving a CT should be on Equities. The definition of the minimum scope of the CT for Equities should be defined in the RTS. We advocate that the CT for Equities should as a minimum cover all post trade information in real time and could at some point also include some basic level of pre trade transparency. Updates to the RTS to facilitate the establishment of a CT for Equities raises the opportunity to fix a number of technical issues such as double reporting, and as well as to make adjustments to reportable data to better qualify post trade data and deliver the full potential of a CT. We support enriching the tape with additional qualifiers. In particular, we believe understanding whether a transaction is price forming and/or addressable is essential to a better understanding of markets. We suggest mandating the identification of transactions executed under a waiver and transaction which are technical in nature such as give-in/give-up. We also support addressing the issue of double reporting and ensure we have the technical capabilities to remove duplicates.

Outside of equities given the greater heterogeneity and, in general, lower liquidity in other instruments there needs to be careful consideration of the CT framework and implementation, in order to ensure the creation of a CT did not create undue market risk. In this light, it is worth noting that developments of this scale take time to deliver. TRACE in the US, focused on corporate credit, has taken 15 years to evolve to its current state of implementation.

1.2. Availability and price of market data

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

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

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

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

Please explain your answer:

5000 character(s) maximum

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

We agree with ESMA’s conclusion that so far MIFID II/MiFIR has not delivered on its objective to reduce the price of market data and that 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.

We strongly support the policy aims which lie behind the RCB proposals and we believe provision of appropriately costed data should be made available in a comprehensible and comparable format. Hence we agree with ESMA’s proposed targeted changes to Level 1 and 2 to address these issues.

We would note that although the current cost of market data is a key reason why a CTP has not emerged, we do not believe that the development of a CT will solve these cost issues on its own, and hence separate action is required.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring best execution	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Documenting best execution	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Better control of order & execution management	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Regulatory reporting requirements	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 type="radio"/>

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.

We do not support mandatory consumption. As we have noted in our responses above, the delivery of a CT would not in isolation solve the problem of market data costs, and could in fact increase costs to market participants, in particular those who will still require low-latency data.

The CT would not be fully beneficial as an aid to evidencing best execution unless it provided a complete historical database (tick by tick), including accurate timestamping, as well as the location and status of the firm with regards to whether or not they were able to access a quote or order, or not. We would note that even if this was available, there are numerous factors other than price which need to be considered in order to achieve best execution, including cost, speed of execution, likelihood of execution and settlement and size. We hence believe it would be misplaced to focus overly on best execution as a use case for a CT, and a CT could not ensure best execution.

We believe the focus should be on development of single data standard for EU markets, based on open formats, which would enhance data quality, accessibility and standardisation, enable greater competition and innovation in provision of data services, and ultimately reduce the cost of entry. As an example, the FIX CT working group's Market Model Typology (MMT) standard, which aims to improve the consistency and comparability of data, has been recognised by ESMA in its report on the development of a CT. ESMA believes that if a CTP is selected it could utilise an Industry standard such as the FIXMMT. Adoption of an open standard developed with active input from market practitioners also opens the possibility for a CT to be extended to include non-EU data which is based on the same standards, further increasing its benefit to EU investors, as well as the likelihood of adoption of the EU CT outside the EU, thereby promoting non-EU investment in EU capital markets.

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 checked="" type="radio"/>	<input type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Single provider per asset class	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>

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

5000 character(s) maximum

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

In addition to the features listed, we believe it is important to enable an industry led approach to define data standards and definitions to ensure appropriate context can be applied to the data and avoid the issues encountered through the initial implementation of MiFID II/MiFIR.

We also believe a CTP should retain the ability to develop products and services beyond the minimum required, but such developments should be subject to normal market pricing policies rather than covered by any specific framework on fees or contribution applied to its role in providing the minimum CT.

We fully agree that for the creation of an EU CT a single provider per asset class would likely be more beneficial to ensure asset class specific knowledge and capabilities could be leveraged, and would therefore be the most effective model. If an SRO type model was implemented it would be viable to have multiple CT providers under the SRO framework.

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

5000 character(s) maximum

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

We believe the focus should be on development of single data standard for EU markets, based on open formats, which would enhance data quality, accessibility and standardisation, enable greater competition and innovation in provision of data services, and ultimately reduce the cost of entry. The industry would be well placed to own the data standards and knowledgeable in the nuances in different needs of different asset classes. As we noted in our response to question 10.1, FIXMMT is an example of an industry led data standard that could usefully be adopted for a CT.

CT data should be real time, and provide for the minimum latency that is meaningful for a human consumer. Current levels of latency that would apply in an economically viable CT would be sufficient for screen data display, however, they are not adequate for wholesale market/low touch trading, and we do not believe such users would be seeking to rely on a CT in place of existing market data feeds.

We agree strong governance arrangements for a CTP are important, and have set out in more detail our suggested approach in our response to question 8.

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 do not support mandatory consumption of the tape, given the cost implications, in particular for firms that already consume the individual market data feeds from trading venue and APA. Investors should have freedom of choice whether to consume a CT, otherwise it raises complex questions around accountability of the CTP provider, governance and voting rights.

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.

Assessing best execution requires a thematic review of processes. Trade by trade analysis can inform thematic reviews, but it does not in isolation mean best execution. There should not be a link between the CT and best execution obligations. A CT could be helpful as a data source for normalising expected standard terms of Transaction Cost Analysis (TCA) and liquidity access, which are component parts of the overall assessment of best execution. Best execution requires consideration of more than just price and it is important that it is a qualitative assessment that is backed up by quantitative analysis for relevant data points. While a CT may be helpful in looking back at executed prices or even quoted prices, it could not take into account the other assessments which must be applied to achieve best execution, such as cost, speed of execution, likelihood of execution and settlement, and size. A number of operational factors may come into play in assessing a firm's efficiency in managing its best execution performance.

