



European Securities and
Markets Authority

Consultation Paper

Guidelines on the MiFID II/ MiFIR obligations on market data



Responding to this paper

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

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

ESMA will consider all comments received by **11 January 2021**.

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

Publication of responses

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

Data protection

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

Who should read this paper?

This consultation paper is interesting for you if you are a trading venue, an APA, an SI or a consumer of market data.

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References and abbreviations

Legislative references

MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ¹
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of Council 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ²
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ³
Delegated Regulation (EU) No 2017/565	Commission Delegated Regulation (EU) No 2017/565 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive ⁴
Delegated Regulation (EU) No 2017/567	Commission Delegated Regulation (EU) No 2017/567 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions ⁵
RTS 1	Commission Delegated Regulation (EU) No 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution

¹ OJ L 173, 12.06.2014, p. 349.

² OJ L 173, 12.06.2014, p. 84.

³ OJ L 331, 15.12.2010, p. 84.

⁴ OJ L 87, 31.03.2017, p. 1.

⁵ OJ L 87, 31.03.2017, p. 90.



obligations in respect of certain shares on a trading venue or by a systematic internaliser⁶

RTS 2

Commission Delegated Regulation (EU) No 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives⁷

Other references

Report on Market Data

MiFID II/MiFIR Review Report No. 1 of 5 December 2019 on the developments in prices for pre- and post-trade data and the consolidated tape for equity instruments

Abbreviations

ESMA	European Securities and Markets Authority
RCB	Reasonable Commercial Basis
APA	Approved Publication Arrangement
CTP	Consolidated Tape Provider
SI	Systematic Internaliser
NCAAs	National Competent Authorities

⁶ OJ L 87, 31.03.2017, p. 387.

⁷ OJ L 87, 31.03.2017, p. 229.

1 Executive Summary

Reasons for publication

On 5 December 2019, ESMA published the MiFID II/MiFIR Report on the developments in prices for pre- and post-trade data and the consolidated tape for equity instruments⁸ (hereafter referred to as 'Report on Market Data').

In this report, ESMA presented, inter alia, its assessment and recommendations on the development of prices for market data and the application of the main MiFID II/MiFIR provisions aiming at reducing the cost of market data: the requirement to publish market data on a reasonable commercial basis (RCB), the requirement to provide market data in a disaggregated format, and the requirement to make market data available free of charge 15 minutes after publication. In the report, ESMA made some recommendations to the European Commission on possible amendments to Level 1 provisions and also committed to develop supervisory guidance in the area of market data. ESMA has now drafted this guidance in the form of Guidelines.

Contents

In this Consultation Paper (CP) ESMA consults on draft guidelines on the MiFID II/MiFIR obligations on market data. By providing clarity for market participants, the proposed guidelines will ensure better and uniform application of these MiFID II/MiFIR obligations. ESMA also believes that the implementation of these Guidelines supports consistent, efficient and effective supervisory practices.

The CP is structured as follows:

- Section 3 covers ESMA's proposal for Guidelines on the provision of market data on the basis of costs.
 - Section 4 sets out ESMA's proposal for Guidelines on the obligation to provide market data on a non-discriminatory basis.
 - Section 5 sets out ESMA's proposal for Guidelines on the per-user fee obligation.
 - Section 6 explains the rationale for Guidelines on the obligation to keep market data unbundled; and
 - Section 7 covers Guidelines on the transparency obligations in relation to (i) the development of a standardised publication format, (ii) standardisation of key terminology used, (iii) accounting methodologies for setting market data fees, and (iv) auditing practices.
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- Section 8 sets out ESMA’s proposal for Guidelines on the provision of market data free of charge 15 minutes after publication.

The CP also includes the following annexes:

- Annex I sets out a list of all the questions of the CP;
- Annex II sets out the costs and benefits analysis;
- Annex III provides a summary of the stakeholder roundtable on market data organised by ESMA in June 2020; and
- Annex IV sets out the draft ESMA Guidelines with, in turn, accompanying annexes.

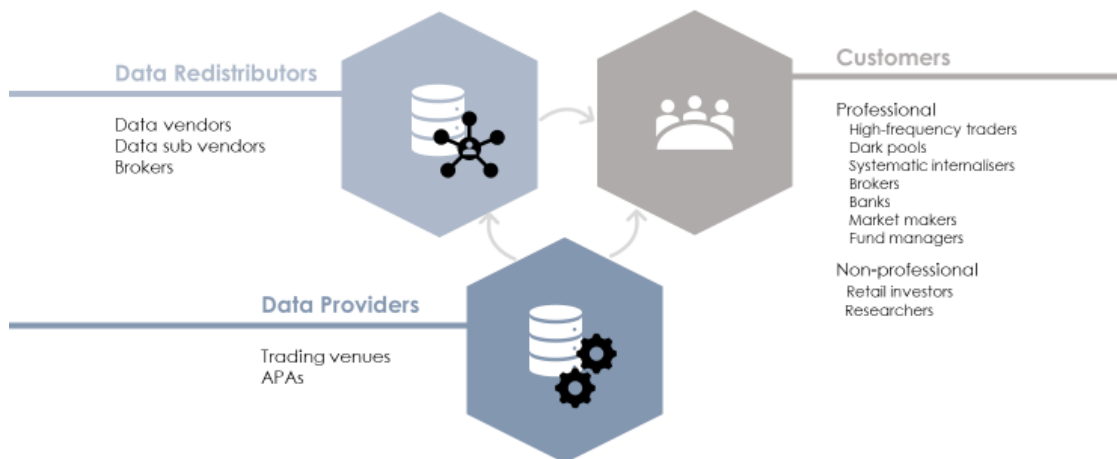
Next Steps

ESMA will consider the feedback it received to this consultation and expects to publish a final report and final Guidelines by Q2 2021.

2 Introduction

5. The provision of market data is essential for market participants to obtain a desired overview of trading activity. Therefore, MiFID II/MiFIR introduced provisions to ensure that market data is available to market participants in an easily accessible, fair and non-discriminatory manner, to decrease the average cost of the market data and to make data available to a wider range of market participants.
6. Market participants involved in the discussion on the provision of market data consist of, broadly speaking, market data providers, market data redistributors and market data users, or customers. Customers, amongst which brokers, banks and fund managers, are reliant on market data providers, such as venues, for market data. In many cases a data redistributor is involved in the chain as well, usually to pool data from different sources. These different stakeholders are listed in the figure below.

FIGURE 1: SCHEME ON THE PROVISION OF DATA



7. ESMA has already previously carried out work in the area of market data. In particular, ESMA has published its Report on Market Data in December 2019, in which the development in prices for pre- and post-trade transparency was a key subject. In that report, ESMA committed to develop guidance on a number of requirements.
8. Specifically, the guidance concerns the requirements stipulated in Articles 13, 15(1) and 18(8) of MiFIR and 64(1) and 65(1) and (2) of MiFID II, that regulated markets, MTFs, OTFs, APAs, CTPs and SIs (hereafter referred to as 'market data providers') shall provide market data on a reasonable commercial basis (RCB) and ensure non-discriminatory access to that information. Articles 6 to 11 of Delegated Regulation (EU) No 2017/567 and 84 to 89 of Delegated Regulation (EU) No 2017/565 further specify these requirements.

9. Furthermore, the guidance concerns the requirement specified in Article 13(1) of MiFIR, that trading venues are required to make data available free of charge 15 minutes after publication ('delayed data'). The same obligation is provided by Article 64(1) and 65(1) of MiFID II in respect to APAs and CTPs.
10. The guidance has been developed in the form of Guidelines, which are based on Article 16(1) of the ESMA Regulation. The current Consultation Paper (CP) includes analysis and proposals for these Guidelines.
11. In order to gather views on the possible content of these Guidelines, ESMA organised a roundtable in June 2020. In Annex III of this CP the feedback that ESMA received during this roundtable is included. The Guidelines also build upon input received from bilateral meetings with stakeholders. Lastly, ESMA used input from NCAs that was received through questionnaires.
12. In the sections below, the following structure is maintained. First of all, section 3 touches upon the applicability of the Guidelines to those market data providers offering market data free of charge. Next, sections 4 to 7 concern those aspects of the Guidelines that relate to the RCB requirements, including the provision of market data on the basis of cost, the obligation to provide market data on a non-discriminatory basis, the per user model, the obligation to keep data unbundled and the transparency obligations. Section 8 covers the proposed Guidelines on delayed data. Each section contains an outline of the legal framework, an analysis of the current situation and an explanation of the proposed Guidelines. Stakeholders are invited to comment on the questions listed in each section.
13. In the annexes to this CP, readers can find a list of all the questions in the CP, a preliminary costs and benefits analysis, a summary of the roundtable on market data; and the draft Guidelines.

3 Applicability for market data providers offering market data free of charge

14. Market data providers offering market data free of charge are exempted from most of the Level 2 provisions on market data. More specifically, according to Article 84(2) of Delegated Regulation (EU) No 2017/565 and Article 6(2) of Delegated Regulation (EU) No 2017/567 the requirements on providing market data on the basis of costs, the different categories of clients under the requirement to provide data on a non-discriminatory basis, per user fees, data disaggregation, and the transparency obligations do not apply to market data providers offering market data free of charge.
15. Nevertheless, ESMA understands that a number of Level 2 requirements on the market data provision do apply to such market data providers. Notably, the requirement to make market data available to all customers on the same terms and conditions, the requirement to have scalable capacities in place to ensure that customers can obtain timely access to market data at all times on a non-discriminatory basis and the

requirement to offer unbundled market data. ESMA therefore suggests that these Guidelines also apply to market data providers providing market data free of charge with respect to the applicable requirements.

16. Moreover, the Guidelines on the provision of delayed data free of charge also apply to market data providers offering market data free of charge.

Question 1: What are your views on covering in the Guidelines also market data providers offering market data free of charge for the requirements not explicitly exempted in the Level 2 requirements?

4 Provision of market data on the basis of costs

4.1 Legal framework

17. According to Article 7 of Delegated Regulation (EU) No 2017/567 and Article 85 of Delegated Regulation (EU) No 2017/565, the fees of market data should be based on the costs for producing and disseminating the data and may include a reasonable margin. The costs of producing and disseminating market data may include an appropriate share of joint costs for other services provided.

