

POSITION PAPER



ESBG response to the public consultation on the review of the MiFID II/MiFIR regulatory framework

ESBG (European Savings and Retail Banking Group)

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ESBG Transparency Register ID 8765978796-80

April 2020



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

Q1: To what extent are you satisfied with your overall experience with the implementation of the MiFID II/MiFIR framework?

Very unsatisfied	
Unsatisfied	X
Neutral	
Satisfied	
Very satisfied	
Don't know / no opinion / not relevant	

Q1.1: 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.

In principle, we welcome the background to the introduction of MiFID II, e.g. increased transparency and investor protection. However, banks and saving banks experienced that many clients did not welcome the changes that MiFID II introduced and complained about the amount of often unhelpful information they have to go through, in particular ex-ante and ex-post costs disclosures. It appears that the administrative burden and the additional steps did not improve the investment experience. Many clients feel 'misunderstood' and wish for 'opt out' options. In particular, clients have complained about the amount of often unhelpful (and overlapping) transaction based information. They feel overwhelmed by the sheer amount of information and would rather have the possibility to waive parts of it. Many investors want to decide for themselves if they wish to do without certain information (such as constantly repetitive information on costs) or receive information afterwards (following telephone orders, for instance). We would welcome the introduction of a waiver option in certain defined cases. The extension of disclosure obligations to institutional clients (eligible counterparties and professional clients) introduced by MiFID II is also felt to be too extensive in practice. The requirements should be limited to retail clients. We would furthermore welcome the increased digitalisation of information in the context of disclosure to clients.

With regard to the rules for the market infrastructure, especially some aspects of the reporting rules according to Art. 26 MiFIR create a massive burden and costs both for the clients and the investment firms without leading to an improvement to prevent market abuse and insider trading.

Q2: Please specify to what extent you agree with the statements below regarding the overall experience with the implementation of the MiFID II /MiFIR framework

	Disagree	Rather not agree	Neutral	Rather Agree	Fully Agree	N.A.
The EU intervention has been successful in achieving or progressing towards its		X				



MiFID II /MiFIR objectives (fair, transparent, efficient and integrated markets).						
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	X					
The different components of the framework operate well together to achieve the MiFID II/MiFIR objectives.	X					
The MiFID II/MiFIR objectives correspond with the needs and problems in EU financial markets.		X				
The MiFID II/MiFIR has provided EU added value.		X				

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.

We welcome the objective of MiFID II to reinforce the rules on securities markets and to improving the transparency and oversight of financial markets including derivatives markets and enhancing investor protection.

However, recent studies, like the Impact Study by Ruhr University Bochum run by Prof. Dr Stephan Paul, show that clients do not benefit from the new requirements. Quite to the contrary, it appears that the administrative burden and the additional steps did not improve the investment experience. Many clients feel ‘misunderstood’ and wish for ‘opt out’ options. In particular, clients have complained about the amount of often unhelpful (and overlapping) transaction based information. They feel overwhelmed by the sheer amount of information and would rather have the possibility to waive parts of it. Moreover, clients receive information partly without added value (e.g. quarterly securities account statement; obligation to provide ex-ante cost information, suitability statement and PRIIPs KIDs even in the case of several similar transactions within a short period of time).

In addition, MiFIR Transaction Reporting makes sense with regard to the MiFID objectives, but the refusal of the national supervisory authorities to recognise FIRDS as a golden source partly contradicts the intention of the legislator. Another problem within Transaction Reporting is that the treatment of ownership transfers is often interpreted incompatible between member states, rendering comparison of reporting items between member states very burdensome. Regarding OTC derivatives and transaction reporting (or even the transparency framework), the value-add to EMIR has to be seen as negligible and the situation should be reconsidered.



Q3: Do you see impediments to the effective implementation of MiFID II/MiFIR arising from national legislation or existing market practices?

Not at all	
Not really	
Neutral	
Partially	X
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.

Under MiFID II, the European legislator has introduced a very detailed regulatory framework for the European markets. Especially Level II and III contain many very granular requirements for investment firms.

This tight framework does not leave any room for any further requirements that would constitute a competitive disadvantage for the firms acting in the relevant Member State. Furthermore, national goldplating requires firms acting in different Member States to apply different rules, which runs counter the harmonised internal market. Nevertheless, we can see further national requirements in different Member States (for example Germany and Spain). The review of MiFID II should be used to introduce a ban on any national legislation on topics that are already subject to MiFID II.

With regard to market practices we have to be aware that in the different national markets solutions for the regulatory requirements have been developed long before MiFID I (for example national data providers). Investment firms have adjusted their IT systems to these national solutions. For firms from other countries these market practices may cause additional effort if they want to enter the relevant market. Since there are no EU wide IT-based solutions, these efforts will be inevitable. In some cases initiatives have been developed to ease working in different Member States (see for example FinDatEx run by the European banking, insurance and product associations).

Moreover, ESMA's previous practice of publishing Q&As without consulting the market beforehand may lead to implementation problems in practice, if market participants have to implement changes at short notice that could not have been foreseen in this form. In the course of MiFID implementation, market participants have made interpretations within the framework of the legal text on which they have based their implementation. Other interpretations by Q&As published well after implementation will subsequently require extensive changes to processes and systems.

Q4: Do you believe that MiFID II/MiFIR has increased pre- and post-trade transparency for financial instruments in the EU?

Not at all	
Not really	
Neutral	
Partially	X
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.

In general, the extension of the provisions for market transparency has increased the pre- and post-trade transparency. In the securities domain, price transparency for many instruments was quite high already before the onset of MiFID II and our subjective assessment is that the post-trade transparency introduced changed little, especially as the different waiver and deferral constellations have to be taken into account.

We found that Pre-Trade Transparency has no practical value-add to post-trade transparency, especially when post-trade transparency is not deferred.

Q5: 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?

Not at all	
Not really	X
Neutral	
Partially	
Totally	
Don't know / no opinion / not relevant	

Question 5.1 Please explain your answer to question 5:

5000 character(s) maximum

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

No significant changes to MiFID I are discernible. With regard to systematic internalisers in the OTC derivatives area, legal uncertainty remains, and ESMA has been one year late in clarifying this issue. Also, incompatibilities between FIRDS and ANNA-DSB regarding the construction of ISINS for OTC Derivatives remain.

When the start of publication of OTC derivatives information next May to be used in the IS condition assessment, this is one of the open issues, which is key for a successful implementation

Q6: Have you identified barriers that would prevent investors from accessing the widest possible range of financial instruments meeting their investment needs?

Not at all	
Not really	
Neutral	
Partially	X
Totally	
Don't know / no opinion / not relevant	



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

5000 character(s) maximum

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

Certain customers are excluded from products which are, however, in some cases intensively demanded by them. For example, wealthy private clients cannot invest in products without PRIIPs KID, or in products that are reserved for professional clients. Even if in individual cases distribution outside the target market is possible, there is only a narrow threshold left for distribution, which is why a customer-friendly solution would be desirable here.

Question 6.1 Please explain your answer to question 6:

5000 character(s) maximum

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

General comments

5000 character(s) maximum

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

Section 2. Specific questions on the existing regulatory framework

PART ONE: PRIORITY AREAS FOR REVIEW

Q7: What are in your view the reasons why an EU consolidated tape has not yet emerged?

	Disagree	Rather not agree	Neutral	Rather Agree	Fully Agree	N.A.
Lack of financial incentives for the running a CT				X		



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

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

5000 character(s) maximum

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

Q7.1 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.

We see marginal benefit of the post-trade transparency regime in the market. Based on this marginal benefit, also the benefit of a CTP is questionable and the economics for potential providers do not play out at the moment in our opinion.
 Although prices for market data have increased, the market seems to be equipped with market data – both from trading venues and OTC through APA.

