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

Fields marked with * are mandatory.

Introduction

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

SECTION 2 will be available in English only.

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

Background of this public consultation

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

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

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

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

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

Responding to this consultation and follow up to the consultation

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

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

This consultation document contains three sections.

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

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

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

This consultation is open until 18 May 2020.

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

More information:

- on this consultation
- on the consultation document
- on the protection of personal data regime for this consultation

About you

* Language of my contribution

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

* I am giving my contribution as

- (○) Academic/research institution
- (◉) Business association
- (○) Company/business organisation
- (○) Consumer organisation
- (○) EU citizen
- (○) Environmental organisation
- (○) Non-EU citizen
- (○) Non-governmental organisation (NGO)
- (○) Public authority
- (○) Trade union
- (○) Other

* First name

Gianluigi

* Surname

Gugliotta

* Email (this won't be published)

assosim@assosim.it

* Organisation name

255 character(s) maximum

Associazione Intermediari Mercati Finanziari - Assosim

* Organisation size

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

Transparency register number

255 character(s) maximum

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

613060211547-05

* Country of origin

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

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles

- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey

- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

* Field of activity or sector (if applicable):

at least 1 choice(s)

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

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

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

Assosim represents the interests of the intermediaries active on the Italian financial markets, namely Italian investment firms, investment banks and subsidiaries of foreign investment services providers. Its members account for nearly the entire amount of the transactions carried out on the Italian stock markets as from Italy, and more than 80% when considering cross border transactions. In addition to advocacy activities, the association advises its members on legal and organisational matters pertaining to the full range of services and activities they provide, including trading and post-trading activities, portfolio management, financial advice and placement.

* Publication privacy settings

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

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

- [x] I agree with the personal data protection provisions

Choose your questionnaire

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

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

The **full version** comprises 87 additional questions addressing **more technical features**.
The full questionnaire is only available in English.

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

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

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

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

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

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

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

5000 character(s) maximum

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

Our overall experience with the implementation of the MiFID II/R framework is not very satisfactory. The main objective of the forthcoming review process should, in our view, be to simplify this legal framework under a proportionality perspective and thereby remove inconsistent requirements that currently hamper economic growth.
Indeed, the MiFID II/R rules were oriented to achieve a number of important goals, such as market transparency and efficiency, investor protection and trust in the financial markets. Still, despite the huge efforts by the financial industry in terms of organization, IT investments and compliance costs, the applicative experience has shown that the relevant requirements are complex, difficult to implement and sometimes not consistent with their objective. Eventually, their implementation proved burdensome, not effective and has led to unintended consequences. Despite the efforts by the financial industry, the objective of ensuring full disclosure and information to clients has not been fully reached. There are instances in which information asymmetries have even worsened such as in the case of listed SMEs. As a matter of fact, the Level 2 provisions on financial research in the Commission Directive 2017/593 (which could be questioned in terms of their being compliant with the Level 1 mandate) have negatively impacted on the level of information available on listed SMEs. Provisions which were aimed at improving both the transparency of the cost of research and the competition in the relevant market (such as the ban on bundling), currently jeopardize the financial sustainability of research, in particular for SMEs that is mainly produced by local brokers, which could hardly survive in this post-MiFID II context.
Additional example of areas which should be reviewed under a simplification/proportionality perspective are the PoG and costs&charges regimes for wholesale clients, whose need for protection/disclosure is lower than the one to be granted to retail clients (see also answer 43.1 on semi-professional clients). A simplified approach also needs to be applied to the execution quality reports, which are very difficult to understand and compare. Room for improvement and simplification can also be identified with respect to the data to be elaborated by ESMA (such as for transparency purposes). Despite the efforts made, data quality issues that jeopardize the effective application of the transparency rules continue to be encountered, with unintended negative consequences for the financial markets and final investors. Additional problems with data quality are going to arise in the light of Brexit, when data coming from the UK industry will no longer be included in ESMA's calculations. Accordingly, the applicable methodologies will need to be simplified and adapted since a significant part of the providers and the data currently will not be available anymore.
A review of the legal framework according to the aforementioned criteria is also important in the light of the high level of fixed costs necessary to ensure compliance with MiFID II/MiFIR, with the risk of driving out of the market small-medium sized local intermediaries. This is not just an issue of competition in the financial industry, as local brokers carry on the entire burden of providing SMEs with access to the capital market in the long run (beyond the more lucrative activities related to IPOs which also attract global brokers).
Finally, it is worth considering the cost of the data which investment firms are required to buy from trading venues/info vendors in order to comply with their regulatory requirements (such as best execution). Following the end of the concentration rule, trading venues reviewed their pricing policies by dramatically increasing market data fees compared to trading fees. In fact, their strategy has been to shift their main center of revenues in a business where they inevitably assume a dominant position (natural monopoly) because of the absence of effective competitors for their data. Corrective measures are absolutely necessary also in this sector.

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention has been successful in achieving or progressing towards its MiFID II /MiFIR objectives (fair, transparent, efficient and integrated markets).	○	◉	○	○	○	○
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	◉	○	○	○	○	○
The different components of the framework operate well together to achieve the MiFID II/MiFIR objectives.	○	◉	○	○	○	○
The MiFID II/MiFIR objectives correspond with the needs and problems in EU financial markets.	○	○	◉	○	○	○
The MiFID II/MiFIR has provided EU added value.	○	◉	○	○	○	○

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.

Impediments to the effective implementation of MiFID II/MiFIR may indeed arise from national legislations and regulations adopted by NCAs before the coming into force of MiFID II/MiFIR and never repealed, as well as in NCAs' supervisory practices which are not fully harmonized at EU level and which hamper the competition between markets.
As far as national legislations are concerned, an obstacle to the free provision of services can be identified, for instance, in the concept of written agreement set forth in Article 58 of the Commission Delegated Regulation 2017/565 for the purposes of the provision of investment services. At present, differences in the contractual laws in force in various EU countries do not secure legal certainty as to business relationships carried out cross-border. In some countries the client's agreement to the terms and conditions sent to him by an intermediary does not need to take any specific form, provided it is in paper or any other durable means (including emails). In principle, the client's agreement could be implicitly inferred from his actual behavior, such as the submission of an order to trade following the receipt of the terms and conditions. In other countries, on the contrary, a wet ink signature on a piece of paper or other durable means (such as a digital signature associated with an agreement in electronic form) would be necessary for the client to be contractually bound to a financial intermediary. To remove current barriers to the free provision of services, the provisions to be adopted under the MiFID review would need to simplify the regulation pertaining to the agreements that investment service providers enter with professional clients per se.
As regards the regulations enacted by national authorities, compliance issues arise in Italy from a resolution currently in force, adopted by Consob in 2014 on the distribution of complex products to retail clients. These provisions conflict with the PoG and product intervention rules in the MiFID II/MiFIR. As a matter of fact, a financial product which may be attributed a positive target market under the latter set of provisions, could not be marketed to retail clients pursuant to the above-mentioned Consob resolution. Such a situation causes impediments to the effective implementation of the rules and poses unlevel playing field issues.
An example of not harmonized supervisory practices is the deferral regime for transparency obligations, which has been of limited use because of the length and the burden of the relevant procedure in front of the Italian CA. A simplified and harmonized regime for deferrals at EU level would be most welcome to level the playing field.
Outside the MiFID II/MiFIR remit, a supervisory practice which is negatively impacting on the ability of market intermediaries to compete in a leveled playing field is the VAT regime on financial research. We are aware that at least one fiscal authority in a member country does not require local brokers to charge VAT under the current unbundling regime. Indeed, in our opinion financial research should be exempted from VAT in all over the EU.

Question 3. Do you see impediments to the effective implementation of MiFID II/MiFIR arising from national legislation or existing market practices?

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

Question 3.1 Please explain your answer to question 3:

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

In the Italian framework we encounter certain impediments to the effective implementation of MiFID II/MiFIR. First of all, prior to the entry into force of MiFID II/MiFIR, Consob issued a recommendation which provided for strict rules of conduct for the distribution of complex products to retail customers (which included, for some financial instruments, a sales ban). The provisions of the recommendation are still in force and compliance with these provisions by intermediaries may be contrary to PoG (and product intervention) rules. In this respect, please consider that a financial product may be given a positive target market with regard to sales to retail customers, while the sale of the same product may be prevented to the same retail customers according to the recommendation. Such a situation causes impediments to the effective implementation of the rules and also poses problems of level playing field. Secondly, in our view, an additional impediment is the fact that the transparency deferral regimes detailed at national level (including Italy) are not well harmonised and this may also cause level playing field problems. In particular, intermediaries have made very limited use of deferrals because, in their view, the time frame for granting a deferral and the related procedure before the Italian CA is quite burdensome and substantially inapplicable. Therefore, we would welcome a more simplified and harmonised regime for deferrals also in order to avoid the occurrence of potential unlevel playing field situations in this respect.

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

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

Question 4.1 Please explain your answer to question 4:

5000 character(s) maximum

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

With reference to the transparency regime we believe that the rules, aimed at increasing pre and post-trade transparency for financial instruments in the EU, are in the right direction although their implementation has not reached the intended result. In fact, the effectiveness of the transparency regime is still affected by the fragmentation of the available data, their cost and low quality. Moreover, such a regime should be deeply simplified.

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

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

Question 5.1 Please explain your answer to question 5:

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

We believe that trading venues and systematic internalizers have different characteristics (mainly, the fact that SIs operate bearing own risks while trading venues don't) which do not require them to have the same type of rules. Given that, we deem that a limited unlevel playing field between them is the natural consequence of their different role/activity and that, therefore, there is no need for a further legislative intervention to level the field.

