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

Fields marked with * are mandatory.

Introduction

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

SECTION 2 will be available in English only.

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

Background of this public consultation

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

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

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

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

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

Responding to this consultation and follow up to the consultation

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

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

This consultation document contains three sections.

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

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

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

This consultation is open until 18 May 2020.

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

More information:

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

About you

* Language of my contribution

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

* I am giving my contribution as

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

* First name

Satu

* Surname

Wennberg

* Email (this won't be published)

satu.wennberg@finanssiala.fi

* Organisation name

255 character(s) maximum

Finance Finland

* 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.

7328496842-09

* Country of origin

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

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

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

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

* Field of activity or sector (if applicable):

at least 1 choice(s)

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

- [x] 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):

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* Publication privacy settings

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

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

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

Choose your questionnaire

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

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

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

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

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

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

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

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

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

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

5000 character(s) maximum

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

The aim of the Capital Markets Union and MiFID II was to increase participation in capital markets. As a study by the German Ruhr University shows, many clients are withdrawing from capital markets because of the effects of MiFID II/MiFIR and PRIIPs regulation. New rules for investment advice make investment advice less flexible for individual clients and more difficult for investment service providers. Regulations have generated substantial direct and indirect costs and strain to banks. All the mandatory processes of an investment advice client now take 50% more time in a bank office. PRIIPs-KID obligations and customer classification have taken nearly 90% of retail investors' global investment possibilities in countries like Finland. Neither professional nor retail clients see the benefits of increased investor protection. Clients find the amount of mandatory information overwhelming. This information includes ex-ante and ex-post cost reporting, all the information about services, different policies and questionnaires to be presented to each client, and all the required reporting. Less is more: to be able to assess the relevant risks, possibilities and costs to enter and remain in capital markets, clients need a manageable volume of relevant information.

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

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

Question 2.1 Please provide qualitative elements to explain your answers to question 2:

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

As the German Ruhr study and information received from Finnish banks show, clients are leaving capital markets and investment service provision has become more difficult because of MiFID II / MiFIR regulations. The costs to implement these regulations have been extremely high to banks and other investment service providers. According to the Ruhr study, average implementation costs are 3.7 million euros and running costs 508.00 euros p.a. per bank. Implementation costs to big banks in Germany were 35 million euros and running costs 4.2 million euros p.a. per bank. These figures seem realistic also from the Finnish point of view with the same regulation change. Furthermore, as explained in answer 1.1. above, we see the negative impact to clients who are leaving the capital markets because of an overwhelming information overload. Therefore, we argue that the costs and benefits are not in balance at all. What the EU economy and the individual economies of European countries and clients need is bigger participation in the European capital markets. Compared to e.g. US markets, Europe is lacking behind. The retail participation level (i.e. how much households have invested in stocks and funds compared to GDP) is too low in Europe.

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.

Effective implementation is not an underlying problem in MiFID II / MiFIR. From a Finnish banks’ point of view, the new rules are implemented effectively. There are some differences in how legislation is implemented or how the regulator interprets some of the issues in different countries but that does not impediments effective implementation.

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.

New regulations entered into force have narrowed the range of financial instruments that can be offered to retail clients. This is mainly because of the PRIIPs regulation requirement to offer KID in clients' national language (Finnish in Finland). Product governance and target market requirements have also narrowed the range of financial instruments that can be distributed to retail clients. The client's classification obligations to classify, in practice, all individual clients to retail clients is the third, main reason and barrier hampering the provision of a wide range of financial instruments. The combined impact of all these factors has narrowed the global financial instrument range for Finnish retail clients by approximately 90%.

PRIIPs KID obligation: Many of the global product manufacturers provide or may provide KID only in English or German. This means that in many EU countries, local distributors cannot get local language versions of these KIDs, so therefore these packaged products (e.g. many global investment funds) are outside of the reach of retail customers. This is the case in Finland.

Product governance and target market: These new MiFID II requirements have forced manufacturers and distributors to narrow the scope of some instruments for retail clients. There are private retail clients with substantial assets and experience who are interested in investing in these instruments. These clients need to be classified as retail clients, and this is the main reason barring their access to a wide range of financial instruments. From the viewpoint of these clients' portfolio, it would be good to diversify their investments also to these instruments. For example, only a few derivatives are available to retail clients, and their structured product scope has narrowed after MiFID II. Private equity and private debt products are outside of the retail scope. Also in some bond emissions, retail clients need to be separated from the investor scope. All of this combined limits retail clients' possibilities to receive profits from the capital markets compared to professional clients with more investment possibilities.

Section 2. Specific questions on the existing regulatory framework

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

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

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

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

PART ONE: PRIORITY AREAS FOR REVIEW

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

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

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

1. Current state of play

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

1.1. Reasons why a consolidated tape has not emerged

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

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

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

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

Please specify what are the other reasons why an EU consolidated tape has not yet emerged?

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

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.

Thinking CT as a commercial service might a wrong starting point. We don’t believe that any private entity will provide it, but it should be created as a public good which would improve the functioning of EU’s capital markets.

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

Please explain your answer:

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

1.2. Availability and price of market data

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

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

- add a mandate to the Level 1 text empowering ESMA to develop Level 2 measures specifying the content, format and terminology of the RCB information; and
- move the provision to provide market data on the basis of costs (Article 85 of CDR 2017/565 and Article 7 of CDR 2017/567) to the Level 1 text;
- add a requirement in the Level 1 text for trading venues, APAs, SIs and CTPs to share information on the actual costs of producing and disseminating market data as well as on the margins with CAs and ESMA together with an empowerment to develop Level 2 measures specifying the frequency, content and format of such information;
- delete Article 86(2) of CDR 2017/565 and Article 8(2) of CDR 2017/567 allowing trading venues, APAs, CTPs and SIs to charge for market data proportionate to the value the data represents to users.

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

Please explain your answer:

5000 character(s) maximum

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

1.3. Use cases for a consolidated tape

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N.A.
Transaction cost analysis (TCA)	◉	○	○	○	○	○
Ensuring best execution	◉	○	○	○	○	○
Documenting best execution	◉	○	○	○	○	○
Better control of order & execution management	◉	○	○	○	○	○
Regulatory reporting requirements	◉	○	○	○	○	○
Market surveillance	◉	○	○	○	○	○
Liquidity risk management	◉	○	○	○	○	○
Making market data accessible at a reasonable cost	◉	○	○	○	○	○
Identify available liquidity	◉	○	○	○	○	○
Portfolio valuation	◉	○	○	○	○	○
Other	○	○	○	○	○	○

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

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

CT is not a solution to the existing market data problems, and it doesn't serve as an instrument to document best execution. However, it could be a "golden source of all trades", a database where all trades (trade-by-trade and aggregated) could be retrieved.