4.2 Assessment and proposals

18. In its Report on Market Data, ESMA concluded that there was a need to provide guidance on the accounting methodologies for setting fees for market data. It is important that market data providers have appropriate accounting methodologies in order to be able to demonstrate that fees for market data are set up in a manner compliant with the MiFID II/MiFIR rules, in particular that fees for market data must be based on the cost for producing and disseminating market data.
19. In response to the growing concerns on the development in prices of market data, some venues have already decided to be more transparent on their cost structure and on their methodology for setting market data fees.⁹ ESMA sees this as a positive development because it contributes to increasing transparency on market data fees and helps customers and regulators to assess how prices were determined. However, ESMA still remains concerned about the overall lack of transparency around market data fees calculation and considers it necessary to provide further guidance to ensure that all market data providers have appropriate cost accounting methodologies in place and provide market participants with the necessary information to understand such methodologies.
20. Due to the overall lack of transparency around market data fees calculation, in the Report on Market Data, ESMA recommended to add a requirement in the Level 1 text

⁹ See for instance, "The Cost of Exchange Services" by IEX Group, 2019

for trading venues, APAs, SIs and CTPs to share information with NCAs and ESMA on the actual costs for producing and disseminating market data and on the actual included margins. Pending the implementation of such requirement, ESMA has been encouraging NCAs to collect details on the overall costs of producing and disseminating market data as well as the margins. This information could be provided on an annual basis with the breakdown by type of costs. Such information, that could be subject to onward distribution to ESMA, would help NCAs and ESMA to monitor the overall developments in costs in market data and ensure consistent approaches across the Union.

21. In Guideline 1 the emphasis lies on the need for market data providers to have a clear methodology in place for setting the price of market data. ESMA believes that market data providers should have a clear and documented methodology and that the methodology should be reviewed on a regular basis, at least annually. This aims to ensure not only that market data providers have a clear methodology in place but also requires that the methodology remains up to date. Market data providers may need to adjust their methodology over time and account for changes in marginal costs. For example, if a market data provider allocates a portion of investments in IT infrastructure to the cost of production and dissemination of market data, the market data provider is expected to consider the amortisation of the investments when allocating these costs.
22. According to the Level 2 requirements, the methodology should be based on the cost for producing and disseminating market data. This requirement does not exclude the possibility to apply a margin. Nonetheless, when this is the case, the methodology should explain whether a margin is included and how the appropriate margin has been determined. ESMA considers that the methodology should demonstrate how the price for market data is based on the costs for the production and dissemination of market data. The methodology should identify the costs that are solely attributable to the production and dissemination of market data (i.e. direct costs) and the costs that are shared with other services (i.e. joint costs). Where relevant, further distinction should be made between variable costs and fixed costs for both direct and joint costs.
23. Guideline 1 also ensures that the allocation of costs for producing and disseminating market data reflects the actual costs of producing and disseminating market data and ultimately the fees charged to market data users. The methodology should include an appropriate justification of the costs included in the fees for market data. For example, market participants should not allocate joint costs according to the revenues generated by the different services and activities of their company because this practice is contradictory to the obligation to set market data fees (i.e. revenues of the market data business) based on costs of producing and disseminating market data.
24. Guideline 1 requires the methodology to clearly identify and categorise the costs when determining the overall costs of producing and disseminating market data. These costs are direct costs and joint costs which in turn can be further broken down between fixed costs and variable costs. ESMA considers it useful to further specify what should be understood as direct, joint, variable and fixed costs. To that end, Guideline 1 aims to explain and harmonise these cost typologies.

25. Finally, in terms of other practices that may indirectly impact the price of market data, ESMA deems it important to include a guideline on auditing revenues. When working on the Report on Market Data, ESMA understood that auditing by market data providers could also contribute to the increase in the costs of market data for market data consumers.
26. In order to avoid that the final cost of data is increased through auditing practices, ESMA is of the view that market data providers should only impose penalties in consequence of an audit, where they can demonstrate that customers have not complied with the terms of the market data agreement. This is reflected in Guideline 2. Also, Guideline 2 requires that the level of penalties in case of non-compliance with the terms of the market data agreement should be based on the recovery of revenues which would have been generated in case of compliance with the license.
27. This implies the exclusion of overly onerous practices that result in the generation of additional revenues on the basis of non-compliance or the inability by the customer to prove compliance with the terms and condition of the license. For example, such practices would be excessive interest charging or extensive retroactivity.

Question 2: Do you agree with Guideline 1? If not, please justify.

Question 3: Do you think ESMA should clarify other aspects of the accounting methodologies for setting up the fees of market data? If yes, please explain.

Question 4: With regard to Guideline 2, do you think placing the burden of proof, with respect to non-compliance with the terms of the market data agreement, on data providers can address the issue? Please provide any other comments you may have on Guideline 2.

Question 5: Do you consider that auditing practices may contribute to higher costs of market data? Please explain and provide practical examples of auditing practices that you consider problematic in this context. Such examples can be provided on a confidential basis via a separate submission to ESMA.

5 Obligation to provide market data on a non-discriminatory basis

5.1 Legal framework

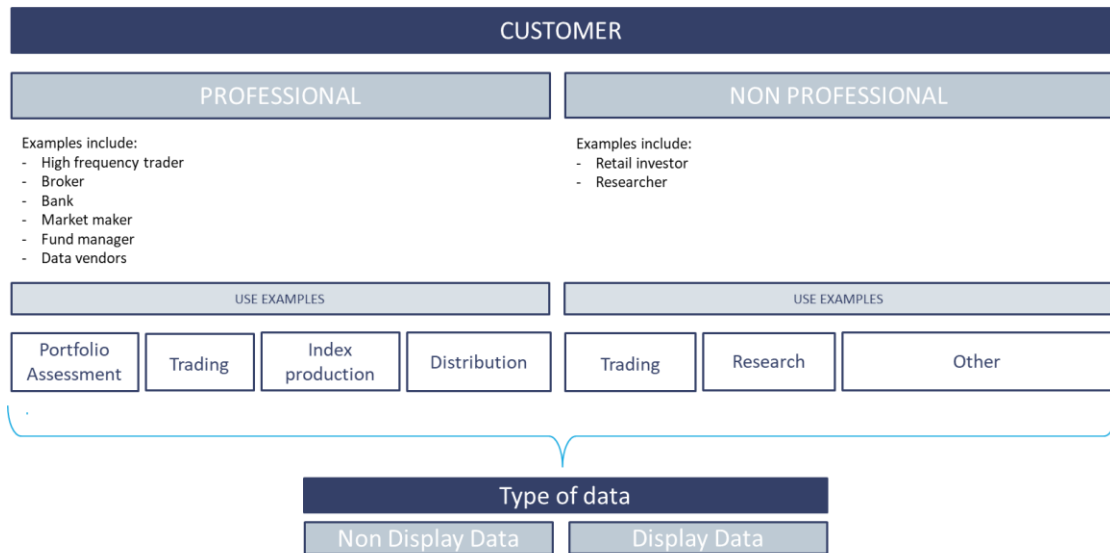
28. According to Article 86 of Delegated Regulation (EU) No (EU) No 2017/565 and Article 8 of Delegated Regulation (EU) No (EU) No 2017/567, market operators and investment firms operating a trading venue and SIs shall make market data available at the same price and on the same terms and conditions to all customers falling within the same category in accordance with published objective criteria.

29. Pursuant to this provision, market data providers can establish categories of customers with different prices, terms and conditions provided that the categories are based on objective criteria and that the categories and the relevant criteria for defining the categories are published. According to the same provision, price differentials should take into account the scope and scale of the market data, and the use made by the customer of the market data.
30. Furthermore, according to this Article market data providers shall have scalable capacities in place to ensure that customers can obtain timely access to market data at all times on a non-discriminatory basis.
31. In addition, Article 89 of Delegated Regulation (EU) No (EU) No 2017/565 and Article 11 of Delegated Regulation (EU) No (EU) No 2017/567 require market data providers to disclose the price and other terms and conditions for the provision of the market data in a manner which is easily accessible to the public.
32. The requirement to provide market data on a non-discriminatory basis applies also to market data providers offering data free of charge. However, given that no prices are charged, categories of customers can only be based on different terms and conditions for such categories. Therefore, Guidelines 3 and 5 apply to market data providers offering data free of charge.

5.2 Assessment and proposals

33. In the context of the Report on Market Data, ESMA analysed a sample of market data policies of trading venues. The analysis showed that currently market data policies do not permit to understand with a sufficient degree of certainty into which category customers are grouped, the criteria behind such categorization and the applicable fees, terms and conditions. As a result, customers have problems in understanding which category they belong to and what the fees, terms and conditions applicable to them are.
34. From the analysis done by ESMA and from the various stakeholder interactions, it emerged that many market data providers when setting up client categories look in particular at the use cases of customers. However, it is not always clear which different uses of data are taken into account, and how fees are applied when a customer makes simultaneous uses of the data.
35. Examples of different market data use cases that exist among market data providers are portfolio assessment, research or index production. ESMA considers that when market data providers set up client categories according to use cases, these are sub-categories of the two overarching categories of professional and non-professional customers, which ESMA has included in the standardised terminology under Guideline 11. The use of sub-categories to professional/non-professional use are not mandatory. However, if such sub-categories are adopted, market data providers should clarify accordingly.

FIGURE 2 EXAMPLES OF CUSTOMER CATEGORIES



36. In Guideline 3, ESMA therefore clarifies that compliance with the obligation to provide data on a non-discriminatory basis requires market data providers to:
- (i) establish in their market data policy categories in which they differentiate between customers, relevant fees and applicable terms and conditions;
 - (ii) publish the criteria used to define the category, which should be based on factual elements easily verifiable and pertaining to more than one customer, and explained and supported in such a manner that customers have sufficient information to understand the category they belong to; and
 - (iii) explain and justify any differentiation in the fees and terms and conditions associated to each category.
37. Regarding point (i), the purpose of Guideline 3 is to ensure information is displayed in market data policies on existing customer categories and the fees and terms and conditions applicable to each category.
38. On point (ii), ESMA requires market data providers to publish and explain the criteria used to distinguish between the different types of data usages to enable their assessment in term of objectivity and their non-discriminatory nature. In particular, Guideline 3 indicates that the criteria used need to be based on factual elements that are easily verifiable and pertain to more than one customer. This reinforces the objectivity and helps at reducing the number of categories of clients to what is strictly necessary to avoid superfluous distinctions.