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

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

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

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

The first barrier we have identified is the treatment of financial research which – as better detailed below – prevents investors to access financial instruments issued especially by SMEs which may not be covered by financial research as big players in this sector mainly focus on large-sized companies.
A second barrier may be found in the application of the PoG regime combined with the PRIIPs regime. The regulatory burden to provide a KID to retail investors and the uncertainty about the scope of application of the PRIIPs Regulation led to the unintended negative consequence that many issuers labeled their financial products as addressed to "professional investors only". This conduct sometimes comprises products that cannot be properly considered as PRIIPs with the result that retail clients are prevented from accessing them and this circumstance produces notable negative consequences, especially for retail bond markets. In this respect, we welcomed the Joint Statement published by the ESAs on 24 October 2019 in order to promote a consistent application of the PRIIPs Regulation and we hope that all the unintended negative consequences of the PRIIPs discipline such as the one described above will be carefully examined and dealt with in the course of the future PRIIPs Regulation review process.
Finally, we welcome the occasion to comment and formulate proposals on the introduction of a new category of semi-professional clients (see answers to questions of Section 3 below). We do support such an introduction because we believe that the current categorization is too narrow for certain types of investors.

Section 2. Specific questions on the existing regulatory framework

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

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

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

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

PART ONE: PRIORITY AREAS FOR REVIEW

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

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

I. The establishment of an EU consolidated tape[1]

1. Current state of play

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

1.1. Reasons why a consolidated tape has not emerged

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

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

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

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

Question 7.1 Please explain your answers to question 7:

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

We believe that the reasons provided above in relation to the absence of an EU consolidated tape are correct. In this respect a key factor is the huge amount of data to be collected/processed which is very challenging especially under an IT infrastructure perspective. This requires a remarkable financial dotation also capable of competing with data vendors which – on the contrary – don't have to bear the regulatory burden set by the law for the CT. Therefore, the whole framework does not properly support the development of such a challenging entrepreneurial initiative.

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

Please explain your answer:

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

1.2. Availability and price of market data

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

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

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

- delete Article 86(2) of CDR 2017/565 and Article 8(2) of CDR 2017/567 allowing trading venues, APAs, CTPs and SIs to charge for market data proportionate to the value the data represents to users.

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

Please explain your answer:

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

We do agree with the amendments proposed by ESMA. We pointed out in many occasions that the RCB criterion was neither clear nor implemented in practice by trading venues which, on the contrary, basically exploited their position as market participants have no other options than to purchase the data from trading venues to fulfill their obligations (for instance, best execution obligations). In particular, due to the abolition of trading concentration, trading venues reviewed their pricing policy by reducing/not increasing trading costs while dramatically increasing market data costs which are essential for intermediaries to comply with MiFID II /R rules, with a final detriment to capital markets efficiency..
Therefore, we do welcome the measures specifying the RCB requirement as well as the proposal of deleting provisions allowing, among others, trading venues to charge for market data proportionate to the value the data represents to users. Furthermore, we would also welcome an analysis of the whole picture under a competition perspective carried out by the competent offices of the EU Commission, given the increase of market data costs and the substantial dominant position held by trading venues.

1.3. Use cases for a consolidated tape

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Transaction cost analysis (TCA)	○	○	◉	○	○	○
Ensuring best execution	○	○	◉	○	○	○
Documenting best execution	○	○	○	○	◉	○
Better control of order & execution management	○	○	○	◉	○	○
Regulatory reporting requirements	○	○	◉	○	○	○
Market surveillance	○	○	◉	○	○	○
Liquidity risk management	○	○	◉	○	○	○

Making market data accessible at a reasonable cost	○	○	○	○	◉	○
Identify available liquidity	○	○	○	◉	○	○
Portfolio valuation	○	○	◉	○	○	○
Other	○	○	○	○	○	○

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

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

As regards the use cases for an EU consolidated tape listed in the table above, we believe that it could theoretically facilitate/ensure -inter alia- compliance with best execution obligations, a better management of liquidity risk and portfolio valuation, although latency is a critical factor to be considered with reference to pre-trade transparency.
However, in our view, in addition to considering the potential positive effects, a cost-benefit analysis should be conducted before implementing an EU consolidated tape as, among other things, this solution must under no circumstances lead to increased costs for intermediaries. Therefore, according to a more realistic view, in the first phase an EU CT could be more easily implemented (as proposed in answer to Question 11.1 below) for post-trade data consolidation. This solution would be of great help in documenting compliance with best execution. Moreover, it could facilitate order & execution management and it could also constitute a useful means to produce execution quality reports to be published by investment firms pursuant to RTS 28.
Furthermore, we believe that the nature of transaction data provided by the CT could help market surveillance activities and the identification of liquidity pools; in fact, such data will provide indications as to where the trades are mainly executed/concentrated.
Lastly, in light of the picture outlined above with respect to the current situation relating to market data costs, we believe that the entry of an EU consolidated tape into the market could reduce trading venues' market power with beneficial consequences - in terms of cost reduction - for data users (and, more in general, for the efficiency of capital markets).

2. General features of the consolidated tape

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

During the EC workshop, the ESMA consultation, conferences and stakeholder meetings, it became clear that a majority of market participants believe that EU financial markets would benefit from the establishment of a CT. ESMA made the following recommendations[2] which appear very important for the success of an EU consolidated tape:

- ensuring a **high level of data quality** (supervisory guidance complemented with amendments of the Level 1 and 2 texts);
- **mandatory contributions**: trading venues and APAs should provide trading data to the CT free of charge;

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

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

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N.A.
High level of data quality	○	○	○	○	◉	○

Mandatory contributions	○	○	○	○	◉	○
Mandatory consumption	◉	○	○	○	○	○
Full coverage	○	◉	○	○	○	○
Very high coverage (not lower than 90% of the market)	○	◉	○	○	○	○
Real-time (minimum standards on latency)	○	◉	○	○	○	○
The existence of an order protection rule	◉	○	○	○	○	○
Single provider per asset class	○	○	◉	○	○	○
Strong governance framework	○	○	○	○	◉	○
Other	○	○	○	○	○	○

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

5000 character(s) maximum

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

We agree on mandatory contribution while we do not agree on mandatory consumption. The reason is that we believe that - in the absence of a mandatory contribution – the CT will not play a key role in the market data sector, constituting basically an additional player with no particular added value. Mandatory consumption is not a viable option because we reasonably believe that the CT will not cover (at least in a short-medium timeframe) any pre- and post-trade data set (even considering that a phase-in approach, as detailed below, is advisable in our opinion). Consequently, investment firms will have to continue to purchase data from trading venues and data vendors. In such a framework a mandatory consumption will inevitably lead to a further cost increase (e.g. costs for mandatory CT consumption plus costs for data from trading venues/data vendors) which we strongly object in light of the aforementioned considerations relating to the current market data costs framework. Moreover, it is worth considering that mandatory consumption could be in contrast with the business choices of some intermediaries to focus their operations on specific markets /asset classes.

As regards the coverage/real-time items mentioned in the table, we would suggest a phase-in approach also entailing a cost-benefit analysis in particular with reference to the pre-trade data regime. Such analysis should have to consider, with respect to the real-time item, especially the crucial aspect of latency and the costs needed to minimize it to the maximum extent (which in any case we assume to be very high). Furthermore, even assuming that the latency issues are solved, it has to be considered that the investment firm could not be a member of the trading venue which could be identified as “the best” – under a pre-trade data perspective – for the execution of the trade according to the CT evidences. Therefore, such data could

be of limited use under this circumstance.
The above being said, we would suggest, in case of a positive outcome of the aforementioned cost-benefit analysis, a phase-in approach to be assessed/implemented very carefully. In particular, phase 1 should entail post-trade data only, with reference to both equity and non-equity instruments traded on both trading and execution venues.
Once phase 1 is well implemented/performs smoothly and on the assumption that no impediments to the start of pre-trade data provision arise mainly in terms of readiness of the system, then phase 2 could be initiated. Phase 2 should include pre-trade data disclosed with a batch process. In conclusion, and following /conditional upon the positive outcome of phase 2, phase 3 could entail pre-trade data on a real-time basis (on the assumption that latency and costs issues described above have been easily dealt with and solved and that phases 1 and 2 are fully developed with smooth functioning).
Financial instruments/venue to be included in pre-trade data consolidation should be also carefully assessed. A preliminary view in this sense could entail the need of including financial instruments according to their liquidity status in order to prioritize liquid instruments. A case study in this respect could include equity and liquid non-equity-instruments traded solely on trading venues.
However, we would suggest that all operational/technical aspects of CT implementation regime (such as, for instance, financial instruments/venue in scope) are further assessed and investigated also by means of ad-hoc public consultations.

Question 12. If you support mandatory consumption of the tape, how would you recommend to structure such mandatory consumption?

Please explain your answer and provide if possible detailed suggestions on which users should be mandated to consume the tape and how this should be organised:

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

Question 13. In your view, what link should there be between the CT and best execution obligations?

Please explain your answer and provide if possible detailed suggestions (e.g. simplifying the best execution reporting through the use of an EBBO reference price benchmark):

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

We believe that the link between the CT and best execution obligations is mainly evidenced with respect to post-trade data published by the CT because such data will constitute a valid reference for the best execution monitoring process. On the basis of the concerns/issues described above with reference to pre-trade data (e.g. latency/high costs together with attention/caution in the implementation), we don't believe that – at least in a medium-term period – the link between CT and best execution could pertain to pre-trade data.

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

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

Question 14.1 Please explain your answers to question 14 and provide if possible detailed suggestions on how the above features should be implemented (e.g. according to which methodology the CT revenues should be redistributed; how price forming trades should be rewarded, alternative funding models):

5000 character(s) maximum

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

With reference to the fee/funding mechanism of the CT we would like to highlight that at this early stage there is room for preliminary comments only given that certain aspects will have to be assessed more in-depth once the corporate/governance/functioning characteristics of the CT (together with its business model) are more precisely determined. Therefore, we would expect that such aspects will be detailed and proposed to the industry in the context of public consultation processes.
Generally speaking, we deem that revenues' redistribution mainly depends on whether the venues will charge the CT (for instance by applying a margin to data production costs) or not. In the first case, we don't believe that such redistribution will be appropriate unless contributing venues participate in some way to the CT (and, therefore, they assume entrepreneurial risks). Furthermore, revenues' redistribution should be assessed also in accordance with the rules of the relevant jurisdiction which will regulate the CT and its corporate mechanisms.
As per the fees, we agree on having a differentiation according to the type of use although we would like to point out that public funding of the CT could allow a free of charge use by investment firms. This could be of great benefit to intermediaries considering the significant costs borne/to be borne for data purchase (and, more in general, for compliance activities) according to the current scenario.
Finally, no precise opinion can be expressed as to whether the position of CTP should be put up for tender every 5-7 years in the absence of details concerning, in particular, the relevant business model. In general, we believe that the entity which will act as CTP will have to make huge and challenging investments in IT infrastructures and that these investments should be given due time for amortization.