2. General features of the consolidated tape

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

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

- ensuring a **high level of data quality** (supervisory guidance complemented with amendments of the Level 1 and 2 texts);
- **mandatory contributions**: trading venues and APAs should provide trading data to the CT free of charge;
- CT to **share revenues with contributing entities** (on the basis of an allocation key that rewards price forming trades);
- contribution of users to funding of the CT, e.g. via **mandatory consumption** of the CT by users to ensure user contributions to the funding of the CT
- **full coverage**: The CT should consolidate 100% of the transactions across all asset classes (with possible targeted exceptions);
- **operation of the CT on an exclusive basis**: ESMA recommends that a CT is appointed for a period of 5-7 years after a competitive appointment process;
- **strong governance framework** to ensure the neutrality of the CT provider, a high level of transparency and accountability and include provisions ensuring the continuity of service.

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

- **Whether pre-trade data should be included in CT**: the argument has been made that the US model for a consolidated quotation tape comprises pre-trade quotes because of the **order protection rule** contained in Regulation National Market System (NMS). The order protection rule eliminated the possibility of orders being executed at a suboptimal price compared to orders advertised on exchanges and it established the National Best Bid and Offer (NBBO) requirement that mandates brokers to route orders to venues that offer the best displayed price. Although some stakeholders strongly support a quotation tape, others have expressed reservations, either because there is no order protection rule in the European Union or because they do not support the establishment of such a rule in the EU which could be encouraged by the establishment of a pre-trade tape. Stakeholders also argue that a quotation tape will be very expensive and that latency issues in collecting, consolidating and disseminating transaction data from multiple venues will always lead to a co-existence of the CT and proprietary exchange data feeds.

- **What should be the latency of the tape**: Many stakeholders argue that the tape should be “real-time”, implying minimum standards on latency such as a dissemination speed of between 200 and 250 milliseconds (“fast as the eye can see”). Other stakeholders support an end of day tape.
- **How to fund the tape and redistribute its revenues**: stakeholders have mixed views on the optimal funding model. They also caution against some aspects of the US model, where the practice of redistribution of CT revenues has, in their view, provided market participants with an incentive to provide quotes to certain venues that rebate more tape revenue, without necessarily contributing to better execution quality.

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
High level of data quality	○	○	○	○	◉	○
Mandatory contributions	○	○	○	○	◉	○
Mandatory consumption	◉	○	○	○	○	○
Full coverage	○	○	○	○	◉	○
Very high coverage (not lower than 90% of the market)	◉	○	○	○	○	○
Real-time (minimum standards on latency)	○	○	○	○	○	◉
The existence of an order protection rule	◉	○	○	○	○	○
Single provider per asset class	◉	○	○	○	○	○
Strong governance framework	○	○	○	○	◉	○
Other	○	○	◉	○	○	○

Please specify what other feature(s) you consider important for the creation of an EU consolidated tape?

5000 character(s) maximum

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

We think a public entity (e.g. ESMA) would be best placed to run a CT. It is difficult to say much about the costs structure, before knowing what the overall costs of a CT would be.
A CT cannot solve any of the scheduled problems in Q10. There will always be a need to buy access to proprietary data and therefore a CT cannot be used to ensure ”reasonable cost of market data”.
That said, in case a CT will be created, the FFI is of the opinion that the following requirements are crucial

- A high level of data quality including identifiable instruments
- Mandatory contribution
- No mandatory consumption

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.

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

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

5000 character(s) maximum

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

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

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

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

None. Best execution is not only about price, but also costs, likelihood of execution etc. Investment firms will need additional information to include in the best execution assessment.

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

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

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

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

It is difficult to say much about the costs structure, before knowing what the overall costs of a CT would be. A crucial condition is no requirements for mandatory consumption. And if there is no use, there is no user fee to be paid.

3. The scope of the consolidated tape

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

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

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

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

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

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

Question 15.1 Please explain your answers to question 15:

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

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

Question 17.1 Please explain your answers to question 17:

5000 character(s) maximum

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

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.

No. In case there is a wish to move on with the CT, all shares must be included as the less shares and information that is included, the bigger the need for buying the proprietary market data from the trading venues.

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.

No flexibility.

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.

We only support a post trade bond CT mainly for transparency purposes. We do not consider it feasible to include derivatives at this stage.

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)						
Maintain the STO with adjustments (please specify)						
Repeal the STO altogether						

Question 23.1 Please explain your answers to question 23:

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

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

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

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

Question 24.1 Please explain your answers to question 24:

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

We do not support the proposal that SIs would be removed as eligible execution places for the purpose of the share trading obligation (STO).

Liquidity is a key characteristic of a well-functioning capital market. In the EU capital markets liquidity is provided by several entities: Exchanges, trading venues, MTFs and SI's. Seen from an investor perspective it is important to have access to both deep liquidity pools, but also a broad range of liquidity providers since each of these liquidity providers have their advantages (and disadvantages) in certain situations. Also, because access to several (types of) liquidity providers gives investors the possibility to choose the most cost-efficient provider.

The current range of EU execution places should be continued. If SIs were to be excluded as eligible

execution venues, critical and massive risk capacity will disappear and thus make it very difficult – if not impossible – to execute large volumes with the speed that characterize a well-functioning and liquid capital market.

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?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N.A.
Abolition of post-trade transparency deferrals	◉	○	○	○	○	○
Shortening of the 2-day deferral period for the price information	◉	○	○	○	○	○

Shortening of the 4-week deferral period for the volume information	◉	○	○	○	○	○
Harmonisation of national deferral regimes	○	○	○	○	◉	○
Keeping the current regime	○	○	◉	○	○	○
Other	○	○	◉	○	○	○

Please specify what other 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?

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

A more detailed specification what should be reported for each asset class in Post Trade. For example, price for each asset class.

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.

Deferrals should be harmonized across the member states so that 4 weeks volume deferrals could be applied to non-liquid and/or above LIS&SSTI trades. All other volume information should be published in 5 minutes.

It is of outmost importance that the harmonized EU post trade deferral regime does not cause undue risk for SIs which may have a result that they withdraw from the market. This is important for smaller and illiquid markets which are dependent on SIs to provide liquidity. Sufficiently long deferral periods should be provided for illiquid instruments and large transactions above SSTI.

II. Investor protection[4]

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

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

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

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

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

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

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

Quantitative elements for question 31.1:

	Estimate (in €)
Benefits	
Costs	Extremely high to implement and includes running costs. The Ruhr study indicates the average implementation costs are 3.7 million euros and running costs 508.00 euros p.a. per bank. Implementation costs to big banks in Germany were 35 million euros and running costs 4.2 million euros p.a. per bank. These figures seem realistic also from the Finnish point of view with the same regulation change.

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.

The level of investor protection has increased, but at the same time, investors are suffering from information overload. For instance, the time it takes to provide basic investment advice to a retail client looking to start saving in one investment fund has been reported to have grown by 50%. As indicated by the study by Ruhr University, many clients are withdrawing from capital markets (see our answer in question 2) because of the effects of MiFID II/MiFIR and PRIIPs overwhelming regulation. This information includes e.g. ex-ante and ex-post cost reporting, reporting based on RTS 27 and RTS 28, information about services, different policies and questionnaires to be presented to each client, and the large amount of required reporting. Less is more: to be able to assess the relevant risks, possibilities and costs to enter and remain in capital markets, clients need a manageable volume of relevant information.

