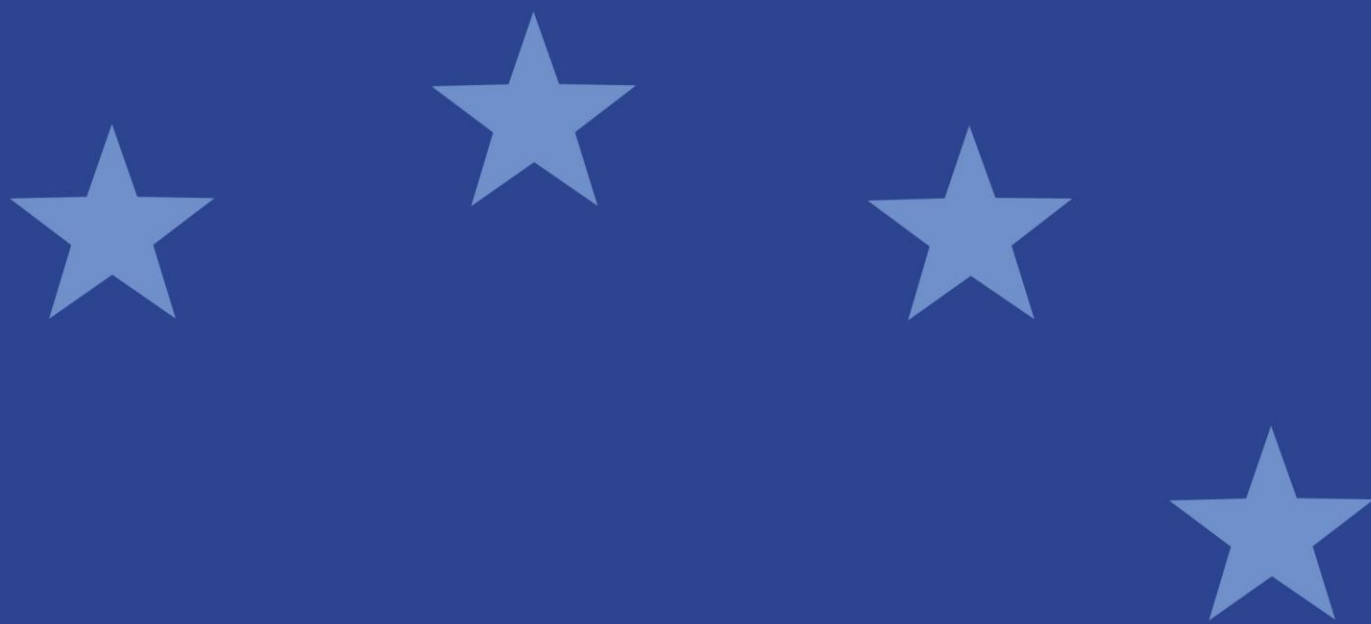


Reply form for the Consultation Paper on Guidelines on the MiFID II/ MiFIR obligations on market data



Responding to this paper

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions summarised in Annex I. Comments are most helpful if they:

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

ESMA will consider all comments received by **11 January 2021**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

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

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_GOMD_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA_FOTF_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_GOMD_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open consultations" → "Consultation on the Guidelines on the MiFID II/MiFIR obligations on market data").

Publication of responses

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

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).

Who should read this paper

This consultation paper is interesting for you if you are a trading venue, an APA, an SI or a consumer of market data.

General information about respondent

| | |
|--------------------------------------|--|
| Name of the company / organisation | Associazione Intermediari Mercati Finanziari - ASSOSIM |
| Activity | Investment Services |
| Are you representing an association? | <input checked="" type="checkbox"/> |
| Country/Region | Italy |

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_GOMD_1>

ASSOSIM welcomes the opportunity to respond to the ESMA consultation regarding Guidelines on the MiFIDII/MiFIR obligations on market data. We appreciate this initiative because it aims to promote standardisation and a better and uniform application of the MiFID II obligations for market data providers. We pointed out in many occasions and also by participating in joint initiatives with other trade associations that the RCB criterion, in particular, is neither clear nor concretely implemented by trading venues which, on the contrary, basically exploit their position since market participants have no other options than to purchase the data from trading venues (or data distributors) in order to comply with their obligations (for instance, best execution obligations) or to provide services to clients (for instance, trading on line and algo trading). In particular, after the abolition of trading concentration, trading venues reviewed their pricing policy by generally reducing trading costs while dramatically increasing market data costs which are essential for intermediaries' activity (with final prejudice for the efficiency of capital markets (lower transparency)). Therefore, we believe that the issues relating to market data costs will have to be assessed also under a competition standpoint. Furthermore, we deem that the enforcement and supervision of the legislative framework (also as clarified by the Guidelines) should be strengthened in order to avoid that the requirements are not fully implemented.