Q8: 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?

5000 character(s) maximum

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



Q9: 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.

Q10: What do you consider to be the use cases for an EU consolidated tape?

	Disagree	Rather not agree	Neutral	Rather Agree	Fully Agree	N.A.
Transaction cost analysis (TCA)				X		
Ensuring best execution				X		
Documenting best execution				X		
Better control of order & execution management			X			
Regulatory reporting requirements		X				
Market surveillance		X				
Liquidity risk management		X				
Making market data accessible at a reasonable cost				X		
Identify available liquidity				X		
Portfolio valuation		X				
Other						

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

5000 character(s) maximum

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

Q10.1 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.



Q11: Which of the following features, as described above, do you consider important for the creation of an EU consolidated tape?

	Disagree	Rather not agree	Neutral	Rather Agree	Fully Agree	N.A.
High level of data quality					X	
Mandatory contributions				X		
Full coverage					X	
Very high coverage (not lower than 90% of the market)					X	
Real-time (minimum standards on latency)					X	
The existence of an order protection rule						X
Single provider per asset class	X					
Strong governance framework					X	
Other						

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

5000 character(s) maximum

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

Q11.1 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 1 2 3 4 5 N. A. 19 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.



Q12: 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.

Q13: 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.

Q14: Do you agree with the following features in relation to the provision, governance and funding of the consolidated tape?

	Disagree	Rather not agree	Neutral	Rather Agree	Fully Agree	N.A.
The CT should be funded on the basis of user fees					X	
Fees should be differentiated according to type of use					X	
Revenue should be redistributed among contributing venues						X



In redistributing revenue, price forming trades should be compensated at a higher rate than other trades						X
The position of CTP should be put up for tender every 5-7 years						X
Other						

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.

Q14.1 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 1 2 3 4 5 N. A. 21 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.

Q15: For which asset classes do you consider that an EU consolidated tape should be created?

	Disagree	Rather not agree	Neutral	Rather Agree	Fully Agree	N.A.
Shares pre-trade ¹			X			

¹ 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.



Shares post-trade					X	
ETFs pre-trade			X			
ETFs post-trade					X	
Corporate bonds pre-trade			X			
Corporate bonds post-trade					X	
Government bonds pre-trade			X			
Government bonds post-trade					X	
Interest rate swaps pre-trade			X			
Interest rate swaps post-trade					X	
Credit default swaps pre-trade			X			
Credit default swaps post-trade	X					
Other					X	

Please specify for which other asset classes you consider that an EU consolidated tape should be created?

5000 character(s) maximum

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

Q15.1 Please explain your answers to question 15:

5000 character(s) maximum

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

If a CT is to be formed, it should be a full-service provider, so that the market-participants can use it as a “one stop shop” for all post-trade data (we find pre-trade transparency of little additional benefit). It should focus on securities where data-standardization is easily possible.

Q16: 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.



Q17: What shares should in your view be included in the Official List of shares defining the scope of the EU consolidated tape?

	Disagree	Rather not agree	Neutral	Rather Agree	Fully Agree	N.A.
Shares admitted to trading on a RM					X	
Shares admitted to trading on an MTF with a prospectus approved in an EU Member State					X	
Other						

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

5000 character(s) maximum

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

Q17.1 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.



Q18: 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?

5000 character(s) maximum

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

Q19: 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.

Q20: In 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.



Q21: 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.

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Q22: 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?

Not at all	
Not really	
Neutral	
Partially	
Totally	X
Don't know / no opinion / not relevant	

Q22.1 Please explain your answer to question 22:

5000 character(s) maximum

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

See answer to question 23.	
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Q23: What is your evaluation of the general policy options listed below as regards the future of the STO?

	Disagree	Rather not agree	Neutral	Rather Agree	Fully Agree	N.A.
Maintain the STO (status quo)	X					
Maintain the STO with adjustments (please specify)					X	
Repeal the STO altogether						



Q23.1 Please explain your answer to question 23:

5000 character(s) maximum

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

Financial instruments that are not listed on EU-markets primarily, should be exempted from the STO as the liquidity on EU-markets is very low.

Q24: Do you consider that the status of systematic internalisers, which are eligible venues for compliance with the STO, should be revisited and how?

	Disagree	Rather not agree	Neutral	Rather Agree	Fully Agree	N.A.
SIs should keep the same current status under the STO					X	
SIs should no longer be eligible execution venues under the STO	X					
Other						

Please explain in what other way(s) the status of systematic internalisers, which are eligible venues for compliance with the STO, should be revisited:

5000 character(s) maximum

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

Systematic internalisers contribute to a broad landscape of execution venues. Therefore, they should be used to fulfil the STO.

Q24.1 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.



Q25: 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.

Q26: What would you consider to be appropriate steps to ensure a level-playing field between trading venues and systematic internalisers?

Please explain your answer:

5000 character(s) maximum

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

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

Q27: 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.



Q28. 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

Q28.1 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.

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.

Q29. 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

Q29.1 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.



Q30. 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	X					
Shortening of the 2-day deferral period for the price information	X					
Shortening of the 4-week deferral period for the volume information	X					
Harmonisation of national deferral regimes				X		
Keeping the current regime		X				
Other						

Please specify what other 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?

5000 character(s) maximum

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

Q30.1 Please explain your answer to question 30:

5000 character(s) maximum

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

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



II. Investor protection

Q31. 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.		X				
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	X					
The different components of the framework operate well together to achieve more investor protection.		X				
More investor protection corresponds with the needs and problems in EU financial markets.	X					
The investor protection rules in MiFID II/MiFIR have provided EU added value.		X				

Q31.1 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	Qualitative
IT	According to a study run by Ruhr University Bochum, banks explained that the acquisition of new (and the expansion of existing) IT systems and hardware has been the 3 rd biggest cost driver (after	



	familiarisation with the new requirements and staff training). For larger banks, IT was even the biggest cost driver.	
Organisational Arrangements	According a study run by Ruhr University Bochum, banks explained that familiarisation with the new requirements has been the biggest cost driver.	
HR	<p>According to a study run by Ruhr University Bochum, banks explained that staff training has been the 2nd biggest cost driver.</p> <p>These efforts by banks have been recognised by clients: According to the study by Ruhr University Bochum clients continue to place great trust in their advisor. 72.6% of clients said they rely completely on their advisor when making an investment decision, and that they did not need further material.</p>	

Quantitative elements for question 31.1:

	Estimate (in €)
Benefits	
Costs	<p>For example: the implementation of MiFID II/PRIIPs has burdened member institutions of the German Banking Industry Committee with EUR 3.7 million on average (around EUR 200,000 – 900,000 for small to mid-sized banks, and as much as EUR 35 million for large banks). This is excluding significant running costs incurred for ongoing compliance with the new provisions of EUR 508,000 p.a. on average (EUR 44,000 – 182,000 for small to mid-sized banks, and around EUR 4.2 million for large banks).</p>

Qualitative elements for question 31.1:



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

The legislator has intervened very largely in customer autonomy in some points, for example by not providing for the possibility of waiving information. Here we would welcome the introduction of such a waiver option in certain cases, for example in connection with frequent, similar transactions within a short period of time, namely with regard to ex-ante cost reporting and suitability statements on the one hand and securities account statement (once a year should be sufficient) on the other. The extension of disclosure obligations to institutional clients (eligible counterparties and professional clients) is also felt to be too broad in practice. We would also welcome the increased digitalisation of information in the context of disclosure to clients.

1: Easier access to simple and transparent products

Q32. 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	X		
Costs and charges requirements	X		
Conduct requirements		X	
Other			

Please specify which other MiFID II/MiFIR requirements should be amended:

5000 character(s) maximum

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

Q32.1 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.