Uniform rules for different types of products do not work. The uniform approach causes a flood of information for products where it does not make sense, e.g. cost and charge rules which apply in the same manner for pure investment products and hedging products. Uniform rules for retail and professional clients do not work well either, when it comes to client information. According to the suitability regime, professionals are deemed to have sufficient knowledge and experience to act on their own. Many of these clients do not want to receive any unnecessary information because it creates an administrative burden and slows down the trading process. In addition to this, different disclosures between MiFID and PRIIPs are leading to confusion on the retail side.

The costs to implement these regulations have been extremely high for banks and other investment service providers (see 1.1 or 31.1). Furthermore, as explained in answer 1.1 above, there is the negative impact of clients withdrawing from the capital markets because of the overwhelming information overload. Therefore, the costs and benefits cannot be considered to be in balance at all.

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

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

1. Easier access to simple and transparent products

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

Please specify which other MiFID II/MiFIR requirements should be amended:

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

PRIIPs KID obligation to provide KID in retail clients' home language: Many of the global product manufacturers provide or may provide KID only in English or German. This means that in many EU countries, local distributors cannot get local language versions of these KIDs, so therefore these packaged products (e.g. many global investment funds) are outside of the reach of retail customers. This is the case in Finland, too. If English was accepted because it is a widely known language both globally and in Finland, this would have a major effect on the product scope available to retail clients.

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: Please see our answers to question 47.1 on directly targeted product governance issues.

Costs and charges requirements: Regarding phone trading, introducing a type of one-off cost and charge disclosure for clients who trade frequently (in some cases several times during the same day) should be considered. Furthermore, it should be possible to provide clients with ex ante cost and charge on the same conditions as the provision of the suitability report when using distance communication.

Conduct requirements: There are private retail clients with substantial assets and some experience who are interested in investing in products that are now out of their scope. After MiFID II the product scope to retail clients has narrowed. For example, only some derivatives are available to retail clients, whereas structured private equity and private debt products as well as some bond emissions are fully out of scope. This limits retail clients' possibilities to receive profits from the capital markets compared to professional clients with more investment possibilities. The most practical solution would be to change the limits of when a retail client can be classified as a professional client (we are referring to answer 42.1). Now nearly all private individual clients need to be classified as retail clients, because the threshold is too high.

Furthermore, the information requirement should be simplified. All the questionnaires and information relating to investment advice and information given about each investment product apply also when giving advice on a basic simple fund to a retail client. The amount of time needed to do this in a regional bank has increased by 50% after MiFID II. With the same number of personnel, banks are able to give investment advice services to a smaller number of clients in the same time or in a single working day.

Moreover, the reporting requirements relating to RTS 27 and RTS 28 are far too complex. In practice, investors have not shown interest in loading and reading these reports in order to evaluate best execution. The usefulness of these requirements should be carefully assessed and calibrated accordingly.

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

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

Question 33.1 Please explain your answer to question 33:

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

The level of protection is adequate, sometimes even too high. The current regime is centred around information flow, knowledge and experience assessments for complex products. Nowadays relevant financial instruments are carved out based on client classification, and too many clients are classified as retail clients, thus receiving more investor protection and information than they need (see question 32.1). Adding anything more would most likely just add unnecessary bureaucracy both for clients and the industry. Fewer clients would be present in the capital markets, which would be against the ultimate goals of the Capital Markets Union.

2. Relevance and accessibility of adequate information

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

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

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

	Yes	No	N. A.
Professional clients and ECPs should be exempted without specific conditions.	(•)	( )	( )
Only ECPs should be able to opt-out unilaterally.	( )	( )	(•)
Professional clients and ECPs should be able to opt-out if specific conditions are met.	( )	( )	(•)

All client categories should be able to opt out if specific conditions are met.	◉	○	○
Other	◉	○	○

Please specify what is your other view on whether all clients, namely retail, professional clients per se and on request and ECPs should be allowed to opt-out unilaterally from ex-ante cost information obligations?

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

All clients should be allowed to opt out unilaterally from ex-ante cost information obligations without specific conditions.

In addition, it should be considered whether a more appropriate solution would be to disapply ex-ante cost information requirements in MiFID II for eligible counterparties and professional clients, or to consider an opt-in solution for professional clients (at least clients “per se”) and EPC receiving ex-ante cost information. At least in wholesale banking, there is no need for ex-ante cost information among these professional clients and eligible counterparties.

However, it should be made clear that service providers can choose whether they want to offer this opt-out possibility to their clients. Service providers should be also be able to choose to send the same information to all clients, e.g. if they have the same electronic web solution to provide this information to all the client categories.

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.

Many wholesale clients do not want to receive as much information as currently required by MiFID II, because it creates an administrative burden and slows down the trading process. Professional clients and EPCs are in the position that they can get ex-ante cost information through other channels if needed. A cost /benefit analysis speaks in favour of a more proportionate and flexible regime for ECPs and professional clients. They should have the possibility to have an exemption and then for the ECP to opt in if requested. For professional clients it should be at least possible to opt out or agree on a more limited application of the rules, irrespective of the financial instrument or investment service that is provided. No difference should be made here between professional clients per se and opt-up professional clients.

Non-professionals should also have the possibility to opt-out upon the client’s initiative and request. Introducing an initial price agreement/grid/list as a one-off disclosure towards the clients who choose to opt out could be considered. This would be particularly helpful in situations where clients trade with relatively high frequency.

Service providers or clients do not need any more complicated ex-ante information. The point made by ESMA in Q&A 2019 relating to the obligation to disclose ex-ante information before and for each separate trade is problematic. It should be stated in regulation that there are other ways to provide ex-ante info to a

client, for example at one time, for all services, when signing an agreement with a client, if this is still required after MiFID II review.

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.

Digitalisation means that customer behaviour is gradually changing in favour of digital channels and online services, also in the field of banking and investment. The general progress by which the use of electronic information is continuously increasing should not be any different in the society at large than in the financial sector. A vast amount of customers do not even want paper documents, considering electronic documents easier to archive. Due to the change in customer behaviour, but just as much for environmental reasons, investment firms should provide information electronically by default, unless the customer has requested to receive the information on paper. This generates also cost savings for investment service providers.

The relevant thing is to look at the durable medium requirements and perhaps to emphasise that electronic information is a medium on the same footing as paper. In MiFID II Article 3 (Commission Delegated Regulation 2017/565) there is a requirement to send information in a durable medium:

"Conditions applying to the provision of information
1. Where, for the purposes of this Regulation, information is required to be provided in a durable medium as defined in Article 4(1) point 62 of Directive 2014/65/EU investment firms shall have the right to provide that information in a durable medium other than on paper only if: (a) the provision of that information in that medium is appropriate to the context in which the business between the firm and the client is, or is to be, carried on; and (b) the person to whom the information is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses the provision of the information in that other medium."