<ESMA_COMMENT_GOMD_1>

Questions

Q1: What are your views on covering in the Guidelines also market data providers offering market data free of charge for the requirements not explicitly exempted in the Level 2 requirements?

<ESMA_QUESTION_GOMD_1>

We agree with the proposal.

<ESMA_QUESTION_GOMD_1>

Q2: Do you agree with Guideline 1? If not, please justify.

<ESMA_QUESTION_GOMD_2>

We agree.

<ESMA_QUESTION_GOMD_2>

Q3: Do you think ESMA should clarify other aspects of the accounting methodologies for setting up the fees of market data? If yes, please explain.

<ESMA_QUESTION_GOMD_3>

On the assumption that the accounting methodology should be based on the cost for producing and disseminating market data in addition to a reasonable mark up, we would ask a clarification with respect to the application of such methodology to non-display market data. In fact, we know that such market data are more expensive than display data without an apparent sound reason.

<ESMA_QUESTION_GOMD_3>

Q4: With regard to Guideline 2, do you think placing the burden of proof, with respect to non-compliance with the terms of the market data agreement, on data providers can address the issue? Please provide any other comments you may have on Guideline 2.

<ESMA_QUESTION_GOMD_4>

We agree that the burden of proof should be placed on market data providers.

<ESMA_QUESTION_GOMD_4>

Q5: Do you consider that auditing practices may contribute to higher costs of market data? Please explain and provide practical examples of auditing practices that you consider problematic in this context. Such examples can be provided on a confidential basis via a separate submission to ESMA.

<ESMA_QUESTION_GOMD_5>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_5>

Q6: Do you agree with Guideline 3? If not, please justify, by indicating which parts of the Guideline you do not agree with and the relevant reasons.

<ESMA_QUESTION_GOMD_6>

We agree.

<ESMA_QUESTION_GOMD_6>

Q7: Do you agree with the approach taken in Guideline 4? If not, please justify, also by providing arguments for the adoption of a different approach.

<ESMA_QUESTION_GOMD_7>

We agree.

<ESMA_QUESTION_GOMD_7>

Q8: Do you agree with Guideline 5? If not, please justify.

<ESMA_QUESTION_GOMD_8>

We agree.

<ESMA_QUESTION_GOMD_8>

Q9: Do you think that ESMA should clarify other elements of the obligation to provide market data on a non-discriminatory basis? If yes, please explain.

<ESMA_QUESTION_GOMD_9>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_9>

Q10: Do you agree on the interpretation of the per user model provided by Guideline 6? If not, please justify and include in your answer any different interpretation you may have of the per user model and supporting grounds.

<ESMA_QUESTION_GOMD_10>

In principle we agree with the "per user model". However, we would like to stress the fact that such model (and the relating fee calculation method) should consider exclusively the number of active users accessing the data simultaneously. Otherwise, in case the mere numbers of users were taken into account without any distinction, then the model could cause distortions because customers would risk paying even more than in the case of application of the device/product model.

<ESMA_QUESTION_GOMD_10>

Q11: Do you agree with Guideline 7? If not, please justify. In your opinion, are there any other additional conditions that need to be met by the customer in order to permit the application of the per user model or do you consider the conditions listed in Guideline 7 sufficient to this aim? Please include in your answer the main obstacles you see in the adoption of the per user model, if any, and comments or suggestions you may have to encourage its application.

<ESMA_QUESTION_GOMD_11>

We agree with Guideline 7 upon condition that the notion of simultaneous users detailed under our answer to Q10 above is inserted in the eligibility conditions.

<ESMA_QUESTION_GOMD_11>

Q12: Do you agree with Guideline 8? If not, please justify also by indicating what are the elements making the adoption of the per user model disproportionate and the reasons hampering their disclosure.