Under MiFID II the requirement to define a target market has been introduced. This requirement mainly requires manufacturers to define the target market for their products. In cases where the manufacturer has not defined a target market for his products, the distributor has to define his own target market.

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

In the same way that distributors have to comply with cost and charges requirements, we consider that legislator should also require cost and charges information from manufactures. A possibility could be to establish standards to be met by manufacturers.

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

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

It is very positive that ESMA has clarified that cost information on bonds and shares can be provided via standardised grids so that the client does not need to be bothered by redundant transaction based information. For reasons of legal certainty this clarification should be made on Level I or II. Therefore, we highly appreciate the proposal by ESMA in its Final Report on inducements and costs and charges disclosures to incorporate the Q & A into the MiFID II Del Reg.

Q33. 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
X	4 – Rather agree
	5 – Fully agree
	Don't know / no opinion / not relevant



Q33.1 If your answer to question 33 is on the negative side, please indicate in the text box which amendments you would like to see introduced to ensure that retail investors receive adequate protection when purchasing products considered as complex under MiFID II/MiFIR:

5000 character(s) maximum

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

Question 33.1 Please explain your answer to question 33:

5000 character(s) maximum

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

MiFID II has introduced very detailed requirements that seek to promote investor protection. These detailed requirements do not leave room for any protection gap. To the contrary, many investors feel overprotected and ask for the ability to opt out of the strict requirements they see as unnecessary administrative burdens.

2: Relevance and accessibility of adequate information

Q34. 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.	X		
Only ECPs should be able to opt-out unilaterally.		X	
Professional clients and ECPs should be able to opt-out if specific conditions are met.		X	
All client categories should be able to opt out if specific conditions are met.			X
Other			

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

5000 character(s) maximum

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



MiFID II actually failed to adapt investor protection to the characteristics of each investor category (retail investors, professional clients, eligible counterparties). The same disclosure obligations with regard to costs and charges apply to all three investors categories, no consideration was given to the special features or different protection requirements.

Regarding the requirements related to professional clients and eligible counterparties, we believe that they know conditions and the prices of various financial services providers. For these investors, the disclosure obligations are more a burden than a benefit. It would be appropriate that level 1 legislation clarifies that for professional clients and eligible counterparties, it would be sufficient to provide a cost grid instead of a transaction-based ex ante cost information.

Additionally, in our opinion there should be no distinction between elected and per se professional clients. In this respect, it should be taken into account that the European legislator presumes that all professional clients have the same knowledge and experience.

On the other hand, we think that experienced retail clients should have also the possibility to opt out from the obligation to receive information on costs and charges. The EU legislator should define the criteria for an “informed retail client”. On such basis, informed retail client should be able to decide on the amount of information s/he wants to receive from his/her distributor.

Professional clients and eligible counterparties should be exempted from the ex ante cost information without specific conditions. Experienced retail clients should have the possibility to opt out from the ex ante cost information.

Regarding eligible counterparties, Article 30 of MiFID II, under which most of the requirements do not have to be applied to transactions executed with eligible counterparties, should be extended to include the cost information requirements. Furthermore, there should be no obligation to disclose costs ex ante and ex post vis-a-vis professional clients (which would be in line with the requirements under PRIIPs and the assumption under Art. 54 and 56 MiFID II Delegated Regulation).

Q34.1 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.

Under MiFID II, the information requirements have been extended to professional clients and eligible counterparties. Especially the obligation to inform professional clients and eligible counterparties on the costs of the transaction causes high costs for distributors.

Professional clients and eligible counterparties are usually banks or institutional clients. For them there is no added value in the information since both client categories do not lack any information. Professional clients and eligible counterparties are on the same level as financial institutions and know the conditions and prices of various financial service providers. They either compare different prices of various service providers by using electronic trading platforms (e.g. Swift, Bloomberg, FIX, etc.) or they request offers from different financial service providers.

In this context, it is important to mention that the legislator allows investment firms to assume that professional clients have the necessary level of knowledge and experience (see Art. 54 (3) and



56 (1) Delegated Regulation (EU) 2017/565). This shows that also the legislator is of the view that professional clients generally have a sufficient level of knowledge and experience. Therefore, many information requirements only apply to retail clients (i.e. the PRIIPs regulation).

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

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

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

Q35. Would you generally support a phase-out of paper based information?

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

Q35.1 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.

MiFID has a preference for information to be provided on paper rather than electronically (via pdf or an internet link). The latter is only allowed under further requirements.

With regard to the ongoing digitalization this preference for paper based information is antiquated. Furthermore, providing information on paper consumes lots of resources (energy, paper) and therefore runs counter the ambitious targets of the EU with regard to sustainability. Therefore, paper is more and more dispensable and should only be used on explicit customer request.

By introducing a phase out of paper under MiFID II (which should be aligned with the review of the PRIIPs regulation) the EU would further promote sustainability. The phase out of paper is in line with the view ESMA expressed in their Technical advice on costs and charges disclosures published 31 March 2020 (p. 42 nr. 193), where ESMA has proposed that electronic communication becomes the default option, if the client has access to electronic information.

Q36. How could a phase-out of paper-based information be implemented?

	Yes	No	N.A.
General phase-out within the next 5 years		X	



General phase out within the next 10 years		X	
For retail clients, an explicit opt-out of the client shall be required.	X		
For retail clients, a general phase out shall apply only if the retail client did not expressly require paper based information	X		
Other		X	

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.

Q36.1 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.

From our point of view, the easiest way to implement a phase-out of paper would be that the current preference of paper based information is substituted by a statutory concept of electronic information. With regard to clients who like to receive information on paper (which may for example be the case for elderly people) clients should have the option to ask for paper based information.

This implementation would allow to save tons of papers without any transition period of several years but on the other hand would protect clients that are not that familiar with IT based information (who will probably be a small minority).

Any initiative in this regard should be accompanied by requiring clients who do not wish to receive paper based information (in other words: everyone that does not use the opt out) to sign up an electronic mail box with the investment firm (under the assumption that the electronic mail box does not go along with any further costs for the client). Without clients having (or starting to have) electronic mail boxes a phase out of paper-based information would be impossible.

Q37. Would you support the development of an EU-wide database (e. g. administered by ESMA) allowing for the comparison between different types of investment products accessible across the EU?

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



Q37.1 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.

Investment firms distributing financial instruments are obliged to inform the client on costs and charges of the services and the product since January 2018. In order to comply with this requirement investment firms have started to develop solutions since 2016. This has led to bilateral agreements between manufacturers and distributors or the establishment of big data bases where manufacturers can provide information on the costs of their products. The IT systems of both, manufacturers and distributors, have been adapted to these solutions which was very expensive.

Since these solutions have been established long ago, there is no need for an EU-wide database on product costs. Such a data base would only have been useful if it had been developed before distributors introduced the solutions mentioned above. Once these solutions are in place, there would be no added value.

Q38. In your view, which products should be prioritised to be included in an EU-wide database?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
All transferable securities	X					
All products that have a PRIIPs KID/ UICTS KIID	X					
Only PRIIPs	X					
Other	X					

Please specify what other products should be prioritised?

5000 character(s) maximum

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

Q38.1 Please explain your answer to question 38:

5000 character(s) maximum

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



For the reasons mentioned in the reply to Q 37 there is no need for an EU-wide database. With regards to PRIIPs and funds we further want to highlight that the manufacturers are obliged to provide a KID / KIID that contains information on product costs. These documents have to be published on the website of the manufacturer.

Q39. Do you agree that ESMA would be well placed to develop such a tool?

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

Question 39.1 Please explain your answer to question 39:

5000 character(s) maximum

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

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

3: Client profiling and classification

Q40. 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
X	5 – Fully agree
	Don't know / no opinion / not relevant

Q40.1 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.