39. Information on criteria should be easily accessible to the public and clear enough to enable customers to understand the category they belong to. In addition, the criteria should be displayed alongside fees, terms and conditions of data licenses in order to permit customers to understand terms and conditions applicable to them in an easy manner.
40. Vis-à-vis point (iii), the guideline asks for an explanation on any fee differentiation. This aims at ensuring that the distinction in fees and terms and conditions among clients, through the creation of categories, is grounded on objective reasons and not only on the value represented by the data to the clients. This ensures that customers who are alike, are not treated differently and that differentiation among clients is not discretionary. By requiring any distinction to be justified, this part of Guideline 3 also aims at reducing the number of categories of clients.
41. ESMA understands that when a customer buys data in order to use it for different purposes (e.g. research, index production, portfolio management), the customer is sometimes required to pay multiple fees for such data according to the number of uses made out of it. Where data use cases are not clearly predefined, such practice renders it very difficult for customers to understand which fees are applicable to them. Furthermore, a basic fee is sometimes added by default regardless of the use made of data, inflating unnecessarily the price.
42. ESMA is of the view that customers should not be required to pay multiple fees for the same data. Paying more than once for the same data makes the use of data for more than one purpose excessively expensive without justification and discourages the use of data in general. Furthermore, it seems to conflict with the obligation provided by Article 7 of Delegated Regulation (EU) No 2017/567 and Article 85 of Delegated Regulation (EU) No 2017/565 requiring the price of market data to be based on the cost of production and dissemination with the inclusion of a reasonable margin.
43. With Guideline 4, ESMA therefore requires market data providers, where their data policy entails different customer categories, to consider specifically the case where a customer could potentially belong to more than one customer category, and requires market data providers for such a case to classify customers only by using one category of data usage, in order to ensure the same data is charged only once.
44. By avoiding duplication of fees for the same data, the Guideline aims to eliminate practices which inflate unnecessarily the cost of data, which render it difficult for customers to predict the overall final price, and which may unnecessarily discourage data application.
45. Moreover, ESMA notes that discrimination on the provision of data may also occur through the request of unnecessary or overly burdensome technical arrangements. As the MiFID II/ MiFIR provisions highlight that customers should obtain timely access to market data at all times on a non-discriminatory basis, ESMA considers such practices as unacceptable.

46. Therefore, Guideline 5 clarifies that when different customers fall within the same category and thus the same terms and conditions apply, the market data providers should also offer the same technical arrangements. Market data providers should ensure that practices in terms of such technical arrangements, including latency and connectivity, are non-discriminatory. Market data providers should be able to justify any differentials for technical arrangements. Non-discriminatory principles should also apply for customers who might be part of a larger group, and where customers are vertically integrated. These customers should not be given an advantage or favourable treatment.

Question 6: Do you agree with Guideline 3? If not, please justify, by indicating which parts of the Guideline you do not agree with and the relevant reasons.

Question 7: Do you agree with the approach taken in Guideline 4? If not, please justify, also by providing arguments for the adoption of a different approach.

Question 8: Do you agree with Guideline 5? If not, please justify.

Question 9: Do you think that ESMA should clarify other elements of the obligation to provide market data on a non-discriminatory basis? If yes, please explain.

6 Per user fees

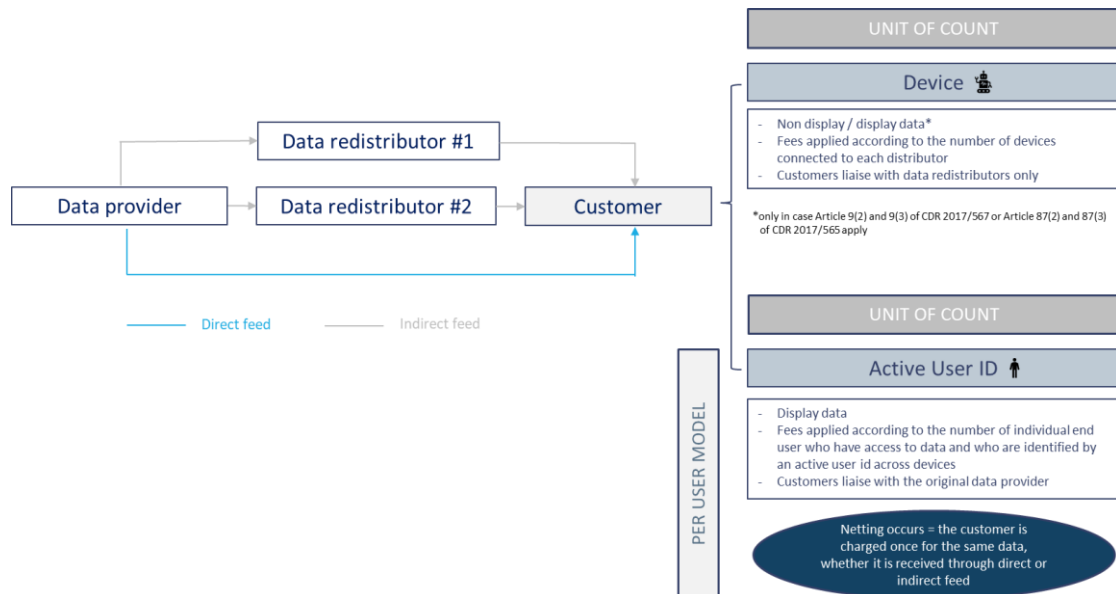
6.1 Legal framework

47. According to Article 87 of Delegated Regulation (EU) No 2017/565 and Article 9 of Delegated Regulation (EU) No 2017/567, market data providers should charge for the use of market data on the basis of the use made by individual end-users of the market data ('per user basis').
48. Market data providers should have arrangements in place to ensure that each individual use of market data is charged only once.
49. By way of derogation, market data providers may decide not to make market data available on a per user basis, where charging on a per user basis would be disproportionate to the cost of making market data available, having regard to the scale and scope of the market data. Market data providers should provide grounds for the refusal to make market data available on a per user basis and publish those grounds on their webpage.

6.2 Assessment and proposals

50. In the context of the Report on Market Data, stakeholders brought to ESMA's attention that the concept of per user fees was not applied in a convergent fashion across market data providers and that guidance is required.
51. ESMA therefore noted in the Report on Market Data that there may be different interpretations of the requirement to charge on a per user basis, and that some respondents interpret the requirements as charging according to the use made by individual customers of the market data rather than on an individual per user basis.
52. In this respect, ESMA recalls that market data is not always supplied directly from venues to customers, but often purchased through data vendors or independent software vendors. Where data is not offered directly from the original market data provider (e.g. venues), data vendors often provide the data through a number of devices. In such cases, fees of display data are charged to the customer based on the number of devices receiving the data. Under this model, for example, a trader simultaneously having access to two different data vendors terminals and to a proprietary Application Programming Interface (API) also fed by the data stream from one of both vendors may end up paying three times for the same data.
53. ESMA understands the per user model to be a model of charging fees for display data where fees are calculated using as unit of count the number of natural users, which allows customers basically to net a part of the market data costs from a single source (e.g. one regulated market) across data vendors and across devices on a natural user level ('per user' or 'user-id' model). In this context, using the former example, the trader would be charged only once rather than three times. Under this model, the client reports data usage directly to the venue, which is then in a position to perform the netting of the client usage.
54. With Guideline 6 ESMA adopts this interpretation for per user model and clarifies the meaning of the obligation to charge on a 'per user basis'. In particular, Guideline 6 clarifies that the per user model requires market data providers to use as a unit of count for display data a "user-id", which permits to charge fees per active user and not per device or data product. Guideline 6 also indicates that the possibility for fees to be paid per physical / active user has as a result permitting to net market data cost from a single source across data vendors and across devices, enabling users to optimise their data costs and to avoid unnecessary multiple billings when the same data is sourced through different market data providers or products.

FIGURE 3 PER USER MODEL



55. ESMA is aware that the implementation of this pricing model/structure is however subject to prior approval by the venue on a case-by-case basis, as a requirement for the model to work is the possibility for the customer to identify correctly the number of active users who have access to the data within the organisation and report to the market data provider the exact number of active users. This important requirement may imply significant IT developments prior to the acceptance by the potential customers.
56. ESMA also notes only a limited number of customers have been qualified as eligible to benefit from the per user model so far and believes eligibility conditions should be limited to what is strictly necessary to make the per user model feasible.
57. ESMA believes the reduction of the eligibility conditions to have access to the per user model is also necessary in order to increase the use of this model among market data providers.
58. To this aim, Guideline 7 requires market data providers to ensure the conditions to be qualified as eligible for the per user model entail only what is necessary to make the per user model feasible. Thus, by eligibility conditions should be understood the customer's ability to i) identify correctly the number of active users who have access to the data within the organisation and ii) report to the market data provider the exact number of active users.
59. ESMA is also aware that the per user model requires trading venues offering it to incur significant administrative costs. From the market data provider's perspective, in fact, the per-user model increases the administrative burden due to the need to engage in an approval process to check customers eligibility and to monitor and net customer

usage, which is reported directly to the venue and to the data vendors. In addition to this, it may be the case that this model is appropriate for some, but not all customers.

60. Taking this circumstance into account, the per user model obligation for the case where the per user model is not adopted, requires market data providers to provide grounds for the refusal to make market data available on a per user basis and to publish those grounds on their webpage.
61. However, in the Report on Market Data ESMA noted that in many instances, market data providers did either not explain the reasons for not offering the possibility to customers to adopt the per user fee model or only provided limited justification by stating that the costs of offering this option would be disproportionate but without providing further explanation.
62. ESMA notes this practice does not permit to understand whether real impediments to the adoption of the per user model exist, or whether its adoption would really appear to be disproportionate.
63. Therefore, Guideline 8 aims to ensure that market data providers explain their decision to not adopt the per user model. To achieve this objective Guideline 8 requires market data providers who do not offer the per user model to customers, to disclose the reasons which make the adoption of the model disproportionate to the cost of making the data available.

Question 10: Do you agree on the interpretation of the per user model provided by Guideline 6? If not, please justify and include in your answer any different interpretation you may have of the per user model and supporting grounds.

Question 11: Do you agree with Guideline 7? If not, please justify. In your opinion, are there any other additional conditions that need to be met by the customer in order to permit the application of the per user model or do you consider the conditions listed in Guideline 7 sufficient to this aim?

Please include in your answer the main obstacles you see in the adoption of the per user model, if any, and comments or suggestions you may have to encourage its application.

Question 12: Do you agree with Guideline 8? If not, please justify also by indicating what are the elements making the adoption of the per user model disproportionate and the reasons hampering their disclosure.

Question 13: Do you think ESMA should clarify other elements of the obligation to provide market data on a per user fees basis? If yes, please explain.

7 Obligation to keep data unbundled

7.1 Legal framework

64. According to Article 10 of Delegated Regulation (EU) No 2017/567 and Article 88 of Delegated Regulation (EU) No 2017/565, market operators and investment firms operating a trading venue and SIs shall make market data available without being bundled with other services. These obligations also apply to market data providers offering data free of charge.

7.2 Assessment and proposals

65. In the context of the Report on Market Data, stakeholders expressed their concerns about certain practices according to which data is not available separately, but only if bought together with additional services.
66. ESMA believes the MiFIR provisions on data unbundling aim at ensuring that users of market data only pay for data they are interested in rather than being forced to buy additional services, which may include other data or other services of little interest to them.
67. Furthermore, ESMA is of the view that the reference to ‘other services’ in Article 10 of Delegated Regulation (EU) No 2017/567 and Article 88 of Delegated Regulation (EU) No 2017/565 should be understood as any value added service offered to the customer in addition to the provision of raw market data, such as pre trade analysis and data cleaning or provision of analytical data.
68. As a result, ESMA believes compliance with this provision requires market data providers to offer the option to buy market data separately from any other additional services or added value data. In this way, customers are free to choose products according to their needs, without being obliged to pay for additional services (which they do not make use of).
69. To achieve this result, Guideline 9 clarifies that market data providers should always make available the purchase of market data separately from additional services and inform customers of this possibility.

