

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

Fields marked with \* are mandatory.

## Introduction

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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.**

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**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](mailto: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

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\* 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

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\* First name

Randy

\* Surname

Pattiselanno

\* Email (this won't be published)

rp@dufas.nl

\* Organisation name

*255 character(s) maximum*

DUFAS (Dutch Fund and Asset Management Association)

\* 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.

Yes, DUFAS is registered under ID 08715619851-22

\* Country of origin

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

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- 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
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- Gibraltar
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- 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
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- Moldova
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- Montserrat
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- Mozambique
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- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
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- Sierra Leone
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- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
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- Sudan
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\* 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
- Other
- Not applicable

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

DUFAS (The Dutch Fund and Asset Management Association) promotes the collective interests of asset managers, investment firms and custodians, operating on and from the Dutch market place – both Dutch and foreign parties. DUFAS represents over 95% of the Dutch asset management market, both retail and institutional business.

\* 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.

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.

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- 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.

DUFAS supports the objectives of the MiFID MiFIR framework. Enhancing investor protection and achieving more transparency in the market infrastructure is essential for the proper functioning of European capital markets. However, implementation of the level of detail of the rules, inter alia via level 3 ESMA Q&As, represented a clear challenge for the European financial industry as a whole whilst at the same time, the question arises whether such level of detail is proven to be beneficial for the functioning of the capital markets and the protection of the investor.



**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).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve the MiFID II/MiFIR objectives.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR objectives correspond with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR has provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

**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.

As mentioned DUFAS supports the objectives of the MiFID MiFIR framework. At the same time the level of detail of the rules, inter alia via level 3 ESMA Q&As, creates such an implementation challenge for investment firms that it can be questioned whether this strikes the right balance between the goals and the regulatory burden. When it comes to e.g. investor protection rules, it may be questioned whether the increased transparency and reporting toward the retail investor, given the level of detail, contributes to a better understanding of the retail client of investing and investment products, or indeed contributes to a decrease of information asymmetries for all types of investors.

Furthermore, the current investor protection framework does not sufficiently differentiate between retail client and professional clients. Investor protection rules imposed on the investment firm which renders services to professional clients may not be balanced with the interest you may wish to protect. Applying retail oriented rules in the relation with professional clients may sometimes lead to 'ritual dances' in the interaction, especially when it comes to integrated portfolio management and/or advice services. Communication with professional clients in a retail oriented way often causes resistance and is often not well received by professional clients. Moreover, often professional clients are also regulated entities, such as insurance companies and pension fund schemes, and as such are also already obliged or used to report in a certain manner. Such reports are often not aligned with the reporting requirements under MiFID II, and therefore unnecessarily cumbersome and expensive for these types of professional clients superfluous.

### **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.

Supervisory convergence: We acknowledge that level 3 Q&As by ESMA is aimed to establish as much supervisory convergence as possible. However, the question arises whether or not national supervisory authorities set the same priority in their supervision of the various regulatory topics.

National guidance: Furthermore, even beyond the ESMA Q&As, NCA's may still impose or issue additional national guidance or interpretations of the MiFID regime. Such practices, although done with the best intentions, should be avoided as they create an impediment for the effective use of passports throughout the EU, in particular in the area of distribution of financial products. More coordination by NCAs is therefore necessary as different local interpretations, as well as supervisory priorities, lead to different outcomes in certain Member States. An example is the circumstance that the Dutch regulator, AFM, is of the opinion that ADL or swing pricing should be disclosed as a service transaction costs even when it is reflected in the single tradable price for a fund on a given day (per guidance that the AFM issued at the end of last year). Whereas we know that other NCAs are not sharing this opinion.

**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.

**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.

**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.

Interplay between product governance rules and suitability or appropriateness testing

Essentially, one could argue that the combination of MiFID II product governance on one end and suitability or appropriateness testing on the other hand leads to less access of retail client to investment products that may be suitable or appropriate. For example, a simple alternative investment fund (AIF) authorized for retail distribution may for product governance purposes be sold to mass retail in accordance with the target market setting by the fund provider. However, as an AIF is considered to be a complex investment product under the MiFID definition, it could well be the case that such a product might not be sold on a MiFID execution only basis without applying the appropriateness test. If a distributor has set up an execution only service without the required appropriateness test such AIF will not be eligible for distribution on such platform whereas a similar UCITS fund might, but only because of the legal structure, not because of the (lower) complexity of the product.

In The Netherlands retail clients in increasing numbers invest on a non-advised, i.e. execution only basis. Distribution of investment products on a non-advised platform also makes it harder for investment firms to ensure that the target market of the investment products corresponds with the targeted end-clients. This is the case in particular where the target market setting is more granular, and especially also where it concerns complex products.

Hence, given the example, but also more in general, we believe that the interaction between the product governance rules vis-à-vis the appropriateness test are not well calibrated and causes a mismatch which may be hard to explain to a retail client. Particularly, as the product governance process regime is an internal process and the reflections of this process is not always visible for the retail client. And given the circumstance that the MiFID II execution only regime in essence has not changed much.

Furthermore, in The Netherlands a shift of retail clients which invest on a non-advised, i.e. execution only basis, is also caused by the introduction of the Dutch full inducements ban in 2014 and the increased investor protection obligations for advisory services pursuant to MiFID II, but also civil law due care considerations.