MiFID II does not differentiate between “normal” retail clients – who have no/not much experience with capital markets – and more “experienced” retail clients (or heavy traders) who are familiar with securities transactions. This leads to a situation where clients trading very often and who have a great “trade volume” receive the same information over and over again. Therefore, it is not surprising that experienced retail clients feel patronized by the new (information) requirements under MiFID II and PRIIPs.

We see excessive customer protection in the following cases in particular:

- Through the obligation to provide ex-ante cost information and a suitability statement (and also a PRIIPs KID) even in cases of frequent, similar transactions within a short period of time without the possibility of waiver by the customer;
- by the obligation to transmit a securities account statement without the possibility of waiver by the customer
- through target market restrictions (if a product is not suitable for retail clients according to its target market definition, but would be useful and desired for certain experienced or wealthy private customers)
- in connection with PRIIPs by excluding product purchases where there is no PRIIPs KID

Q41. 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
X	5 – Fully agree
	Don’t know / no opinion / not relevant

Q41.1 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.

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

However, we would like to point out that we are sceptical that lowering the threshold for professional clients’ financial situation can solve the above mentioned problems for experienced retail clients. The amount of assets does not correlate with the experience and knowledge or professionalism of the client. The amount often excludes people who have the appropriate knowledge and experience and an interest in more investment opportunities.

Experienced retail clients are frustrated by too much (overlapping) information simply because they are familiar with the markets and the financial instruments they buy. These clients do not necessarily have a great fortune. Therefore, we do not think that lowering the financial thresholds for professional clients is the right “remedy” for this kind of clients which is why we are in favour of introducing a new category of semi-professional clients.



Q42. 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
X	5 – Fully agree
	Don't know / no opinion / not relevant

Q42.1 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.

<p>We are in favour of including a further category, between professional investors and retail investors, for people who are not professionals, but trade very frequently within a certain reference period. A separate, adjusted set of rules would definitely make sense to facilitate the trading experience while ensuring a reasonable level of investor protection.</p> <p>Experienced retail investors/semi-professional clients do not need dozens of pages containing the exactly same information on a very regular basis (i.e. every time that they are active on the markets).</p> <p>Experienced investors should therefore have the opportunity to opt out for certain information. The introduction of this new client category should be optional for investment firms, so that the investment firm itself can decide whether to take the necessary implementing measures or whether it prefers to automatically provide clients with a higher level of protection.</p> <p>The semi-professional client should be a sub-category of the retail client. This is intended to avoid further complexity with regard to various MiFID obligations (e.g. best execution reports, best execution policies, inducements allocations, information obligations).</p>
--

Q43. 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			X			
Information provided on costs and charges					X	
Product governance	X					
Other					X	

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

5000 character(s) maximum

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



Experienced retail clients /semi-professional clients should be able to waive MiFID II and PRIIPs information requirements such as:

- ex-ante cost transparency
- PRIIPs-KID
- quarterly reporting
- reporting on losses
- possibility to waive the recording of telephone conversations
- suitability statement

Products for professional clients should also be accessible to semi-professional clients (for example, international PRIIPs or equity instruments of banks).

Q43.1 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.

Providing clients with mandatory documents (product information, cost disclosure) prolongs both advisory and execution-only business. As mentioned above, the more “experienced” the retail clients are, the more they feel bothered or annoyed by these delays.

This is why most clients are dissatisfied with the new provisions. This is also why the above mentioned waiver options for experienced retail clients should be established.

Q44. 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.

We think that opt out options with regard to information requirements for experienced retail clients would considerably accelerate the order process for these clients. We see an effort in the one-time, technical and procedural conversion to the new client category. We hope to save time in the ongoing sales process by reducing information duties

However, we do not expect that introducing a new client category of experienced retail clients/semi-professional clients would, in general, significantly change investment firms’ current operations. The main objective of introducing e.g. opt-out mechanisms for experienced retail investors is to offer them a more customized set of rules which is better suited for their needs and to avoid delays in the order process. This would significantly contribute to the contentment of these clients.



Q45. What should be the applicable criteria to classify a client as a semi-professional client?

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

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

5000 character(s) maximum

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

<p>In our opinion, the following “other” criteria should be taken into account in order to classify a client as experienced or semi-professional:</p> <ul style="list-style-type: none"> • Offering such investor category should remain <i>optional</i> for the credit institution/investment firm • The investor should <i>request</i> to be recognised as semi-professional • The investor should <ul style="list-style-type: none"> - have a proven track-record of trading with different types of financial instruments over at least 3 years or should have carried out more than 10 securities transactions per year in a particular financial instrument (and can therefore be classified as experienced in this particular financial instrument).
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Q45.1 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.

The preferred option is to refrain from introducing an asset threshold. If such a threshold is nevertheless deemed necessary, it should be set at € 20,000 so that as many people as possible can take advantage of this provision.

4: Product Oversight, Governance and Inducements

Q46. 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
X	4 – Rather agree
	5 – Fully agree
	Don't know / no opinion / not relevant

Q46.1 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.

A barrier to purchase exists if a product is not suitable for retail customers according to the target market, but it would be useful and desirable for certain experienced or wealthy private customers.

MiFID II has introduced comprehensive product governance requirements both for manufacturers and distributors. These requirements have further increased investor protection. Nevertheless, the requirements should only be applicable with regard to retail investors and not for professional clients and eligible counterparties.

Q47. Should the product governance rules under MiFID II/MiFIR be simplified?

	Yes	No	N.A.
It should only apply to products to which retail clients can have access (i.e. not for non-equities securities that are only eligible for qualified investors or that have a minimum denomination of EUR 100.000).	X		
It should apply only to complex products.		X	
Other changes should be envisaged – please specify below.	X		



Simplification means that MiFID II/MiFIR product governance rules should be extended to other products.		X	
Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.			X
The regime is adequately calibrated and overall, correctly applied.		X	

Q47.1 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.

<p>The product governance requirements are an effective tool to prevent that investors purchase products that are not targeted for them. The requirements can prevent misselling.</p> <p>The risk of misselling only exists with regard to retail investors. Therefore, the product governance requirements should not apply to transactions with professional clients and eligible counterparties. If a product is not sold to retail clients the manufacturer should not be obliged to define a target market.</p> <p>Furthermore, the requirement for a target market for simple products should be dropped.</p>

Q48. In your view, should an investment firm continue to be allowed to sell a product to a negative target market if the client insists?

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

Q48.1 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.

<p>There should be no ban on distributors to sell a product to a negative market if the client insists. The decision how to cope with target market deviations (and purchases into the negative market) should be up to the distributor.</p> <p>In general terms, distributor has a better knowledge of the client and should therefore be allowed to deviate from the target market.</p>

Q49. Do you believe that the current rules on inducements are adequately calibrated to ensure that investment firms act in the best interest of their clients?

	1 – Disagree
	2 – Rather not agree



	3 – Neutral
	4 – Rather agree
X	5 – Fully agree
	Don't know / no opinion / not relevant

Q49.1 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.

<p>The MiFID II rules on inducements provide a “double” approach in order to ensure that inducements are used for the benefit of clients only.</p> <p>First, investment firms have to accurately disclose to the client the exact and concrete amount of inducements received prior to executing an order. The disclosure of inducements may be combined with the ex ante cost disclosure. Thus, every retail client is aware of all costs relating to his investment and of all benefits (= inducements) his advisor or distributor receives. The ex ante cost disclosure (including the disclosure of inducements) is regularly a one or two pager which reveals easily understandable and comprehensively for the retail client all costs and inducements. Hence, every retail client is able to assess the impact of the inducement on the investment advice and to take his investment decision on an informed basis.</p> <p>Second, MiFID II makes sure that investment firms can only keep the inducements received if they use them to enhance the quality of the services provided to their clients. Art. 11-13 of the MiFID Delegated Directive (EU) 2017/593 provide detailed and exhaustive case groups in which the inducement is regarded as quality enhancing. Further the national competent authorities examine the compliance with the legal requirements on inducements by checking the investment firm’s lists of inducements and their use for quality enhancement. Thus, there is no scope for investment firms to interpret this condition too widely or to bypass the condition of quality enhancement.</p>
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Question 50. Would you see merits in establishing an outright ban on inducements to improve access to independent investment advice?