3. The scope of the consolidated tape

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N.A.
Shares pre-trade[3]	○	◉	○	○	○	○
Shares post-trade	○	○	○	○	◉	○
ETFs pre-trade	○	◉	○	○	○	○
ETFs post-trade	○	○	○	○	◉	○
Corporate bonds pre-trade	○	◉	○	○	○	○

Corporate bonds post-trade	○	○	○	○	◉	○
Government bonds pre-trade	○	◉	○	○	○	○
Government bonds post-trade	○	○	○	○	◉	○
Interest rate swaps pre-trade	○	◉	○	○	○	○
Interest rate swaps post-trade	○	○	○	○	◉	○
Credit default swaps pre-trade	○	◉	○	○	○	○
Credit default swaps post-trade	○	○	○	○	◉	○
Other	○	○	○	○	○	○

[3] Pre-trade would not be executable but delivered at the same latency as the post-trade data. Pre-trade market data is understood to be order book quote data for at least the five best bid and offer price levels. Post-trade market data is understood to be transaction data.

Question 15.1 Please explain your answers to question 15:

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

Our answers to Question 15 reflect the views given in answer to Question 11.1 above and the phase-in approach there described.

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

Question 16. In your view, what information published under the MiFID II /MiFIR pre- and post-trade transparency should be consolidated in the tape

(all information or a subset, any additional information)?

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

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

As stated above, we deem that technical aspects pertaining to the CT functioning (such as the information to be consolidated) should be subject to a more-in depth analysis and public consultation process.
At this early stage we may suggest, with respect to post-trade data, to consider the consolidation of the main following information: price, quantity, time, buy/sell-side, MIC code, the settlement date.

3.2. The Official List of financial instruments in scope of the CT

To provide market participants with legal clarity, a CT would benefit from a list setting out, within a given asset class, the exact scope of financial instruments that need to be reported to the CT. This section discusses, for each asset class, how to best create an "**Official List**" of financial instruments that would feature in the CT, having regard to the feasibility of producing such a list.

Shares

There are different categories of shares traded on EU trading venues, including: (i) shares admitted to trading on a Regulated Market (RM) - for which a prospectus is mandatory; (ii) shares admitted to trading on an Multilateral Trading Facility (MTF) (e.g. small cap company listed on the small cap MTF) with a prospectus approved in an EU Member State; (iii) shares traded on an EU MTF without a prospectus approved in a EU Member State (e.g. US blue chip company listed on a US exchange but also traded on a EU MTF). While the first two categories have a clear EU footprint and should be considered for inclusion in the CT, the inclusion of the latter category is more questionable because it consists of thousands of international shares for which the admission's venue or the main centre of liquidity is not in the EU.

Question 17. What shares should in your view be included in the Official List of shares defining the scope of the EU consolidated tape?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.

Shares admitted to trading on a RM	○	○	○	○	◉	○
Shares admitted to trading on an MTF with a prospectus approved in an EU Member State	○	○	○	○	◉	○
Other	○	○	○	○	○	○

Question 17.1 Please explain your answers to question 17:

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

We are in favor of including into the perimeter shares admitted to trading both on a RM and on MTF either with a prospectus or with a mere admission document (in the cases where a prospectus is not required). We would suggest the exclusion from the perimeter of the so-called “third country shares” (e.g. shares whose main pool of liquidity is located outside the EU) as the consolidation would remain partial.

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

Please explain your answer:

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

Question 19. What flexibility should be provided to permit the inclusion in the EU consolidated tape of shares not (or not only) admitted to an EU regulated market or EU MTF?

Please explain your answer:

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

ETFs, Bonds, Derivatives and other financial instruments

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

Please explain your answer and provide details by asset class:

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

As regards non-equity financial instruments we refer to what stated in answer to question 11.1. With respect to the post-trade regime, we are in favor of including in the perimeter all financial instruments admitted to trading on a TV in order to have a CT properly functioning and providing useful information to the maximum extent.
With reference to the pre-trade regime, in case of positive outcomes of the preliminary cost-benefit analysis mentioned above, the liquidity status of the financial instruments could be a driver for determining the scope of instruments to be included. However, this aspect (together with other elements pertaining to the pre-trade regime) should be better investigated and discussed with the financial industry also by means of public consultation processes.

4. Other MiFID II/MiFIR provisions with a link to the consolidated tape

4.1. Equity trading and price formation

The share trading obligation ('STO') requires that EU investment firms only trade shares on eligible execution venues, unless the trades are non-systematic, ad-hoc, irregular and infrequent ("*de minimis*" exception) or do not contribute to the price discovery process. The STO can pose an issue when EU investment firms wish to trade international shares admitted to a stock exchange outside the EU as not all stock exchanges outside the EU are recognised as equivalent. The European Commission recognised as equivalent certain stock exchanges located in the United States, Hong Kong and Australia, with the consequence that those stock exchanges are eligible execution venues for fulfilling the STO. In addition, ESMA provided, in coordination with the Commission, further guidance on the scope of the STO.

Question 21. What is your appraisal of the impact of the share trading obligation on the transparency of share trading and the competitiveness of EU exchanges and market participants?

Please explain your answer:

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

We believe that the STO contributed to reducing trade fragmentation and in this way it also improved trade transparency. Nevertheless, the STO represents both a limitation to the autonomy of intermediaries in the search for the best conditions for clients and an unlevel playing field element when considering it under a global perspective. Therefore, positive and negative elements should always be balanced. It is worth considering that, in order to safeguard clients' interests, in case of third-country shares that have the main pool of liquidity or can provide better execution conditions outside the EU, such shares should be excluded from STO's perimeter. Indeed, we believe that the clients' best interest should always prevail and, therefore, when such interest could be better served, under a best execution perspective, by acceding to a third country trading venue (in the absence of an equivalent decision by the Commission), then this should be explicitly allowed under the STO legal framework. This is particularly important also to preserve and foster the competitiveness of the EU intermediaries with respect to extra-UE competitors which are not subject to STO. Moreover, EU intermediaries' branches in third countries should be excluded from the STO perimeter in order to be fully competitive with extra-EU intermediaries that are not subject to such a regime.

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

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

Question 22.1 Please explain your answer to question 22:

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

With reference to shares admitted to trading also on third-country markets, we think that there is not sufficient clarity on the scope of the trades included or exempted from the STO, as there are few equivalent decisions adopted by the Commission. Moreover, should the liquidity pool criterion be adopted in order to determine whether a share traded also in non-EU markets is in the STO perimeter or not, it could be difficult to implement the relative assessment procedures. Therefore, a second-best option could be using the ISIN criterion (as already done by ESMA when considering the impact of a no-deal Brexit in the STO framework). Anyway, MiFID II/R framework should provide that when the STO conflicts with the best execution, then the latter should prevail. Please, also consider what stated in the answer to Question 21 above.

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Maintain the STO (status quo)	◉	○	○	○	○	○
Maintain the STO with adjustments (please specify)	○	○	○	◉	○	○
Repeal the STO altogether	○	○	○	◉	○	○

Question 23.1 Please explain your answers to question 23:

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

Please, see answers to Questions 21 and 22 above.

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
SIs should keep the same current status under the STO	○	○	○	○	◉	○
SIs should no longer be eligible execution venues under the STO	◉	○	○	○	○	○
Other	○	○	○	○	○	○

Question 24.1 Please explain your answers to question 24:

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

As already pointed out in the response to ESMA consultation on MiFID II/MiFIR review report on, among others, share trading obligation, we totally disagree with the option of removing SIs as eligible execution venue under the STO because this could jeopardize the efforts and investments made so far by SIs (especially when they have opted in) and it could also have negative consequences in terms of best execution for clients and competitiveness of the EU financial industry. In this regard, please consider that in the last years we have seen a dramatic increase in market data fees applied by the exchanges. Generally, these costs have not been rebated on end-users thanks to -inter alia- the internalization activity. We believe that moving the execution of all share trades back to exchanges and other TVs would strengthen their market power with increasing costs for investors. Based on the above, we think that SIs should keep on maintaining the current status under the STO.

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

Please explain your answer:

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

We believe that the SIs' regime for bonds could be improved under a simplification and burdens' reduction perspective. In particular, according to the CD Regulation EU 2017/565, should the relevant thresholds be reached for a bond, then the investment firm shall be considered as a systematic internalizer for all bonds belonging to a class of bonds issued by the same legal entity or by an entity within the same group. Such provision is quite burdensome, but at the same time it could be easily disapplied by not agreeing to publish a quotation under art. 18 MiFIR. In this regard, it would be preferable to have a clearer and fairer regulatory framework.
Moreover, according to a simplification principle, it should be provided that no threshold monitoring is requested to investment firms if they opt-in the SI's regime and they act as SI with respect to all the financial instruments which should be included in the perimeter if they acted as SI under the mandatory regime. In other words, if an investment firm acts voluntarily (e.g. opt-in regime) as SI for all bonds belonging to a class of bonds issued by the same legal entity or by an entity within the same group, then no threshold monitoring process should be put in place with reference to such bonds.

Question 26. What would you consider to be appropriate steps to ensure a level-playing field between trading venues and systematic internalisers?

Please explain your answer:

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

Please, see answer to Question 5 above.