For instance a broker based in Frankfurt will need 4 milliseconds to send an order to any London based venue, and more than 10 milliseconds to reach a Nordic venue. In such environments the availability of a quote does not guarantee that you can actually execute before it changes or disappears. Therefore, timeliness of execution is an important factor to take into account. Likewise, whilst the CT should cover most, if not all, trading activity, it cannot be assumed that market participants have access to all addressable liquidity. For instance, a buy-side firm may have access to a few single dealer platforms or equities SIs and should not be required to have access to all. In the context of best execution a CT could monitor metrics such as trading venue market share but should not be seen as the reference to demonstrate best execution on an order by order basis.

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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input 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 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 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.

We believe the CT could also be initially funded via a membership fee required of all ESMA registered entities. A modest annual fee would facilitate initial set up of the CT as well as guarantee a minimum operating budget.

The governance of the CT should account for balanced representation of both market data users (Buy-Side and Sell-Side) and providers, including SIs and Investment Firms trading OTC.

It is essential to ensure that CT governance represents stakeholders' interests, in particular, users of the CTP.

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.

To further substantiate our ‘rather not agree’ view with regards to redistributing revenue, price-forming trades should be compensated at a higher rate than other trades. We would however stress that price forming transactions should not be limited to execution of pre-trade transparent quotes and orders. We strongly believe that post trade reporting contributes to pre-trade transparency for the next trade.

The CT must exist by way of an open structure, which ensures that it is not subject to abuse. The structure should be set up in such a way that the data does not create commercial value for the provider based on the data contributions of industry participants. The operator should be compensated for the running cost.

We recommend a model with the following characteristics:

- On the basis that a CT user fee is understood as a fee to consume the CT, a CTP should commercialise the CT at a simple and affordable price. Consumers should also be able to buy segments of the tape in a disaggregated fashion (for instance by country of listing)
- We do not believe the CT should be charged depending on usage. As noted in the ESMA report on market data costs and the CT, pricing per usage allowed for some market data providers to enforce fees on data which according to MiFID should have been free.
- Revenue of the CT should be shared between contributors to the CT and include not only trading venues but also Systematic Internalisers and Investment Firms.
- In redistributing revenues, differentiation should be made between technical and price forming transactions. Price forming transaction should not be limited to pre-trade transparent transactions and should include printed transactions. A redistribution model that prioritises rewarding quotes risks encouraging the establishment of systems that maximise the number of quotes, updates or orders made transparent artificially. A revenue redistribution model should take into account relative impact to price formation, and hence trades which are large in scale should be appropriately rewarded on the basis of the impact they have on price formation when compared to quotes in much smaller size.
- The CT technical arrangement could be put up for tender at regular interval. We do not believe it is in the interest of the CT to change and operate a new tape every 5 or 7 years. However, the representation of market data users and providers should be put up for renewal regularly.

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

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.

An EU consolidated tape should be created per product given the significant differences in transparency requirements and order flow management. The delivery of transparency should not create undue risk for a firm trading within the EU, and therefore we believe that the creation of a CT, and also transparency generally, should be limited to materially liquid instruments. For example, pre-trade transparency is not relevant to the fixed income market and single name CDS should be excluded from the regime.

For Equities however, a first level of pre trade transparency in real time could be included in the mandatory scope of the CT. We strongly believe that as a minimum trading venues, SIs and Investment Firms should contribute pre and post trade information to the tape, if only in order to build a meaningful tick database.

Given current challenges around interest rate swaps including technical data issues, we struggle to find a cost benefit analysis for including interest rate swaps, or indeed any derivatives, within a CT.

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.

We believe that all the information should be published including waivers and post trade flags. We also believe flags should be enhanced to differentiate further technical transactions from others. In particular, the non-price forming transaction flagging within MiFID includes both benchmark transactions and technical transactions (Give in-give up, intra group transactions) which investors should be able to differentiate. The information should also include a unique transaction ID in order to allow users to locate themselves in the tape, and to facilitate to removal of duplicate records.

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 checked="" type="radio"/>	<input type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>

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

5000 character(s) maximum

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

Shares admitted to trading on a regulated market with a primary issuance in the EEA.

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.

The Official List of shares for the CT should be comprised of EU shares with a primary issuance in the EEA, rather than for all shares made available for trading on EU venues. Implementation should be straight forward as primary issuance is a very tightly regulated and organised process in Europe and therefore data on shares falling within this category should be readily available. All regulated markets have knowledge of their issuers and extensively manage static data for the purpose of listing, trading and corporate actions. This rule rightly recognises the perimeter of the region in which issuers have chosen to raise capital in order to be transparent and accessible to EU investment firms and EU investors.

Having an official list should not prevent a CT from aggregating more instruments.

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.

N/A

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.

If the Official List of shares for the consolidated tape is comprised of EU shares with a primary exchange listing in the EEA, rather than for all shares made available for trading on EU venues, inclusion of non-EU shares on the same basis should be possible. Implementation should be straight forward as primary issuance is a very tightly regulated and organised process in Europe and in other jurisdictions. All regulated markets have knowledge of their issuers and extensively manage static data for the purpose of listing, trading and corporate actions. This rule rightly recognises the perimeter of the region in which issuers have chosen to raise capital in order to be transparent and accessible to EU investment firms and EU investors.

