

Response Form to the Consultation Paper

MiFIR review report on the obligations to report transactions and reference data



Responding to this paper

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

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

ESMA will consider all comments received by **20 November 2020**.

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

Instructions

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

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_CP_TRRF_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA_TRRF_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_TRRF_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open Consultations" → "Consultation paper on MiFIR review report on the obligations to report transactions and reference data").

Publication of responses

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

Data protection

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

Who should read this paper?

This document will be of interest to all stakeholders involved in the securities markets. It is primarily of interest to competent authorities and firms that are subject to MiFID II and MiFIR – in particular, investment firms and credit institutions performing investment services and activities and trading venues. This paper is also important for trade associations and industry bodies, institutional and retail investors and their advisers, and consumer groups, as well as any market participant because the MiFID II and MiFIR requirements seek to implement enhanced provisions to ensure the transparency and orderly running of financial markets with potential impacts for anyone engaged in the dealing with or processing of financial instruments.

General information about respondent

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

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_CP_TRRF_1>

As a general consideration we would like to underline that the Consultation Paper seems oriented to set out certain obligations on SIs having the ultimate effect to assimilate them to trading venues. As a result, the different treatment introduced by MiFIDII/MiFIR regime for SIs and trading venues would be disappplied for most part. Our members acting as SIs strongly object to this proposed approach considering that they have done investments relating to the carrying out of SI's activity (and, in certain cases, decided to opt-in) on the basis of the current MiFID II/MiFIR SI's legal regime which now ESMA is proposing to amend after three years of application only. Such a short timeframe does not even allow the amortisation of all the costs borne to comply with the SI's regime. The introduction of further costs due to the need to comply with the proposed requirements would make the situation even worse considering the current (and the envisaged) critical situation for intermediaries caused by the pandemic. Finally, such changes could discourage intermediaries from opting-in thus reducing the overall transparency level. Considering the above, we would propose ESMA to maintain the current regime and, in any case, to perform a deep impact analysis of the proposed changes.

<ESMA_COMMENT_CP_TRRF_1>

Questions

Q1 : Do you foresee any challenges for UCITS management companies and AIF managers in providing transaction reports to NCAs? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_1>

We believe that such extension would add further costs without producing adequate benefits as the majority of UCITS/AIF's transactions are already reported by investment firms as the latter act as executing broker on behalf of management companies.

<ESMA_QUESTION_TRRF_1>

Q2 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_2>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_2>

Q3 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_3>

With respect to the last paragraph of the proposed new version of article 26(8) we would kindly ask confirmation that the "transmission of copy of the reports" provided therein is a requirement on competent authorities (e.g. on the NCA of the home MS in favour of the NCA of the host MS) and not on intermediaries.

<ESMA_QUESTION_TRRF_3>

Q4 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_4>

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<ESMA_QUESTION_TRRF_4>

Q5 : Do you envisage any challenges in increasing the scope including derivative instruments traded through an SI as an alternative to the expanded ToTV concept? Please justify your position and if you disagree please suggest alternatives.

<ESMA_QUESTION_TRRF_5>

We deem that the proposal at stake is one of the elements of the CP which - as outlined in our introductory comments above - could affect the current legal regime applicable to SIs on which the financial industry relied upon in order to adopt business decisions about SIs activities. Furthermore, the envisaged changes would introduce new reporting/transparency obligations for SIs entailing additional operational and IT costs. Therefore, we cannot agree with ESMA's proposal. The approach proposed by ESMA – besides having a critical impact on SIs' activity – would also reflect on SIs' counterparties because it would increase the number of instruments to be reported. We also note that this approach would broaden such number of instruments without being exhaustive in the end because other kind of derivatives (e.g. bespoke derivatives) would be out of scope since – as ESMA correctly provides – *“imposing transparency on those non-standardised derivatives might not only represent an unnecessary burden for reporting entities but it might, more generally, introduce reporting noise for other participants rather than meaningful transparency”*. Therefore, our members see no material benefits in the proposal, also considering that the derivatives at stake (e.g. those traded through SI systems) would be already captured by EMIR reporting obligations. The inclusion of such instruments would basically duplicate the reporting requirements without tangible benefits.

<ESMA_QUESTION_TRRF_5>

Q6 : Do you agree that the extension should include all Systematic Internalisers regardless of whether they are SI on a mandatory or voluntary basis? Please justify your position.

<ESMA_QUESTION_TRRF_6>

On the assumption that we are against the extension proposal for the reasons explained in our answer to Q5 above, in case of its adoption we would suggest to include SIs on a mandatory basis only in order not to discourage intermediaries from opting-in especially in the critical economic scenario due to the pandemic.

<ESMA_QUESTION_TRRF_6>

Q7 : Do you envisage any challenges with the approach described in paragraphs 45-46 on the scope of transactions to be covered by the extension? Please justify your position and indicate your preferred option for SIs under the mandatory regime explaining for which reasons. If you disagree with all of the outlined options, please suggest alternatives.

<ESMA_QUESTION_TRRF_7>

We recall our answer to Q5 above with respect to the challenges with the approach proposed by ESMA. However, on the assumption that we are not in favour of said approach, we would propose the adoption of Option 3.

<ESMA_QUESTION_TRRF_7>

Q8 : Do you foresee any challenges with the proposal to replace the reference to the term “index” in Article 26(2)(c) with the term “benchmark” as defined under the BMR? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_8>

We would prefer Option 3 (maintaining the status quo).

<ESMA_QUESTION_TRRF_8>

Q9 : Which of the three options described do you consider the most appropriate? Please explain for which reasons and specify the advantages and disadvantages of the outlined options. If you disagree with all of the outlined please suggest alternatives.