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

Question 50.1 Please explain your answer to question 50:

5000 character(s) maximum

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



We strongly oppose a ban on inducements to improve access to fee-based advice (“investment advice on an independent basis”). Investment advice on an independent basis is no valid alternative to commission-based advice because it is only accessible to wealthy clients and therefore socially unjust. Only commission-based advice can guarantee that all social classes have access to securities advice – regardless of their respective income or social status. Such unrestricted access to investment advice is particularly important in the current low-interest environment.

Moreover, inducements are exclusively used in order to enhance the quality of the services for clients. Thus, inducements finance numerous measures which are cost-free for clients and offer them added value (e.g. special offers for online-savvy clients; offer of sustainable products within investment advice services; multi-channel solutions enabling clients to “switch” from online to personal advice; “at home” services for clients; financial education in schools; cost-free online tools such as performance calculation tools, wealth calculator, currency calculator, dividend performance calculator etc.).

We believe that the placement/underwriting of a financial instrument should not be considered as an inducement. We think that it should be appropriate to return to the treatment given under MiFID I. It is a third-party payment for a service performed. We are aware that this is a problem that has arisen in certain countries but given its relevance, it should be legally clarified in level 1 or level 2 that the placement/underwriting of a financial instrument is not an inducement but a third-party payment for a service performed. In case that the remuneration for this service is not permitted, the market of corporate issuers will be limited because there will not be financial institutions willing to place or underwrite issuances

Having said that in case that the placement/underwriting of a financial instrument is considered an inducement. It should be a permitted inducement and not subject to the quality assessment of services set out under MiFID II.

Against this background, the negative consequences of a ban on inducements would be overwhelming.

First, a ban on inducements would undermine the economic viability of investment advisors to provide their services to customers, and significantly reduce the widespread availability of investment advice (also in rural areas).

Moreover, large sections of the population would lose access to qualified investment advice. This would particularly concern retail investors with small portfolios which need investment advice the most. This is especially critical against the background of permanently low interest rates because clients with the need of investment advice (low income/ poor financial education) will not make use of fee-based investment advice. This would be an undesirable result for the very customers intended to be protected, would undermine their ability to participate in long-term investment in the European economy and ultimately undermine the economic growth which is dependent on the availability of long-term investment.

A ban on inducements would also have severe competitive effects, distorting the intended level playing field in favour of investment advice offered on an independent basis. This would favour one specific business model, which has not even proven to be successful in practice. From our point of view the current advisory model is established and there is no evidence that the quality of advice is better or worse in the one or the other model.



Furthermore, a ban on inducements would create a risk of a shift to the grey capital market – untrustworthy investments will be encouraged by less and low quality investment advice. Moreover, a ban on inducements in an area which is already highly regulated may have anti-selection effects as retail investors may search for alternatives less regulated (such as gold, Forex products...), or even non regulated products (rare earths, manuscripts, etc.).

A ban on inducements would lead to higher costs for on-going investment advice – almost 40% of investment advice does not result in a transaction, however the fee of independent investment advice becomes due anyway.

Different practices reflect the healthy diversity of the European Internal market – and do not contradict the general goal of investor protection, which is ensured by important protection rules, reinforced by MIFID II (prevention / management of conflicts of interests, information duty, suitability, etc.).

ESBG welcomes ESMA's recommendation in its Final Report (Final Report ESMA's Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID II dated 31 March 2020), according to which ESMA "*...does not recommend to the Commission to ban inducements completely for all retail products across the Union*".

Moreover, we share the concern that a ban on inducements would create an uneven playing field with other types of products (for instance, insurance products).

We also see a risk that a ban on inducements would create an "advice gap" for retail clients with small portfolios since "*banks might decide not to offer advisory services to retail clients and redirect them to execution-only services*".

Q51. 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	X
3- Neutral	
4- Rather agree	
5- Fully agree	
Don't know / no opinion / not relevant	

Q51.1 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.



Q52. 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	X
3- Neutral	
4- Rather agree	
5- Fully agree	
Don't know / no opinion / not relevant	

Q52.1 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.

In our view the basic content of education and of the exam for investment advisers is already be implemented by the ESMA guidelines for the assessment of knowledge and competence. An EU-wide framework for the relevant knowledge already exists in this respect. Further regulations are not necessary.

The extent and content of the trainings should be left to each institute itself, adapted to its individual needs.

5. Distance communication

Q53. 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	X
Don't know / no opinion / not relevant	



The requirements to inform the investor ex ante on costs and inducements on a durable medium have created huge problems for telephone trading. Due to the greater time and administrative burden telephone orders entail, they are now also becoming less attractive for banks and investors.

This is clearly demonstrated by the study of Ruhr University Bochum: 75.8% of banks now indicate that the importance of business conducted by telephone as a distribution channel is diminishing. This statement is also reflected on a quantitative level: the number of telephone orders is decreasing. Their share in the total number of orders with investment advice declined by 9.9 percentage points due to the new provisions, the equivalent of a relative drop of approximately 50% (H1 2017 vs H1 2018). The share of orders placed in branches increased accordingly.

Therefore, we highly support the new Q&A 23 and 28 where ESMA has foreseen the opportunity to use standardised cost grids in some cases and to provide the ex ante on a durable medium after the transaction if the use of cost grids is not allowed. This is a great relief for banks and investors. In the MiFID II review, the two possibilities created in Q&A 23 and 28 should be included in the Level II legislation in order to create a higher legal certainty. With regard to the possibility to provide the ex ante after the transaction the concrete wording should be aligned with the wording of Art. 13 (3) PRIIPs regulation. The alignment would take account of the fact that many PRIIPs under the PRIIP regulation also qualify as a financial instrument under MiFID II so that distributors have to provide both, a PRIIPs KID and an ex ante cost information. Recently, ESMA has proposed in its Technical advice on inducements and costs and charges disclosure to introduce a provision that allows to provide the ex ante after the order is executed. The concrete wording shall be harmonised with the current provision in the PRIIPs regulation as in most cases the distributor has to provide both, the ex ante and the PRIIPs KID.

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.

Recently, ESMA has proposed in its Technical advice on inducements and costs and charges disclosure to introduce a provision that allows to provide the ex ante after the order is executed. The concrete wording shall be harmonised with the current provision in the PRIIPs regulation as in most cases the distributor has to provide both, the ex ante and the PRIIPs KID. We fully support this proposal.

For professional clients and eligible counterparties, the problems posed are even greater since the vast majority of transactions are executed via distance communication and a quick execution is essential for the parties involved. Transactions with professional clients and eligible counterparties parties should therefore be generally exempted so that these categories of client would not have to be provided with any ex-ante information on costs in telephone trading (see Question 34 above).

Q54. Are taping and record-keeping requirements necessary tools to reduce the risk of products mis-selling over the phone?

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



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

Q54.1 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.

No. From the point of view of reducing mis-selling, we do not see the need for telephone recording. The majority of telephone orders happen advice-free, and compliance with the customer's requirements results anyway from other documents (Target Market, Suitability/Appropriateness test), from which it can be deduced whether or not the product fits the customer. From this aspect, no additional recording is therefore necessary.