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

Question 27. In your view, what would merit attention to further promote the price discovery process in equity trading?

Please explain your answer:

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

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

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

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

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

Question 28.1 Please explain your answer to question 28:

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

The STO and CT provisions should not have the same perimeter as i) there is still uncertainty about the third country shares regulatory framework under both the STO and the CT regimes; ii) should the CT start with post-trade data only and cover both equity and non-equity instruments, it could have a larger perimeter than STO; iii) should the CT start also with pre-trade data (which we would not be in favor of, as expressed above), it should comprise only liquid shares, so being a smaller set than the STO's one.

Similarly, both for equity and non-equity instruments, there may also be merit in aligning, where possible, the scope of financial instruments covered by the CT with the scope of financial instruments subject to the transparency regime.

Question 29. Do you consider, for asset classes where a consolidated tape would be mandated, that the scope of financial instruments subject to pre- and post-trade requirements should be aligned with the list of instruments in scope of the consolidated tape?

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

Question 29.1 Please explain your answer to question 29:

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

We believe that the scope of financial instruments subject to pre and post-trade requirements should be larger than the CT perimeter, assuming that the latter is implemented in subsequent stages and that it doesn' t comprise third country shares whose main pool of liquidity is outside the EU.

4.3. Post-trade transparency regime for non-equities

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Abolition of post-trade transparency deferrals	◉	○	○	○	○	○
Shortening of the 2-day deferral period for the price information	◉	○	○	○	○	○
Shortening of the 4-week deferral period for the volume information	○	◉	○	○	○	○
Harmonisation of national deferral regimes	○	○	○	○	◉	○
Keeping the current regime	○	◉	○	○	○	○
Other	○	○	○	○	○	○

Question 30.1 Please explain your answer to question 30:

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

As regards the post-trade transparency regime for non-equities, it is worth considering that there is not a full harmonization at the EU level, as NCAs have to authorize the deferral under a procedure that can vary from country to country. With particular reference to the Italian implementation, we believe that the procedure vis-a-vis the Italian authority is too complex thus making the authorization process substantially inapplicable. Therefore, we would welcome a more simplified and harmonized regime for deferrals also to avoid the occurrence of potential unlevel playing field situations in this respect.

II. Investor protection[4]

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

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

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

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

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

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

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

Quantitative elements for question 31.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 31.1:

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

With respect to the experience with the implementation of the investor protection rules we refer to the general considerations expressed in the answer to Question 1.1 above.

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

	Yes	No	N.A.
Product and governance requirements	◉	○	○
Costs and charges requirements	◉	○	○
Conduct requirements	○	○	◉
Other	○	○	◉

1. Easier access to simple and transparent products

The CMU is striving to improve the funding of the EU economy and to foster retail investments into capital markets. The Commission is therefore trying to improve the direct access to simple investment products (e.g. certain plain-vanilla bonds, index ETFs and UCITS funds). On the other hand, adequate protection has to be provided to retail investors as regards all products, but in particular complex products.

Question 32.1 Please explain your answer to question 32:

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

We believe that the product governance framework should be amended in order to simplify its rules especially with respect to plain-vanilla products, execution services and wholesale clients.
Furthermore, we deem that the application of the PoG regime originated unintended negative consequences when combined with the uncertainty relating to the classification of a product as “PRIIP” under the PRIIPs Regulation. Because of such uncertainty, in fact, manufacturers very often labeled as “professional only” (so providing the relevant target market) products not effectively having characteristics which prevented their distribution to retail clients. This led to the result of having a quantity of products qualified as “complex” while, on the contrary, their features were closer to those of simpler products. This circumstance originated distortions in the product governance mechanisms and in the possibility for both retail clients (acting in the context of execution services and/or investment advice) and individual portfolio managers (acting on behalf

of retail clients) to access a wider range of financial instruments also for diversification purposes.
The aforementioned uncertainty relating to the scope of the PRIIPs regime in some cases entailed an opposite response to the one described above, which led manufacturers to draft a KID and, therefore, to consider PRIIPs products not having, on the contrary, proper “packaged” characteristics. This circumstance impacted on the costs&charges regime given that article 50 of Delegated Regulation 565/2017 prescribes, inter alia, the aggregate disclosure of costs and charges also relating to the financial instrument every time that the provision of a KID is required in relation to such instrument. The consequence was that in such a scenario the disclosure was given – with higher burdens for distributors - with respect to products not effectively being packaged, and, therefore, not in adherence to the legislative rationale.

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

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

Question 33.1 Please explain your answer to question 33:

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

We consider that the level of protection granted to retail clients with respect to complex products should be better calibrated with the type of investment service carried out in favor of such investors. In particular, we believe that a portfolio manager appointed by a retail client should have the possibility to insert in the portfolio complex products also having a “professional only” target market (obviously on the assumption that such products are coherent with the mandate granted to the portfolio manager). In fact, we deem that the investments made in the context of an added-value service such as individual portfolio management – carried out by a professional subject who has to ensure the continued adherence of the investments made to the mandate granted by the client – mitigate the need of protection to be ensured, instead, when the investor deals with different kind of investment services. On the basis of such an assumption, we believe that products with a negative target market for retail clients could be given access to retail investors’ managed portfolios on a wider basis than that provided by ESMA in its Guidelines on product governance upon condition that the mandate and the diversification principle are respected.

2. Relevance and accessibility of adequate information

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

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

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

	Yes	No	N. A.
Professional clients and ECPs should be exempted without specific conditions.	◉	○	○
Only ECPs should be able to opt-out unilaterally.	○	◉	○
Professional clients and ECPs should be able to opt-out if specific conditions are met.	○	◉	○
All client categories should be able to opt out if specific conditions are met.	○	◉	○
Other	○	○	○

Question 34.1 Please explain your answer to question 34 and in particular the conditions that should apply:

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

As anticipated in the answer to Question 1.1 above, the costs and charges provisions proved to be very critical in the implementation phase mainly because the regime also applies – save for few minor exceptions – to relationships with per se professional clients and eligible counterparties. This circumstance originated operational burdens/delays in the execution of transactions and an overflow of information with basically no benefit because such investors have the necessary knowledge and market experience to assume informed decisions. In this respect we welcome ESMA's most recent approach to the matter contained in its Final Report on, inter alia, costs and charges disclosure requirements under MiFID II and oriented to grant more flexibility. However, we would suggest the assessment of an express exclusion from the regime for professional clients/ECPs rather than an opt-out solution because the implementation of the opt-out approach would have a significative administrative and operational impact, considering the need of the client to formally communicate its opt-out and the procedures required by the investment firm to record such decision and to act accordingly. Therefore, such a solution would not solve the problem of the operational burdens/delays acknowledged in applying the current rules.
In case the aforementioned option is not viable for professional clients upon request, then, with reference to such a category of clients, we would suggest introducing the possibility to opt-out.

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

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

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

Question 35.1 Please explain your answer to question 35:

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

In general, we support a phase-out of paper-based information although we believe that it should be implemented very carefully and in a medium/long-term perspective considering that not all clients have adequate experience of IT tools.

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

	Yes	No	N. A.
General phase-out within the next 5 years	○	○	○
General phase out within the next 10 years	○	○	○
For retail clients, an explicit opt-out of the client shall be required.	○	○	○
For retail clients, a general phase out shall apply only if the retail client did not expressively require paper based information	○	○	○
Other	○	○	○

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

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

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

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

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

Question 37.1 Please explain your answer to question 37:

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

We are not in favor of developing a general investment product EU-wide database (except where - as detailed in our answer to question 38.1 below - it includes products with PRIIPs KIDs/UCITS KIIDs only). Firstly, EU-wide databases created for different MiFID II/MiFIR purposes have already proven to be very difficult to handle and to deal with. In this case, such a database would be even more challenging because of the expected comparison function: in fact, comparing an EU-wide catalog of products having different features and characteristics could lead to significant categorization issues with the likely result of producing distortions and biased classifications.
Secondly, the alimentation/update of such a database by investment firms would generate further costs with no prospected material benefits especially for retail investors. In fact, it is likely that they will not be able – because in most cases they do not own the necessary technology and/or knowledge and experience - to manage properly the large quantity of information contained in the database and to promptly detect outdated or incoherent information.

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

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

Other	◉	○	○	○	○	○

Question 38.1 Please explain your answer to question 38:

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

We believe that the EU-wide database could be a useful container of all PRIIPs KIDs/UCITS KIIDs in order to have a sole and commonly shared source of access for investment firms, investors and NCAs. We deem that if the objective of the envisaged database is allowing comparison, then the aforementioned kind of products (and related documentation) fits the idea of such a database since KIDs/KIIDs are drafted according to common standards also with the aim to allow comparison between products.
Furthermore, investment firms (especially when providing on-line execution services) could address their clients to such a database in order to comply with the legal requirement to provide them with a KID/KIID before executing a transaction. This would obviously have a positive impact on timing and organizational /operational burdens.
On the contrary, we would neither prioritize nor include in the EU-wide database other kinds of transferable securities for the reasons highlighted in the answer to Question 37.1 above.

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

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

Question 39.1 Please explain your answer to question 39:

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

On the assumption that products having KID/KIID only will be included in the database in question, we agree with the proposal of having ESMA to develop such a tool because its role and status would ensure reliability /impartiality and because it could ensure free-of-charge access. Furthermore, NCAs will surely better liaise with ESMA rather than with a private subject in accessing the database for supervisory purposes.

3. Client profiling and classification

MiFID II/MiFIR currently differentiates between retail clients, professional clients and eligible counterparties. In line with the procedure and conditions laid down in the Annex of MiFID II, retail clients can already “opt-up” to be treated as professional clients. Some stakeholders indicated that the creation of an additional client category (‘semi-professional investors’) might be necessary in order to encourage the participations of wealthy or knowledgeable investors in the

capital market. In addition, other concepts related to this classification of investors can be found in the draft Crowdfunding Regulation which further developed the concept of sophisticated investors[5].The CMU-Next group suggested a new category of experienced High Net Worth ("HNW") investors with tailor made investor protection rules[6].