In practice, article 3 means that service providers are asking clients in large numbers whether they want to use electronic documents, but to all customers who do not respond, papers still need to be printed and mailed. Most clients already only use electronic documents but there are still clients who have not answered this question – we need a push from the regulator to digitalise these remaining clients, and we also need a change: digital information should be the default according to regulation. At the very least, all the clients who

use web-based services should also only be sent electronic documents by default. These documents can be stored e.g. in the client's online banking solution and should be regarded as a durable medium. However, service providers should be allowed to make separate agreements with clients who still need and want paper documents for some reason.

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

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

Please specify in which other way could a phase-out of paper-based information be implemented?

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

It should be clearly stated in the MiFID directive that the service provider should provide all the information and communication electronically by default, unless the customer has requested to receive the information on paper. A short transition period may be granted; it could be even shorter than the suggested five years.

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.

At the moment, the majority of Finnish customers already receive all of the information electronically. Phase-out should happen as soon as possible with a short transition period if needed.

It should be clearly stated in the MiFID rules that the service provider should provide all the information and communication electronically by default, unless the customer has requested to receive the information on paper. A short transition period may be granted but it does not have to be as long as five years.

Making a major transition towards digitalisation will generate significant cost savings. MiFID II has increased total printing costs. For instance, one service provider announced that in 2018, after MiFID II, their printing costs had by August already reached the previous year's total printing costs.

Environmental aspects are also significant in regular paper printing and mailing. Current regulation has made it impossible to transfer fully out from regular printing. We need a push from regulation to digitalise the last client groups that still are provided with paper information.

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.

FFI doubts whether there is a real need for this kind of database. Retail investors are mainly investing in domestic investment products, mainly due to language barriers and differences in product markets. The comparison of different products designed for different markets might be challenging. It should be carefully investigated if the benefits of setting up such a database outweighs the costs. A lesson should be learned from the comparison website for the fees charged by payment service providers (Directive 2014/92/EU). Given the complexity and issues when aiming to create fully harmonised KIDs in PRIIP, it can be assumed that it would be even harder to create a database capable of presenting a meaningful comparison of investment products. To conclude, FFI doesn't see a need for this kind of database.

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
All transferable securities	( )	( )	( )	( )	( )	(●)

All products that have a PRIIPs KID/ UICTS KIID	○	○	○	○	○	◉
Only PRIIPs	○	○	○	○	○	◉
Other	○	○	○	○	○	◉

Question 38.1 Please explain your answer to question 38:

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

As stated above in the question 37.1, FFI doesn't see a need for this kind of database.

However, if this kind of database is to be set up, the products with PRIIPs KIDs would be easier to start with, because the comparison of those products is easier due to their standardised information sheet. In a later phase the database could be expanded with other products if there is a proven need for such a 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.

Comparison websites may be operated either by a private operator or by a public authority. On the other hand, due to MiFID inducement rules it might be difficult to find a business case for setting up a comparison website operated by a private operator.

3. Client profiling and classification

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

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

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

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

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

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

Question 40.1 Please explain your answer to question 40:

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

The current client classification rules may lead to a situation where there are unnecessary limitations in the product offer for an experience retail client. There are private retail clients with substantial assets and some experience that are interested in investing to products that are now out of scope. There is a demand for more complex products, like AIFMD funds.

The current client classification regime in MiFID II creates certain undesired balances. In a prolonged low yield environment, investors are moving away from fixed income asset classes and seeking yields in more illiquid investments, which are only available for professional investors, e.g. illiquid infrastructure or secured debt structures. After MiFID II the product scope is narrowed to a sophisticated retail client. For example, only some derivatives are available to retail clients, whereas structured private equity and private debt - products as well as some bond emissions are out of scope. This limits retail clients' possibilities to receive profits from the capital markets compared to professional clients with more investment possibilities. In conclusion, the current regime goes against the thought of financial inclusion as well as the ambition to open up financial markets for all types of investors.

The ambiguous wording in PRIIPs regulation (EU 1286/2014) Article 4(1) has created unwanted product offering restrictions on the MiFID distribution side. PRIIP is defined as an instrument that "is subject to fluctuations because of exposure to reference values or to the performance of one or more assets not directly purchased by the retail investor". This means that bonds could be considered PRIIPs if they contain typical provisions like make-whole call options, certain change of control puts, index-linked and capital features, and interest rate step up/down mechanics, caps and floors. The problem is that manufacturers do not provide KIDs for these types of products. The current opt-up professional criteria have also added to the unwanted product offering restrictions on the MiFID distribution side. The latest letter from the ESAs on this

topic was welcome, but we are after firm and clear rules through legislation. When coupled with MiFID's opt-up professional criteria, product restrictions are inevitable.

Given that sophisticated retail clients are similar to certain professional clients, there is currently an information overload when dealing with these clients. Some elements like suitability reports create unnecessary administrative burdens both for the firm and the customer.

The client classification opt-up criterion for trading frequency treats all instruments in the same manner and causes situations where the criterion does not work well or cannot even be used in practice. Looking at bond transactions or illiquid products, these are generally not traded at the level of frequency indicated in the opt-up criterion. Furthermore, a criterion related to trading frequency carries a risk of creating incentives to increase the number of transactions so that the customer can be reclassified.

The criterion on knowledge/experience that relates to a person having worked in the financial industry is often irrelevant. Working experience from the industry does not automatically translate to knowledge on specific products (an equities trader doesn't necessarily have knowledge about exchange traded products or bonds, for example). It is more relevant whether the customer understands the product and the risks involved. This requirement is also interpreted differently in different countries, which creates difficulties for firms and clients operating in multiple jurisdictions. It does not make sense that the customer is allowed to put all their money in crypto currencies or online casinos, for example, but cannot access financial products that they have acquired adequate knowledge and understanding on.

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 support investigating whether the threshold should be lowered. Other criteria should be taken to account as well. The most practical solution would be to evaluate all the conditions to reclassify clients from retail to professional clients more easily.

Should a portfolio size threshold be kept, it is important that a firm is able to consider and include both internal and external assets (i.e. the client's total portfolio even though all the assets may not be held within the firm itself).

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.

FFI is in favour of making the MiFID II rules proportionate and relevant for experienced retail clients. We recognise the information requirement challenges with experienced retail clients and also see challenges in the way the opt-up mechanism has been implemented in its current form, as described under Q40.1. An alternative and even more efficient solution to a new client category is to re-assess and simplify the rules for opt-up to professional investors in Annex II to MiFID 2. Furthermore, small institutional investors like foundations should benefit from lighter rules, and could be directly classified as professional clients.