6. Reporting on best execution

Q55. 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	X
2- Rather not agree	
3- Neutral	
4- Rather agree	
5- Fully agree	
Don't know / no opinion / not relevant	

Q55.1 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.

We think that there are number of detail where implicit quality to the reports can and should be improved:

- For the RTS28 report, the distinction between RTO and Venue business is very peculiar and leads to reports which might not be understandable to investors (as broker and venue business is split and the venues behind the brokers do not become visible). It provides poor information, just the top five venues where executed orders and units expressed in % of volume. We consider that it could be improved by flavour information including some aggregated data coming from Transaction Cost Analysis (TCA) as % of reached best execution venue by venue or bps (basis points) deviation from benchmark. In terms of cost, we consider that there is a right balance, even when the information required is quite simple. Information source coming from the same provider as TCA (included on annual 70€k fees).
- For the RTS27 report, it should me date clear that OTC Derivatives are not to be covered. The report is not tailored to this product-class and any reports published will be highly questionable and non-standardized, reducing overall quality. For securities we think it would make sense to only enforce the report after RTS27 if transaction number in the reporting interval exceeds some threshold. Having a large number of reports on very sparse data do not make sense from our perspective and this should be just clarified.

Regarding TCA, we consider that they provide more accurate information. Every child transaction is compared to benchmark (Best Bid Offer) and flagged as +/-.

Moreover, we would like to highlight that there is no evidence that clients actually use this information. It must be assumed that clients do not read this additional information. The reports are just part of the annual audits.

Due to the strict format requirements, the reports are very long and difficult for the customer to understand. The reports regularly have a length of more than 40 pages. The information is hardly comprehensible for the investor (in particular the connection between the data can hardly be deduced from it).

The values entered do not allow any conclusions to be drawn about the total order volume. There are no details to that effect. For a differentiated consideration and evaluation by an investor, an overall data would be much more suitable than individual values of an investment firm.

In conclusion, we believe the information contained in the Best Execution reports (RTS 27) is difficult

Q56. 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				X		
Format of the data					X	



Quality of data					X	
Other						

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

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

The merging of the two reports into one overall report.

A highly condensed presentation of the results (maximum 2 pages).

Entries only if values are also available. No "N.A." entries.

Experience shows that Transaction Cost Analysis (TCA) are much more appropriate. We would like to emphasise that TCA are available at client demand above their own transactions. In case of TCA, there is quite immaterial room for improvement capability considering current detailed level of analysis.

Q56.1 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.

Q57. 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	X
2- Rather not agree	
3- Neutral	
4- Rather agree	
5- Fully agree	
Don't know / no opinion / not relevant	



Q57.1 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.

In their current form, the reports are regularly not very helpful for investors (see answer to question 55). At the same time, the preparation of the reports is very costly and cumbersome, especially for OTC trades not traded on a platform. The data must be processed manually by the institutions. Frequently, several employees are responsible for preparing and publishing the reports. A condensed presentation of the reports could reduce costs and promote comprehensibility (see answer to question 56).

In the case of TCA, external provider with access to Market Database Service cost around 70€k/year that we consider right balance compared to detailed information provided and the possibility to create ad-hoc reports to clients, even automatically.

III. Research unbundling rules and SME research coverage

Q58. 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.

1. Increase the production of research on SMEs

1.1. EU Rules on research

Q59. How would you value the proposals listed below in order to increase the production of SME research?



The pressure on investment firms to cut consumption of research that in many cases is charged against the firm's P&L, led to a massive drop in research service cost as many brokers struggled to keep as many clients as possible as conquering them back under current regulatory framework made access to prospect clients more difficult and because smaller pay checks require more clients in order to keep the prevailing cost structures. In turn, sell-side firms started to cut costs by either reducing number of analysts or the most expensive, in any case affecting the coverage (quantity and quality) of companies. The most affected are the companies covered with smaller size and liquidity because are those also less relevant to the portfolios of most clients. Some Members followed the same movement by reducing the intensity of coverage in SMEs in order to add larger companies in markets, and launched a company sponsored research offer.

Moreover, we would like to highlight the following consequences from MiFID-II requirements:

- In the long run, less research will be available in the market
- Research will be concentrated on larger stock listed blue chip companies
- Research coverage on small- and mid-sized stocks will be under pressure
- Smaller asset managers who cannot afford high-quality research any longer will most likely go out of business
- Fund managers unwilling to invest in smaller caps/IPOs, raising the hurdle for companies to go public
- Concentration among fund managers, reducing the brokerage client base
- Private (retail) investors do not have access to professional quality research any longer (not publicly available)
- It was always a goal of the EU/European Commission to establish a better functioning liquid market vs. the US (Market Cap to GDP & value creation significantly lower in Europe!)
- With MiFID II, it is practically impossible to attract further mid-/small-sized & innovative companies, start-ups, etc. for financing via the capital market (clear disadvantage vs. the US)

	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	X					
Authorise bundling for SME research exclusively				X		
Exclude independent research providers' research from Article	X					



13 of delegated Directive 2017 /593						
Prevent underpricing in research					X	
Amend rules on free trial periods of research		X				
Other						

Please specify what other proposals you would have in order to increase the production of SME research: 5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Q59.1 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.

The exclusion of independent research providers would provide on one hand an unfair advantage to “independent” research firms. There are small quality research houses that are part of banks (therefore not independent by market’s definition) that shouldn’t have a disadvantage vs the so-called independent houses. Such a measure would further squeeze local brokers, making research a business for global banks and big independent firms. Local brokers are the ones more likely to consider SMEs research as a core segment. On the other hand, it may lead to a more complex and potentially damaging situation in which investment firms will bundle for some firms (independent) and not for others, decreasing the level of transparency in client dealing and creating incentives for buying “independent” research regardless of quality aspects. In our view it can be damaging overall to the very initial goals of Mifid II regulation and not being effective at all with regards to fostering SME research.

Market participants and stakeholders agree that the pricing of research has not led to an increase in transparency. For this reason ,the entire concept of putting a price on research should be questioned and re-evalued.

In order to increase transparency and promote interest in SMEs in particular, research should be widely distributed and to as many recipients as possible. It should not be limited to the few who pay for it.

In order to foster growth and to gain improved access to equity capital markets we suggest to free investments in exchange listed companies from taxes (e.g. withholding-, capital gain- and/or dividend taxes with a holding period of minimum 1 year). This will give the burdened segment of SME a push with regard to its overall attractiveness to investors. Further on, it will help to integrate



European capital markets in the SME segment. Namely the regime of dividend payments, including a possible refund of doubled taxed dividends across Europe, will be improved substantially. MiFID II regulation has increased the cost basis for asset managers and has further fostered the process of investing bigger tickets and thus to invest into higher market cap companies. Therefore, we see - in principle - a need to redefine the definition of SME entities from up to € 200m market cap (according to prospectus regulation) to a market cap of up to € 1bn or a free float market cap of up to € 500m. This of course varies from market to market. Within European smaller equity capital markets (= emerging markets), the definition has to be adapted.

We also consider that prevent under-pricing in research is risky. The price and reach of application requires a comprehensive strategy considering among others: impact of minimum price on investment firms budget and risks of concentrating the investment industry in a small number of firms; a price that does not force firms hiring a very limited number of research providers as it will further lead to market power concentration on a small number of brokers/research houses; consider applying to country research coverage level or SME research only although this may further constrain clients ability on interest in paying for that research or paying for more than one broker. Controlling market structure at both sell side and buy side levels is going to be an important driver to meet the main goals of MiFID II requirements in what concerns investors protections.