When determining the scope of the CT, policy makers should ensure that relevant provisions do not prevent the potential inclusion of data relating to shares traded on Swiss or UK trading venues or other jurisdictions where an express need has been identified by market practitioners. The addition of this data would be a significant benefit to EU investors and would likely increase commercial viability of the tape. The inclusion of foreign shares should not however be predicated on their inclusion in the wider European transparency regulatory framework but rather serve to provide users with a consolidated view of relevant liquidity pools inside and outside of Europe. Adoption by a CTP of industry led data standards such as those developed by FIX should further serve to ensure a CT was capable of inclusion of both EU and non-EU shares.

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.

In light of how fixed income instruments trade, a CT should be created on a per product basis. Pre-trade transparency is not that relevant to the fixed income market and therefore the focus for a consolidated tape for relevant instruments should be on post trade data. The delivery of transparency should not create undue risk for a firm trading within the EU, and therefore we believe that the creation of a tape and also transparency should be limited to product types which are not materially liquid such as investment grade credit bonds. Illiquid instruments such as Single name CDS should be excluded from the regime.

Trying to determine an approach for the CT using the current definition for transparency, i.e. instruments that are Traded on a Trading Venue (TOTV), would be exceptionally difficult to implement due to the extremely broad and diverse range of products that are included within its scope. A large volume of data would be created which will be of little use to market participants. We believe that it would be appropriate to focus solely on cash bonds. We do not see a valid use case for including derivatives within the scope of a CT, especially in light of the time and complexity that would be entailed in implementation due to the issues that have been encountered by the industry around identifying and then consolidating information for these instruments.

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.

Barclays strongly believes that the scope of the share trading obligation needs to be revised to mitigate some of the potential negative consequences that arise under the current structure. We do not believe it is in the best interests of EU firms and investors to be limited in accessing liquidity in shares where the primary market or home listing is outside the EU, or where a key source of liquidity is in markets outside the EU. Our preference would be for the removal of the share trading obligation, as EU shares were already traded on EU venues prior to MiFID II, and we believe this would continue even if an obligation to do so was removed, especially considering how bilateral off venue executions are regulated under the SI regime.

If the share trading obligation is retained, we suggest that the scope should be limited to EU shares with a primary listing in the EEA. Where a European issuer chooses to raise capital by listing on a non-EU market, EU investment firms and investors should be permitted to trade in that listing on the third country market without limitation. We believe this solution is more practical than the introduction of a currency component to the rule. Limiting the STO to shares with an EU country code trading in the currency of an EU member state will not allow investors to access all primary listings of certain European stocks. Permitting access to third country firms' place of listing would solve this problem, and would only be applicable to a limited number of stocks. An equivalence decision could still be required in order to trade on a third-country venue for stocks with only an EU primary listing. Practical implementation would be achievable by updating static data with a clear identification of the place of listing.

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 impact of the share trading obligation has led to restrictions in liquidity, which ultimately is detrimental to end investors.

Barclays strongly believes that the scope of the share trading obligation needs to be revised to mitigate some of the potential negative consequences that arise under the current structure. We do not believe it is in the best interests of EU firms and investors to be limited in accessing liquidity in shares where the primary market or home listing is outside the EU, or where a key source of liquidity is in markets outside the EU. Our preference would be for the removal of the share trading obligation, as EU shares were already traded on EU venues prior to MiFID II, and we believe this would continue even if an obligation to do so was removed, especially considering how bilateral off venue executions are regulated under the Systematic Internaliser regime.

If the share trading obligation is retained, we suggest that the scope should be limited to EU shares with a primary listing in the EEA. Where a European issuer chooses to raise capital by listing on a non-EU market, EU investment firms and investors should be permitted to trade in that listing on the third country market

without limitation. We believe this solution is more practical than the introduction of a currency component to the rule. Limiting the STO to shares with an EU country code trading in the currency of an EU member state will not allow investors to access all primary listings of certain European stocks. Permitting access to non-EU listing venues would solve this problem, and would only be applicable to a limited number of stocks. An equivalence decision could still be required in order to trade on a third-country venue for stocks with only an EU Primary listing. Practical implementation would be achievable by updating static data with a clear identification of the place of listing.

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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Repeal the STO altogether	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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.

Barclays strongly agrees that the scope of the share trading obligation needs to be revised to mitigate some of the potential negative consequences that arise under the current structure. We do not believe it is in the best interests of EU firms and investors to be limited in accessing liquidity in shares where the primary market or home listing is outside the EU, or where a key source of liquidity is in markets outside the EU. Our preference would be for the removal of the share trading obligation, as EU shares were already traded on EU venues prior to MiFID II, and we believe this would continue even if an obligation to do so was removed, especially considering how bilateral off venue executions are regulated under the SI regime.

If the share trading obligation is retained, we suggest that the scope should be limited to EU shares with a primary listing in the EEA. Where a European issuer chooses to raise capital by listing on a non-EU market, EU investment firms and investors should be permitted to trade in that listing on the third country market without limitation. We believe this solution is more practical than the introduction of a currency component to the rule. Limiting the STO to shares with an EU country code trading in the currency of an EU member state will not allow investors to access all primary listings of certain European stocks. Permitting access to non-EU listing venues would solve this problem, and would only be applicable to a limited number of stocks. An equivalence decision could still be required in order to trade on a third-country venue for stocks with only an EU primary listing. Practical implementation would be achievable by updating static data with a clear identification of the place of listing.

Barclays strongly opposes removing SIs as eligible execution venues and supports AFME’s response to this question.

Barclays operates a number of activities under the SI regime, which we believe provide our clients with valuable services that cannot be replaced by trading on a lit order book or trading venues. High touch and program trading activities provide clients with access to our balance sheet and upon transaction transfer the market risk of the transaction to Barclays as an SI. When trading through this type of service, clients seek immediacy of execution at a fair price (derived from both market conditions and the nature of the transaction). In turn, SIs build an inventory on risk, the vast majority of which is unwound on trading venues, often in closing auctions.