Instead of proposing a new category of semi-professional clients, we propose to change all three conditions to classify clients as professional clients, and to add one more to the list. Two out of these four new conditions should be enough to classify the client as professional:

- Client’s instrument portfolio limit EUR 500,000 should be lowered to EUR 200,000. Clients may also have other assets to consider here and the limit is too high.
- Condition: “client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters” should be changed to “client has carried out 10 trades in any market per year”. This condition has caused many problems in practice. In some instruments, e. g. funds or structured products, or even bonds, it is not common practice to trade so frequently. Even the most sophisticated clients do not trade in real estate funds so often in the “relevant market”.
- Condition “the client works or has worked in the financial sector for at least one year in a professional position” should be changed to “has knowledge from experience with the instruments and markets for at least one year”. There are many experienced clients who have never worked in the financial industry and, on the other hand, some people who have worked in the industry but have no experience with some specific products.
- We also propose a new condition: “Transactions made by the client exceed EUR 100,000. If the client wants to make a transaction this large, it indicates a professional client. One transaction of this size would be considered as one condition for reclassifying the client. The limit of EUR 100,000 is the same as in Prospectus Regulation (EU) 2017/1129 for not to produce prospectus, and the same limit is widely used in wholesale markets. Similar threshold is also found in local transpositions of Alternative investment funds managers directive (EU) 2011/61, where a client can be treated as a professional for a specific investment type if the client commits to invest EUR 100,000 and declares in writing, in a document separate from the relevant investment/commitment agreement, that the client acknowledges and is aware of the risks with the commitment/investment.

However, if our proposal to simplify the rules for opt-up to professional investors is not a viable solution and the Commission still pushes for a new client category, the pros and cons of introducing a semi-professional client category should be properly analysed. The benefits of lighter rules and information obligations should clearly outweigh the costs of introducing a completely new client category, which would require changes in IT systems and processes and the training of employees, as well as changes to the industry’s self-regulation initiatives like the EMT. As a positive effect we see that a new client category could lead to a wider selection of product offering to experienced clients and cost savings for service providers in the form of lighter

information requirements in the long term. FFI in principle therefore supports the proposal to introduce a semi-professional customer category with limited information requirements in the Level 1 text.

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Suitability or appropriateness test	○	○	○	○	◉	○
Information provided on costs and charges	○	○	○	○	◉	○
Product governance	○	○	○	○	◉	○
Other	○	○	○	○	◉	○

Please specify what other investor protection rules should be mitigated or adjusted for semi-professionals clients?

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

We see that the most practical solution would be to evaluate all the conditions to reclassify clients from retail to professional clients and to keep the three categories. We are not in favour of the new fourth category of semi-professional client because it would make the classification process more difficult both to service providers and clients. However, if the Commission still sees this a valid consideration, we propose that nearly all the protection rules are mitigated for semi-professional clients:

- Removal of the obligation to provide the client with PRIIPs KIDs/KIIDs. This would add more variety to packaged products.
- Fewer knowledge and experience assessments – for example that the client, after an initial assessment, is deemed to have sufficient knowledge and experience for the given instrument types, without then having to redo the assessment in each and every advisory or trading situation.
- Removal of the requirement to produce a suitability report. We see very little added value in suitability reports with these experienced clients, and we propose not producing them at all. If the Commission is still in favour of the suitability report, then it should be possible to opt out from it – especially for non-complex products. A customer that does multiple trades in equities, for example, will get a suitability report for each trade. This creates unnecessary administrative burden both for the firm and the customer, and there are customers who have no interest in receiving the suitability report.
- Removal of information about costs and charges: ex-ante and ex-post reports.
- Removal of the obligation to report losses of portfolio or financial instruments exceeding 10%. These clients are aware of the market volatility of these products.
- Removal of loss threshold reporting for leveraged instruments, currently required for retail clients according to Article 62 of the delegated regulation.
- Loosening up the assessment of ability to bear loss related to the relevant transactions. This could be

based on market conditions and at a given frequency rather than every transaction.

- Putting a larger responsibility on clients to actively inform the investment firm when changes occur, in order to make a larger difference compared to retail clients.
- Focusing the product governance target market rules to retail clients only.

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.

See the previous answer.

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.

An additional client category would need to be catered for through system support, front line work, and background quality control. This would be a huge IT undertaking: all the IT systems, reports, client documentation and internal guidance would have to be changed to be able to produce the new kind of service package to this new client category. It would demand substantial implementation development and resources at first, and running costs afterwards. Personnel would also have to be trained for a more complex client classification. As stated under question 42.1, an alternative, simpler way would therefore be to look into amending the existing opt-up criteria for becoming a professional client.

One-off implementation:

- Back-end infrastructure
- Databases including both product and client data
- Front-end tools for interacting with clients, such as investment advisory tools and trading platforms
- Client information packages, including terms & conditions and other forms
- Client reporting systems
- Data exchange processes, both internal within company groups as well as external due to self-regulatory initiatives such as the EMT

Recurring:

- Maintenance of all the above points. The introduction of a new client category would introduce more complexity which would create more maintenance costs
- Updates based on regulatory initiatives or supervisory activities

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

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

Please specify what other criteria should be the one applicable to classify a client as a semi-professional client:

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

We see that the most practical solution would be to evaluate all the conditions to classify clients from retail client more easily to professional client and to keep the three categories. We are not in favour of adding the fourth category of semi-professional client because it would make the classification process more difficult both to service providers and clients.

However, if the Commission still considers this, then we propose that minimum investable portfolio would be one of the conditions to classify clients as semi-professional. This limit should be lower than the limit of EUR 500,000 that applies to professional clients; for example, EUR 100,000 would be a good minimum. As explained in 42.1, this limit is already in use in Prospectus regulation and AIFMD. It is important that a firm is able to consider and include both internal and external assets (i.e. the client's total portfolio even though all the assets may not be held within the firm itself).

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.

A minimum size of investable portfolio could work in the sense that the industry is already used to working with such a criterion for opt-up professional clients. If the existing opt-up professional criterion is kept at EUR 500,000, setting the threshold at EUR 100,000 for semi-professionals would be plausible. It is important that a firm is able to consider and include both internal and external assets (i.e. the client's total portfolio even though all the assets may not be held within the firm itself).

If a trading frequency criterion was to be considered, it cannot be applied in a uniform manner across all types of products, like the current opt-up professional criterion. See our statement under question 40.1.

When it comes to the client's knowledge and experience, the emphasis should be on the client's understanding and knowledge about the products, rather than on their working experience in the financial sector.

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.

We support making the product governance requirements more proportionate depending on the type of investment service, client and financial instrument.
Access to third country products (like US ETFs) has been restricted because their manufacturers do not deliver product governance data and/or KIDs and there is no possibility for EU distributors to take these obligations on themselves.

Manufacturers not delivering full or comprehensible target market data or unwilling to deliver target market data cause product restrictions on the distributor side. Given the magnitude of target market data maintenance, this is by no means a small exercise for firms, especially for non-MiFID firms such as fund companies.

Given how the ESMA Guidelines have been structured around distribution outside the positive target market and inside the negative target market, the product governance rules create a stricter approach than what the suitability and appropriateness requirements do. Basically, the reason for this is that the latter are based on alerting and warning the client of potential outcomes, whereas the former is based on justifying the actual situation around the sale of the product (see point 71 in the ESMA Product Governance Guidelines).