1.2. Alternative ways of financing SMEs research

Q60. 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	X
5- Fully agree	
Don't know / no opinion / not relevant	

Q60.1 If you do consider that a program set up by a market operator to finance SME research would improve research coverage, please specify under which conditions such a program could be implemented:

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



Listed SMEs should ensure by their own means a minimum level of coverage by a registered research house and set aside a budget (regulated cost) to pay for it as a regular cost to keep listing status. While this may not be attractive financially to a global house as trading on the small cap company would still be reduced, it may be very compelling for local brokers to sustain research coverage on smaller cap stocks. For example, the Italian case seems to have been at least partly successful as in the “STAR segment there the obligation by Borsa Italiana regulations for issuers in this market segment to enter into a contract with a corporate broker which engages to publish at least 2 research per year on their financial instruments” along with “increase of stock liquidity due to... fiscal incentives applying to long-term investments in financial instruments other than those included in a market index”

<https://www.assosim.it/scarica-contenuto/?id=The%20financial%20research%20in%20Italy%20under%20the%20MiFID%20II.pdf>

Q60.1 Please explain your answer to question 60:

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

The program should not be set up by the market operator alone, but by a separate entity comprising all market players (issuers, research, market operator, government representatives etc.).

Q61. 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.

Among providers, the whole idea should be to use local players as a way to foster diversity of opinions (as the overall market is more and more controlled by global players that use dumping on research prices to further consolidate positions and access to the key investment firms), help protect a local base of research firms that are the most likely to ensure a long term coverage of domestic SMEs, to better access to local information in order to provide more accurate and complete research to the ultimate beneficiaries of research, which are the investors. As for SMEs, it should be taken into consideration indicators such as market cap size, transaction liquidity, financial resources, current level of research coverage, shareholding structure. Still, the decision on the selection of providers should be left to the SMEs as happens with all other financial and investment services they hire on a current basis and let the market compete for the services. Moreover, it should support the small market players: e.g. incentive system for brokers to publish reports on listed small and mid-cap companies.



Q62. 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	X
5- Fully agree	
Don't know / no opinion / not relevant	

Q62.1 If you agree, which recommendations would you make on the form that such use of artificial intelligence could take and do you see risks associated to the development of AI-generated research?

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

Partly to some commoditized parts of the research process and investment selection.

Q62.1 Please explain your answer to question 62:

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

--

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



Q63. 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	X
3- Neutral	
4- Rather agree	
5- Fully agree	
Don't know / no opinion / not relevant	

Q63.1 If you do agree that the creation of a public EU-wide SME research database would facilitate access to research material on SMEs, please specify under which conditions this database should operate:

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

There are enough aggregators in the market and the main issue today is creating incentives to foster research production while a database to access research does not guarantee that by itself.

Q63.1 Please explain your answer to question 63:

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

Q64. 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	



Q64.1 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.

The database should not be set up by a supervisory entity/regulator, as this is an operative issue. ESMA should regulate, not create a market.

Q65. 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	X
Don't know / no opinion / not relevant	

Q65.1 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.

Yes, depending on a detailed contract with the stock listed company. Banks do have already these contracts in place where especially the independence of the investment recommendation is not in danger! This is aligned with legal- and compliance departments and chinese walls (vs. sales, trading and origination) have to be in place and work of course properly. The issuer-sponsored coverage and respective internal compliance procedures are of course published in every disclaimer at the end of a research report.

Q66. 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	X
5- Fully agree	
Don't know / no opinion / not relevant	



Q66.1 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.

We agree, if a respective detailed contract is in place an independence is secured (aligned with legal- and compliance departments and chinese walls in place).

Q67. Do you consider that rules applicable to issuer-sponsored research should be amended?

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

Q67.1 If you do consider that rules applicable to issuer-sponsored research should be amended, please specify how:

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

Q67.1 Please explain your answer to question 67:

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



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 II level 1	X					
Authorise bundling for SME research exclusively					X	
Amend Article 13 of delegated Directive 2017/593 to exclude independent research providers' research from Article 13 of delegated Directive 2017 /593					X	
Prevent underpricing in research			X			
Amend rules on free trial periods of research		X				
Create a program to finance SME research set up by market operators					X	
Fund SME research partially with public money				X		
Promote research on SME produced by artificial intelligence	X					
Create an EU-wide database on SME research						X
Amend rules on issuer sponsored research	X					
Other						



Please specify which other policy option would be most needed and have most impact to foster SME research:

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

Q68.1 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.

Amend rules on free trial periods of research not necessarily effective to its end, but an extension of the period for trial service seems important to avoid too much industry consolidation as relations seem to perpetuate if brokers are not able to properly show case their product. 3 months has shown to be too short time for a proper assessment by the client and to compensate the time taken with trial contracts bureaucracy.

In relation to the creation of a program to finance SME research, companies should have a budget for ensuring a minimum level of research coverage. The allocation of it to specific brokers should be decided by the SME as in any other banking/investment service regularly paid by companies

IV. Commodity markets

Q69. 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 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N.A.
The EU intervention been successful in						



<p>achieving or progressing towards improving the functioning and transparency of commodity markets and address excessive commodity price volatility.</p>						
<p>The MiFID II/MiFIR costs and benefits with regard to commodity markets are balanced (in particular regarding the regulatory burden).</p>						
<p>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.</p>						
<p>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.</p>						
<p>The position limit framework and pre trade transparency regime for commodity markets</p>						



has provided EU added value.						
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Q69.1 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	Qualitative
IT		
Organisational Arrangements		
HR		

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

Q70. 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

Please provide example(s) of (nascent) contracts where the position limit regime has constrained the growth of the contract:

Underlying cause of the constraint (A/B/C)*:

*Note: 1 The underlying cause of the constraint is due to (A) the position limit becoming too restrictive as open interest increases, (B) an incorrect categorisation under the position limits framework or (C) the underlying physical markets are not efficiently reflected.



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

Size of the OTC space the contract(s) is/are trying to enter (in €):

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

Market share the nascent contract(s) is/are expected to gain (in %):

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

Contract(s) is/are euro denominated?



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

Q71. Please indicate the scope you consider most appropriate for the position limit regime:

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

Please specify what other scope you consider most appropriate for the position limit regime:

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

Q71.1 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.

Q72. 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

Open interest:

Threshold for open interest:

Number of affected contracts in the EU for open interest:

Please explain why you consider that the open interest is a criterion that could be used:



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

Type and variety of participants:

Threshold for the type and variety of participants:

Number of affected contracts in the EU for the type and variety of participants:

Please explain why you consider that the type and variety of participants is a criterion that could be used:

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

Other criterion:

Please specify what other criterion could be used and explain your answer:



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

Threshold for this other criterion:

Number of affected contracts in the EU for this other criterion:

Q72.1 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.

Q73. 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	
--	--

Q73.1 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.

Q74. For which contracts would you consider a position limit exemption for a financial counterparty under mandatory liquidity provision obligations ?

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

	Yes	No	N.A.
Nascent			
Illiquid			
Other			

Please specify for which other contracts you would consider a position limit exemption for a financial counterparty under mandatory liquidity provision obligations:

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

Q74.1 Please explain your answer to question 74:



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

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

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

Please specify for other which counterparties you consider a hedging exemption appropriate:

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



Q75.1 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

Q76. Do you consider that pre-trade transparency for commodity derivatives functions well? If you do not consider that pre-trade transparency for commodity derivatives functions well, please (1) provide examples of markets where the pre-trade transparency regime has constrained the offering of niche instruments or the development of new and/or fast moving markets, and (2) present possible solutions including, where possible, quantitative elements:

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

If you do not consider that pre-trade transparency for commodity derivatives functions well, please (1) provide examples of markets where the pre-trade transparency regime has constrained the offering of niche instruments or the development of new and/or fast moving markets, and (2) present possible solutions including, where possible, quantitative elements:
5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.