We believe SI activity is beneficial to the market as a whole, complementary to other methods of execution as well as contributing to orderly markets and robust price formation mechanisms.

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 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.

Barclays does not believe it is necessary to revisit the status of SIs as eligible execution venues under the STO.

Barclays strongly opposes removing SIs as eligible execution venues under the STO.

Barclays operates a number of activities under the SI regime, which we believe provides our clients with valuable services that cannot be replaced by trading on a lit order book or trading venues. High touch and program trading activities provide clients with access to our balance sheet and upon transaction transfer the market risk of the transaction to Barclays as an SI. When trading through this type of service, clients seek

immediacy of execution at a fair price (derived from both market conditions and the nature of the transaction). In turn, SIs build an inventory on risk, the vast majority of which is unwound on trading venues, often in closing auctions.

SI liquidity is also particularly important for less liquid shares where often bi-lateral trading is the best option to manage market impact.

We believe SI activity is beneficial to the market as a whole, complementary to other methods of execution as well as contributing to orderly markets and a robust price formation mechanism.

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.

We believe certain pre-trade obligations currently applied to SIs should be removed where they go further than the pre-trade rules requirements applicable on multilateral venues; namely the obligation to make firm quotes 'available to other clients' (Article 18(5)) and 'enter into transactions' under the published conditions with clients to whom the quote(s) are made available (Article 18(6) & 18(7)).

It is exceptionally important to ensure SIs are fully supported under the MiFID II/MiFIR framework to protect their capacity to provide OTC risk liquidity to the market across all asset classes.

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.

We believe that a comparison of the obligations applicable to different forms of execution venue should not be characterised as a search for a level playing field, as this can understate the key factor that different forms of execution venue serve different functions, offering valuable services and modes of execution to EU markets. We believe the focus should be on achieving good outcomes for investors, including by ensuring support for a wide range of execution methods, rather than narrowly focusing on lit venues. The overall market and investor choices are served best by the availability of a range of options appropriately defined and supported under MiFID II/MiFIR. SIs and multilateral trading venues do not provide the same service or undertake the same responsibilities or risk profiles. Equity trading venues provide one of many available price forming mechanisms, but they are not counterparty to any transaction. By comparison, Investment Firms and SIs in particular generate price forming trades and bear risk for each of the transactions they undertake.

We believe SI activity and liquidity provision through commitment of risk capital is vital and beneficial to the

market as a whole, complementary to other methods of execution as well as contributing to orderly markets and robust price formation mechanisms. Barclays operates a number of activities under the SI regime, which we believe provide our clients with valuable services that cannot be replaced by trading on a lit order book or trading venues. High touch and program trading activities provide clients with access to our balance sheet and upon transaction transfer the market risk of the transaction to Barclays as an SI. When trading through this type of service, clients seek immediacy of execution at a fair price (derived from both market conditions and the nature of the transaction). In turn, SIs build an inventory on risk, the vast majority of which is unwound on trading venues, often in closing auctions. SIs bear a real risk to the consequences of effecting transactions, whether they execute on behalf of clients or trade on their own account.

Implementation of MiFID should strike a balance between the objective of meaningful transparency whilst limiting the risks for SIs and therefore limiting the unintended consequences for the ultimate clients and/or the market of increased costs and/or reduced liquidity. To this end, we believe certain obligations currently applied to SIs should be removed where they go further than the pre-trade rules required on multilateral venues; the obligation to make the firm quotes 'available to other clients' (Article 18(5)) and 'enter into transactions' under the published conditions with clients to whom the quote(s) are made available (Article 18 (6) & 18(7)).

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.

More effective post trade transparency and good data quality by way of a CT which does not impose high access costs would promote price discovery in equity trading.

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

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

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

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

Question 28.1 Please explain your answer to question 28:

5000 character(s) maximum

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

We do not believe it is essential to align STO with the CT scope. However, we would stress that the CT could benefit from a high coverage, inclusive of shares that should not be in scope of the STO. For instance, consolidating the market data on foreign shares or DRs could prove useful to investors trading across jurisdictions. It would not be appropriate in such a case to consider those instruments in scope of the share trading obligation and prevent EU investors from accessing liquidity on their primary listing.

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.

We support the alignment of the scope of instruments subject to pre- and post-trade transparency with the mandatory scope of the CT, but emphasise that it is important to ensure that non-price forming/technical trades are clearly distinguished from trades representing addressable liquidity in order to avoid published data providing misleading representations of the market.

4.3. Post-trade transparency regime for non-equities

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Abolition of post-trade transparency deferrals	<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 type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Keeping the current regime	<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 type="radio"/>	<input type="radio"/>	<input 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.

Barclays supports the MiFID policy objective to achieve effective transparency which does not create undue risk. Implementing a regime which balances these objectives appropriately requires careful calibration, in particular in light of the broad scope of instruments covered by MiFID II. We believe that generally speaking the current regime strikes an appropriate balance, but there have nonetheless been clear examples of both over-transparency and under transparency in certain instruments. Given the broad and varied scope of products, it would be very costly and complex to implement comprehensive changes to the regulation. Furthermore, the complexity of the regulations makes smaller and more targeted changes difficult given the risk of unintended consequences.

While complex, the currently available deferrals are designed with the correct aim to ensure transparency is appropriately balanced with the risk to liquidity, in particular for less liquid instruments or trades that are large in size. Any changes to the regime of deferrals should not create a situation whereby trading in certain instruments creates undue risk to market participants, as this will be to the detriment of liquidity in these instruments. Requirements to make data transparent must be appropriate for the asset class, and should be aligned with comparable transparency regimes in other jurisdictions to ensure EU firms are not put at additional risk relative to competitors in other jurisdictions when trading the same instruments. Implementation of a CT for bonds would deliver, for the first time, easily accessible transparency of the fixed income market for the whole industry. In light of the complexities noted above therefore it might be appropriate to review the operation of the transparency regime after that point.