As explained under question 40.1, the ambiguous nature of the wording of PRIIPs Article 4(1) has created unwanted product offering restrictions on the MiFID distribution side, as manufacturers do not provide KIDs for these types of products. When coupled with MiFID's opt-up professional criteria, product restrictions are inevitable.

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

	Yes	No	N. A.

It should only apply to products to which retail clients can have access (i.e. not for non-equities securities that are only eligible for qualified investors or that have a minimum denomination of EUR 100.000).	○	◉	○
It should apply only to complex products.	◉	○	○
Other changes should be envisaged – please specify below.	◉	○	○
Simplification means that MiFID II/MiFIR product governance rules should be extended to other products.	○	◉	○
Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.	○	◉	○
The regime is adequately calibrated and overall, correctly applied.	○	◉	○

Question 47.1 Please explain your answer to question 47:

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

The product governance rules should be simplified. The original political intention with the rules was to cover packaged investment products – comparable to the PRIIPs scope. The Level II rules and ESMA Guidelines then were given a too broad scope to cover all products and all services.

We consider the specific requirements on the Compliance function and their reporting as already embedded in the general duties of the Compliance function and their work through a risk-based approach. Therefore, we question their specific integration and mentioning in the Delegated Regulation.

The rules did not stop at a pure product governance level, and some of the elements basically concern suitability. An example of such an element is the practical implication and treatment of negative target market for services only requiring an assessment of knowledge and experience and client type. Changes should be made so that the rules more clearly separate product governance from issues which are in fact already regulated through the suitability and appropriateness rules.

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 concept of negative target market could be debated, since it adds an unnecessary level of complexity to firms' processes and the client experience when interacting with firms. One should either be within the target market or outside of the target market. Whether the latter would be suitable or appropriate in the distribution of a product, is a matter that should be regulated through conduct rules. The situation described above is a suitability/appropriateness question for all services requiring an assessment. This question and the way the rules have been structured is a clear example of a conflict where the appropriateness rules and the target market rules do not work together.

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 acknowledge that the rules at the EU level are a compromise providing overall guidance on quality enhancements (QE), and at the same time providing quite a lot of room for member states to set out local standards. This has now been used by some NCAs to come out with quite far-reaching and detailed interpretations (often based on local political considerations) even though the countries in question have not gold-plated the inducement requirements. We now see that the difference between how regulators approach this matter has a risk of creating disparities between how firms can operate their businesses within the EU in different markets. Although there is room for national discretion within the context of the inducement rules, stretching the rules without gold-plating could not have been the original intention when the EU drafted these rules.

In light of the above, it is important that the EU rules set out sufficient overarching principles of how the inducement rules should be read and interpreted for different types of investment products. Currently we see an issue in all investment products being looked at through the same lens with a one-size fits all approach, even though there are clear differences between investment funds and structured products, for example. While an ongoing inducements structure works well for the investment fund structure, it is not necessarily a good fit for structured products where the structuring, issuance and sales process is more of a one-off

process:

• In situations where a client would act against the way a product is structured and hold the product past its intended short investment horizon. An ongoing Quality Enhancements regime is then difficult both from the investment firm and client perspective.
• Where a structured product is sold by a client on the secondary market to another party, it is unclear how an ongoing inducement should be managed.
• It is unclear how the rules should be maintained when it comes to the roles for the parties involved in an issuance and sales process (issuer, distributor and advisor).

Given that this element of product diversification is lacking, we have seen national regulators pushing for restrictions on one-off/up-front inducements.

Some EU member states, such as Germany, have regulated that wide local distribution networks are considered one quality enhancement towards clients when inducements are justified. In most of the EU countries, Finland included, this is not in local regulation. In our opinion, this is a quality enhancement that could well be accepted in the entire EU region. Distribution networks are an important channel to distribute investment services and products to people in many areas. If inducements were not possible it would have a big effect on the distribution of financial instruments in the EU.

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

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

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

Question 50.1 Please explain your answer to question 50:

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

The manufacturer of an investment product should be able to make its own decision on the distribution system of the product. MiFID should enable both distribution models to have more variety on the market. An outright ban would have severe implications on the distribution of different financial instruments by financial groups. In the worst case, an outright ban on inducements would gradually end the model of dependent investment advice and in many cases would stop distribution. It would create a situation where fewer people are investing, and this is against the goals of the Capital Markets Union.

We are of the opinion that inducements help finance distribution networks, promote a wider range of products, and improve access to investment advice. Today, inducements also cover the infrastructure

around investments, e.g. fixed costs, IT costs and administration.

The implementation of the strengthened quality enhancement criteria through MiFID II, the increased client information, strengthened suitability requirements and product neutral internal advisor remuneration structures, are sufficient to achieve adequate investor protection.

Since inducements are normally paid based on the client's assets, the inducements regime carries the benefit of cross-subsidising investment advice to client segments with smaller savings or smaller investment portfolios, in the sense that wealthier investors help to fund these services for the wider community.

The structure in the Nordic countries is built on distribution channels which consist of – or are owned by – banks and insurance companies that also have in-house manufacturing, as well as distributors without in-house manufacturing. Without distribution fees there is a lot less incentive for these distributors to include products from external product manufacturers in their product offering. Naturally, this would lead to diminishing product diversity, fewer products for the clients to choose from, and barriers for smaller manufacturers to gain a foothold in the market.

Furthermore, in countries where an outright ban has been implemented, it has not produced encouraging results in the provision of independent investment advice to retail clients. On the other hand, we are pleased to see growth in lightweight robo-advisory services offered by companies in the Nordic market, which can and should be a quality enhancement of the distributor.

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

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

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

Question 51.1 Please explain your answer to question 51:

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

The qualification requirements for staff are important to make sure that they possess the appropriate knowledge, skills and experience, but FFI is of the opinion that that a certification requirement should rather be defined at the Member States level due to the national differences in education systems. Investment providers should be responsible for the competence of their employees. The level of knowledge, skills and experience was increased significantly in MiFID II. There has been lots of internal and external training

relating to this level increase: thousands of employees were retrained based on MiFID II changes. The level is adequate now and there is no need to set up a further certification requirement for staff.

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.

As stated in question 51.1, a certification requirement should be defined rather at member states level due to the national differences in education systems. The required level of knowledge, skills and experience was increased significantly in MiFID II. There has been lots of internal and external training relating to this level increase: thousands of employees were retrained based on MiFID II changes. The level is adequate now and there is no need to set up a further certification requirement for staff.

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.

The flexibility should be provided regarding distance communication at the client's consent in order to avoid unnecessary delays in orders. When clients place orders by phone, there is no real room to give detailed ex-ante cost and charges information. Service providers should be able to give ex-ante cost and charges information in a more general way when the parties agree about the services provided to clients. Another possibility would be to give the information after the transaction, e.g. in the client's online bank solution. This should apply not only to telephone orders, but to any order given by other remote communication method, such as via web-based client (video) negotiation, or other systems where the order is given electronically.

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.

Taping and record-keeping requirements are also considered to be useful tools in handling clients' complaints and to protect employees' rights.