## 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.

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<sup>1</sup> 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**

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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<sup>1</sup>**

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## 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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Overly strict regulatory requirements for providing a CT	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Competition by non-regulated entities such as data vendors	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of sufficient data quality, in particular for OTC transactions and transactions on systematic internalisers	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

#### 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.

In general members of DUFAS recognize that apparently for market data processing via CT seems to be less appetite for commercial organizations. Apparently operating a CT does not seem to be viable. Some members doubt the added value of a CT where they do not use pre- and post-trade market data on a regular basis, particularly trades are primarily in fixed-income and derivatives only. However where liquidity gets more scattered the need for the development of a CT may increase. Other members which trade more in equity instruments advocate the development of a CT. In addition, they also believe that the development of a European CT may also benefit the further development of the CMU. Such CT should however be properly constructed and governed. Access to the CT should be ensured, also by keeping the costs of market data low.

In general, one of the main issues and reasons why we believe a CT has not been developed yet relate to the market data costs. Who will bear the costs of such CT and which party will be most equipped to develop and run such CT. In this context DUFAS believes that whoever will be operating the CT, strict supervision by ESMA and NCAs on the pricing of market data is essential for the development of a CT. We advocate that ESMA and NCAs will supervise the “reasonable commercial costs” with much more scrutiny. This in order to mitigate the cost of market data, which also may lead to increase of the reliance of market participants to such data. This will at the end of the day make the development of a CT much more viable.

**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.

At this stage we do not see a need for a dedicated framework of a CT. However, whenever the EC decides to develop a dedicated framework, this should properly be publicly consulted.

## **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.

DUFAS believes that where the targeted amendments addresses the concern of financial market parties about the increasing costs, we would certainly agree. We are therefore pleased that the EC and ESMA acknowledge the issues around the market data costs.

**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)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring best execution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Documenting best execution						



	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Better control of order & execution management	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Regulatory reporting requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Market surveillance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Liquidity risk management	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Making market data accessible at a reasonable cost	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Identify available liquidity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Portfolio valuation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**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.

Although some members doubt whether the CT may be beneficial, also in terms of costs and benefits analysis, other members of DUFAS believe that the development of the CT benefits the CMU. It may potentially lead – where adequately developed and on a reasonable costs basis- to more transparency, better price information, increase of investor confidence, and a greater share of retail investments in the capital markets. The assumption is that the development of such CT leads to more standardized data, comparable data, and it may increase the quality of data. Transparency provided by a CT may also address concerns around the extent of ‘dark’ trading and role of investment firms operating an SI. In any case the use of the CT should be properly constructed and governed.

## 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<sup>2</sup> 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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<sup>2</sup> 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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Mandatory contributions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mandatory consumption	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Full coverage	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Very high coverage (not lower than 90% of the market)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Real-time (minimum standards on latency)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The existence of an order protection rule	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Single provider per asset class	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Strong governance framework	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**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.

Where a CT will be developed, we believe that in any case firstly the use of the CT should be properly constructed and governed. Secondly, the cost and access to the market data in the CT should be properly managed, i.e. the CT should be accessible on a low-cost basis. Cost of the CT could be shared among sell-side, buy-side and vendors. In order to ensure high quality of the market data in the CT a mechanism of revenue sharing could be put in place. This may provide incentives to the relevant market parties to ensure and guarantee the high quality of the data. Thirdly, a comprehensive plan as to the implementation of the CT should carefully be considered. We therefore advocate that the development and set up of the CT should be properly consulted by ESMA.

**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.

Members of DUFAS doubt whether mandatory consumption is necessary. Market parties already use most of the market data envisaged to be included in the CT. Consumption should be stimulated by the quality and user friendliness of the CT and the data contained herein. Where access to data is ensured because of low-costs and high quality, mandatory consumption is not necessary.

**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.

**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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Fees should be differentiated according to type of use	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Revenue should be redistributed among contributing venues	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
In redistributing revenue, price-forming trades should be compensated at a higher rate than other trades	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The position of CTP should be put up for tender every 5-7 years	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**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.

For members it is essential that the development and operating costs should be kept as minimal as possible, also by using existing infrastructures on various reporting. Acces and availability of the CT should be at reasonable cost.

### 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 <sup>3</sup>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shares post-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

ETFs pre-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
ETFs post-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Corporate bonds pre-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Corporate bonds post-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Government bonds pre-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Government bonds post-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Interest rate swaps pre-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Interest rate swaps post-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Credit default swaps pre-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Credit default swaps post-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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<sup>3</sup> 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.

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.

### **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	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shares admitted to trading on an MTF with a prospectus approved in an EU Member State	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**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.

**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.

#### **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.

**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.

**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)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Maintain the STO with adjustments (please specify)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Repeal the STO altogether	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**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.

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	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
SIs should no longer be eligible execution venues under the STO	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.

**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.

**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.

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.

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.

**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?**

		2		4	5	
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	1 (disagree)	(rather not agree)	3 (neutral)	(rather agree)	(fully agree)	N. A.
Abolition of post-trade transparency deferrals	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shortening of the 2-day deferral period for the price information	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shortening of the 4-week deferral period for the volume information	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Harmonisation of national deferral regimes	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Keeping the current regime	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

### 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.

## II. Investor protection<sup>4</sup>

**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.

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<sup>4</sup> 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.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more investor protection.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More investor protection corresponds with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The investor protection rules in MiFID II/MiFIR have provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

**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:**

	<b>Estimate (in €)</b>
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.