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

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

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

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

Question 40.1 Please explain your answer to question 40:

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

In fact, the "one size fits all" approach adopted by MiFID II/MiFIR might be overly protective not just for experienced retail clients, but also for wealthy retail clients, thereby unnecessarily limiting their access to the broadest possible range of financial instruments. It is true that clients meeting the criteria in Annex II to the MiFID may opt-up to be treated as professionals. Still, there might be experienced clients who miss the portfolio size in Annex II to the MiFID II and wealthy clients who miss the relevant experience. There appears to be no good reason to exclude access to complex financial instruments for experienced clients who miss the portfolio size as well as for wealthy clients who invest through the means of an asset manager or investment advisor. More generally, we agree that the MiFID client classification should be reviewed to overcome the rigid categories identified by MiFID and better reflect the different degrees of sophistication within the retail client category.

Question 41. With regards to professional clients on request, should the threshold for the client's instrument portfolio of EUR 500 000 (See Annex II of MiFID II) be lowered?

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

Question 41.1 Please explain your answer to question 41:

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

We believe that the whole set of criteria and the methodology of the opt-up procedure should be reviewed. It is true that the current €500,000 threshold is too high and could hardly meet the interests of retail clients with assets close to the threshold that cannot be upgraded today. Still, there might be clients with work experience in sectors other than the financial sector (i.e. listed companies, real estate companies, companies active in the commodity market or who provide advice to companies in the financial sector or corporate transactions such as M&A) that nonetheless require knowledge of the transaction or service envisaged. We would also like to point out the complexity of the calculation of the average frequency of transactions and the difficulties faced by the investment firms in gathering the relevant information, which among other things could hardly account for experience.
An alternative approach could be to allow investment firms to balance the various criteria and fill small gaps in relation to some requirements with an overabundance in others.

Question 42. Would you see benefits in the creation of a new category of semi-professionals clients that would be subject to lighter rules?

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

Question 42.1 Please explain your answer to question 42:

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

The introduction of a new category of semi-professional clients could better capture that group of investors with a high level of knowledge and experience and a capital and income situation that allow them to bear a higher exposure to risk and that could, therefore, be exempted from the limits currently imposed on retail clients, regardless of their upgrade as professionals on request

Question 43. What investor protection rules should be mitigated or adjusted for semi-professionals clients?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Suitability or appropriateness test	○	○	○	○	◉	○

Information provided on costs and charges	○	○	○	◉	○	○
Product governance	○	○	○	○	◉	○
Other	○	○	○	○	○	◉

Question 43.1 Please explain your answer to question 43:

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

The creation of a new category of semi-professional clients would certainly improve the effectiveness of the protection granted by the regulation to wealthy and knowledgeable people. As such, these clients would be allowed access to the financial instruments which cannot be lawfully marketed and placed to retail investors. The relevant suitability and appropriateness procedures would be lightened, and both manufacturers and distributors would be able to better target their financial instruments to the actual needs of their clients. Moreover, knowledgeable clients should be allowed to opt-out from ex-ante cost information obligation without any specific conditions. Indeed, a case-by-case assessment about this category of clients would be costly and time-consuming.
Finally, an additional relief to be considered as regards semi-professional clients could be the possibility for them to unilaterally opt-out from the written agreement requirement currently provided for by Article 58 of the Commission Delegated Regulation 2017/565, whereas no written agreement at all should be required for the provision of investment services to professional clients per se. As a matter of fact, as we argue in our reply to question 3.1, the lack of harmonization as regards the notion itself of the concept of the written agreement is currently hampering the provision of investment services at cross-border level.

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

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

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

Please see or answer to question n. 43.1.

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Semi-professional clients should possess a minimum investable portfolio of a certain amount (please specify and justify below).	○	○	○	○	◉	○
Semi-professional clients should be identified by a stricter financial knowledge test.	○	○	○	○	◉	○
Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise.	○	○	○	◉	○	○
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.	○	○	○	○	◉	○
Other	○	○	○	○	○	◉

Question 45.1 Please explain your answer to question 45 and in particular the minimum amount that a retail client should hold and any other applicable criteria you would find relevant to delineate between retail and semi-professional investors:

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

Semi-professional clients could be identified based on the amount of their investment portfolios and knowledge. The minimum amount of their portfolio should allow for an effective level of diversification of their investments, namely not lower than €100,000. Moreover, they should qualify in terms of an adequate level of knowledge of, and experience in the risks related to the financial instruments and services, which should not necessarily be demonstrated on the basis of a professional position in the financial sector. In fact, semi-professional clients might have gained experience in the financial sector or other areas which still allow them to develop financial skills. The perimeter of their skills should thus be broader than that required at for upon-request professional clients, which should also be amended as we propose in our answer to question 41.1.

4. Product Oversight, Governance and Inducements

The product oversight and governance requirements shall ensure that products are manufactured and distributed to meet the clients' needs. Before any product is sold, the target market for that product needs to be identified. Product manufacturers and distributors should thus be well aware of all product features and the clients for which they are suited. To do so, distributors should use the information obtained from manufacturers as well as the information which they have on their own clients to identify the actual (positive and negative) target market and their distribution strategy.

There is a debate around the efficiency of these requirements. Some stakeholders criticise that the necessary information was not available for all products (e.g. funds). Others even argue that this approach adds little benefit to the suitability assessment undertaken at individual level. Similar doubts are mentioned with regards to the review of the target market, in particular for products that don't change their payment profile. Concerns are raised that the current application of the product governance rules might result in a further reduction of the products offered.

Question 46. Do you consider that the product governance requirements prevent retail clients from accessing products that would in principle be appropriate or suitable for them?

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

Question 46.1 Please explain your answer to question 46:

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

As anticipated in our answer to question 33.1 above, we believe that in some cases PoG requirements have prevented retail clients from accessing products that would have been appropriate or suitable instead. In this regard, please consider that intermediaries acting as portfolio managers in most cases could not invest, on

behalf of their retail clients, in products whose target market is “professional only”. This happens just because of such target market and, therefore, independently from the product’s effective characteristics, from the adoption of a strict diversification approach and from the circumstance that the intermediary can fully understand the product’s features and that it could fit, following a portfolio approach, the mandate granted by the client. Moreover, as a result of the uncertainty of the scope of the PRIIPS regime already highlighted in the previous answers, lots of simple and less risky products are now targeted as “professional only” with the effect that retail clients are prevented to access such products even in case they have entrusted the management of their savings to an investment firm according to a portfolio management investment service. The unintended effect is that retail clients can have riskier and more complex portfolios than the ones they would have had if there had been no such limit. Finally, the “rare occurrence” criterion provided by ESMA’s Guidelines on product governance has sometimes worked as a further barrier to access products once the numerical threshold for determining such “occurrence” set by the intermediary has been reached.

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

	Yes	No	N. A.
It should only apply to products to which retail clients can have access (i.e. not for non-equities securities that are only eligible for qualified investors or that have a minimum denomination of EUR 100.000).	○	◉	○
It should apply only to complex products.	◉	○	○
Other changes should be envisaged – please specify below.	◉	○	○
Simplification means that MiFID II/MiFIR product governance rules should be extended to other products.	○	◉	○
Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.	○	◉	○
The regime is adequately calibrated and overall, correctly applied.	○	◉	○

Question 47.1 Please explain your answer to question 47:

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

We think that the product governance rules should be simplified as they should apply i) to complex products only, whose features are not immediately linked to specific objectives and needs to be satisfied; ii) to retail clients only, because it is essential that financial products are manufactured and properly distributed to them according to a clear product governance process in order to prevent incorrect behaviours while such process is burdensome and substantially useless for professional clients; iii) according to a proportionality principle, so that in case of execution services (without active marketing) product governance requirements could mainly consist in the indication of the distribution channels; iv) with respect to reporting obligations from

distributors to manufactures, exclusively in case a distribution agreement is in force between them; v) with a flexible approach with reference to the sales into the negative target market in case of portfolio management (please see answers to Question n. 46.1 and to Question 33.1 above).

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

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

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

Question 48.1 Please explain your answer to question 48:

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

The question of whether an investment firm may continue to be allowed to sell a product to a negative target market in case a client insists needs to be assessed in the light of ESMA's indications in this respect. In its Guidelines on product governance, ESMA provides room for sales to negative target market although with quite strict terms and conditions, since it states that "sale to investors within this group should be a rare occurrence, the justification for the deviation should be accordingly significant and is generally expected to be more substantiated than a justification for a sale outside the positive target market". Furthermore, ESMA indicates that investment firms should be able to identify ex-ante situations where such sales may be carried out to assess the relevant courses of action. Therefore, the framework provides responsibility for sales to a negative target market upon the intermediary and we think this is the main reason why – as stated in the paragraph preceding Question 48 – distributors seem reluctant to sell to negative target market even though the client insists. Finally, we believe that a written statement by the client is not an effective instrument to mitigate the legal risk for the firm as it could be challenged by the same client afterward.

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

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

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

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

Question 49.1 Please explain your answer to question 49:

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

We believe that the current rules on inducements are quite well balanced to ensure that investment firms act in the best interest of their clients. Nevertheless, in the EU countries there is not a homogeneous implementation of Art. 11.2. a) of the Commission Delegated Directive 2017/593.
In fact, we note that, despite the non-exhaustive nature of the list of the quality enhancement requirements set out therein(and also expressly provided in Recital 21), in certain countries (like Spain) such list is strictly limited to what prescribed by the above-mentioned article, while in other countries (like Italy) there is uncertainty about the further conditions that can justify an inducement. This is particularly relevant in the case of the service of placement -without the provision of investment advice- to a professional-client. The quality enhancement requirements set out by Art. 11.2. a) are substantially not applicable to such kind of clients because they are designed for retail clients who can effectively benefit from, for instance, added-value tools or from the provision of non-independent investment advice. In this regard, we would suggest the insertion of further (exemplificative) quality enhancement conditions specifically applicable to professional clients. By way of illustration, such conditions could include financial product training, networking activities with asset managers or producing comparison charts of similar products.
Finally, we would also propose to literally set out that the quality enhancement conditions provided by the law are not exhaustive.