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.

From our experience, investors are not keen on studying the best execution reports. We advise to assess the general interest and usefulness of these reports from the investor's perspective. The burden of reporting shouldn't be increased relating to this reporting obligation.

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

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

Please specify what else could be done to improve the quality of the best execution reports issued by investment firms:

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

One major step for usefulness and availability would be a centralised reporting platform, where all the RTS27 reports need to be uploaded.

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.

Best execution reports should have a predefined (e.g. XML-based) reporting format.
In RTS27 a precise product scope wasn't provided, so some trades are reported without identifiers (ISIN code), only with a written description of the product. Is this useful for market participants? For the analysis purposes of investors, it would be better if there was only one specified identifier for the product.

The product scope of an RTS27 report should be limited to only ToTV products (Traded on a Trading Venue), thus the only identification of the products would be an ISIN code.
RTS28 reports do not provide useful data of investment firms that execute trades 100% on own account: the quantitative reports contain only one row, which notes that 100% in this product is executed on own account. Only the qualitative reports should be provided in such cases.

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.

Some of the reports are clearly made for trading venues, as not all report templates make sense for OTC products (e.g. derivatives). To balance the costs on investment firms, this report should be mandatory for Systematic Internalisers and trading venues only.

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

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

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

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

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

The research unbundling rules and inducement regime under MiFID II have reduced the amount of research available for investors, especially in the case of SMEs. It seems that regulation removed the incentive to provide research coverage for less liquid instruments. It should be noted that Nordic countries overall are characterized by a high number of SMEs, which makes the region more exposed to the above-mentioned negative consequences of unbundling.

In winter 2018/2019, the NSA conducted a survey among its members, resulting in the following findings:

- Overall Research budgets in the Nordics have decreased since MiFID II/MiFIR
- Quality of research in general has declined
- Research coverage of SMEs has declined
- The distinction between research and corporate access has led to substantial administrative costs without contributing to investor protection
- There is a need for a level playing field between US and EU as regards the provision of research

FFI members have commented that research resources have decreased because of the unbundling rules. Professional investors who have resources to pay for quality research can acquire it to some extent, but smaller and individual investors may have no resources or the will to pay for research at all. There are few independent research houses in the world which provide quality non-issuer sponsored research without execution, but due to fees, these are limited only for larger professional clients.

Quality of research has fallen also because the number of analysts and researchers working in the market is smaller than before MiFID II. Issuer-sponsored research has gained foothold in the markets, but the quality of issuer-sponsored research is not as good as traditional research from the buy-side point of view.

All the research costs were bundled in execution fees before MiFID II and there was no separate fee for research. For both clients and service producers, this was a simple and acceptable way of doing business. Due to unbundling rules, the same parties now have separate research payment accounts (RPAs), etc. Pricing and procedures relating to research are difficult for both buyers and sellers.

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

1. Increase the production of research on SMEs

1.1. EU Rules on research

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

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

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

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

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

Other	○	○	○	○	◉	○

Please specify what other proposals you would have in order to increase the production of SME research:

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

The only workable solution to cover the issues relating to quantity, quality and pricing of research, and proper functioning of markets, would be that all the costs of research (big companies, SMEs, FICC) could be covered bundled in execution pricing. This is the only real solution to gain back SME research coverage and proper functioning of research market. Unbundling of execution and research has had a negative impact on all the parties in the market.

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.

Introduce a specific definition of research in MiFID II level 1: All the research is similar and should be based on same rules.

Authorise bundling for SME research: Exclusive bundling for SMEs would eventually most likely have a negative impact on research coverage and SMEs. First, it is difficult to define what is a SME and what is not. Second, it would be difficult to have separate bundled pricing for SME research and execution and have separate unbundled pricing for bigger companies' execution and research and possibly FICC research. All the problems of separate pricing would remain and then the bundled execution prices of SMEs would probably have to be raised to cover the costs of SME research coverage. This would be a more complicated system than under MiFID II. Eventually this could act against the participation to funding of SME companies – more investors would invest only to bigger companies. There is naturally always a market demand for big company research. SMEs however are a more problematic and vulnerable area in terms of research coverage.
Exclude independent research providers' research: Both sell-side and buy-side see that these independent research providers should be placed under same regulation and same procedures as other research providers. There might also be competition issues involved with this. Furthermore, buy-side shouldn't act differently when buying from independent research providers.

Prevent under-pricing in research: The prevention of under-pricing in research might have a negative impact on research coverage. There are levels of pricing for research that come from market participants, and these kinds of price floors would eventually have a similar negative impact to research as caused by MiFID II. Those professional clients who have budgets to pay for research would not raise these budgets; they would just buy less research, and this would result in a decline of research coverage again.

Amend rules on free trial periods of research: We are of the opinion that amending the rules on free trial periods of research has no effect on SME research coverage. ESMA's Q&A now defines that this period cannot be more than 3 months, which is enough to see if the service is workable.

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.

Public money or money from market operators can be problematic; it is difficult to decide who gets the funding and who does not, for example.

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.

FFI is in favour of market-driven research without any subsidy from public funding.

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.

Artificial Intelligence can only utilise information provided by the companies, e.g. statistics. Good quality research still means people who can combine all the information and have a market view, making interpretations about the data and the financial situation and future of SMEs. Data derived from AI needs to be checked and would not be solid data to rely on by investors. Therefore, the use of artificial intelligence can be a supplement to research but not a substitute. Regardless, in FFI's opinion the developing AI technology is something with potential to keep an eye on.

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.

Our members do not see a proper market for this kind of database. There have been a couple of these kinds of research databases in the market, but they have not been successful. Smaller investors are not usually willing to pay even smaller fees for research. For research providers, these kinds of databases are not attractive because the fees coming from this model are that small – why give away your valuable research openly without a proper fee? On the other hand, bigger clients are willing to pay more for quality research.

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.

As noted in Q 63.1, we do not see that research service providers would like to give away their quality SME research to ESMA database basically for free. ESMA would not be a proper party to charge and receive fees.

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.

If the relationship between the investment firm and the issuer is clearly disclosed, we do believe that issuer-sponsored research qualifies as an acceptable minor non-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.

Issuer-sponsored research should be regulated the same way as other research. We do not see a difference in this regard. However, the relationship between the investment firm and the issuer should be clearly disclosed.

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 If you do consider that rules applicable to issuer-sponsored research should be amended, please specify how:

5000 character(s) maximum

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

Such amendments could be disclosure requirements. For example, the relationship between the issuer and the provider of the research must be clearly stated, no target price, no recommendation, and it must be clearly labelled as issuer-sponsored research.

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

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

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.

FFI is of the opinion that a workable solution to cover the issues relating to quantity, quality and pricing of research and proper functioning of markets would be that all the costs of research (big companies, SMEs, FICC) could be covered bundled in execution pricing. This is the only real solution to gain back SME research coverage and proper functioning of the research market. Unbundling of execution and research has had a negative impact on all the parties in the market.

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.

See our comments under question 59.