In general DUFAS believes that an enhanced framework of investor protection under MiFID II benefits the needs within in EU capital markets. However we do have the following observations:

**Retail versus professional:** the current investor protection framework does not sufficiently differentiate between retail client and professional clients. Investor protection rules imposed on the investment firm which renders services to professional clients may not be balanced with the interest you wish to protect. Applying retail oriented rules to professional clients may sometimes lead to 'ritual dances' in the interaction, especially when it comes to integrated portfolio management and/or advice services. Communicating with professional clients in a retail oriented way causes resistance and is often not well received by professional clients. Moreover, often professional clients are also regulated entities, such as insurance companies and pension fund schemes, and as such are already obliged to report in a certain manner. Such reports are often not aligned with the reporting requirements under MiFID II, and therefore unnecessarily cumbersome and expensive for these types of professional clients.

**Detailed framework:** since the entering into force of MiFID II, a detailed framework has been implemented aimed at enhancing investor protection. In general, we support the idea of enhancement of investor protection rules, but we fear that some of them – because of the sheer amount of details - are not being well understood by retail clients, for example the very detailed rules on costs and charges or the 10% loss reporting requirement. Although we appreciate the efforts of ESMA to provide more clarity via its current approach in the form of continuously updated Q&As, we doubt whether this level of detail is beneficial to the retail investor, while at the same time it makes it virtually impossible for investment firms to become compliant.

**Supervisory convergence:** furthermore, whilst the ESMA Q&As are intended to ensure more supervisory convergence, we still notice a difference between supervisory practice of the various NCA's in terms of interpretation or because of the provision of additional national guidance, e.g. national Q&As, but also in terms of the setting of priorities by NCA's. Ensuring a level playing field amongst supervisory practices is therefore key!

**Alignment with other EU legislation:** MiFID II does not interact smoothly with other pieces of EU legislation regarding financial markets nor with legislation that also aims to increase investor protection such as PRIIPs.

**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	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs and charges requirements	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Conduct requirements	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

## 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.

Product and governance requirements: first of all, we believe that product governance rules should either apply to retail clients only, or at least that much more proportionality and more flexibility should be allowed for determining e.g. the target market where it states to be applicable to professional clients. Secondly, it should focus primarily on complex products.

Costs and charges: we do recognize that the MiFID II rules regarding costs and charges, aimed at showing aggregated cost transparency of both the service and the financial investment product, benefits the retail investor. However, the MIFID II Delegated Regulation provisions on cost and charges should be revised in order to provide much more distinction between retail investors on one hand and professional and eligible counterparties (ECP) on the other hand. Contrary to retail clients, we believe that for ECPs and professional clients specifying the format of the aggregate cost transparency has no added value. ECPs and professional clients should be or are capable to assess the cost of the service and the products without the necessity of such format. Most of the information is already provided by the investment firm in documentation used in the professional market, such as standardized documentation on certain mandates. We therefore believe that ECPs or professional investors should be exempted from the costs and charges requirements or, alternatively, they should be given the option to opt-out of many of the prescribed ex-ante and ex-post requirements. Professional parties should be free to agree amongst themselves how to deal with cost disclosures.

Although we definitely see merit in providing retail clients with aggregated costs and charges information both on an ex-ante and ex-post basis, we think that the level of detail of this cost information goes far beyond what an average retail investor is either interested in and/or can comprehend. Hence we advocate to lower the level of detail of the costs and charges requirements and also shift the focus on such information from the transaction level, which provides far too much detail, to an overall portfolio level.

Conduct of business rules: 10% loss reporting: We believe that the current reporting requirement for portfolio managers in the case of a 10% depreciation of the portfolio should be deleted, at least for professional investors. We believe that professional clients do not need this information. Moreover, they are capable to assess and monitor this themselves. In addition to this, market practice shows that there is often already telephone contact on losses between firms and professional clients on the portfolio's, also where such losses are far less than 10%. We also believe that '10% loss reporting for retail investors may not contribute to more investor protection. Particularly, where such reporting is triggered for non-advised portfolios and also connected to certain leveraged instruments, the questions arises whether such reporting really adds to the concept of more investor protection. The recent losses in investment portfolios resulting from the global COVID-19 crisis may provide an example to learn whether or not such reporting really has added value. Most of our members confirm that even in times of the COVID-19 this is not the case. Such reporting looks rather ineffective. Direct contact with clients in a crisis is much more effective and appreciated instead of

standardized reporting. Eventually, where clients may have a need for such reporting, it should be possible to agree upon such reporting on a bilateral basis between the client and the investment firm rather than impose such reporting as a mandatory standard.

Client level: Most of investor protection rules seem to more focused on a product level or transaction level rather than on a client-oriented or portfolio level. Retail investors do benefit much more where the investment firm approaches them in more client-focused manner. For example, for retail clients generally, a focus on an overall transparent report of anticipated costs and charges on a portfolio level has much more value than the aggregated costs at transaction level when it relates to advisory services. For retail clients the overall picture is important. The same applies where it relates to providing insight on the effects of costs on the (expected) return of the portfolio. Applying the latter on a transaction basis does not add much insight in a well diversified portfolio. Where we look at product governance, we also see that there is a focus on the individual investment product, not on the entire portfolio. Here again, we feel that for the retail client the focus should shift to the portfolio of the client.

Finally, a too strict investor protection regime may also have the result that it may limit the access of retail client to products which may well be suited for them.