Question 14: Do you agree with Guideline 9? If not, please justify.

Question 15: Do you think ESMA should clarify other elements in relation to the obligation to keep data unbundled? If yes, please explain.

8 Transparency obligations

8.1 Legal framework

70. Article 89 of Delegated Regulation (EU) No 2017/565 and Article 11 of Delegated Regulation (EU) No 2017/567 prescribe the obligation for market data providers to “disclose the price and other terms and conditions for the provision of the market data in a manner which is easily accessible to the public”.
71. The transparency provisions in Article 89 of Delegated Regulation (EU) No 2017/565 and Article 11 of Delegated Regulation (EU) No 2017/567 contain a non-exhaustive list of aspects that should be made public. These include the current price lists, information on the content of the market data, revenue obtained from making market data available (as well as the proportion of that revenue compared to total revenue) and information on how the price was set.

8.2 Assessment and proposals

72. In the Report on Market Data, ESMA concluded that there would be merit in standardising the RCB information that market data providers have to disclose pursuant to Article 89 of Delegated Regulation (EU) No 2017/565 and Article 11 of Delegated Regulation (EU) No 2017/567. In particular, ESMA committed to develop a standardised publication format for disclosing the RCB information and to standardise key terminology used.

8.2.1 Standardised publication format

73. The purpose of Article 89 of Delegated Regulation (EU) No 2017/565 and Article 11 of Delegated Regulation (EU) No 2017/567 is to increase transparency, timeliness and comparability of information on market data prices and content. However, as highlighted in the Report on Market Data, this objective has not been achieved. Indeed, the usability and comparability of information is quite limited. Very often, the information is presented in long and complex documents which sometimes are placed on different webpages making the consultation and the reading of the information difficult.
74. By harmonising the way information is published, market data users would not only be able to better compare market data policies across market data providers, but they would also have easier access to the information necessary for making a decision on an informed basis.
75. Also, the use of a single publication for the disclosure of price lists, price changes, information on the content of market data, revenues from market data provision activities, price setting and costs accounting methodologies could lead market data providers to simplify their fees schedules and be more transparent.

76. Therefore, ESMA is suggesting in Guideline 10 the use of a standardised publication format (see Annex I of the Guidelines) that market data providers should use to publish the RCB information. This standardised publication format gathers all the information set out in Article 89 of Delegated Regulation (EU) No 2017/565 and Article 11 of Delegated Regulation (EU) No 2017/567 and includes also instructions on the methodology and granularity to be used for the disclosure of the information.

Question 16: Do you agree with Guideline 10 that market data providers should use a standardised publication format to publish the RCB information? If not, please justify.

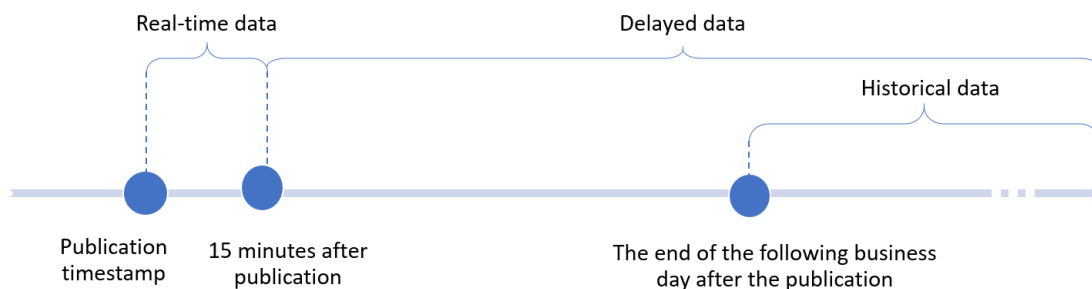
Question 17: Do you agree with the standardised publication template set out in Annex I of the Guidelines and the accompanying instructions? Do you have any comments and suggestions to improve the standardised publication format and the accompanying instructions?

8.2.2 Standardisation of key terminology

77. Following the analysis on market data policies conducted by ESMA in the context of the Report on Market Data, it was noted that the terminology used for the disclosure of the price and other terms and conditions for the provision of market data was inconsistent. For example, the categories of market data customers (professional vs. non-professional customer) are defined based on objective criteria by market data providers which are, however, identified in a heterogeneous and often divergent way across market data providers. These different approaches in defining the objective criteria, terms and definitions are detrimental to market data customers who may fall into different categories depending on the policy of the chosen market data provider. Comparison between fees is made more difficult where market data providers use different terminology for the same services.
78. ESMA believes that it is important for market data customers to understand market data fees, terms and conditions so they can compare offers across market data providers and choose which market data service or package is most suitable for their needs. It is therefore key to have standardised terminology, coupled with targeted fee information presented in a consistent format covering the most representative services linked to market data.
79. Consequently, ESMA is proposing in Guideline 11 several standardised terms to be used by market data providers in their market data policies and price lists.
80. In relation to customers, ESMA proposes to adopt the terms of “professional customer” and “non-professional customer”. For the sake of clarity, examples of the latter category would include retail investors and researchers. These categories should be seen as overarching categories, and do not preclude any further granularity, e.g. in terms of use of data (see also section 5).

81. In relation to the concept of “unit of count”, ESMA is of the view that there should be a distinction according to the type of use by the customer, which means the use of either display or non-display market data. As display market data will be accessed through human users, ESMA considers that to quantify the level of use of display data, a “user-ID” should be applied¹⁰. Similarly, as non-display market data will be accessed through a machine by automated means, ESMA considers it appropriate to quantify the level of use by the number of servers or devices.
82. Adopting the “user-id” as the unit of count for display data also should permit to net market data costs from a single source across data vendors and across devices, in line with the per user model.
83. ESMA also includes in Guideline 11 a number of other definitions where standardisation is deemed beneficial, including display data, non-display data and derived data. As mentioned in the Report on Market Data, display data is commonly considered as data that is consumed by a human user through the support of a screen, whereas non-display data would generally refer to data directly fed into trading algorithms. ESMA has introduced definitions for these types of usage accordingly.
84. With respect to derived data, ESMA considers that this is data created as a result of the transformation or combination of the raw data originally generated by market data providers with other data provided by different sources that cannot be used to materially replace or substitute the original data.
85. Finally, Guideline 11 also defines the terms of real-time data, delayed data and historical data, whereby real time market data is data delivered with a delay of less than 15 minutes after publication, and delayed data is data made available 15 minutes after publication. This is also pictured below.

FIGURE 4 REAL-TIME, DELAYED AND HISTORICAL DATA



¹⁰ Except where Article 9(2) and 9(3) of Delegated Regulation 2017/567 or Article 87(2) and 87(3) of Delegated Regulation 2017/565 apply.

Question 18: Do you agree with the proposed definitions in Guideline 11? In particular, do they capture all relevant market uses and market participants? If not, please explain.

Question 19: Is there any other terminology used in market data policies that would need to be standardised? If yes, please give examples and suggestions of definitions.

8.2.3 Cost disclosure

86. In the Report on Market Data, ESMA concluded that the way market data providers disclose information on accounting methodologies to set market data fees was in general not satisfactory and hence committed to issue guidance in this field.
87. Guideline 12 therefore requires market data providers to make public, by using the template in Annex I of the draft Guidelines, a detailed explanation of the accounting methodology for setting the fees of market data. The explanation should provide, inter alia, the list of all the types of costs included in the fees of market data and the allocation keys for joint costs. The allocation keys should be expressed in percentage and market data providers should provide the rationale for the allocation of the joint costs.
88. In addition, ESMA believes that the transparency of margins can be improved. Hence, Guideline 12 requires providers to disclose the fact that they include a margin in the fees of market data. It is not required to disclose to the public the actual level of the margin. Market data providers should explain though why they consider the margin reasonable and, if applicable, explain why the margin differs from one category of market data to another (i.e. why some categories of market data have a higher margin than other categories of market data).

Question 20: Do you agree with Guideline 12? If not, please justify.

Question 21: Do you think there is any other information that market data providers should disclose to improve the transparency on market data costs and how prices for market data are set? If yes, please provide suggestions.

8.2.4 Auditing practices

89. ESMA recognises that auditing is necessary for market data providers to ascertain that market data customers respect the terms and conditions of the data license. However, in their auditing practices some market data providers place the burden of proof of how data has been used on market participants. Moreover, often market data users do not have sufficient information on the market data fees that could be retroactively applied in consequence of an audit, the terms and conditions of the auditing and on how they are expected to demonstrate compliance with the market data agreements.

90. Therefore, ESMA is of the view that market data providers should be explicit in the market data agreement with respect to the market data fees that can be applied retroactively, the terms and conditions of the auditing (e.g. the frequency of the auditing) and how customers are expected to demonstrate their compliance with the agreement. With Guideline 13, ESMA aims at ensuring that data customers can understand how audits are carried out and are enabled to adopt the necessary arrangements to demonstrate their compliance with the terms and conditions in the case of audit.

Question 22: Do you agree with Guideline 13? If not, please justify.

9 Making data available free of charge 15 minutes after publication

9.1 Legal framework

91. Pursuant to Article 13(1) of MiFIR, trading venues are required to make data available free of charge 15 minutes after publication ('delayed data'). The same obligation is imposed by Article 64(1) and 65(1) of MiFID II on APAs and CTPs.
92. The data to be published by trading venues is specified in Articles 3, 6, 8 and 10 of MiFIR, and by APAs and CTPs in Article 64 and 65 of MiFID II. Those fields are further clarified in Table 1 and 3 of Annex I of RTS 1 for equity instruments, and in Annex I and Table 2 of Annex II of RTS 2 for non-equity instruments.
93. Following many questions and complaints from market participants about the application of this provision, ESMA provided further guidance Q&As on transparency issues¹¹. In particular, Q&A 9 and 10 addressed issues relating to delayed data.
94. Q&A 9a clarified that the market data provided free of charge 15 minutes after publication should replicate the information published on an RCB and be made available directly to end users. Q&A 9b specified that trading venues, APAs and CTP may not impose redistribution fees on redistributors or third parties, unless where redistributors/third parties charge for the distribution of data and or commercialise value-added services created from such data.
95. Q&A 10 clarified which types of practices of trading venues and APAs are not considered as compliant with the regulatory requirements. Furthermore, the Q&A explained that APAs and trading venues should adapt the format in which the data is provided to the needs of users. When the data is accessed in large amounts and on a

¹¹ <https://www.esma.europa.eu/document/qa-mifid-ii-and-mifir-transparency-topics>



regular basis, the information has to be provided on a machine-readable basis to ensure that it can be accessed through robust channels allowing for automatic access.