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

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

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

Question 50.1 Please explain your answer to question 50:

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

We disagree to establish an outright ban on inducements. Like other sources of conflicts of interest, they must be properly managed and disclosed while a general ban could jeopardize the investment services

provision and reducing their quality enhancement effects. Moreover, because of the ban, investment firms might increase the fees for clients so making investment services access less attractive and much more expensive.

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

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

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

Question 51.1 Please explain your answer to question 51:

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

Any certification requirement should only be mandatory from staff providing investment advice to retail clients. Accordingly, it should not be required from staff providing other relevant information, nor from staff advising clients other than retail clients (for example, no certification should be required on investment firms or specific departments thereof, which are exclusively engaged in structuring and trading capital market transactions and/or providing M&A financial advice to issuers). Indeed, Recital 79 of the current MiFID clearly restricts the scope of Article 25 only to staff providing advice or selling investment products to retail clients. As a matter of law, in our opinion it was not for ESMA nor for national regulators to extend the scope of the knowledge and competence requirements beyond provisions of services to retail clients. We reckon that investment firms are responsible for damages caused to clients by the members of their staff who do not possess an adequate level of knowledge and competence in relation to the products and services they offer. Still, without prejudice to any certification requirement which the new MiFID may wish to mandate on staff advising retail clients, it should be for every single intermediary to assess the actual need for training of its staff providing information or advising clients other than retail clients, by taking into account, inter alia, the complexity of the products and services it offers. Moreover, the same certification/training requirements should apply in all EU countries, without any room for gold plating. Accordingly, the new provisions should also clarify, inter alia, the very definition of "staff giving information", as uncertainties on the scope of the relevant requirements risk imposing unnecessary burden on investment firms. Finally, certifications and training acquired in a Member State should be recognized as valid for the same activities in other Member States.

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

- 1 - Disagree

- 2 - Rather not agree
- 3 - Neutral
- (•) 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 52.1 Please explain your answer to question 52:

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

Please see our answer to question n. 51.1.

5. Distance communication

Provision of investment services via telephone requires ex-ante information on costs and charges (please consider also ESMA’s guidance on this matter). When a client wants to place an order on the phone, the service provider is obliged to send the cost details before the transaction is executed, a requirement which may delay the immediate execution of the order. Further, MiFID II/MiFIR requires all telephone communications between the investment firm and its clients that may result in transactions to be recorded. Due to this requirement, several banks argue to have ceased to provide telephone banking services altogether.

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

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- (•) 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 53.1 Please explain your answer to question 53:

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

We think that telephone trading -mainly chosen by wholesale investors- has been negatively impacted by cost & charges ex ante disclosure rules. In fact, the need of providing simultaneously the same information in a durable medium delays the conclusion of the transaction with a potential prejudice for clients especially in case of volatile financial instruments (i.e. equity and/or derivatives). Therefore, we agree on allowing cost & charges disclosure through a durable medium immediately after the transaction is executed. Anyway, with reference to wholesale clients, as stated above, costs&charges regime (including ex ante disclosure) should not apply.

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

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- (●) 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 54.1 Please explain your answer to question 54:

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

We believe that taping and record-keeping requirements allow to reduce the risk of misselling over the phone while they also protect intermediaries from clients’ opportunistic claims.

6. Reporting on best execution

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

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

- 1 - Disagree
- (●) 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 55.1 Please explain your answer to question 55:

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

We think that execution quality reports are generally complex, provide no comparable data and are quite burdensome both for execution venues (“RTS 27”) and for investment firms (“RTS 28”). Therefore, we would propose to modify the relevant delegated regulations under a perspective of simplification and

standardization so making the data more comparable and understandable. Moreover, we would suggest clarifying the notion of “other liquidity provider” adopted by RTS 27 explaining if it differs from “market making” and, if so, for what elements. Besides, we would propose to make explicit that when an investment firm trades customized derivatives with a client, such contracts should not be included in the execution quality report under RTS 27 as a customized derivative is “one of a kind”, so lacking the regularity and uniformity elements that should always characterize the liquidity providing/market making activity. Finally, concerning the provision under art. 3, par. 3, let. g) of the “RTS 28”, we would propose to cancel the wording “including any data published under Delegated Regulation (EU) 2017/575” as such data cannot be used in investment firms’ reports due to the above-mentioned lack of standardization and understandability.

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Comprehensiveness	○	○	○	○	◉	○
Format of the data	○	○	○	○	◉	○
Quality of data	○	○	○	○	◉	○
Other	○	○	○	○	○	○

Question 56.1 Please explain your answer to question 56:

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

Please see our answer to question 55.1 above.

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

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

Question 57.1 Please explain your answer to question 57:

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

We think that the execution quality reports should be rethought under a simplification perspective in order to achieve a fair balance in terms of costs and benefits. Besides the issues pointed out in our answer to Question 55.1, for example the report published by investment firms under "RTS 28" should not comprise the percentage of aggressive/passive orders as the majority of investors cannot understand the meaning of such data.

III. Research unbundling rules and SME research coverage[7]

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

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

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

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

The new rules on unbundling of research and execution services appear to be a disproportionate remedy to the market failure that the MiFID was supposed to address. Many years before MiFID was passed, various NCA (including Consob) had already introduced a “virtual” unbundling obligation which was able to address in a more simple, effective and efficient way the transparency of research prices, the need to prevent conflict of interests and ensure the best interest of the clients, raised in the consultation paper.
The above-mentioned “virtual” unbundling would require executing brokers to specify what proportion of their bundled commissions was spent on execution and what on research (see our answer to question 59.1). In turn, asset managers were required to disclose the research costs to their clients and were not allowed to use the amount allotted to cover the cost of research to pay for any other service, such as execution services.
Accordingly, also the ban on linking the research charge to the volume and/or value of the transactions executed on behalf of the client is clearly a disproportionate requirement, leading to competitive disadvantages for smaller asset managers. Indeed, research producers are consequently required to charge smaller asset managers the same research price they charge to larger asset managers, with higher costs for smaller portfolios.
We thus agree with what we understand to be the consultation paper assumption, namely that the MiFID unbundling requirement has had unintended consequences on the quantity, quality and pricing of the research. In this regard, we consider that the new MiFID provisions on research have had several negative knock-on effects on the market.
More to the point, the absence of a definition of research that would unequivocally place it in the category of investment services (as argued in our answer to question 59.1) has led to the commoditization of the financial research. As a result, global brokers have developed flat-fee pricing policies, which are jeopardizing the financial sustainability of the analysis departments of local brokers, which account for virtually the entire production of research on SMEs listed on peripheral markets (whereas global brokers focus their research activities almost exclusively on issuers included in the main financial indexes all over the world).
In the medium term, the lower economies of scale and scope, of which local brokers benefit compared to global brokers, may force them to contain their production costs on financial research, with further negative impacts on coverage and quality of their research. Cost-cuttings would inevitably result in a decrease in the seniority of the teams of analysts, an upsurge in the workload on individual analysts and a loss of the relevant professional skills in peripheral markets.
Moreover, cost-cutting is currently driving the entry into the market of producers of low-quality quantitative analysis developed by computers, which would merely replicate financial metrics that are generally publicly available but would be unable to provide investors with any add-on assistance which would account for high-quality financial research service.
An additional side effect of cost-cutting policies can be the recent rise in passive management, which benefits from the positive effects produced on the market by the financial research paid for by active managers (free-riding). It might also be worth pointing out that passive investment strategies bring along a further shift of savings towards highly capitalized issuers, whose equity instruments are included in the relevant financial indexes.
As regards SMEs, low coverage and liquidity have resulted in a significant increase in information asymmetries, which in turn have generated, as could reasonably be expected, an increase in volatility and what is worse, a higher cost of funding for SMEs, due to the higher risk premium required by investors both on primary and secondary markets, with problems of adverse selection. Moreover, these higher funding costs are hurting the SMEs’ appetite for investments and, therefore, on growth and employment, especially in countries, such as Italy, characterized by a high presence of SMEs.

In light of the above we believe that the unbundling requirements are having negative effects on the overall quality of the services provided to the final investors and, consequently, on their investment decisions and the efficient allocation of financial resources.

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

1. Increase the production of research on SMEs

1.1. EU Rules on research

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

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

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

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Introduce a specific definition of research in MiFID II level 1	○	○	○	○	◉	○
Authorise bundling for SME research exclusively	○	○	◉	○	○	○
Exclude independent research providers' research from Article 13 of delegated Directive 2017 /593	○	○	◉	○	○	○

Prevent underpricing in research	○	○	○	○	◉	○
Amend rules on free trial periods of research	○	○	○	◉	○	○
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.