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

*5000 character(s) maximum*

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

In general, we support the concept of differentiating between complex and non-complex, i.e. simple investment products. However, the question arises whether this is always well defined and aligned. For example, there is a discrepancy between product governance rules and the execution only regime when it comes to complex versus non complex products. For product governance purposes a simple AIF retail fund may considered to be non-complex. Target market may be mass retail, whilst at the same time AIFs are considered to be complex for the execution only MiFID regime. Hence, an appropriate test applies to such AIF, whilst such test would not apply to a similar fund structured as an UCITS. This is confusing for a retail client, whilst the difference can only be explained by the difference in legal and regulatory structure. We therefore, believe that these types of funds should be considered to be non-complex across the entire EU within the meaning of article 57 of the MiFID II Delegated Regulation.

## **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.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Only ECPs should be able to opt-out unilaterally.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Professional clients and ECPs should be able to opt-out if specific conditions are met.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
All client categories should be able to opt out if specific conditions are met.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**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 we already indicated under question 31.1, we believe that the current investor protection framework does not sufficiently differentiate between retail and professional clients. Investor protection rules imposed on the investment firm which renders services to professional clients may not be balanced with the interest you may wish to protect.

Dufas believes that not all ex-ante information costs and charges information is very relevant for professional clients and ECP's. These parties regularly trade in a variety of financial instruments as part of their normal business and the required ex-ante information will not provide much additional insight. If an investor qualifies as professional, this person/entity should be able to understand the investment characteristics based on the information provided and not be dependent on the MiFID categories for its insight. Furthermore, in current practice, in the various mandates and investment services concluded between professional parties, costs disclosures are already included and agreed upon bilaterally. Adding ex-ante cost information basis on the MiFID II formats has no added value. Particularly, insurance companies and pension schemes have their own prescribed reporting templates (including cost) based on Solvency II respectively IORP rules. Adding an extra ex-ante cost information based on the MiFID format seems superfluous and drives up cost unnecessarily.

In the context of costs and charges information, we therefore believe that ECPs or professional investors

should be exempted from the costs and charges requirements. Professional parties should be free to agree amongst themselves how to deal with costs disclosures.

If an exemption is not feasible, professional clients should at least be able to opt-out from the costs and charges information based on the prescribed ex-ante and ex-post requirements. Provided that one of the 'specific conditions' to be met would at least be that the client is truly qualifying as professional and an opt-up professional (having sufficient level of knowledge and experience).

As an alternative, one could also consider a combination. Some professional clients, particularly those professional clients such as pension schemes and insurance companies which have their own regulatory reporting, could be exempted, whilst professional clients that are not subject to regulatory reporting requirements, would not be exempted per se, but should be allowed 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.

DUFAS believes that digital communication should be the default way of working. However, we do think that the client should always be able to obtain certain information on paper. Particularly for those clients who do not have access to digital channels. Although we believe the number of such clients will decrease over years and much more information will be provided on a durable medium. Hence, there should always be an opt-out for clients, provided this also fits with in the way of doing business of the investment firm. Specific attention should be for the costs of such phase-out. Such phase-out should be made possible against reasonable costs.

### 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	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
General phase out within the next 10 years	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
For retail clients, an explicit opt-out of the client shall be required.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
For retail clients, a general phase out shall apply only if the retail client did not expressly require paper based information	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**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.

We believe that a general phase-out of paper-based information could be implemented within the next 5 years for most of our members. However, as said before, both retail and professional clients should have the possibility to opt-out.

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.

DUFAS considers that there may be merit in setting up an Europe-wide database that includes information on products and costs, although at the same time Dufas also has concerns about this set up. Comparison of certain investment products, such as PRIIPs investment products or other complex products should be encouraged and possibly one logically consistent database could be very helpful achieving this. Although we see some merit in such a database we do, however, have the following questions or concerns:

User: who will be the user of the database? Will that be the distributor or will that be the retail investor? The set up of the database will depend on this. If the retail investor is the intended user of such data, the question arises how would you market such data base. i.e. how would it be ensured that the retail investor really uses this database? Would it also mean that this database should include the technology and smart tooling which is essential for enabling it or making it attractive or easy for retail clients to compare investment products via such database? And how will it be ensured that the use of such tool or databases may not considered to be the rendering of investment advice or the provision of investment recommendations?

Administration; the question arises whether it should be ESMA who should manage such database or a third party supervised by ESMA? Is the set up of such database at all a public task?

Cost: in terms of cost, it is essential to know what the cost will be and who will bear such cost.

Part of Regulation: is it the intention that the operation of such database will be part of the MiFID II, and if so what is the reasoning behind this?

In general and if this idea is to be further developed in more detail, we definitely call for ESMA or the Commission to publicly consult about the set up of such a Europe-wide database for investment products, where the issues set forth above are amongst those addressed.

**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	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
All products that have a PRIIPs KID/ UCITS KIID	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Only PRIIPs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**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.

DUFAS believes that, if and when such EU wide database would established, it should be focused on particularly retail investment products falling under UCITS, AIFs or other PRIIPs products. It does not seem to be necessary to include alle transferable securities such as plain vanilla shares. Furthermore, where in the future possibly, -though not desirably-, the UCITS KIID still will be mandatory for professional clients, such investment products should also not necessary be included in such database.

**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.

At this stage, we believe that it hard to assess whether ESMA would be well place to develop such a tool, as it also depends on answering to the questions set forth in 37.1. The question also arises whether the set up of such a EU wide database should be considered to be a public task. Maybe private third parties would be better able to achieve this. We strongly recommend ESMA or the European Commission, if and when the idea about the database would be developed in more detail, to publicly consult about the set up of such Europe-wide database for investment products.