<ESMA_QUESTION_TRRF_9>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_9>

Q10 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_10>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_10>

Q11 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_11>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_11>

Q12 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_12>

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<ESMA_QUESTION_TRRF_12>

Q13 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_13>

Although we are not in favour of the proposal to include derivative instruments traded through an SI (not having underlying traded on a TV) in reference data reporting obligations (as better detailed in our answer to Q5 above), we note that the proposed text of the amended article 27 makes a general reference to “financial instruments” and not to derivatives with the characteristics set out by ESMA in paragraph 65. Therefore, we believe that there is a mismatch between ESMA’s aim and the wording proposed. Should ESMA effectively adopt the approach described in Section 4.1 of the CP, then the text of the amended article 27 should be recalibrated accordingly by specifying the financial instruments (derivatives only) in scope for SIs.

<ESMA_QUESTION_TRRF_13>

Q14 : Did you experience any difficulties with the application of the defined list concept? If yes, please explain.

<ESMA_QUESTION_TRRF_14>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_14>

Q15 : Do you foresee any challenges with the approach as outlined in the above proposal? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_15>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_15>

Q16 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_16>

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<ESMA_QUESTION_TRRF_16>

Q17 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_17>

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<ESMA_QUESTION_TRRF_17>

Q18 : Do you foresee any challenges with the approach outlined in paragraphs 75 and 76? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_18>

We believe that the proposal to extend the obligation to generate a TVTIC to the transactions executed by SIs is one more element supporting our members' opinion about the fact that the CP is oriented to level the field between trading venues and SIs while MiFIDII/R regime clearly drew a line between such venues since it does not consider transaction executed through a SI as executed on a trading venue. As we underlined in other sections of this document, the application of the obligation at stake would increase the costs for SIs' activities and discourage intermediaries from opting-in (with loss of business opportunities in a scenario heavily jeopardised by the pandemic). Furthermore, the implementation of the internal code proposed in paragraph 76 of the CP is unclear for our members, so they ask whether it will require the population of an additional field in the transaction reporting records.

<ESMA_QUESTION_TRRF_18>

Q19 : Do you foresee any difficulties with the implementation of an additional code generated by the trading venue to be disseminated down the transaction chain in order to link all transactions pertaining to the same execution? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_19>

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<ESMA_QUESTION_TRRF_19>

Q20 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_20>

We do not agree with the proposal to report MiFiD clients' categorisation details. We deem that the inclusion of such information would only add complexity to TR reports which are already very complex due to the large amount of data to be inserted. Furthermore, it will require additional IT developments (with consequent costs) for intermediaries with no expected material benefits. In fact, our members consider that clients' categorisation details pursuant to article 24 of MiFiD II are usually acquired by our NCA by means of ad-hoc request (information supervision). We believe that this kind of data transmission is more expedient than the transmission via TR records because the latter would entail the inclusion of such details into a large amount of data having different nature and purpose. In this respect, we note that clients' categorisation details seem to be out of scope with respect to market abuse purposes which are the basis of the transaction reporting regime.

<ESMA_QUESTION_TRRF_20>

Q21 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_21>

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<ESMA_QUESTION_TRRF_21>

**Q22 : Which of the two approaches do you consider the most appropriate?
Please explain for which reasons.**

<ESMA_QUESTION_TRRF_22>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_22>

**Q23 : Do you foresee any challenges with the outlined approaches? If yes,
please explain and provide alternative proposals.**

<ESMA_QUESTION_TRRF_23>

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<ESMA_QUESTION_TRRF_23>

**Q24 : Do you foresee any challenges with the outlined approach to pre-trade
waivers? If yes, please explain and provide alternative proposals.**

<ESMA_QUESTION_TRRF_24>

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<ESMA_QUESTION_TRRF_24>

**Q25 : Have you experienced any difficulties with providing the information
relating to the indicators mentioned in this section? If yes, please explain and
provide proposals on how to improve the quality of the information required.**

<ESMA_QUESTION_TRRF_25>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_25>

Q26 : Do you foresee any challenges with this proposal? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_26>

Theoretically speaking our members are in favour of the proposal although they would like to underline the increase of costs linked to the need of populating the new field relating to buyback programs in TR records. Therefore, indications relating to the end of the timeframe of the double reporting (e.g. according to MAR regime and to MiFIR transaction reporting regime) would be appreciated in order to fully assess the proposal.

<ESMA_QUESTION_TRRF_26>

Q27 : Do you agree with this approach? If not, please clarify your concerns and propose alternative solutions

<ESMA_QUESTION_TRRF_27>

We do not agree with the proposed approach because we deem that data quality issues detected by ESMA with respect to reporting carried out by transmitting firms should be solved not by providing an obligation on receiving investment firms. We underlined in this document how financial industry is affected by costs relating to the implementation of, inter alia, MiFID II/R; consequently, we are not in favor of the introduction of requirements entailing the incurrence into further costs.

<ESMA_QUESTION_TRRF_27>

Q28 : Do you agree with this analysis? If not, please clarify your concerns and propose alternative solutions.

<ESMA_QUESTION_TRRF_28>

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<ESMA_QUESTION_TRRF_28>

Q29 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_29>

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<ESMA_QUESTION_TRRF_29>

Q30 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_30>

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<ESMA_QUESTION_TRRF_30>

Q31 : Are there any specific aspects relating to the ISIN granularity reported in reference data which need to be addressed? Is the current precision and granularity of ISIN appropriate or is (for certain asset classes) a different granularity more appropriate?

<ESMA_QUESTION_TRRF_31>

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<ESMA_QUESTION_TRRF_31>

Q32 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_32>

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<ESMA_QUESTION_TRRF_32>

Q33 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_33>

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<ESMA_QUESTION_TRRF_33>