9.2 Assessment and proposals

96. As an introductory remark, it is worth noting that despite the publication of dedicated Q&As, ESMA continues to receive regular complaints from data users concerning the lack of compliance with delayed data provisions by many trading venues and APAs. Indeed, ESMA and NCAs are aware of numerous entities which fail to make available the data free of charge in line with the expectations set out in the Q&As.
97. In light of this, ESMA considered it useful to better explain and expand the content of the abovementioned Q&As into the proposed Guidelines. Furthermore, guidelines are a stronger Level 3 instrument available to ESMA and are translated into all EU languages. As the Guidelines will replace the Q&A, for clarity, ESMA plans to withdraw the Q&As immediately after the publication of the Guidelines.
98. With respect to the provisions to make market data available free of charge on a delayed basis, the relevant obligations are imposed on trading venues with regards to pre- and post-trade data and on APAs and CTPs with respect to post-trade data.
99. Given the experiences with the implementation of those legal provisions, ESMA considers it necessary to specify first to whom the delayed data should be provided free of charge. ESMA considers that according to the Level 1 text the data should be published for free to any market participant, i.e. there should not be a differentiation between retail and corporate users. This clarification is proposed in the first part of Guideline 14. This is without prejudice to the fact that certain restrictions may be warranted as to how the delayed data can be used. This point will be addressed hereafter in the discussion on the proposed Guideline 16.
100. Furthermore, ESMA believes that compliance with the obligation to provide data free of charge requires that the relevant delayed data is accessible, complete, provided in a useful format and for a sufficient period of time. In order to verify the current status of implementation and identify the areas where further guidance is needed, ESMA and NCAs undertook in Q2 2020 an analysis of the delayed data publications of trading venues and APAs in the EU taking into consideration all such aspects relating to publication, namely access, completeness, format and timeliness.
101. The assessment has been made by ESMA on the basis of the input provided by NCAs. It took into account all existing legal provisions, including Q&As regarding delayed data provision. ESMA received overall 77 responses assessing compliance of 68 trading venues and 9 APAs, from 27 NCAs. A score has been assigned in respect to each aspect in scale from 1 (non-compliance) to 5 (full compliance). It should be noted that while trading venues need to provide both pre- and post-trade data on delayed basis, APAs are only assessed with respect to their post-trade data provision.

TABLE 1 AVERAGE SCORE TRADING VENUES AND APAs FOR DELAYED DATA PROVISIONS (ESMA ASSESSMENT)

Entity type	Access	Completeness	Format	Timeliness
RMs	4.43	3.78	3.65	3.57
MTFs	4.25	3.69	3.40	3.27
OTFs	3.90	4.00	3.70	3.80
APAs	4.50	4.21	3.86	4.21
Average	4.27	3.92	3.65	3.71

102. Data access has been defined as availability of the relevant data on the website of a trading venue or APA in a manner which is easy to find, and user-friendliness of any process necessary to access the data, i.e. signing contractual agreements or registration. On average, this area has been assessed as satisfactory by ESMA, with the average score of 4.25. Signing of contractual agreements has been required by 8 entities (10% of total of 77 trading venues and APAs analysed) while registration process by 13 entities (17%). There were 15 entities (19%) where it was not straightforward to find the delayed data on the website.

103. Overall, in terms of access, ESMA considers that the current requirements are appropriate. There are certain trading venues and APAs which consider it necessary to require users to sign agreements or register, but those processes appear not overly complex or burdensome. Since they help the data providers to monitor better the usage of the delayed data, ESMA considers it appropriate to maintain those practices. In the cases where the delayed data is not easily available on the website, some further supervisory follow up may be needed. This should not however require any regulatory clarification. Consequently, in terms of delayed data access, Guideline 14 only clarifies that registration or signing agreements is allowed for the data provision monitoring purposes, provided they are not overly complex or burdensome.

104. A second aspect of the delayed data provision that was analysed is its completeness. According to MiFID II / MiFIR, the necessary post-trade data publication elements are price, volume, transaction and publication time, instrument identifier and venue of execution, and when applicable, transaction flags. During the assessment, in case of 17 trading venues and APAs (22%) the basic post-trade data (such as price, volumes or transaction timestamp) were not found, while as much as 49 entities (64%) do not publish post-trade transparency flags.

105. For the pre-trade data publication, the delayed data should include “the current bid and offer prices and the depth of trading interests at those prices which are advertised through the trading venues’ systems”. RTS 1 and 2 further clarify that for continuous auction order book trading systems and for other trading systems, the five best bid and offers should be published. According to the assessment performed, 31 entities (40%)

do not publish basic pre-trade data (best bid and offer and depth of interest) on delayed basis, where in particular provision of data from central limit order book appears challenging. 50 entities (65%) do not publish more than one best bid and offer mentioned by the RTS 1 and 2.

106. There seems to be a gap between the regulatory expectations and the publication practices with respect to completeness of data. Therefore, ESMA considers it useful to clarify in Guideline 14 that in case of post-trade data all elements included in the Level 1 and 2 texts, including flags, should be subject to the publication. ESMA would be interested to receive feedback from data users whether flags are indispensable.
107. In terms of pre-trade data, given the technical challenges of the publication, which result from high volume of data at the order level, and also limited value added for data users, ESMA suggests in Guideline 14 to discharge the reporting entities from publishing more than one current best bid and offer in the delayed data publication. ESMA is seeking further feedback from data users whether they agree with this proposal, and whether any differentiation should be made depending on the type of trading system.
108. Another aspect of the delayed data publication is data format. This area also leaves some space for improvement, as 29 entities (38%) do not publish post-trade data in a machine-readable format while 42 trading venues do not publish pre-trade data in a machine-readable format. For 39 entities (51%) there is no possibility to automatize the data extraction. Moreover, data is not always provided for all financial instruments (or classes of financial instruments), but as ISIN by ISIN search. This is the case of 23 entities (30%) for post-trade data and 42 entities (55%) for pre-trade data.
109. ESMA understands that the format of data provision should be adapted to the user's needs and would like to seek further feedback from market data users whether there is a case to differentiate between the format of data provision of pre- and post-trade data. In particular for pre-trade delayed data, users are invited to specify which use cases are relevant for them, and what format of data they need for those use-cases.
110. A last part of the assessment focused on whether data was available for a sufficient period of time. According to the assessment, currently 39 entities (51%) do not publish post-trade data for the period of at least 24 hours and 52 entities (68%) in case of pre-trade data. There have been some concerns raised about the clarity of the current guidance which requires data to be published for at least 24 hours. ESMA therefore suggests clarifying in the guidance that the data of the given trading day should be available until the end of the following trading day in case of post-trade data. In case of pre-trade delayed data, ESMA proposes that the data should be published until more recent data is available, i.e. without the need to maintain historical information.
111. Finally, there are certain situations where it appears justified that data providers should be paid for their data provision. Those cases have been defined in Guideline 16 as data redistribution and value-added services. This guideline is closely aligned with the requirements previously spelled out in ESMA Q&As. The noticeable difference is that ESMA considered it necessary to further define the concepts of "value-added services"

and “data distribution”. This was considered necessary since in practice certain data providers considered any use of delayed data by commercial users as a “value added service” for their business, and therefore subject to a fee. ESMA disagrees with this broad interpretation and suggest limiting the definition of “value-added services” to those activities where a product created on a basis of delayed data is sold for a fee.

Question 23: Which elements for post- and pre-trade data publication should be required? In particular, are flags a useful element of the publication? Should there be any differences between the different types of trading systems? Is the first best bid and offer sufficient for the purpose of delayed pre-trade data publication?

Question 24: Which use cases of post- and pre-trade delayed data are relevant to you as a data user? What format of data provision is necessary for these use cases, and especially for pre-trade delayed data?

Question 25: Do you agree with the definitions of data-distribution and value-added services provided in Guideline 16? Please explain.

Question 26: Do you have any further comment or suggestion on the draft Guidelines? Please explain.

Question 27: What level of resources (financial and other) would be required to implement and comply with the Guidelines and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale and complexity of the activities of your organisation, where relevant.

10 Annexes

10.1 Annex I Summary of questions

Question 1: What are your views on covering in the Guidelines also market data providers offering market data free of charge for the requirements not explicitly exempted in the Level 2 requirements?

Question 2: Do you agree with Guideline 1? If not, please justify.

Question 3: Do you think ESMA should clarify other aspects of the accounting methodologies for setting up the fees of market data? If yes, please explain.

Question 4: With regard to Guideline 2, do you think placing the burden of proof, with respect to non-compliance with the terms of the market data agreement, on data providers can address the issue? Please provide any other comments you may have on Guideline 2.

Question 5: Do you consider that auditing practices may contribute to higher costs of market data? Please explain and provide practical examples of auditing practices that you consider problematic in this context. Such examples can be provided on a confidential basis via a separate submission to ESMA.

Question 6: Do you agree with Guideline 3? If not, please justify, by indicating which parts of the Guideline you do not agree with and the relevant reasons.

Question 7: Do you agree with the approach taken in Guideline 4? If not, please justify, also by providing arguments for the adoption of a different approach.

Question 8: Do you agree with Guideline 5? If not, please justify.

Question 9: Do you think that ESMA should clarify other elements of the obligation to provide market data on a non-discriminatory basis? If yes, please explain.

Question 10: Do you agree on the interpretation of the per user model provided by Guideline 6? If not, please justify and include in your answer any different interpretation you may have of the per user model and supporting grounds.

Question 11: Do you agree with Guideline 7? If not, please justify. In your opinion, are there any other additional conditions that need to be met by the customer in order to permit the application of the per user model or do you consider the conditions listed in Guideline 7 sufficient to this aim?

Please include in your answer the main obstacles you see in the adoption of the per user model, if any, and comments or suggestions you may have to encourage its application.



Question 12: Do you agree with Guideline 8? If not, please justify also by indicating what are the elements making the adoption of the per user model disproportionate and the reasons hampering their disclosure.

Question 13: Do you think ESMA should clarify other elements of the obligation to provide market data on a per user fees basis? If yes, please explain.

Question 14: Do you agree with Guideline 9? If not, please justify.

Question 15: Do you think ESMA should clarify other elements in relation to the obligation to keep data unbundled? If yes, please explain.

Question 16: Do you agree with Guideline 10 that market data providers should use a standardised publication format to publish the RCB information? If not, please justify.

Question 17: Do you agree with the standardised publication template set out in Annex I of the Guidelines and the accompanying instructions? Do you have any comments and suggestions to improve the standardised publication format and the accompanying instructions?

Question 18: Do you agree with the proposed definitions in Guideline 11? In particular, do they capture all relevant market uses and market participants? If not, please explain.

Question 19: Is there any other terminology used in market data policies that would need to be standardised? If yes, please give examples and suggestions of definitions.