Q76.1: Please explain your answer to question 76:

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

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

V. Derivatives Trading Obligation

Q77. 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.			X			
The MiFID II/MiFIR costs and benefits with regard to the DTO are balanced (in particular regarding the regulatory burden).			X			
The different components of the framework operate well together to achieve more transparency and competition in trading of instruments subject to the DTO.		X				
More transparency and competition in trading of instruments subject to the DTO corresponds with the needs and problems in EU financial markets.			X			
The DTO has provided EU added value.			X			

Q77.1 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.



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

The DTO is a contribution to more transparency of the derivatives market. We recognize that it was implemented adequately and proportionately. However, we expect the EU legislators to adjust the DTO to the EMIR Refit with respect to the counterparts that fall under the scope of the DTO.

At the moment, the two legislatives measure are not in line with each other, which was the origin idea when creating the DTO according to MIFIR. These adjustments are urgent as the current status is absurd: A system which was created interlocked is now thrown apart.

Quantitative elements for question 77.1:

	Estimate (in €)
Benefits	
Costs	

Q77.1: Please explain your answer to question 77:

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

Q78. 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	X
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.



Q78.1 Please explain your answer to question 78:

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

See answer and explanation to Question 78.
--

Q79: Do you agree that the current scope of the DTO is appropriate?

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

Q79.1 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.

--

Q80: 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	

Q80.1 Please explain your answer to question 80:



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

VI. Multilateral systems

Q81: 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	X
Don't know / no opinion / not relevant	

Q81.1: 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.

Q81.1 If your response to question 81 is rather negative, please indicate which amendments you would suggest and why:

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



Q81.1 Please explain your answer to question 81:

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

VII. Double Volume Cap

Q82: 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.					X	
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).				X		
The different components of the framework operate well together to achieve more transparency in share trading				X		
More transparency in share trading correspond with the needs and problems in EU financial markets.				X		
The DVC has provided EU added value						

Q82.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.



Quantitative elements for question 82.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 82.1:

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

VIII. Non-discriminatory access

Q83: 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	

Q83.1 If you do see any particular operational or technical issues in applying open access requirements which should be addressed, please specify for which financial instrument(s) this would apply and explain your reasoning:



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

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

Q84: 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	

Q84.1 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

Q84.1 Please explain your answer to question 84:

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

Q85: 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?

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

IX. Digitalisation and new technologies

Q86: 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?



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

Q87: 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?

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

Q88: Where do you think digitalisation and new technologies would bring most benefits in the trading lifecycle (ranging from the issuance to secondary trading)?

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

Q89: 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	



Q89.1 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

Q90: 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	X
Don't know / no opinion / not relevant	

Q90.1: 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

Streamlined suitability /appropriateness check

Q91: 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	X
Don't know / no opinion / not relevant	



Q91.1: 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

Streamlined suitability /appropriateness check
--

X. Foreign exchange (FX)

Q92: 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	X
Don't know / no opinion / not relevant	

Question 92.1 If you do not believe that the current regulatory framework is adequately calibrated to prevent misbehaviours in the area of spot foreign exchange (FX) transactions, which recommendations would you make to improve the robustness of the regulatory framework?

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

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We consider that the FX Spot Market is a transparent market that functions efficiently. Given the current regulation, the existence of the Global FX code to which most banks have adhered and the fact that risks associated to this product for non-professional clients are negligible, in our view changing the regulatory framework for FX Spot will add no value and it might even be detrimental for the FX Spot Market as a whole.

The FX spot market is a liquid, dynamic and highly developed and standardized market with multiple market participants in which it is extremely difficult to observe misbehaviours. Therefore, a change of regulatory framework does not seem appropriate.

Misbehaviours often occur in markets where:

- Prices are not transparent or execution is not available during large time windows.
- The offer is concentrated in a few large participants that can manipulate prices (or fixings used to build prices)
- Access to information is difficult to obtain or the information available is not updated
- Market liquidity is low
- There is no standard code of conduct/behavior in place

Taking a look at the FX Spot Market, we can see that none of the above is true as:

- Prices are transparent and executable 24/7 globally. Best execution is a fact.
- Offer is atomized globally as virtually every single bank in the world provides this service and, additionally, new players (Fintechs) appear each day. Moreover, because of the cases of Fixing manipulation that took place in the past, there is a new standard in the market which is shielded against tampering and manipulation of the fixings adding to the transparency of the market.
- globally. As in equities, no every stock (or FX pair) has the same liquidity, but in G7 pairs that represent a substantial share (83,5%) of the global market liquidity is huge.
- The Global FX code was designed 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”. The Global Code will be periodically reviewed and is expected to evolve over time in a similarly collaborative manner. These are the Global FX code six leading principles
 - o Ethics: Market Participants are expected to behave in an ethical and professional manner to promote the fairness and integrity of the FX Market
 - o Governance: Market Participants are expected to have a sound and effective governance framework to provide for clear responsibility for and comprehensive oversight of their FX Market activity and to promote responsible engagement in the FX Market.
 - o Execution: Market Participants are expected to exercise care when negotiating and executing transactions in order to promote a robust, fair, open, liquid, and appropriately transparent FX Market.
 - o Information Sharing: Market Participants are expected to be clear and accurate in their communications and to protect Confidential Information to promote effective communication. that supports a robust, fair, open, liquid, and appropriately transparent FX Market.
 - o Risk Management and Compliance: Market Participants are expected to promote and maintain a robust control and compliance environment to effectively identify, manage, and report on the risks associated with their engagement in the FX Market.
 - o Confirmation and Settlement Processes: Market Participants are expected to put in place robust, efficient, transparent, and risk-mitigating post-trade processes to promote the predictable, smooth, and timely settlement of transactions in the FX Market.

As a result of the above, the FX Spot Market is almost immune to misbehaviours as no market participant is powerful enough to move the market in its direction, so adding more regulation it would only contribute to increase costs with no extra benefits.

When analyzing the use the FX spot has in the market among retail, micro companies, small SMEs and even large Corporations, we can see that it is mainly used to obtain foreign CCY to pay for goods/materials/services bought abroad or to convert to local CCY the money received from good/materials/services sold/provided to foreign clients. In general, there is no intention to buy or sell FX spot for invest-



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

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

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

1. Requirements under MiFID and PRIIPs must be harmonised

The different requirements under MiFID and PRIIPs have the consequence that investors receive contradicting information in the respective documents: In the KID product costs are displayed including inducements and in the ex ante without inducements. The requirements need to be harmonised. This aspect was also recently highlighted by ESMA in its Technical advice on inducements and costs and charges disclosures (p. 32, no. 127).

2. Statements of client financial instruments or client funds in accordance with Article 63 of the MiFID II Delegated Regulation

Besides the information requirements with regard to costs and inducements that are dealt with in the consultation paper, there are other information and reporting requirements under MiFID II. Particularly costly for investment firms in practice is compliance with the requirement under Article 63(1) of the MiFID II Delegated Regulation to send their clients at least on a quarterly basis a statement in a durable medium of the financial instruments or funds they hold for them.

Given that clients are widely able to view their portfolio online (or contact their investment advisor where necessary), providing them with such statements is superfluous. Compliance with this new requirement introduced under MiFID II imposes a considerable cost burden on banks. This is mainly because the statement cannot be sent to many clients electronically, as they do not have an electronic mailbox. In the case of several savings banks, for example, only just under half of clients have one. The statement has to be sent to all other clients by post, which is expensive (paper, postage, etc.).

The quarterly reporting requirements, compliance with which entails enormous costs every year, should be dropped in the course of the MiFID II review.



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

Regarding cost reporting:

Reporting product costs as part of total costs is generally confusing for customers, as the product costs are already included in the product price and the customer does not have to pay them additionally. A clearer presentation should be considered in this point”.





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Published by ESBG in April 2020