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 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 more investor protection.	<input type="radio"/>	<input checked="" type="radio"/>	<input 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 type="radio"/>	<input checked="" 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	
Costs	

Qualitative elements for question 31.1:

5000 character(s) maximum

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

We believe different answers are applicable to the questions above when looked at separately from the perspectives of retail and wholesale markets.

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 type="radio"/>	<input checked="" 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.

Retail investor participation in capital markets transactions has been largely impacted by MiFID II requirements in combination with PRIIPS and the Prospectus Regulation as borrowers' appetite to offer to retail investors has decreased.

The main constraint operating in the market is the requirement for both a Key Information Document for products/instruments that may be designated a PRIIP and the consequential requirement for costs and charges disclosure. Neither of these may be readily available for simple instruments, which immediately blocks a product sale and impacts on ex post cost and charge reporting for legacy instruments.

We support the capital markets union action plan to improve access by retail investors to capital markets and

in this light would urge a review of the applicability of the product governance regime to non-complex instruments (excluding UCITS) with a view to ensuring that simple investment products such as single line securities and bonds are more easily accessible to retail clients.

Please see our response to Question 34 on costs and charges.

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.

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.

In respect of retail client business, we support some clarification or standardisation on costs and charges generally (particularly growth rates, assumed holding periods) that work for all firms, including those that only execute high volume transactions on a non-advised basis. We think the utility of certain features of costs and charges disclosures, particularly cumulative effects of costs on returns information is not proven, not least because there is so little guidance about calculation basis. We do not support retail client opt-outs in general, except at the moment in respect of cumulative effect illustrations, which all clients find confusing.

Based on feedback we have had from our wholesale clients we believe the ex-ante costs and charges disclosure requirements under MiFID II are not beneficial to professional clients and eligible counterparties, and indeed and in some cases clients have expressly requested not to receive these disclosures.

Barclays is already driven by commercial imperatives to deliver the highest standard of commercial disclosures to our clients, irrespective of the MiFID II requirements. We aim to provide information that is directly useful to clients, often designed based on clients' explicit requirements. Such information provision would be unimpacted by the disapplication of the MiFID II ex-ante costs and charges requirements in relation to wholesale clients.

The MiFID II disclosures are hence extraneous to the needs of these clients whilst introducing an unnecessary ongoing overhead on producers of the disclosures, both in terms of interpreting the rules and operationalising them. We are hence in favour of reducing complexity by means of disapplication of the MiFID II ex-ante costs and charges disclosures for professional and eligible counterparties, rather than by allowing such clients to opt out of the regime. An opt out approach creates a significant operational burden for firms, in particular the need to keep records of requests from clients to opt out. Wholesale clients will typically request an opt out from these requirements verbally and therefore ESMA's suggestion that an opt out approach requires firms to maintain an audit trail evidencing the request from the client creates a disproportionate compliance burden with no corresponding benefit to the client.

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.

Barclays supports a general phase-out of paper based information. Electronic communication would minimise delays and reduce paper waste from a sustainability perspective, in support of the EU's sustainable finance agenda. However, we should be mindful of the transition with respect to clients that request paper based information over digital communication and vulnerable customers. We would support a transition over a number of years.

In the short term, we would support ESMA's proposed amendment to the rule that currently requires a positive election in favour of electronic communication over paper, particularly when dealing with clients through a purely online service.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

5000 character(s) maximum

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

In line with AFME, Barclays supports a general phase out within a period shorter than five years.

We support ESMA, in its Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID II (ESMA35-43-2126), that Article 3 of the MiFID II delegated regulation be amended “so that, when information must be provided in a durable medium, the provision of such information by means of electronic communications shall become the norm and default option” unless the client has not provided a valid email address or explicitly requested information in paper form. This would achieve the desired outcome without imposing an undue operational burden or costs on firms to seek additional client consents/confirmations in this respect.

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.

Barclays would be supportive of a phase out of paper based information so long as there was sufficient time for clients to be able to adjust given that as it stands many do not supply an email address if they request paper information.

Costs savings of 10% of all administrative costs per client would be achieved by phasing out paper.

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.

We are unclear on the intended purpose of the database. There is a risk that investors would rely on a database to make investment decisions. In the context of capital markets transactions we believe investors should make investment decisions based on the prospectus.

We believe that there are existing industry led initiatives that would be better suited to the creation of more standardised views across products. For example the European MIFID template (EMT) devised by EFAMA,

used primarily by fund managers across Europe, which is working well as it has both the technical expertise and specific product knowledge required.

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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
All products that have a PRIIPs KID/ UICIS KIID	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Only PRIIPs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Question 38.1 Please explain your answer to question 38:

5000 character(s) maximum

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

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

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

Question 39.1 Please explain your answer to question 39:

5000 character(s) maximum

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

As noted above, we do not see the need for a database mandated under regulation, and believe industry led initiatives are better suited to the creation of more standardised views across products.

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.

Barclays is of the view that existing client classification rules are constraining, as they do not take the full financial market experience of the client into account. There are both quantitative and qualitative criteria which are used to assess a client. We believe that the quantitative test of how many transactions a client has carried out on the relevant market at an average frequency of 10 per quarter over the previous four quarters fails to take into consideration clients who might have a life time of trading experience in equivalent instruments but have not for various reasons satisfied the requirement for the previous quarter. In these instances it is reasonable to assume that the client is qualified to enter into a new transaction type.

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.