Question 20: Do you agree with Guideline 12? If not, please justify.

Question 21: Do you think there is any other information that market data providers should disclose to improve the transparency on market data costs and how prices for market data are set? If yes, please provide suggestions.

Question 22: Do you agree with Guideline 13? If not, please justify.

Question 23: Which elements for post- and pre-trade data publication should be required? In particular, are flags a useful element of the publication? Should there be any differences between the different types of trading systems? Is the first best bid and offer sufficient for the purpose of delayed pre-trade data publication?

Question 24: Which use cases of post- and pre-trade delayed data are relevant to you as a data user? What format of data provision is necessary for these use cases, and especially for pre-trade delayed data?

Question 25: Do you agree with the definitions of data-distribution and value-added services provided in Guideline 16? Please explain.

Question 26: Do you have any further comment or suggestion on the draft Guidelines? Please explain.



Question 27: What level of resources (financial and other) would be required to implement and comply with the Guidelines and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale and complexity of the activities of your organisation, where relevant.

10.2 Annex II Preliminary cost-benefit analysis

Provisions on market data under MiFID II/MiFIR include requirements to provide market data on a reasonable commercial basis (RCB) and to make data available free of charge 15 minutes after publication. In its Report on Market Data, ESMA concluded that it was necessary to develop guidelines regarding the above provisions on market data.

Impact of the draft ESMA guidelines

We set out below a preliminary assessment of the expected benefits and costs of the proposed guidelines for consultation.

Benefits

ESMA believes that the benefits of the guidelines are threefold. The introduction of the proposed guidelines will:

- a) support market data providers in the application of market data provisions by giving clarity on the applicable regulatory requirements, as well as provide a resource against which they can assess the effectiveness and appropriateness of their existing policies and practices;
- b) reduce the risk that data users face increasing market data prices or pay excessive fees for their access to market data, and to allow them to benefit more easily from the market data provided free of charge 15 minutes after publication; and
- c) reduce the risk of arbitrage through enhanced regulatory and supervisory convergence across competent authorities.

Costs

Market data providers will be required to assess the guidelines against their existing policies and processes and may need to review them. Some technical implementations may be necessary in case of some entities. Following any changes market data providers would be required to inform and update all relevant staff as to the changes in the internal policies and processes, providing training where necessary.

Conclusions

In light of the above, ESMA believes that the overall compliance costs associated with the implementation of the guidelines will be fully compensated by the benefits arising from the enhanced framework.

MiFID II/ MiFIR is prescriptive in the area of market data provisions because the demand for market data and its value has been increasing in an environment driven by technological development and increased competition. MiFID II/MiFIR has as an objective to make market data available to all users in an easily accessible, fair and non-discriminatory manner. As such, guidelines which ensure that market data providers are better able to meet this objective are justified on the basis that the costs of implementation will be limited to compliance costs.



10.3 Annex III Summary of the Roundtable on Market Data

ESMA organised on 29 June 2020 a roundtable on market data issues to gather further input in the context of its work on market data following the publication of the Report on Market Data on the cost of market data and the consolidated tape (CT) for equity instruments.

ESMA invited ten external stakeholders representing trading venues, APAs and data users to the roundtable. Members of the Transparency Task Force (TTF) and the Secondary Markets Standing Committee (SMSC) also attended the roundtable.

The roundtable invited stakeholders to provide feedback on three areas of issues identified in the Report on Market Data for which ESMA committed to conduct follow up work: the obligation to provide market data on a reasonable commercial basis (RCB), the obligation to provide market data free of charge 15 minutes after publication (delayed data) and OTC data quality.

RCB: ESMA staff shared with roundtable participants the first reflections on draft guidelines on the obligation to provide market data on an RCB. Overall, roundtable participants, both from trading venues, APAs and data users, were supportive of the proposals presented. Representatives of trading venues were supportive of proposals to improve the quality of the disclosure of cost related information but expressed reservations concerning the disclosure of actual costs. Data users, while supportive of improving the quality of the disclosure of cost-related information, recommended complementing this by introducing a cost benchmark.

Roundtable participants were supportive of the proposal to publish the RCB information in a harmonized template and to standardise definitions of key terms and concepts used in market data agreements. Furthermore, data users urged to set out in the guidelines supervisory expectations on audit practices of trading venues, which many users considered excessive. Moreover, data users expressed concerns about the creativity of trading venues for creating new use cases or categories of customers and asked for more transparency to better understand the criteria for such use cases and avoid paying several times for the same data. Representatives of trading venues did not consider it necessary to limit use cases and in particular expressed level playing field concerns if it was no longer possible to charge systematic internalisers for the use of data.

Delayed data: There was agreement between roundtable participants that currently there are only limited use cases for delayed pre-trade data and that this should therefore not be the focus for ESMA's work. Concerning post-trade delayed data, representatives of trading venues and data users expressed opposing views. Trading venue representatives pointed to the very few users accessing data made available via websites and defended the practice of charging for delayed data when users distribute it for a charge or when it is used for commercial purposes ('value-added'). Data users complained about trading venues and APAs making the data available for only a limited period of time and considered that trading venues were excessively charging for delayed data that used to be free of charge under MiFID I. Furthermore, data users considered that website data is only of very limited use since it is not aggregated and checking every trading venue's website would be very burdensome. Therefore, data is generally accessed via data vendors.



OTC data quality: The discussion focussed on the drivers for low OTC-data quality and how shortcomings could be addressed. Overall, roundtable participants agreed that in particular the following issues contribute to low data quality: different interpretations on the reporting of give-up transactions, lack of reporting instructions/standardisation on how to populate certain fields for post-trade transparency, reporting of technical trades, ISINs disappearing from files, lack of fields (e.g. for some derivatives there should be a field on the term of the contract), limited quality controls by APAs, low enforcement by competent authorities. Roundtable participants considered that some of these issues could be addressed by issuing supervisory guidance, whereas others would require amendments of RTS 1 and RTS 2.



10.4 Annex IV Draft Guidelines



European Securities and
Markets Authority

Draft Guidelines

On the MiFID II/ MiFIR obligations on market data

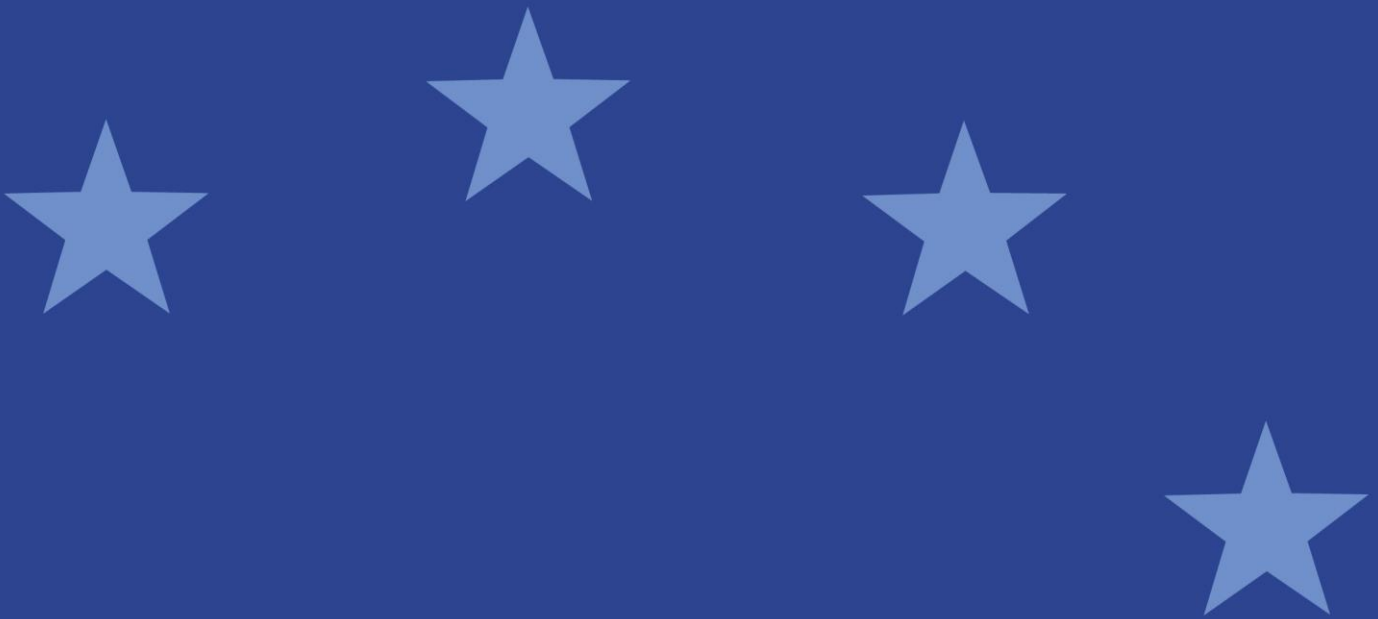




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1 Scope

Who?

1. These guidelines apply to NCAs, trading venues, approved publication arrangements (APAs), consolidated tape providers (CTPs) and systematic internalisers (SIs). Section 5.7 in relation to the provision of delayed data does not apply to SIs.
2. From 2022 onwards, ESMA will carry out supervision on APAs and CTPs, as stipulated in Regulation (EU) No 2019/2175. As of that time, references to NCAs should be read as references to NCAs supervising trading venues, SIs, and those carrying out supervision on their national APAs and CTPs exempted from ESMA supervision. While the Guidelines are not addressed to ESMA, APAs and CTPs for which ESMA will be the responsible competent authority from 2022 onwards will themselves continue to be subject to the Guidelines.

What?

3. These guidelines apply in relation to Articles 13, 15(1) and 18(8) of MiFIR as further specified in Articles 6 to 11 of Delegated Regulation 2017/567 and of Articles 64(1) and (2) and 65(1) and (2) of MiFID II¹² as further specified in Articles 84 to 89 of Delegated Regulation 2017/565.

When?

4. These guidelines apply from [dd month yyyy].
5. These guidelines will cease to apply to NCAs which are no longer responsible for the supervision of APAs and CTPs as of the date following that on which ESMA has taken over the supervision of those APAs and CTPs.

¹² As of 1 January 2022, reference to these provisions should be read as a reference to the new MiFIR provisions as specified in Regulation (EU) No 2019/2175, and as further supplemented by relevant Level 2 acts. Please also see the correspondence table in Annex III.



2 Legislative references, abbreviations and definitions

Legislative references

ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ¹³
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of Council 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ¹⁴
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ¹⁵
Delegated Regulation (EU) No 2017/567	Commission Delegated Regulation (EU) No 2017/567 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions ¹⁶
Delegated Regulation (EU) No 2017/565	Commission Delegated Regulation (EU) No 2017/565 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive ¹⁷
RTS 1	Commission Delegated Regulation (EU) No 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depository receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution

¹³ OJ L 331, 15.12.2010, p. 84.