<ESMA_QUESTION_GOMD_12>

Provided that we would prefer that the "per user model" is applied without any waiver, we believe that the factors for which such model is not adopted should be accurately detailed by market data providers. In this respect we believe that mentioning the "excessive administrative costs" (as proposed by ESMA at the end of Guideline 8) is too generic and it could entail a way to easily avoid the offer of the "per user model". Furthermore, in order to ensure an adequate level of enforcement and supervision on the conditions of data provision, the reasons for not offering the "per user model" could be addressed also to NCAs.

<ESMA_QUESTION_GOMD_12>

Q13: Do you think ESMA should clarify other elements of the obligation to provide market data on a per user fees basis? If yes, please explain.

<ESMA_QUESTION_GOMD_13>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_13>

Q14: Do you agree with Guideline 9? If not, please justify.

<ESMA_QUESTION_GOMD_14>

We agree.

<ESMA_QUESTION_GOMD_14>

Q15: Do you think ESMA should clarify other elements in relation to the obligation to keep data unbundled? If yes, please explain.

<ESMA_QUESTION_GOMD_15>

We do agree with the unbundling criterion although we believe that its application may be circumvented by the license fragmentation applied by market data providers. In case licenses are fragmented without a clear reason, then the potential cost saving brought by the application of the unbundling might be cancelled/diminuished by said fragmentation (for example, a provider may require, pursuant to new use terms and conditions, more licenses for a single use-case). Again, enforcement and supervision in this area are needed in order to avoid negative unintended consequences for data users.

<ESMA_QUESTION_GOMD_15>

Q16: Do you agree with Guideline 10 that market data providers should use a standardised publication format to publish the RCB information? If not, please justify.

<ESMA_QUESTION_GOMD_16>

As stated in our introductory comments, in the area of market data we are in favour of standardisation to the maximum extent possible in order to ensure a level playing field, compliance with the relevant rules and comparability. For this reason we are not in favour of allowing market data providers to "use other criteria" to distinguish the type of licenses or data product.

<ESMA_QUESTION_GOMD_16>

Q17: Do you agree with the standardised publication template set out in Annex I of the Guidelines and the accompanying instructions? Do you have any comments and suggestions to improve the standardised publication format and the accompanying instructions?

<ESMA_QUESTION_GOMD_17>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_17>

Q18: Do you agree with the proposed definitions in Guideline 11? In particular, do they capture all relevant market uses and market participants? If not, please explain.

<ESMA_QUESTION_GOMD_18>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_18>

Q19: Is there any other terminology used in market data policies that would need to be standardised? If yes, please give examples and suggestions of definitions.

<ESMA_QUESTION_GOMD_19>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_19>

Q20: Do you agree with Guideline 12? If not, please justify.

<ESMA_QUESTION_GOMD_20>

We agree.

<ESMA_QUESTION_GOMD_20>

Q21: Do you think there is any other information that market data providers should disclose to improve the transparency on market data costs and how prices for market data are set? If yes, please provide suggestions.

<ESMA_QUESTION_GOMD_21>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_21>

Q22: Do you agree with Guideline 13? If not, please justify.

<ESMA_QUESTION_GOMD_22>

We agree.

<ESMA_QUESTION_GOMD_22>

Q23: Which elements for post- and pre-trade data publication should be required? In particular, are flags a useful element of the publication? Should there be any differences between the different types of trading systems? Is the first best bid and offer sufficient for the purpose of delayed pre-trade data publication?

<ESMA_QUESTION_GOMD_23>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_23>

Q24: Which use cases of post- and pre-trade delayed data are relevant to you as a data user? What format of data provision is necessary for these use cases, and especially for pre-trade delayed data?

<ESMA_QUESTION_GOMD_24>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_24>

Q25: Do you agree with the definitions of data-distribution and value-added services provided in Guideline 16? Please explain.

<ESMA_QUESTION_GOMD_25>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_25>

Q26: Do you have any further comment or suggestion on the draft Guidelines?

Please explain.

<ESMA_QUESTION_GOMD_26>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_26>

Q27: What level of resources (financial and other) would be required to implement and comply with the Guidelines and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale and complexity of the activities of your organisation, where relevant.

<ESMA_QUESTION_GOMD_27>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_27>