Barclays does not in general find the EUR 500,000 threshold to be an impediment when assessing clients requesting to be treated as professional. The more problematic component of the quantitative test is the rather limb which relates to trading history. This test sets a high bar because it requires a demonstration of 40 previous transactions on the relevant market, spaced out over the previous four quarters. This neglects any assessment of clients who may have a life time of trading in equivalent instruments but for various reasons, have not traded in the previous quarter or clients who can evidence recent transactions in instruments of equivalent complexity which make it reasonable to assume the client is sophisticated enough to enter into a new transaction type. Furthermore, the trading history limb of the test seems somewhat redundant in light of the qualitative test that the client must also satisfy.

This trading history test can be particularly problematic for newly incorporated corporate clients who may not warrant the full scope of the retail investor protection regime but who have no trading history or financial instrument portfolio on which to base the per se professional quantitative assessment. If such companies could draw on the trading history or assets of their principals (on whose knowledge and experience they can already rely for the purpose of the qualitative assessment), it would allow them, in appropriate cases to opt up to elective professional status, which general speaking, is more appropriate for these entities.

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.

Barclays does not see benefit in creating a new category of semi-professional clients, and agrees with ESMA's recommendation, as set out in its Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID II (ESMA35-43-2126), that the creation of a new category of "semi-professional" or "sophisticated retail" client is not necessary or desirable.

We do however believe there is an opportunity to enhance the professional opt-up process in order to remove some impediments that current limit the availability of professional treatment to clients for whom it would be otherwise appropriate. We include more details in our response to Questions 40 and 41.

If the Commission were to propose the creation of a new category of client we would ask that grandfathering provisions be applied with the effect that Investment Firms are not required to review or revise existing classifications applied prior to the introductions. Further, we would suggest that the existing regime which permits an opt-up from retail to professional status be retained.

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

As previously stated, we would recommend a change in opt-up rules, rather than the creation of a new semi-professional client category, in which case no amendments to the investor protection rules to account for a new category would be required.

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

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

5000 character(s) maximum

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

Making changes would involve tremendous cost and time. Multiple millions went into operationalising previous changes and MiFID compliance; this would be the same again should there be further adjustments to current operations, with no real benefit. There would be minimal cost if no new category was created and if the opt-up process was streamlined instead, where we would see benefit.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>	<input type="radio"/>	<input checked="" 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 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 type="radio"/>

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.

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.

We believe the Product Governance rules as currently implemented impose operational burdens on the distribution of non-complex products (such as ordinary shares and non-complex bonds) to mass market retail investors, thereby potentially increasing the costs associated with and / or inhibiting retail clients' access to such products.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
It should apply only to complex products.	<input checked="" type="radio"/>	<input 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 the Product Governance regime can benefit from simplification both in terms of the product scope, and the market participants to whom it applies. The product scope could usefully be revised so the regime only applies to complex products, thereby excluding non-complex products such as ordinary shares and non-complex bonds. Since non-complex financial instruments can be bought without an appropriateness test by any category of investor, the application of the Product Governance rules to these types of product is unnecessary. Such rules in the context of non-complex products add extra costs and compliance on firms in relation to disclosures of target markets and distribution strategies, as well as having to assess compliance with the other product governance rules, for instruments that may under MIFID already be distributed by investment firms as “mass retail” products without a requirement to conduct an appropriateness assessment. The Product Governance rules in the context of non-complex products are therefore superfluous given the MIFID “appropriateness” regime and the many other existing investor protection regimes such as the Prospectus Regulation, Market Abuse Regulation regarding ongoing disclosures by listed entities, corporate governance requirements and other similar regulatory requirements.

Further the regime could be restricted in application to non-wholesale markets, so that it does not apply to business with eligible counterparties and per se professional clients. Eligible counterparties and professional per se entities are, by definition, already able to purchase any financial instrument. As a consequence the application of the product governance rules, in particular the requirement for a target market, is unnecessary when considering trading among such entities.

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 believe that the regime already provides an appropriate degree of investor protection, and further restrictions on sale to negative target markets is both unnecessary and could inhibit the ability of firms to provide their clients with appropriate products. The product governance regime currently permits sale of products to clients in the negative target market, with associated regulatory guidance making clear that this should be a rare occurrence in need of significant justification by the distributor. It remains the case that there may be circumstances in which it is in the best interests of a client to distribute a product to them, notwithstanding that the client falls within the manufacturer's negative target market for the relevant product (such as for portfolio diversification or hedging purposes).

One specific example of where it could be suitable for a product to be sold to the negative target market is a sale where the decision maker is a discretionary investment/fund manager. In this instance we do not believe a written explanation should be required that the client was informed.

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

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

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

Question 49.1 Please explain your answer to question 49:

5000 character(s) maximum

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

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

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

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

Question 50.1 Please explain your answer to question 50:

5000 character(s) maximum

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

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

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

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

- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 51.1 Please explain your answer to question 51:

5000 character(s) maximum

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

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.

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.

We already provide ex ante costs and charges in advance of a trade. If we wanted to reduce delays it may be helpful for professional clients if we did not send them costs and charges information. However, for retail clients this would not be useful without further changes to the regulation, as we have to send them costs and charges.

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.

With regards to client order services, we believe it is necessary to continue recording calls. Should a client later disagree with the terms of a trade, then there is a recording of what was agreed. If a client wishes to have a quick execution, then there is necessity in the call being recorded. Telephone taping is important for internal controls and beneficial to both firms and clients.

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.

MiFID II has been positive in focusing firms on how best execution should be applied and delivering a granular approach to delivering best execution with appropriately applied governance and oversight.

However, we believe the best execution reports as currently mandated do not embrace the core principle outlined in the Level 1 text on best execution and the way it should be applied. The reports are overly complicated and too detailed. They also vary by the product and capacity within which a client trades meaning they are not suitable as a one size fits all approach for clients seeking data to support their best execution assessments.