**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<sup>5</sup>.The CMU-Next group suggested a new category of experienced High Net Worth (“HNW”) investors with tailor made investor protection rules<sup>6</sup>.

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<sup>5</sup> 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.

<sup>6</sup> 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.

On the one hand the group of retail investors under the MiFID II definition is quite large, without any granularity in retail clients, However, in practice investment firms already distinguish their own subcategories within this retail client group apart from the MiFID II client classification. Common distinction are mass retail client (up to a certain threshold for investable assets), private clients (beginning from a certain threshold investable assets), and high net-worth individuals.

**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 have no firm opinion on the question whether or not the threshold for professional clients on request should be lowered as such. This depends on the entire revision of the professional framework under MiFID and should not be approached in isolation. See further our response under question no 42.

**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.

New category: Some of our members support the introduction of a new category or amendment whilst at the same time this may lead to a new category of clients and thus result in an additional administrative and operational burden on firms. This new category is particularly relevant in the event the requirements between

professional clients and retail clients diverge, e.g. in relation to product governance requirements. Should the MiFID conduct rules for professional client and retail clients be not much different, there is less need for a new category. Whereas in case the framework between professional and retail investors are quite different, adding a new category in between becomes more relevant. Essentially, whether or not a new category should be introduced depends on the entire MiFID framework, and the way a distinction is made between both types of investor. Moreover, it is essential that client classification, including such new category corresponds with the categories used in other legislation such as PRIIPs, AIFMD and the Prospectus Regulation in order to avoid any confusion.

Amending opt-up professional: In addition some of our members advocate amending the current opt-up professional category. Finally, as a main goal in the context of the CMU, adding a new category or alternatively an amendment of the current opt-up professional category, should have the result that there will be more capital flows into sustainable investment products, AIFs and ELTIFs which may be less liquid, but may at the same time be attractive for those investors that have a long term horizon. An amendment of the current opt-up professional investor regime could facilitate this, e.g. by lowering the threshold for the number of required transactions to e.g. a threshold of two transactions per year in case of illiquid instruments such as AIFs and ELTIFs.

### 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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Information provided on costs and charges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Product governance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

#### 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.

As we indicated previously, should the MiFID conduct rules for professional client and retail clients be not much different, there would be less need for a new category, whereas if the framework between professional and retail investors is quite different, adding a new category in between becomes more relevant. In the latter case, where the introduction of a semi-professional category has added value, we believe that adjustment of the investor protection rules such as the suitability or appropriateness test and product governance seems logical. In addition, adjustment of the information obligations should not only be made for costs and charges, but also regarding other information obligations such as the 10% loss reporting requirement.

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**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.

Members of DUFAS find the change in current operations hard to predict. It depends whether a new category for a semi-professional client is added or whether or not the current professional on request, i.e. the opt-up professional, rules are amended. Where application of certain conduct of business rules is no longer required for semi-professional clients- which clients used to be retail clients- this would obviously be a one-off change. Where application of certain conduct of business rule are slightly amended to reflect a lighter protection regime for semi-professional clients- which clients used to be retail clients- this obviously would be a recurrent process.

**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).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Semi-professional clients should be identified by a stricter financial knowledge test.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
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.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**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.

Members of DUFAS believe that the number of transactions which a client has to undertake per quarter penalizes sophisticated long-term investors who have a buy or hold strategy and/or use the services of a professional advisor or consultation for the purposes of portfolio construction. Furthermore, the number of transactions conducted may very well depend on underlying market volatility and the need to hedge reallocate positions on the basis of market movements. Hence, the number of transactions should also be depended on the type of instrument, and the frequency should also at least be set on a yearly basis rather than a quarterly basis.

While experience in the financial sector does constitute relevant experience, we believe there are a number of other examples firms could use to establish experience. DUFAS members support a more flexible approach which would allow firms to assess client experience on the basis of a flexible number of criteria. For example, it is a very different process to assess the experience of a high net worth individual who may or may not have a retained advisor or discretionary portfolio manager or a trustee of a local authority pension fund who has access to sophisticated advice from a specialist pensions consultant.

#### **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.

Interplay between product governance rules and suitability or appropriateness testing

Essentially, one could see and argue that the combination of MiFID II product governance on the one hand and suitability or appropriateness testing on the other hand leads to less access of retail client to services or products that may be suitable or appropriate. For example, a simple alternative investment fund (AIF) authorised for retail distribution may be sold to mass retail for product governance purposes in accordance with the target market setting by the fund provider. However, as an AIF is considered to be a complex investment product under the MiFID definition, it could well be the case that such product may not be sold on a MiFID execution only basis without applying the appropriateness test. If a distributor has set up an execution only service without an appropriateness test, such AIF is then not eligible for distribution under such platform, whereas a similar UCITS fund might, but only because of the legal structure, not because of the complexity of the product. In The Netherlands retail clients invest increasingly on a non-advised, i.e. execution only basis. Distribution of investment products on a non-advised basis makes it harder for investment firms to ensure that the target market of the investment products corresponds with the targeted end-clients. This is particularly the case where the target market setting is more granular, especially also where it concerns complex products.

Hence, we believe that the interaction between the product governance rules vis-à-vis the appropriateness test are not well calibrated and causes mismatches which may be hard to explain to a retail client.