¹⁴ OJ L 173, 12.06.2014, p. 84.

¹⁵ OJ L 173, 12.06.2014, p. 349.

¹⁶ OJ L 87, 31.03.2017, p. 90.

¹⁷ OJ L 87, 31.03.2017, p. 1.



obligations in respect of certain shares on a trading venue or by a systematic internaliser¹⁸

RTS 2

Commission Delegated Regulation (EU) No 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives¹⁹

Regulation (EU) No
2019/2175

Regulation (EU) No 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds²⁰

Abbreviations

ESMA	European Securities and Markets Authority
RCB	Reasonable Commercial Basis
NCA	National Competent Authorities
EU	European Union
APA	Approved Publication Arrangement
CTP	Consolidated Tape Provider
SI	Systematic Internaliser

¹⁸ OJ L 87, 31.03.2017, p. 387.

¹⁹ OJ L 87, 31.03.2017, p. 229.

²⁰ OJ L 334, 27.12.2019, p. 1.



Definitions

The definitions set out in MiFID II and MiFIR apply unless further specified.

<i>market data provider</i>	a trading venue as defined in Article 4(1)(24) of MiFID II, an APA as defined in Article 4(1)(52) of MiFID II, a CTP as defined in Article 4(1)(53) of MiFID II or an SI as defined in Article 4(1)(20) of MiFID II
<i>market data agreement</i>	an agreement between the market data provider and the customer
<i>market data policy</i>	a publicly disclosed policy document from the market data provider, listing relevant market data information

3 Purpose

6. These guidelines are based on Article 16(1) of the ESMA Regulation. The objectives of these guidelines are to establish consistent, efficient and effective supervisory practices within the European System of Financial Supervision (ESFS) and to ensure the common, uniform and consistent application of the provisions in Articles 13, 15(1) and 18(8) of MiFIR and Articles 64(1) and 65(1) and (2) of MiFID II.
7. These guidelines aim to ensure that financial market participants have a uniform understanding of the requirement to provide market data on a reasonable commercial basis (RCB), including the disclosure requirements, as well as the requirement to provide the market data 15 minutes after publication (delayed data) free of charge. These guidelines also aim to ensure that NCAs will have a common understanding and develop consistent supervisory practices when assessing the completeness, comprehensibility and consistency of the RCB and delayed data provisions.

4 Compliance and reporting obligations

Status of the guidelines

8. In accordance with Article 16(3) of the ESMA Regulation, NCAs and financial market participants must make every effort to comply with these guidelines.
9. Subject to paragraph 2 of Section 1, NCAs to which these guidelines apply should comply by incorporating them into their national legal and/or supervisory frameworks as appropriate, including where particular guidelines are directed primarily at financial market participants. In this case, NCA should ensure through their supervision that financial market participants comply with the guidelines.

Reporting requirements

10. Within two months of the date of publication of the guidelines on ESMA's website in all EU official languages, NCAs to which these guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.
11. In case of non-compliance, NCAs must also notify ESMA within two months of the date of publication of the guidelines on ESMA's website in all EU official languages of their reasons for not complying with the guidelines.
12. A template for notifications is available on ESMA's website. Once the template has been filled in, it shall be transmitted to ESMA.
13. Financial market participants are not required to report whether they comply with these guidelines.

5 Guidelines on the MiFID II/MiFIR requirements on market data

5.1 Introduction

14. Articles 13, 15(1) and 18(8) of MiFIR and 64(1) and 65(1) and (2) of MiFID II set out requirements for trading venues, APAs, CTPs and SIs ('market data providers') to provide market data on an RCB and ensure non-discriminatory access to that information. Articles 6 to 11 of Delegated Regulation (EU) No 2017/567 and 84 to 89 of Delegated Regulation (EU) No 2017/565 further specify these requirements.
15. The requirements in Delegated Regulation (EU) No 2017/567 and Delegated Regulation (EU) No 2017/565 set out the principle to provide market data on the basis of the cost for producing and disseminating it and require market data providers to comply with a number of disclosure requirements aiming at enabling market data users to understand how market data is priced, to compare market data offers and to ultimately assess whether market data is provided on a reasonable commercial basis.
16. Furthermore, Article 13(1) of MiFIR requires trading venues to make data available free of charge 15 minutes after publication (delayed data). The same obligation is provided by Articles 64(1), 65(1) and (2) of MiFID II in respect to APAs and CTPs.
17. In order to ensure that these requirements on market data deliver against their objectives, these guidelines set out further ESMA's expectations on how market data providers should comply with the provisions on market data. In particular, the guidelines elaborate on the requirement to provide market data on the basis of cost, on the requirement to ensure non-discriminatory access to data, on the disclosure obligations and on the requirement to provide delayed data free of charge.
18. While the legal requirements provide for the same approach for trading venues (regulated markets, MTFs, OTFs), APAs, CTPs and SIs, it is important to highlight that the scope of the market data requirements is different for these four types of entities. For instance, trading venues have to provide pre- and post-trade market data on an RCB, whereas the RCB requirements for SIs are limited to pre-trade market data and for APAs and CTPs to post-trade market data. Furthermore, SIs are not subject to the requirements on delayed data. In consequence, not all requirements apply to all entities to the same extent. Where relevant, this is highlighted in the guidelines.
19. ESMA acknowledges that it is important to take the different nature, scale and complexity of market data providers into account when specifying the expectations on the market data provisions. In accordance with Articles 1(5) and 8(3) of the ESMA Regulation, ESMA has taken into account the principle of proportionality when drafting these Guidelines. For example, considering the different operating models and cost structures of market data providers these guidelines do not harmonise the cost accounting methods but rather require market data providers to have a clear and documented methodology for setting the price of market data. Similarly, to avoid that

market data providers operating continuous auction order book trading systems face a high operational and administrative burden when disclosing delayed pre-trade data, and given the limited added value of users of very granular pre-trade data, these guidelines clarify that for such systems the obligation to provide delayed pre-trade data are met when providing access to the best bid and offer only.

20. The guidelines start with the requirements on RCB and non-discriminatory access (sections 5.2-5.6) and closely follow the structure of the delegated acts further specifying the RCB requirements. Section 5.7 covers the provisions on delayed data.

5.2 Provision of market data on the basis of cost

Guidelines 1 and 2 are based on Article 85 of Delegated Regulation (EU) No 2017/565 and Article 7 of Delegated Regulation (EU) No 2017/567.

Guideline 1: Market data providers should have a clear and documented methodology for setting the price of market data. The methodology should remain up to date, and hence be reviewed on a regular basis, at least annually. Market data providers may need to adjust their methodology over time and account for changes in marginal costs. For example, if a market data provider allocates a portion of investments in IT infrastructure to the cost of production and dissemination of market data, the market data provider is expected to consider the amortisation of the investments when allocating these costs.

Market data providers should explain in their methodology whether a margin is included and how that margin has been determined.

The methodology should demonstrate how the price for market data is based on the costs for the production and dissemination of market data. The methodology should also identify the costs that are solely attributable to the production and dissemination of market data (i.e. direct costs) and the costs that are shared with other services (i.e. joint costs). Where relevant, further distinction should be made between variable costs and fixed costs for both direct and joint costs.

Direct costs should be understood as costs that are solely attributable to the production and dissemination of market data such as working hours of market data staff. Joint costs should be costs that cannot be solely attributed to the production and dissemination of market data such as the lease of offices or salaries of administrative staff. Variable costs should be costs incurred for the production and the dissemination of one additional unit of market data and fixed costs should be costs that do not vary with the volume of market data produced and disseminated.

In order to ensure that the allocation of costs for producing and disseminating market data reflects the actual costs of producing and disseminating market data and ultimately the fees charged to customers, the methodology should include an appropriate justification on the costs included in the fees for market data. For example, market data providers should not allocate joint costs according to the revenues generated by the different services and activities of their company because this practice is contradictory to the obligation to set market data fees (i.e.



revenues of the market data business) based on costs of producing and disseminating market data.

Guideline 2: In order to avoid that the final cost of data is increased through overly onerous auditing practices, market data providers should only impose penalties in consequence of an audit, where they can demonstrate that customers have not complied with the terms of the market data agreement. The level of penalties in case of non-compliance with the terms of the market data agreement should be based on the recovery of revenues which would have been generated in case of compliance with the license.

Audits should only be aimed at identifying occurred breaches with market data agreements. Overly onerous practices that result in the generation of additional revenues on the basis of non-compliance or the inability by the customer to prove compliance with the terms and condition of the license should be excluded. For example, such practices would be excessive interest charging or extensive retroactivity.

5.3 Obligation to provide market data on a non-discriminatory basis

Guidelines 3 to 5 are based on Article 86 of Delegated Regulation (EU) No 2017/565 and Article 8 of Delegated Regulation (EU) No 2017/567.

Guideline 3: Market data providers should describe in their market data policy the categories of customers and how the use of data is taken into consideration to set up the categories of customers. The criteria used should be:

- (i) based on factual elements, easily verifiable and sufficiently general to pertain to more than one customer;
- (ii) explained in such a manner that customers are enabled to understand the category they belong to.

Market data providers should explain the applicable fees and terms and conditions for each use. They should motivate any differentiation of fees and terms and conditions pertaining to each category of customers.

Guideline 4: Along with the description of the different customer categories, market data providers should clarify in their market data policy how fees are applied when a customer potentially belongs to more than one customer category because the customer makes different simultaneous uses of the data. In such a case, market data providers should apply the relevant fees in a way that ensures the provision of same data is charged only once by applying one customer category only.

Guideline 5: When different customers fall within the same category and thus the same terms and conditions apply, the market data providers should also offer the same technical arrangements. Market data providers should ensure that practices in terms of such technical arrangements, including latency and connectivity, are non-discriminatory.



5.4 Per user fees

Guidelines 6 to 8 are based on Article 87 of Delegated Regulation (EU) No 2017/565 and Article 9 of Delegated Regulation (EU) No 2017/567.

Guideline 6: Market data providers should for display data use as a unit of count the “Active User-ID” that enables customers to pay according to the number of active users accessing the data, rather than per device or data product. The per user model should enable customers to avoid multiple billing in the case market data has been sourced through multiple data products or subscriptions.

Guideline 7: Market data providers should ensure the conditions to be qualified as eligible for the per user model require only what is necessary to make the per user model feasible. In particular, eligibility conditions should mean i) the customer is able to identify correctly the number of active users who have access to the data within the organisation and ii) the customer reports to the market data provider the exact number of active users.

Guideline 8: When market data providers do not offer the per user model to customers, and when they disclose the reasons which make the adoption of the model disproportionate to the cost of making the data available, market data providers should indicate the specific features of their business model which make the adoption of the per user model disproportionate and why these make the adoption of the model unfeasible. The factors could include excessive administrative costs.