Best execution reporting can be useful as a source of information to show where Investment Firms are executing but do not help with evidencing the quality of execution. Overly detailed or transaction level information is costly to produce but does not provide benefit as evidence.

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 type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Quality of data	<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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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.

To improve their usefulness, best execution reports should be designed to reflect the thematic approach to delivery of best execution. Best execution reviews do not entail trade by trade analysis against external data sources, and hence very granular best execution reports with huge volumes of data will not deliver benefit. Reports should be simplified to provide only relevant information, and end investors must be able to interpret and compare them in a meaningful way.

Particularly in wholesale markets, best execution is closely linked to the objective of the investors, the size in which they trade and how the orders are processed and managed throughout the order workflow. Publicly disclosed reports are unlikely to include the necessary information such investors would need to assess the quality of execution they receive.

Data at a higher level of granularity could usefully replace aspects of current reports. RTS 27 could be amended to require a summary per asset class of the activity run by an SI encompassing number of instruments traded, and relevant measures as appropriate per asset class, for instance average trade size and average daily turnover for equities. Thresholds should be introduced to remove the reporting requirement for illiquid instruments, or where volume is below de minimis thresholds, as such data would be even less meaningful to investors and risks overly exposing the activity of the reporting entity. For RTS 28, we feel it is more difficult to strike a balance between public and client privileged disclosure. We would therefore recommend to proceed with caution before changing the nature and the granularity of the data produced and would recommend further more detailed consultation, in particular given the cost associated with making changes to the reports.

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.

We do not believe that the current best execution reports reflect the Level 1 MiFID principle of how best execution should be applied. Instead, the reports include too much information, which is overly detailed and not relevant to particular asset classes.

A significant proportion of the costs associated with the reporting are now sunk costs however there is an ongoing cost to maintain the reporting. Any changes to the reporting will necessitate further investment by firms in analysis, interpretation and implementation spend, and as such there should be a very clear

identified benefit based on a thorough consultation with buy-side firms before any changes are proposed.

We recommend a significant simplification of the reports, to focus on very high level measures of the relative activity of reporting firms per asset class, excluding technical or non-market impacting trades, with measures calibrated to reflect the most meaningful data points per asset class.

We would welcome further follow up discussions on what may be the most appropriate data points to report per asset class.

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.

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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Authorise bundling for SME research exclusively	<input type="radio"/>	<input 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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prevent underpricing in research	<input type="radio"/>	<input type="radio"/>	<input 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 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 type="radio"/>

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

5000 character(s) maximum

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

1.2. Alternative ways of financing SMEs research

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

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

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

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

5000 character(s) maximum

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

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

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

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

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

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

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

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

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

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

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

Question 64.1 Please explain your answer to question 64:

5000 character(s) maximum

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

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

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

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

Question 65.1 Please explain your answer to question 65:

5000 character(s) maximum

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

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

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

Question 66.1 Please explain your answer to question 66:

5000 character(s) maximum

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

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

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

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

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

	1 (least effective)	2 (rather not effective)	3 (neutral)	4 (rather effective)	5 (most effective)	N. A.
Introduce a specific definition of research in MiFID level 1	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Authorise bundling for SME research exclusively	<input type="radio"/>	<input 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 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 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 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 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 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 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 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 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 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.

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"/>					
The MiFID II/MiFIR costs and benefits with regard to commodity markets are balanced (in particular regarding the regulatory burden).	<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"/>					
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"/>					
The position limit framework and pre-trade transparency regime for commodity markets has provided EU added value.	<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.

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 type="radio"/>	<input type="radio"/>
A designated list of 'critical' contracts similar to the US regime	<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"/>

Question 71.1 Please explain your answer to question 71:

5000 character(s) maximum

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

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

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

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

Question 72.1 Please explain your answer to question 72:

5000 character(s) maximum

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

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

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

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

Question 73.1 Please explain your answer to question 73:

5000 character(s) maximum

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

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

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

	Yes	No	N.A.
Nascent	<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

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 checked="" type="radio"/>	<input 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"/>	<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"/>	<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"/>	<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.

In general, we believe the DTO regime has been applied in a flexible manner, with due regard for alignment with the technical scope of application of the equivalent regime in other jurisdictions. The timely adoption of equivalence decisions in respect of third country jurisdictions is crucial to avoid EU firms and their clients being cut-off from key liquidity pools, or from having to take costly action (for instance, changing booking models, contracting with additional liquidity providers, or joining additional venues) in anticipation of a potential loss of such access.

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.

Barclays believes that the current scope of the DTO is appropriate and has struck the right balance.

However, we recommend a number of relatively minor adjustments to the DTO regime:

- We would support the introduction of a mechanism to permit the urgent suspension of the DTO, under a mechanism to be pre-defined, and when pre-defined criteria are met, such as the non-availability of eligible trading venues, or a significant change in the liquidity of in scope instruments.
- Amendment to article 28 of MiFIR to clarify that the scope of transactions subject to the DTO under MiFIR should be a subset of transactions subject to the CO under EMIR. This adjustment would generate greater legal clarity with respect to whether contracts could be subject to the DTO whilst also providing alignment on a more dynamic forward looking basis.
- In order to remove a potential impediment to marketwide adoption of the introduction of benchmarks fallback clauses (under article 28(2) of the EU Benchmarks regulation) in legacy contracts, provide clarification that such changes do not trigger application of the DTO.

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.

Barclays believes that the current scope of the DTO is appropriate and has struck the right balance.

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.

We agree with ESMA's recommendation for a full alignment of the scope of counterparties between the EMIR Clearing Obligation (CO) and the DTO provisions, as contained in its review on the alignment of MiFIR with the changes introduced by EMIR Refit, published in January 2020.