IV. Commodity markets[8]

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

ESMA has already conducted a consultation on position limits and position management. The report will be presented to the Commission at the end of Q1 2020. From a previous ESMA call for evidence, the commodity markets regime seems to have not had an impact on market abuse regulation, orderly pricing or settlement conditions. ESMA stresses that the associated position reporting data, combined with other data sources such as transaction reporting allows competent authorities to better identify, and sanction, market manipulation. Furthermore, the Commission has identified in its Staff Working Document on strengthening the International Role of the Euro that “There is potential to further increase the share of euro-denominated transactions in energy commodities, in particular in the sector of natural gas”.

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

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards improving the functioning and transparency of commodity markets and address excessive commodity price volatility.	○	○	○	○	○	○
The MiFID II/MiFIR costs and benefits with regard to commodity markets are balanced (in particular regarding the regulatory burden).	○	○	○	○	○	○
The different components of the framework operate well together to achieve the improvement of the functioning and transparency of commodity markets and address excessive commodity price volatility.	○	○	○	○	○	○
The improvement of the functioning and transparency of commodity markets and address excessive commodity price volatility correspond with the needs and problems in EU financial markets.	○	○	○	○	○	○
The position limit framework and pre-trade transparency regime for commodity markets has provided EU added value.	○	○	○	○	○	○

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

Quantitative elements for question 69.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 69.1:

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

1. Position limits for illiquid and nascent commodity markets

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

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

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

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

	1 (most appropriate)	2 (neutral)	3 (least appropriate)	N.A.
Current scope				
A designated list of 'critical' contracts similar to the US regime				
Other				

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	○	○	○
Illiquid	○	○	○
Other	○	○	○

Question 74.1 Please explain your answer to question 74:

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

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

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

Question 75.1 Please explain your answer to question 75:

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

2. Pre-trade transparency

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

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

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

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

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

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

V. Derivatives Trading Obligation[9]

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

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

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

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

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

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

Quantitative elements for question 77.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 77.1:

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

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

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

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

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

Question 79.1 Please explain your answer to question 79:

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

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

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

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

Question 80.1 Please explain your answer to question 80:

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

VI. Multilateral systems

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

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

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

- 1 - Disagree
- 2 - Rather not agree
-

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

VII. Double Volume Cap[10]

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards the objective of more transparency in share trading.	○	○	○	◉	○	○
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	○	○	◉	○	○	○
The different components of the framework operate well together to achieve more transparency in share trading.	○	○	◉	○	○	○

More transparency in share trading correspond with the needs and problems in EU financial markets.	○	◉	○	○	○	○
The DVC has provided EU added value	○	○	○	◉	○	○

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

Quantitative elements for question 82.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 82.1:

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

From the share execution point of view, the execution costs have decreased since MiFID II. This is partly due to the fact that especially early 2018 DVC lowered the amount of dark MTF trading simultaneously when other better-quality execution venues' (FBA's, SI's, LIS venues) share of overall trading rose. This has also resulted to better quality executions by our metrics. However, some doubt remains on both venue and stock specific DVC levels as well as the effectiveness of the temporary venue and stock specific bans. The objective for transparency has made it easier for us to understand the stock specific liquidity profile eg. in both pre- and post-trade analysis.

The Negotiated Trade Waiver (NTW) should not be limited in usage as this waiver is an important tool in smaller markets and markets with lower liquidity levels. It benefits retail investors, where many are directly affected via investments in pension funds. Furthermore, to our knowledge, the NTW has not been a source of misuse as the case has been for the RPW.

Smaller markets may not have sufficient depth of liquidity on the order book to match orders above a certain size at a point in time. This means that orders even slightly larger than average (but below a size which would qualify for the large in scale waiver) can negatively impact on the market resulting in increased price volatility to the detriment of investors. Even shares classified as "liquid" under MiFIDII/MiFIR can still go through periods of lower liquidity when the use of the NTW becomes more critical to reduce increased price volatility and support trading activity.

Increasing the possibility of using the NTW for liquid shares during lighter trading periods would have the effect of increasing the investor appetite in such shares, at least in the smaller markets.

VIII. Non-discriminatory access[11]

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

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

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

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

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

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

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

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

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

Please explain your reasoning and specify which countries:

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

IX. Digitalisation and new technologies

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

Furthermore, it is evident that digitalisation and new technologies are transforming the financial industry across sectors, impacting the way financial services are produced and delivered, with possible emergency of new business models.

The digital transformation can bring huge benefits for the investors as well as efficiencies for industry. To promote digital finance in the EU while properly addressing the new risks it may bring, the Commission is considering proposing a new Digital Finance strategy building on the work done in the context of the FinTech action plan and on horizontal public consultations. The Commission recently published two public consultations focusing on crypto assets and operational resilience in the financial sector, and may consult later this year on further topics in the context of the future Digital Finance strategy.

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

Question 86. Where do you see the main developments in your sector: use of new technologies to provide or deliver services, emergence of new business models, more decentralised value chain services delivery involving more cooperation between traditional regulated entities and new entrants or other?

Please explain your answer:

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

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

Please explain your answer:

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

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

Please explain your answer:

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

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

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

Question 89.1 Please explain your answer to question 89:

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

The online environment puts a strong focus on providing products to customers as fast as possible, with as few barriers as possible. As far as financial services are concerned, this might endanger retail clients if they do not take enough time to reflect on purchasing complex financial products. On the other hand, making the product quick and easy to purchase (e.g. speedy or ‘one-click’ products) makes it easier for clients to buy and sell at least simple investment

products online. Taking all of the above into consideration, the Commission would like to gather feedback on whether certain rules in the MiFID II/MiFIR framework on marketing and provision of information to clients should be adjusted to better suit the provision of services online.

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

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

Question 90.1 Please explain your answer to question 90:

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

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

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

Question 91.1 Please explain your answer to question 91:

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

X. Foreign exchange (FX)

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

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

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

Question 92.1 Please explain your answer to question 92:

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

Currently more than a thousand wholesale FX Market participants have signed and adopted the FX Global Code, which was initiated by the Basel Committee and developed in a partnership between central banks and market participants from 16 jurisdictions around the globe.

The Global Code does not impose legal or regulatory obligations on market participants, nor does it substitute for regulation. It is intended to serve as a supplement to local laws, rules, and regulation by identifying global good practices and processes. While the code sets itself down as "voluntary", adherence to its principles is growing – major Central Banks have confirmed they will link their trading to adherence with the code.

In addition, we consider the spot FX Market to be the most liquid of any FX derivatives in a same currency pair.

In our opinion, adding FX spot into MiFID II / MiFIR would create regulation overlap with the Global FX Code and create costly record-keeping and reporting burdens.

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.

We are of the view that current supervisory powers are adequate.

Section 3. Additional comments

You are kindly invited to make additional comments on this consultation if you consider that some areas have not been covered above.

Please, where possible, include examples and evidence.

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

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

Please explain your answer:

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

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

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

Useful links

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

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

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

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

Contact

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