

# Reply Form

**to the Consultation Paper on MAR Guidelines on  
delay in the disclosure of inside information**

## Responding to this Consultation Paper

ESMA invites comments on all matters in this Consultation Paper and in particular on the specific questions summarised in Annex 1. 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 **29 April 2026**.

All contributions should be submitted online at [www.esma.europa.eu](http://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:

- Insert your responses to the questions in the Consultation Paper in this reply form.
- Please do not remove tags of the type < ESMA\_QUESTION\_CPIL\_0>. Your response to each question has to be framed by the two tags corresponding to the question.
- 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.
- When you have drafted your responses, save the reply form according to the following convention: ESMA\_CP1\_ MARG\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP1\_ MARG\_ABCD.

- Upload the Word reply form containing your responses to ESMA's website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

## **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 publicly 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](http://www.esma.europa.eu) under the heading '[Data protection](#)'.

## **Who should read this paper?**

All interested stakeholders are invited to respond to this consultation paper. This consultation paper is of primary interest to issuers, including SMEs, and trading venues, but responses are also sought from any other market participant including trade associations and industry bodies, institutional and retail investors, consultants and academics.

## 1 General information about respondent

Name of the company / organisation	AMF Italia – Associazione Intermediari Mercati Finanziari
Activity	Trade Association
Are you representing an association?	<input checked="" type="checkbox"/>
Country / Region	Italy

## 2 Questions

**Q1 Do you see merits in maintaining the legitimate interest currently described in point b of Guideline 1 (i.e possibility for the issuer to delay the disclosure of its financial situation, where an immediate publication may jeopardise the measures to reestablish its viability)? Please indicate the arguments supporting your answer.**

<ESMA\_QUESTION\_MARG\_1>

We agree with maintaining the legitimate interest currently described in point (b) of Guideline 1, including in circumstances where the issuer is not yet subject to formal insolvency proceedings. As highlighted in the Consultation Paper, there may be situations in which the preservation of an issuer's financial viability depends on the implementation of a range of remedial measures — such as securing financing arrangements, issuing debt instruments or disposing of assets — which are typically undertaken in a pre-insolvency context. The list of triggering events set out in the draft delegated act appears to be primarily focused on formal restructuring or insolvency proceedings and may therefore not fully capture these earlier-stage situations in which delay of disclosure is equally justified in order to safeguard the effectiveness of the recovery measures being pursued.

<ESMA\_QUESTION\_MARG\_1>

**Q2 What is your view on the legitimate interest which are proposed to be added to the MAR Guidelines? When commenting on a specific legitimate interest, please report in your answer the title as given in the relevant subsection.**

<ESMA\_QUESTION\_MARG\_2>

We submit that the situations expressly identified in the MAR Guidelines should be construed as illustrative only and should not be interpreted as constituting an exhaustive list of circumstances in which a legitimate interest to delay disclosure may arise. Accordingly, issuers should be permitted to rely on a general principle for the purposes of assessing, in accordance with Article 17(4) MAR, whether the conditions for delay are satisfied in a given case.

For these purposes, a legitimate interest to delay disclosure should be considered to exist where the immediate disclosure of inside information would be likely to prejudice the issuer's ability to protect or pursue a lawful objective.

The inclusion of such an overarching principle would appropriately reflect the structure and purpose of Article 17(4) MAR, which requires issuers to carry out their own assessment, under their own responsibility, of whether delayed disclosure is justified in the light of the specific facts and circumstances of each case. In this context, the examples set out in the ESMA Guidelines should operate as non-binding illustrations of the application of that principle and should not be treated as a closed or restrictive catalogue capable of limiting the issuer's margin of assessment.

We support the inclusion, among the examples of legitimate interest, of the case referred to in point (a) (orders by a public authority to maintain confidentiality).

We would welcome clarification from ESMA on the treatment of situations in which a non-disclosure order issued by a public authority is of indefinite duration or does not indicate any expiry date. In such cases, it is unclear whether an issuer may continue to rely on Article 17(4) MAR for as long as the order remains in force, thereby permitting a potentially indefinite delay in disclosure, or whether, in the absence of a defined temporal limit it could be considered that the delay mechanism should not be activated.

We submit that point (b) should be redrafted. In our view, where there is a need to collect further information, the information in question may not always meet the precision requirement under Article 7 MAR until the relevant information-gathering process has been completed and its outcome has been duly assessed by the issuer's administrative body. In such circumstances, the information would not yet qualify as inside information and, consequently, no disclosure obligation under Article 17 MAR would arise. As a result, the issue of delaying disclosure under Article 17(4) MAR would not be engaged. It is therefore essential that the guidelines properly highlight this distinction, so as to ensure that situations in which the precision threshold under Article 7 MAR has not yet been met are not conflated with cases in which inside information already exists and the issuer is entitled to delay its disclosure pursuant to Article 17(4) MAR.

This assessment should remain subject to a case-by-case evaluation by the issuer. We would therefore suggest that the final guidelines clarify this point.

<ESMA\_QUESTION\_MARG\_2>

**Q3 In addition to the case of parallel procurements of the same nature, are you aware of other instances where disclosure of sensitive commercial information may jeopardise an issuer's business opportunity, and should thus qualify as a legitimate interest for the delay?**

<ESMA\_QUESTION\_MARG\_3>

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<ESMA\_QUESTION\_MARG\_3>

**Q4 In your view, which legitimate interests could be added to the MAR Guidelines for the purpose of the delay in the disclosure?**

<ESMA\_QUESTION\_MARG\_4>

We submit that a further instance in which the disclosure of inside information may jeopardise an issuer's legitimate business interests — and should therefore qualify as a legitimate interest for the purposes of delay under Article 17(4) MAR — arises in connection with the appointment of key managers or senior executives. Specifically, where the issuer's governing body has resolved to appoint a new manager or executive, but the individual concerned has not yet terminated his or her existing employment or contractual relationship with a third party, the immediate disclosure of the appointment decision could materially prejudice both the issuer and the individual involved. In particular, premature disclosure could (i) interfere with the orderly termination of the manager's prior engagement, (ii) jeopardise the appointment itself, for instance where the prior employer may take retaliatory or pre-emptive action upon learning of the intended departure, or (iii) expose the individual to professional or reputational harm in the context of the ongoing relationship. In such circumstances, the issuer has a legitimate interest in delaying disclosure until the manager has duly terminated the previous relationship. This scenario is not uncommon in practice and, in our view, warrants express recognition in the MAR Guidelines as an illustrative example of a legitimate interest justifying delay.

We take this opportunity to invite ESMA to publish the updated Guidelines as close as possible to 5 June, when the amendments to the MAR will become applicable, in order to avoid leaving market participants without guidance for an extended period.

<ESMA\_QUESTION\_MARG\_4>