VI. Multilateral systems

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

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

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

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

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

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

5000 character(s) maximum

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

In our view, the definition of multilateral system under MiFID II/MiFIR is well understood by the industry (at both EU and national level), adequately reflects the functioning of the market and does not require further clarification.

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 type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input 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.

Barclays would prefer the removal of the double volume cap. There is no conclusive evidence that double volume caps have improved price formation in European markets. The introduction of the caps has however significantly complicated European market structure, creating an environment where available execution methods change at regular intervals. They have also proven difficult to explain to clients, especially to clients outside of the EU. We are supportive of AFME's response to this question.

Post trade transparency needs to be focused on good quality data.

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.

Barclays is supportive of the application of the open access requirements and does not see any issues that would necessitate their further deferral. Overall we believe that open access will foster competitiveness on European markets, improve risk management and make central clearing more attractive. Having open access would increase competition as it would open up the existing vertical silos, to enable products from trading venues outside the siloed group to be cleared by the CCP and vice versa. This would improve client choice and enable entities to pool more contracts from multiple venues at the same CCP, which in turn may result in benefits for netting and cross-margining.

While there are technical issues to be taken into consideration as part of any individual access request, we believe there are safeguards in place that should serve to address and mitigate these, both in regulation (Arts 35 & 36) but also through the participation and input from members of CCPs in risk committees which can serve to provide feedback on potential issues and desired resolutions.

Even when open access for all products becomes possible through expiry of the moratorium, it is not expected that this will lead to an immediate proliferation of new connectivity, as venues and CCPs will need to plan and sequence any operational and IT build and ensure there is commercial support.

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 If you do think that the open access regime will effectively introduce cost efficiencies or other benefits in the trading and clearing areas, please indicate the specific areas (such as type of specific financial instruments) where, in your opinion, open access could afford most cost efficiencies or other benefits when compared to the current situation:

5000 character(s) maximum

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

Our experiences from the implementation of open access in equity markets have been positive, and the changes have yielded benefits for market participants. As noted in our response to Question 83.1, we believe open access will foster competitiveness on European markets, improve risk management and make central clearing more attractive. Having open access would increase competition as it would open up the existing vertical silos, to enable products from trading venues outside the siloed group to be cleared by the CCP and vice versa. This would improve client choice and enable entities to pool more contracts from multiple venues at the same CCP, which in turn may result in benefits for netting and cross-margining.

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.

A good example is the interoperability of CCPs at equity level. A number of large Equities markets are now fully interoperable and have brought efficiencies and costs savings to the clearing and settlement market structure. For instance, NASDAQ Nordics, the LSE and the MTF all propose a fully interoperable model allowing their member to consolidate their clearing and settlement arrangements, also reducing settlement fail risks. On the other side, we have also seen recently, following consolidation across venues, signs that previously interoperable venues such as the Irish Stock Exchange and Oslo Borsmay may go back to a preferred or unique CCP model following their take-over by Euronext. We do not believe there is any valid reason or cause for concern that would justify returning to a closed clearing model. We believe that competition between multiple CCPs, together with adequate regulation of clearing risks, actually foster more resilient and robust markets.

IX. Digitalisation and new technologies

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

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

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

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

Please explain your answer:

5000 character(s) maximum

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

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.

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

Please explain your answer:

5000 character(s) maximum

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

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

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

Question 89.1 Please explain your answer to question 89:

5000 character(s) maximum

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

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

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

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

Question 90.1 Please explain your answer to question 90:

5000 character(s) maximum

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

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

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

Question 91.1 Please explain your answer to question 91:

5000 character(s) maximum

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

X. Foreign exchange (FX)

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

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

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

Question 92.1 Please explain your answer to question 92:

5000 character(s) maximum

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

We do not believe that an amendment to the EU regulatory framework for Spot FX, via MAR and/or MiFID/R, is necessary or appropriate, in light of the global cross-border nature of Spot FX, its short dated tenor and the types of market participants (and their rationale for) trading Spot FX . There would be limited benefits to such a change in scope, but significant implementation challenges of which further detail can be found in

GFXD's response to this question, which we support.

We fully agree with GFXD that whilst the current regulatory framework helps to prevent a majority of misbehaviours in the Spot FX market, the FX Global Code ('Code') (https://www.globalfx.org/fx_global_code.htm) provides the best means to support regulation against market abuse. The FX Global Code was specifically developed by central banks, NCAs and market participants from around the world to promote a "robust, fair, liquid, open and appropriately transparent market in which a diverse set of market participants, supported by resilient infrastructure, are able to confidently and effectively transact at competitive prices that reflect available market information and in a manner that conforms to acceptable standards of behaviour." Barclays has attested adherence to the code, which has been widely adopted globally by over 1,000 market participants. The current global review process to ensure it remains fit for purpose should be supported by EU NCAs and by the Commission. We support ESMA's suggestion to wait for the Code to be more deeply embedded into the market and for any developments flowing from the 2020 review to be adopted across the EU.

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.

We support GXFD's response to this question and also believe that EU NCAs could be empowered to recognise and enforce the FX Global Code (https://www.globalfx.org/fx_global_code.htm) and should also look to establish arrangements to leverage the comprehensive Spot FX data that is already available, such as that from EU trading venues. Central banks and NCAs in major jurisdictions such as Australia, the EU, Hong Kong, Singapore and the US have endorsed the Code and expressed support for its adoption by market participants.

Section 3. Additional comments

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

Please, where possible, include examples and evidence.

5000 character(s) maximum

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

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

Please explain your answer:

5000 character(s) maximum

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

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

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Useful links

[More on the Transparency register \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](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)

Contact

fisma-mifid-r-review@ec.europa.eu