**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).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
It should apply only to complex products.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other changes should be envisaged – please specify below.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Simplification means that MiFID II/MiFIR product governance rules should be extended to other products.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The regime is adequately calibrated and overall, correctly applied.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

**Question 47.1 Please explain your answer to question 47:**

Application to professional clients: We believe that the application of product governance rules to professional clients by means of investment management and/or advice has no added value. This applies in particular to portfolio management, where the investment decisions are not taken by the client but by the asset manager. As a result, requiring an asset manager to define a target market means requiring an asset manager to tell himself what products he can and cannot select in the provision of his services. This means applying a similar suitability assessment twice (one on an abstract – product - level and one for the individual case).

Product governance rules should therefore either apply to retail clients only, or at least where it remains to be applicable to professional clients, much more proportionality and more flexibility should be given in determining e.g. the target market.

Product governance rules should in principle be focused on complex products only. As to the definition of complex products under MiFID the current understanding is that only (non-structured) UCITS funds can be considered non-complex, while simple AIFs authorized for retail distribution are not. We advocate that these retail AIFs should explicitly be considered and ruled to be non-complex and should therefore fall within the scope of article 57 of the MiFID II Delegated Regulation.

Furthermore, we believe a more effective balance should be struck in relation to the application of the product governance requirements to portfolio management services rendered to professional clients. The relevant requirements should take account of the fact that portfolio management services are rendered on the basis of investment guidelines that are agreed between the asset manager and sophisticated clients. As such, requiring the determination of a target market for the financial instruments included in the client's portfolio, and mandating that records be kept of the reliance on the diversification/hedging exemption and of potential distributions into financial instruments' negative target market, would not appear to elevate the level of protection enjoyed by the client in a way that is proportionate to the administrative burden created for investment firms. In particular, when considering that portfolio management services are subject to suitability requirements, which arguably provide the highest degree of investor protection.

Feedbackloop: Another point raised by our members is the product governance feedbackloop, i.e the information on sales to or outside the target market etc. that distributors need to provide to manufacturers. Members sympathise with this idea in theory, but they experience that it does not seem to work in practice. Many professional parties and/or manufacturers not subject to MiFID II do not see any value in it or make use of the information exchange.

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 answer should actually be 'neutral'.

Some of our members believe that selling to a negative target market client (allowing such party to invest although being part of the negative target market for that product) would jeopardize the whole intention of defining the negative target and complicates the responsibility/ accountability/liability value chain. Please note that the question does not distinguish between 'selling outside the identified target market' and 'selling to the negative target market', the so-called 'grey area'. We believe that there is room for a category in between. Correspondingly, some of our members believe that it should be possible to sell products outside the defined target market, yet that it should not be allowed to sell products to the identified negative target market.

Other members think that selling within the negative target market should still be possible, but would depend on the formulation of such target market. In any event, we believe that the hedging exemption as adopted by ESMA in their guidelines should be maintained, including the possibility on rare occasions to include a product in the portfolio that does fall within the negative target market.

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 additional transparency requirements on inducements under MiFID II have indeed improved the focus of investment firms and their efforts to act in the best interest of their clients.

However, we believe that minor non-monetary benefits are too restrictively defined. It is essential that there is a level playing field between Member States when it comes to minor non-monetary benefits. Currently, Member States have an option to allow additional minor non-monetary benefits. However, the Dutch

legislator has not made use of this option. We feel that currently Member States are approaching the matter in different ways. In addition, for practical reasons, we believe that a materiality threshold of EUR 50 or EUR 100 for minor non-monetary benefits would add value. This is not because our members feel that they wish to go back to a gift policy, but more for practical operational reasons. This prevents e.g. incurring significant expenses for sending back gifts of limited value that are received by mail. Also, this would add to front office commitment to policy. Currently, e.g. merely accepting a ballpoint pen is a violation of internal policies which makes it hard to create staff engagement and to enforce compliance. Furthermore, it is undesirable to have different legal frameworks regarding inducements applicable to different types of financial companies (e.g. insurer, investment firm, fund manager) that are part of the same group. From that perspective, we advocate to align the inducements rules for the various regulated financial services companies as much as possible.

Some consumer associations have stated that inducement rules 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.

In the Netherlands, an outright ban on inducements for all investment services provided to the retail market was already introduced by law as per 1 January 2014. Although the introduction of the inducements ban had an impact on the retail market, particularly for the access of the mass retail client to investment advice, it may be fair to say that the Dutch market and clients have adjusted to the inducements ban. Having said this, our members are quite neutral to the question whether an outright ban in Europe should be introduced or not, also because most of our members operate on a cross border basis.

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 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.

We believe that an EU wide certification system may be hard to achieve. In the Netherlands, the Dutch Securities Institute (DSI), an organization set up by the Dutch financial industry, already accommodates certifications of competence of staff working within the financial industry. For the Dutch market, an EU certification system may not be necessary. However, where staff requirements can be harmonized, we would support this, although at the end of the day we believe local differences will maintain to exist. In addition where harmonization takes place this should not result in different layers, both local and EU wide, which only increases the staff requirements.

**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.

We believe that these qualifications may be organized on a more international overarching level if there is some advantage to be gained from harmonization. However, such harmonization should not lead to lowering the standards now current at a national Dutch level. Moreover, creating an EU-wide target market for training providers would make the development and provision of high-quality training commercially attractive. Simultaneously, market parties will have access to a larger range of possible providers, allowing them to select a training that is best tailored to their client market / services offerings.