In addition to introducing a definition of research, authorize bundling and prevent underpricing, other proposals to be considered to increase the production of SME research should include at least the followings:
1. Listed issuers capitalizing less than €500MLN should be required to have at least 2 corporate brokers producing sponsored research (namely paid for by the issuers themselves). The current low level of SME research is a by-product of the relevant low market demand. Asset managers and institutional investors, for whose benefit financial research is produced, have very limited room for investment in financial instruments characterized by a low level of liquidity and to bear the cost of the relevant financial research. Still, financial research provided free of charge is normally the main/only tool to bring a good investment in financial instruments issued by an SME to the attention of institutional investors and asset managers. Sponsored research could, therefore, help to break the above-described vicious circle between the financial instrument's low liquidity, the lack of interest in investing in these financial instruments and, subsequently, the lack of demand for the relevant research. Once this vicious circle is broken, the liquidity of these financial instruments would grow and, together with it, the ability of their issuers to make use of the capital market to finance their growth, up to the point of attracting the interest of asset managers and institutional investors and hence generating demand for independent research;
2. Research should be exempt from VAT, as it used to be the case when it could be charged bundled by the executing brokers;
3. To properly manage conflicts of interest, the production and distribution of sponsored research should be restricted only to authorized and supervised entities and should be subject to both the MAR and the entire MiFID/R package;
4. To allow market operators to form investment decisions based on a plurality of views, the production of independent research on SMEs (namely not paid for by the SMEs themselves) should be promoted. To this end, a completely different approach should be developed for financial research, which should be regulated and remunerated as a service (not as a commodity, as it is the case under the current legal framework). As a high value-added service, financial research should account for a long-term relationship, whereby financial analysts (and salespersons) provide broad coverage on a national market (or one or more segments thereof) and can develop a constant dialogue with asset managers and institutional investors to guide them in their investment decisions. Such a service should not be restricted to the provisions of a target price built on publicly available financial metrics, but would rather expand on a quite large number of issues, such as regulatory developments in the issuer's home country, political decisions about to be taken by its national government, as well as information relating to the management of specific local problems (health emergencies, climate, cataclysms, etc.). Accordingly, financial research should also be remunerated on a service basis (all-in-one service package), to enhance its broad contribution to any investment decision taken by asset managers and institutional investors, including decisions not to invest in a specific issuer or a specific market segment.

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

5000 character(s) maximum

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

QUESTION 1. This is indeed the most relevant proposal among those put forward in the consultation paper: research is an investment service and should be regulated as such. Indeed, it is not a commodity, and its role goes much beyond the specific investment recommendations, which are just one of the several components it consists of. Nor can it be confined to single issuers' analysis. Rather, as a high added-value service, it consists of an ongoing relationship that, by moving from fundamental analysis, aids asset managers in their investment decisions. As part of this all-in-one service package, financial analysts provide asset managers with information on additional factors and developments related to a national market. Consistently, the production and distribution of research should be remunerated from an all-in-one service package perspective and be related to the value produced to the investment-decision process. By the same token, access to research provided by an executing broker should be included in the factors to be considered to evaluate the quality of execution under A27 MiFID.

QUESTION 2. Too much emphasis was placed by MiFID2 on how research is to be remunerated. The ban on bundling would not appear to serve any of the MiFID aims, and above all, by no means, it can be functional to the best execution obligation. Under A27 MiFID, asset managers are not allowed to pass orders to a broker other than the one that provides the best trading conditions. To the extent that the best price includes the cost of the research, it would be hard to identify any harm to the final investor. Still, the concern was raised that bundling would put execution-only brokers and third-party research providers at a competitive disadvantage compared with brokers offering bundled services. To remedy problems as such, many years before MiFID was passed, various NCA (including Consob) had already introduced a "virtual" unbundling obligation requiring executing brokers to specify what proportion of their bundled commissions was spent on execution and what proportion on research. This was facilitated by putting CSAs in place, which enabled asset managers to pay for research from independent research providers, thereby creating more of a level playing field among different types of providers. Asset managers were also required to disclose research costs to their clients and were not allowed to use commissions to pay for services other than trading and research. In light of the above, we believe that (virtual) bundling should be authorized for all research.

QUESTION 3. We oppose the proposal to exclude independent research providers from A13 of Directive 2017/593 as we consider unacceptable and contrary to the Treaty that a category of operators may benefit from a competitive advantage due to the different legal and compliance regimes to which they are subject. Same risk, same rules is by far a consolidated principle in the EU law. Accordingly, not only should independent-research providers be required to comply with Art. 13 of Directive 2017/593, but they should also be required to comply with any other provision applying to providers of other investment services. Moreover, because of the conflicts of interest that can be identified where the research is remunerated by the issuer, independent-research providers should be authorized, supervised and regulated on standards equivalent to those applicable to licensed intermediaries.

QUESTION 4. Prevention of underpricing in research is essential to increase the production of SME research. Almost the entire production of SME research is provided by smaller local brokers, which would not be able to compete and sustain their analysis departments in the event of unfair market practices carried out by larger competitors. It is in the Commission's current remit to investigate the dumping practices postulated in the document recently published by the French AMF. Consistently, the forthcoming MiFID reform should establish objective criteria for defining a fair price for research. Just as free research can incentivize deviant behaviors on the market, so is research sold at a paltry price. Both free research and underpriced research must be qualified as incentives and as such prohibited.

QUESTION 5. A simplified regime should be provided about the free trial period of research on SMEs. The free trial is of the utmost importance to raise public awareness on issuers that are unlikely to be covered by asset managers' investment policies. Besides, maximum trial periods should apply to individual categories of both financial instruments and research (equity, fixed income, macro, etc.).

1.2. Alternative ways of financing SMEs research

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

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

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

Question 60.1 Please explain your answer to question 60:

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

Financial research should be produced and distributed in a free market context, so as to guarantee asset managers the possibility of making investment decisions on the basis of a plurality of quality research provided in a competing environment by authorized and supervised entities. Because of the natural monopoly of the business they run, market operators should not be granted any role in the research market to avoid any risk of restriction of competition in the relevant market. Moreover, market operators are often assigned supervisory functions which would hardly be compatible with the performance of any activity other than the operation of the trading platforms themselves.

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

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

There is obviously a need to subsidize SME research on the supply side. As we already said in our answer to question 59, analysts tend to orient their coverage to the more profitable research on large caps, and institutional investors and asset managers have very little interest in SME research because of the limited room they have for investment in financial instruments characterized by low level of liquidity. To this end, we proposed introducing an obligation on listed issuers that capitalize less than €500MLN to have at least 2 corporate brokers producing sponsored research and, at the same time, incentivizing independent research

(namely not paid for by the issuer itself) so as to allow institutional investors and asset managers to gain an unbiased opinion on these issuers' future prospects
An option to explore could be to extend to financial research the fiscal incentives which apply to R&D costs. Like R&D, financial research contributes to the country's economic growth and reduces unemployment. Therefore, similarly to industrial research, we should consider the possibility of introducing a tax credit on the costs of research, both in favor of those who commission it from third parties (namely the SMEs which capitalize less than €500MLN), and in favor of "non-sponsored" players (who produce the research on these same SMEs which is necessary for investors to form a "multi-contributed" opinion on their economics).
An alternative could be to set up a fund on the public budget to finance such tax incentives with the contribution of all entities playing a role whatsoever on the market and, therefore, intermediaries, issuers, market management companies, auditing and rating companies, insurance companies, asset managers, including in particular managers of passive funds, etc.

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

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

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

Question 62.1 Please explain your answer to question 62:

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

We believe that artificial intelligence can assist financial analysts in their assessment of both the information impact and the publicly available key financial metrics on the issuers. Still, we are absolutely opposed to any proposal to include mere quantitative analyses produced by computers within the notion of financial research.
As we have amply argued in our answers to the previous questions, in order to protect the integrity of the market and investors, financial research must be defined, regulated and supervised as a service, based on a constant dialogue between a financial analyst and a salesperson (producer and distributor of the financial research service) and an asset manager (user of the research service).

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

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

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

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

- (●) 1 - Disagree
- ( ) 2 - Rather not agree
- ( ) 3 - Neutral
- ( ) 4 - Rather agree
- ( ) 5 - Fully agree
- ( ) Don’t know / no opinion / not relevant

Question 63.1 Please explain your answer to question 63:

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

We agree with the establishment of a centralized SME research database only for sponsored research (i.e. the research paid for by the issuers) to be provided free of charge to any interested party. It is essential though that the intellectual property of independent research (namely paid for by its users/customers) be protected at European level. Unauthorized dissemination of independent research should thus be legally pursued.
Without prejudice to the above, pre-IPO research should in any case be excluded from the perimeter of the database. If made publicly available, this research risks being reclassified as unauthorized-offering documents, unauthorized advertising of investment products or personal investment recommendations.

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

- ( ) 1 - Disagree
- ( ) 2 - Rather not agree
- ( ) 3 - Neutral
- ( ) 4 - Rather agree
- ( ) 5 - Fully agree
- (●) Don’t know / no opinion / not relevant

Question 64.1 Please explain your answer to question 64:

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

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

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

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- (•) 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 65.1 Please explain your answer to question 65:

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

In line with Recital 29 and Article 12(3)(b) of Directive 2017/593, issuer sponsored research should qualify as an acceptable minor non-monetary benefit to the extent that it is paid for by the issuer and is made available at the same time to any investment firms wishing to receive it or to the general public.

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

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- (•) 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 66.1 Please explain your answer to question 66:

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

In our opinion issuer-sponsored research qualifies as investment research under Art. 36 of Directive 2017 /565. As such, it should be subject to the complete set of provisions in the MiFID II/R package and consistently reserved for authorized and supervised entities.

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

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

- (●) 1 - Disagree
- ( ) 2 - Rather not agree
- ( ) 3 - Neutral
- ( ) 4 - Rather agree
- ( ) 5 - Fully agree
- ( ) Don’t know / no opinion / not relevant

Question 67.1 Please explain your answer to question 67:

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

It should be made clear beyond any reasonable doubt that sponsored research is reserved for authorized and supervised intermediaries and regulated according to the provisions of the MiFID II/R package.

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

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

Question 68.1 Please explain your answer to question 68:

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

To foster SME research, the most effective policy options would be, in the order:
1. Defining research as a financial service and regulate it accordingly. The current commoditization of the research is the main cause of the inadequate level of SME research registered by the Commission itself in the present consultation paper (see our answer to question 59.1)
2. Preventing underpricing and establishing objective criteria for defining a fair price for research, to guarantee the financial sustainability of the research departments of local brokers which account for virtually the entire production of research on SMEs listed on peripheral markets (see our answers to questions 58 and 59.1);
3. Funding SME research partially with public money and, to this end, extending to financial research the fiscal incentives which apply to R&D costs (see our answer to question 61);
4. Amending rules on the free-trial period, to allow research providers to bring good investment opportunities to the attention of asset managers (see our answer to question 59.1);

We firmly oppose any proposal to
1. Authorize the bundling of SME research exclusively. We think that to increase SME research, the ban on bundling should be removed for all research (see our answer to question 59.1);
2. Make independent research providers subject to a legal and compliance regime different from the ones applying to the authorized and supervised intermediaries which produce/distribute research (see our answer to question 59.1);
3. Amend rules on issuer-sponsored research, as all research should be subject to the same rules (see our answer to question 66.1). Accordingly, the production and distribution of sponsored research should be restricted only to authorized and supervised intermediaries and should be subject to both the MAR and the entire MiFID/R package (see our answer to question 59.1);
4. Promote research on SMEs produced by artificial intelligence, in that research consisting of mere quantitative analyses should not account for financial research at all (see our answer to question 62.1);
5. Create a program to finance SME research set up by market operators, which should not be allowed to carry out any activity other than the operation of trading platforms (see our answer to question 60.1);
6. Create an EU database for research other than sponsored research (see our answer to question 63.1).