**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.

Yes, we agree, We believe that where circumstances where it is impossible or impractical to provide the client with the ex-ante cost information before a transaction is executed, it should be possible to provide this information after the transaction's execution. Although having said this, in the Dutch market this requirement did not seem to create significant problems.

**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.

In practice, Dutch firms have already put record-keeping systems in place. From that perspective there is no need to abolish taping and record keeping systems, also because these systems allow for a review of conversations in the case of complaints from customers.

## 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 believe that the information is standardized to some extent (the percentages that are allocated to brokers /venues) yet not fully (the quality of execution obtained). We therefore tend not to agree that the best execution reports are of sufficiently good quality to provide investors with useful information on the quality of execution of their transactions. Moreover, we note that (at least) professional investors seem to have minimal interest in RTS28 reports but doubt whether this relates to the content thereof.

**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	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Format of the data	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Quality of data	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

## 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.

The information on the quality of execution obtained that needs to be published is specified in article 3(3) of RTS 28. However, other than what is the case for the information that is specified in articles 3(1) and 3(2), the Annex to RTS 28 does not provide a format for the information on the quality of execution obtained. Considering the possible sensitivity of the information, market parties may have a tendency towards sharing as little information as they can reasonably get away with. To ensure that a uniform level of detail is provided, some members of DUFAS feel that it may add value to include a format for the quality of execution obtained in the Annex to RTS 28 as well. This may also be beneficial for comparison purposes. Other members are wary that too much standardization also may affect the quality of the best execution reports, and may affect the flexibility of the firm issuing the report.

## 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.

For this question we are not referring to 'cost' in the literal meaning of the word, but rather to 'cost' as in loss of bargaining position towards brokers/ counterparties. As information needs to be openly published on the website rather than disclosed to clients, brokers/counterparties can obtain access to the best execution reports and will be able to identify their importance to the buy side firm. Sell side firms can use this information to their advantage in fee negotiations or in the quoting process (if you appear to obtain 80% of an asset manager's order flow for a particular product, you may be quoting to narrow spreads). This does not benefit investors. Changing the requirement to publish to a requirement to disclose to clients would help in this respect.

## III. Research unbundling rules and SME research coverage<sup>7</sup>

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.

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<sup>7</sup> 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.

Our members have the following observations:

**Equity:** Unbundling of research had the highest impact on equity. Certainly, in the beginning of the unbundling regime the prices of equity research varied widely. Market participant faced difficulties how to price equity research. Unbundling of research also had a impact on the equity of SMEs, as there are not enough investors willing to pay the costs for SME research. This has consequences for financing SMEs;

**Fixed income :** Fixed income and related macro research seems to be fairly priced. Some members are willing to pay for this type of research. Others feel that this leads to additional costs which will ultimately be charged to clients. Members do not see a lot of impact of the introduction of paid-for fixed income research on bid-offer spreads.

**RPA:** The introduction of the research payment account (RPA) is too difficult. Some of our members have introduced the RPA, but are of the opinion it does not work. The RPA entails a lot of administrative burden. As a result of which the costs of maintain the RPA is too high. Compliance with the RPA rules is also difficult to achieve.

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	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Authorise bundling for SME research exclusively	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exclude independent research providers' research from Article 13 of delegated Directive 2017 /593	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prevent underpricing in research	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Amend rules on free trial periods of research	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**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.

**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.

**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.

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.

**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.

**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.

Yes, we believe that issuer-sponsored research falls or should fall within the definition of an acceptable minor non-monetary benefit as defined by Article 12 of the Delegated Directive (EU) 2017-593, which read as follows: "(...)3. The following benefits shall qualify as acceptable minor non-monetary benefits only if they

are: (...) (b) written material from a third party (...) where the third party firm is contractually engaged and paid by the issuer to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any investment firms wishing to receive it or to the general public;”

Qualification of issuer-sponsored research as a minor non-monetary benefit ensures both accessibility to SME research and transparency of the sponsored character. Having said this members believe that value of sponsored research is fairly limited, which also is the rationale behind the argument that it should be considered to be a minor-monetary benefit.

### **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.

No, as we believe that issuer-sponsored research falls or should fall within the definition of an acceptable minor non-monetary benefit as defined by Article 12 of the Delegated Directive (EU) 2017-593, this implied mutatis mutandis that should not be qualified as investment research as defined in Article 36 of Delegated Regulation (UE) 2017/565.

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.

**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	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Authorise bundling for SME research exclusively	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Amend Article 13 of delegated Directive 2017/593 to exclude independent research providers' research from Article 13 of delegated Directive 2017/593	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prevent underpricing of research	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Amend rules on free trial periods of research	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Create a program to finance SME research set up by market operators	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Fund SME research partially with public money	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Promote research on SME produced by artificial intelligence	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Create an EU-wide database on SME research	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Amend rules on issuer-sponsored research	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

*5000 character(s) maximum*

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

**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.

## **IV. Commodity markets<sup>8</sup>**

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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 position 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.

<sup>8</sup> 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.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits with regard to commodity markets are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The position limit framework and pre-trade transparency regime for commodity markets has provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**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:**

	<b>Estimate (in €)</b>
Benefits	
Costs	

## Qualitative elements for question 69.1:

*5000 character(s) maximum*

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

### 1. Position limits for illiquid and nascent commodity markets

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A designated list of 'critical' contracts similar to the US regime	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

#### 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.

**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’.**

- Open interest
- Type and variety of participants
- Other criterion:
- There is no need to change the scope

**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.

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Illiquid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A financial counterparty	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**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

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

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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<sup>9</sup>**

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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.