IV. Commodity markets[8]

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

ESMA has already conducted a consultation on position limits and position management. The report will be presented to the Commission at the end of Q1 2020. From a previous ESMA call for evidence, the commodity markets regime seems to have not had an impact on market abuse regulation, orderly pricing or settlement conditions. ESMA stresses that the associated position reporting data, combined with other data sources such as transaction reporting allows

competent authorities to better identify, and sanction, market manipulation. Furthermore, the Commission has identified in its Staff Working Document on strengthening the International Role of the Euro that “There is potential to further increase the share of euro-denominated transactions in energy commodities, in particular in the sector of natural gas”.

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

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

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

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

	1 (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 improving the functioning and transparency of commodity markets and address excessive commodity price volatility.	○	○	○	◉	○	○
The MiFID II/MiFIR costs and benefits with regard to commodity markets are balanced (in particular regarding the regulatory burden).	○	◉	○	○	○	○
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.	○	◉	○	○	○	○
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.						
The position limit framework and pre-trade transparency regime for commodity markets has provided EU added value.	◉	○	○	○	○	○

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

Quantitative elements for question 69.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 69.1:

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

The position limit and pre-trade transparency were difficult to implement at the IT level and to explain to customers. Indeed, the position limit regime is proving to be very burdensome for market members as regards the reconciliation of all positions. In addition, our experience shows that the positions to be reported are often those held on securitized derivatives by clients trading online, even though their positions are very small in size/value. In this regard, we believe that compliance with the position reporting requirement for such positions is rather burdensome and might be not very useful/effective for market abuse purposes. Therefore, we suggest introducing a minimum threshold (EUR 50,000/100,000) below which position reporting should not be required.

1. Position limits for illiquid and nascent commodity markets

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

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

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

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

	1 (most appropriate)	2 (neutral)	3 (least appropriate)	N.A.
Current scope	○	○	◉	○
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.

Question 71.1 Please explain your answer to question 71:

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

We suggest the creation of a list of instruments, managed by ESMA, which includes the relevant ISINs of the instruments for which there is a position limit obligation.

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

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

- [x] Open interest
- [x] 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:

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 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.

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.

Question 72.1 Please explain your answer to question 72:

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

Open interest is an important indicator of the size of the interest in commodities. Type and variety of participants should be referred not to market members only but should also include other intermediaries, provided that they act on behalf of final customers. Final customers themselves should also be involved in the process.

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

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

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

Question 73.1 Please explain your answer to question 73:

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

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

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

	Yes	No	N.A.
Nascent			
Illiquid			
Other			

Question 74.1 Please explain your answer to question 74:

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

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

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

Question 75.1 Please explain your answer to question 75:

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

2. Pre-trade transparency

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

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

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

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

Question 76.1 Please explain your answer to question 76:

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

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

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

V. Derivatives Trading Obligation[9]

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

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards more transparency and competition						

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

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

Quantitative elements for question 77.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 77.1:

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

We believe that the DTO regime has certainly promoted transparency and pricing efficiency as it favored the shift of trading from over the counter to markets. Nevertheless, there are still areas of improvement as such a regime is no longer aligned with the corresponding EMIR provisions (see Question 80.1) with consequent regulatory burdens for small financial counterparties and non-financial counterparties. These burdens are not justified in light of the benefits provided by the DTO regime.

Question 78. Do you believe that some adjustments to the DTO regime should be introduced, in particular having regards to EU and non-EU market making activities of investment firms?

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

Question 79. Do you agree that the current scope of the DTO is appropriate?

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

Question 79.1 Please explain your answer to question 79:

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

The introduction of EMIR Refit has not been accompanied by direct amendments to MiFIR, which leads to a misalignment between the scope of counterparties subject to the clearing obligation (CO) under EMIR and the derivatives trading obligation (DTO) under MiFIR. ESMA consulted in Q4 2019 on the need for an adjustment of MiFIR, receiving broad support for such an amendment and ESMA published their report on 7 February 2020.

Question 80. Do you agree that there is a need to adjust the DTO regime to align it with the EMIR Refit changes with regard to the clearing obligation for small financial counterparties and non-financial counterparties?

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

Question 80.1 Please explain your answer to question 80:

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

> We believe that there is a strong need to align the DTO regime with the EMIR Refit changes with regard to small financial counterparties and non-financial counterparties. The said regimes should maintain a close link over time and be promptly adjusted in case of changes to one of them as the clearing obligation under EMIR is a pre-requisite for the trading obligation under MiFIR. A clear reference to the EMIR corresponding provisions would be preferable in order to ensure a constant alignment.

VI. Multilateral systems

According to MiFID II/MiFIR, a 'multilateral system' means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system. MiFID II/MiFIR also requires all multilateral systems in financial instruments to operate as a regulated trading venue - being either a regulated market or a multilateral trading facility (MTF) or an organised trading facility (OTF) - bringing together multiple third-party buying and selling interests in a way that results in a contract.

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

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

- 1 - Disagree
- 2 - Rather not agree
-

3 - Neutral
- (●) 4 - Rather agree
- ( ) 5 - Fully agree
- ( ) Don't know / no opinion / not relevant

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

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

We think that the current definition of multilateral system adequately reflects the actual functioning of such markets without causing any competitive distortion or circumvention of the applicable discipline. However, we believe that it is crucial to carry out prompt enforcement actions in this area. In particular, such actions should be oriented in order to verify that systems operated by an entity that doesn't bear any risk and that - by interposing itself in each transaction- brings together multiple interests are classified and treated as "multilateral" (with subsequent application of all the rules provided for multilateral systems).

VII. Double Volume Cap[10]

MiFID II/MiFIR introduced a Double Volume Cap ('DVC') to curb "dark" trading by limiting, per platform and at EU level, the use of certain waivers from pre-trade transparency. Some stakeholders have criticized the DVC as a too complex process failing to reduce off-exchange trading in the EU. For instance, according to a 2019 Oxera study, the equity market share of systematic internalisers has risen to 25% since application of the DVC while the share of on venue trading is declining. For example, the market share of CAC40 shares trading on the primary stock exchange (Euronext) fell from 75% in 2009 to 62% in 2018 and Oslo Børs's market share of trading on OBX-listed shares dropped from 95% in 2009 to 62% in 2018. The proportion of public order book trading on the primary exchange in major equity indices has declined to between 30% and 45% of overall on-venue trading. The Commission services are seeking stakeholder's views on their experience with the DVC and its impact on the transparency in share trading.

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards						

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

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

Quantitative elements for question 82.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 82.1:

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

First of all, we would like to underline that one of the MiFIDII/MiFIR main goals is to increase market transparency. Therefore, the presence of dark pools must be strongly limited in order to achieve such goal. Secondly, we believe that the suspension from trading under the waivers - in case of breach of the DVC threshold - proved to be uneffective to curb dark trading. Therefore, we would suggest the review of the reference price waiver and the negotiated trade waiver adopting a stricter approach aimed at limiting their use. Should such approach not be agreed, then the DVC should be replaced by a different mechanism working promptly and not when the negative effects on transparency have already occurred.

VIII. Non-discriminatory access[11]

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

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

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

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

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

- Yes
- No
- Don’t know / no opinion / not relevant

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

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

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

Question 85. Are you aware of any market trends or developments (at EU level or at national level) which are a good or bad example of open access among financial market infrastructures?

Please explain your reasoning and specify which countries:

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

IX. Digitalisation and new technologies

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

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

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

Question 86. Where do you see the main developments in your sector: use of new technologies to provide or deliver services, emergence of new business models, more decentralised value chain services delivery involving more

cooperation between traditional regulated entities and new entrants or other?

Please explain your answer:

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

Question 87. Do you think there are particular elements in the existing framework which are not in accordance with the principle of technology neutrality and which should be addressed?

Please explain your answer:

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

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

Please explain your answer:

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

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

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

Question 89.1 Please explain your answer to question 89:

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

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

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

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

Question 90.1 Please explain your answer to question 90:

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

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

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

Question 91.1 Please explain your answer to question 91:

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

X. Foreign exchange (FX)

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

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

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

5 - Fully agree

Don’t know / no opinion / not relevant

Question 92.1 Please explain your answer to question 92:

5000 character(s) maximum

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

We believe that the current regulatory approach which excludes spot FX contracts from the category of financial instruments does not require amendments. In fact, we deem that the requirements/specifications laid down in article 10 of Delegated Regulation 565/2017 remedied to the lack of clarity regarding FX contracts recorded during MiFID I regime, therefore ensuring a consistent interpretation in the UE and providing a further positive contribution to EMIR implementation as the latter, on its turn, relies on “derivatives contract” definition provided at EU level. Therefore, spot FX contracts should continue to be outside the financial instruments’ regulation.

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.

Considering the importance of the MiFID II/R framework review, we would like to stress the need to carry on and to complete the process in the shortest time possible.

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

Please explain your answer:

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

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

The maximum file size is 1 MB.
You can upload several files.
Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Useful links

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

More on this consultation (https://ec.europa.eu/info/publications/finance-consultations-2020-mifid-2-mifir-review_e

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

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

Contact

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