<sup>9</sup> 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.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits with regard to the DTO are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more transparency and competition in trading of instruments subject to the DTO.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
More transparency and competition in trading of instruments subject to the DTO corresponds with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The DTO has provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

**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:**

	<b>Estimate (in €)</b>
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.

Some members of DUFAS are quite positive about the DTO. The DTO has created more liquidity on the trading venues. In addition, they have experienced that more execution possibilities were created. They also support ESMA's proposal to align the MiFID DTO and EMiR Refit (for SFC). It should also remain to be possible for SFCs to trade those instruments on a trading venue, although they are not subject to the clearing obligation. Other members indicate, however, that the DTO causes costs to go up for particularly large trades. It is perceived that transparency of such large trades is undesirable. It therefore also depends on the issue on solution of the pre-trade waiver.

## 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

## If you do believe that some adjustments to the DTO regime should be introduced, please explain which adjustments would be needed and with which degree of urgency:

*5000 character(s) maximum*

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

Yes, as mentioned, most members are in favour of aligning MiFIR DTO and EMiR Refit, as proposed by ESMA.

## 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.

Yes, DUFAS members believe that currently DTO covers the correct scope as it includes sufficiently liquid instruments, but leaves out the less liquid instruments. As indicated under q.77.1, some members of DUFAS are quite positive about the DTO. The DTO has created more liquidity on the venues. In addition, they have experienced that more execution possibilities were created. They also support therefore ESMA's proposal to align the MiFID DTO and EMiR Refit (for SFC). It should also remain to be possible for SFCs to trade those instruments on a trading venue, although they are not subject to the clearing obligation. Other members indicate, however, that the DTO causes costs to go up for particularly large trades. It is perceived that transparency of such large trades is undesirable. It therefore also depends on the issue on pre-trade waiver.

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.

Yes, as mentioned, most members are in favour of aligning MiFIR DTO and EMiR Refit for SFCs, as proposed by ESMA.

## VI. Multilateral systems

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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

## VII. Double Volume Cap<sup>10</sup>

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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.

<sup>10</sup> 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?**

		2				
	1		3	4	5	

	(disagree)	(rather not agree)	(neutral)	(rather agree)	(fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards the objective of more transparency in share trading.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more transparency in share trading.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More transparency in share trading correspond with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The DVC has provided EU added value	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**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:**

	<b>Estimate (in €)</b>
Benefits	
Costs	

## Qualitative elements for question 82.1:

*5000 character(s) maximum*

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

## VIII. Non-discriminatory access<sup>11</sup>

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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.

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<sup>11</sup> 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

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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 emergence 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.

We believe that MiFID rules in relation to investor protection should not form an impediment to digital solutions. Needless to say, we support the European Commission's goal to encompass the digital age. This also means that current investor protection rules needs to be reassessed with that in mind.

For example, legislation such as PRIIPs is still centred around the concept of a printed or static document such as an pdf. DUFAS believes that e.g. the requirement to (actively) submit a PRIIPs KID on a 'durable medium' as defined in the European legislation, hinder the use of digital solutions for the KID. This does not relate to the content of the PRIIPs KID, but it relates to the way of disseminating PRIIPs information via digital solutions. From a retail client perspective the following is important to note. Due to the high level of usage of banking apps by retail clients the client has provided the industry with a clear indication of its preferred means of communication. However, to furnish a pdf (which is in essence what the requirements result in) in an app is not an ideal way in getting the retail client to obtain and read the PRIIPs KID. As alternative, adding a link in an app which routes to a website where a KIID is available is easier to implement than having one or more PRIIPs KID actively pushed in an app. In such case the investor is still able to read the information and download it where it wishes to do so. PRIIPs KID is not personalised information, and therefore the necessity to submit such information on a durable medium seems to be absent contrary to personalised information, such as an portfolio statement. Alternatively, financial parties should be free in the way they provide or offer PRIIPs KID information. For example a financial product selector, i.e. a tooling system or database, comprising the PRIIPs KID information of various available financial products, based on which an investor can compare and select financial products, may be more meaningful for an investor than standalone pdf's. Finally, in practice we note that it is too burdensome and too expensive to furnish PRIIPs KID in pdf format via retail investment apps. This is of course PRIIPs, but this applies to similar examples on general information obligations under MiFID II. MiFID requirements should be more flexible on digital solutions on investments and create mor flexibility for investment firms for including information in suitable tooling.

**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.

We do not believe that providing a paper-based document in pdf still counts as a technology neutral tool. This because of the fact that this does not provide the level of interaction and engagement that good technology can provide. Paper-based documents historically were produced to support discussions by a consumer with a physical intermediary so static data presentations, e.g in pdf format, in fact reduce the amount of interaction consumers have before they can make important investment decision.

**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)**

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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.

Yes, we believe the current regulatory framework is adequately calibrated. We do not think FX spot should be classified as a financial instrument under MiFID.

**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

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**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.

**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 \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

[More on this consultation \(https://ec.europa.eu/info/publications/finance-consultations-2020-mifid-2-mifir-review\\_en\)](https://ec.europa.eu/info/publications/finance-consultations-2020-mifid-2-mifir-review_en)

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

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

## **Contact**

fisma-mifid-r-review@ec.europa.eu