5.5 Obligation to keep data unbundled

Guideline 9 is based on Article 88 of Delegated Regulation 2017/565 and Article 10 of Delegated Regulation (EU) No 2017/567.

Guideline 9: Market data providers should always inform customers that the purchase of market data is available separately from additional services. Market data providers should not condition the purchase of market data upon additional services.

5.6 Transparency obligations

Guidelines 10 to 13 are based on Article 89 of Delegated Regulation (EU) No 2017/565 and Articles 9 and 11 of Delegated Regulation (EU) No 2017/567.

Standardised publication format

Guideline 10: Market data providers should publish the information required by Article 89 of Delegated Regulation (EU) No 2017/565 and Article 11 of Delegated Regulation (EU) No 2017/567 by using the template provided in Annex I.

When market data providers use other criteria (e.g. level) to distinguish the type of licenses (other than professional/non-professional) or data product (other than display/non-display data), they should provide a definition of these criteria in the market data policy or price list.



Additionally, market data providers should provide the information in a consistent manner in terms of granularity to make the disclosure meaningful (e.g. per asset class and on annual basis). Where relevant, information should be provided separately for pre- and post-trade data.

Additional information that is outside the scope of the transparency obligation should not be provided in the template. However, market data providers should ensure that the additional information is easily accessible by customers (e.g. by inserting a reference to the relevant publication containing information and justification for additional criteria used to distinguish data product and licenses or set customer categories as indicated in Guidelines 3 to 5).

Standardised key terminology

Guideline 11: Market data providers should adopt the definitions set out in Annex II of the Guidelines in their market data policies and price lists.

Cost disclosure

Guideline 12: To comply with Article 11(e) of Delegated Regulation (EU) No 2017/567 and Article 89(2)(e) of Delegated Regulation (EU) No 2017/565, market data providers should make public, by using the template in Annex I of the Guidelines, a detailed explanation of the accounting methodology for setting the fees of market data. The explanation should provide, inter alia, the list of all the costs included in the fees of market data and the allocation keys for joint costs.

Market data providers should disclose whether they include a margin in the fees of market data and explain, where applicable, why they consider the margin reasonable and, if why the margin differs from one category of market data to another (i.e. why some categories of market data have a higher margin than other categories of market data).

Market data providers are not required to disclose actual costs for producing or disseminating market data or the actual level of the margin, however the information provided on costs and margin should enable users to understand how the price for market data was set and compare the methodologies of different market data providers.

Auditing practices

Guideline 13: Market data providers should be explicit in the market data agreement with respect to the market data fees that can be applied retroactively, the terms and conditions of the auditing (e.g. frequency) and how customers are expected to demonstrate their compliance with the market data agreement.

5.7 Obligation to make market data available free of charge 15 minutes after publication

Guidelines 14 to 16 are based on Articles 64 and 65 of MiFID II and Article 13 of MiFIR.

Data access and content



Guideline 14: The access to the delayed data should be provided to both professional and non-professional customers. It is acceptable for market data providers to require a simple registration for the purpose of monitoring who has access to the data.

The delayed data publications should cover all the trading systems operated by the trading venues. The post-trade data should contain all the relevant fields for the purpose of post-trade transparency, including flags, as specified in RTS 1 and 2. For pre-trade delayed data, given the operational challenges resulting from high volumes of pre-trade data on one hand, and the requirements of data users on the other hand, it is considered sufficient to only include the first current best bid and offer prices available.

Data format and availability

Guideline 15: The delayed data should be provided in a useful format adapted to the users' needs, and available for a sufficient period of time.

Pursuant to Article 14 of the Delegated Regulation (EU) No 2017/571, in case of delayed post-trade data, the data should be provided in machine-readable format and available in commonly used programs. It should be possible for a user to automatize the data extraction. The data should be available for all instruments traded combined (or a class of instruments), but not on a single instrument basis. This format is required from all market data providers, in order to ensure that the data can be easily consolidated as per MIFID II / MIFIR objective. The data should be available at least until midnight of the following business day to initiate the data extraction by a user.

The format of pre-trade delayed data should be adapted to users' needs. Given that the data is not provided for the purpose of consolidation, it should be available until the more up to date value is available (i.e. without historical information), or in case of lack of such update, until midnight of the following business day.

Data redistribution and value-added services

Guideline 16: Without prejudice to the legal provisions prohibiting market data providers to charge the use of delayed-data, where a delayed data user re-distributes the delayed data for a fee (including a general fee for accessing its services), a charge to those data re-distributors may apply. Likewise, where a delayed data user creates value-added services which are sold for a fee to third parties, trading venues, APAs and CTPs may charge that user.

Data-redistribution should be understood as a business model of selling the data in unchanged form to third parties, either directly by access to that data, or via a general access fee. Where a delayed data user publishes delayed data on its website, but does not charge for that access, it should not be considered as data re-distribution for the purpose of this guideline. Likewise, where the delayed data is used for the internal purposes of the delayed data user, e.g. portfolio valuation, it is not considered data-redistribution.

Value-added service should be understood as creation of a product made on a basis of raw delayed data, e.g. though aggregating data sets across different sources or creating historical series, or combining it with other information, and offering it as a product to third parties. Only



those value-added services which are sold as a product for a fee to third parties should be considered a value-added service. That is, where a company makes use of delayed data, e.g. to value its portfolio, or provide information to its clients on the basis of delayed data free of charge, it should not be considered as a value-added service for the purpose of this guideline.

Annex I - Template for publishing RCB information

Please find beneath the template instructions for filling in the template.

Legal basis	Contents			
Article 89(2)(a) of Delegated Regulation (EU) No 2017/565 and Article 11(2)(a) of Delegated Regulation (EU) No 2017/567	Price List: year XXXX			
	<i>[Insert the hyperlink to the price list and a high-level summary of the fees offered]</i>			
Article 89(2)(b) of Delegated Regulation (EU) No 2017/565 and Article 11(2)(b) of Delegated Regulation (EU) No 2017/567	Advance disclosure with a minimum of 90 days' notice of future price change will entry into force on the DD/MM/YYYY <i>[Insert the hyperlink to the future price list with the date of entry into force]</i>			
Article 89(2)(c)(i-iii) of Delegated Regulation (EU) No 2017/565 and Article 11(2)(c)(i-iii) of Delegated Regulation (EU) No 2017/567	Market Data Content Information Period covered: 01/01/yy - 31/12/yy			
	<u>Asset Class</u>	1) Number of instruments covered	2) Total turnover of instruments covered	3) Pre-trade/post-trade market data ratio
	Equity instruments (shares, ETFs, DRs, certificates, other equity-like financial instruments)			
	Bonds			
	ETCs ETNs			
	SFPs			
	Securitised derivatives			
	Interest Rate Derivatives			

	Credit Derivatives			
	Equity derivatives			
	FX derivatives			
	Emission allowances derivatives			
	C10 derivatives			
	Commodity derivatives			
	CFDs			
	Emission allowances			
<i>Article 89(2)(c)(iv) of Delegated Regulation (EU) No 2017/565 and Article 11(2)(c)(iv) of Delegated Regulation (EU) No 2017/567</i>	Information on any data provided in addition to market data	<i>[List]</i>		
<i>Article 89(2)(c)(v) of Delegated Regulation (EU) No 2017/565 and Article 11(2)(c)(v) of Delegated Regulation (EU) No 2017/567</i>	Date of the last licence fee adaption for market data provided	<i>[DD/MM/YYYY]</i>		

<p>Article 89(2)(d) of Delegated Regulation (EU) No 2017/565 and Article 11(2)(d) of Delegated Regulation (EU) No 2017/567</p>	<p>Total Market Data Revenues (EUR)</p>	<p><i>[Per operating MIC]</i></p>	
	<p>Market Data Revenues as a proportion of total Revenues (%)</p>	<p><i>[Per operating MIC]</i></p>	
<p>Article 89(2)(e) of Delegated Regulation (EU) No 2017/565 and Article 11(2)(e) of Delegated Regulation (EU) No 2017/567</p>	<p>Cost accounting methodology: year YYYY</p>		
	<p>Information on how the price was set, including the cost accounting methodologies used</p>	<p><i>[Please, insert hyperlink or provide in detail the information requested]</i></p>	
	<p>Accounting methodologies</p>	<p>1) <i>List of types of costs: direct and joint costs</i></p>	
		<p>2) <i>Allocation keys (%)</i></p>	
		<p>3) <i>Please explain whether a margin is included</i></p>	
<p>Principles</p>			

Instructions for filling in the template:

1) Reporting period

Information should be reported for a full period of 12 months except for the first reporting period where the period may be shorter or longer.

2) Number of instruments

The Average number of reporting or tradable instruments for the period covered should be provided. For derivatives, the average number of contracts should be considered.

3) Total turnover of instruments covered

For the calculation, the Average of the Daily Total Turnover should be considered and provided. The volume measure should be confirming table 4 of Annex II of RTS 2 for bonds instruments.

4) Pre trade/post trade market data ratio

Market data providers should calculate and publish the ratio of orders per transactions. Orders should include all input messages published in accordance with Articles 3, 4, 8, 9, 14 and 18 of MiFIR and including messages on submission, modification and cancellation sent to the trading system of a trading venue, relating to an order or a quote. However, these should exclude cancellation messages sent subsequently to: (i) uncrossing in an auction; (ii) a loss of venue connectivity; (iii) the use of a kill functionality. Transactions should mean a totally or partially executed order subject to the requirements under Articles 6, 7, 10, 11, 20 and 21 of MiFIR. The number of unexecuted orders should be calculated taking into account all phases of the trading session, including the auctions.

Please note that SIs and APAs do not have to disclose the pre-trade/post-trade data ratio. SIs do not have to provide information on fees for post-trade market data and APAs do not have to provide their fees for pre-trade market data.

Annex II – Standardisation of terminology

i. Customer

The Customer should be the natural and legal person who signs the market data agreement with the market data provider and is invoiced for the market data fees.

ii. Unit of Count

The Unit of Count should be the unit used to measure the level of use of market data to be invoiced to the customer and that is applied for fee purposes. It should distinguish between the type of use, i.e. display use and non-display use:

- for display use: the Active User ID should be the unit of count to quantify the level of use of display market data to be invoiced to the customer.²¹ The Active User ID shall be the ID associated to each human user who can actively access the display data.
- for non-display use: the server or device should be the unit of count to quantify the level of use of non-display market data to be invoiced to the customer. The server or device should be any machine that accesses and processes the data automatically.

iii. Professional Customer

Professional Customer should mean a customer who uses market data to carry out a regulated financial service or investment activity or to provide a service for third parties.

iv. Non-Professional Customer

Non-Professional Customer should mean a Customer who does not meet the definition of Professional Customer.

v. Display Data

Display Data should mean the data provided or used through the support of a monitor or a screen and that is human readable.

vi. Non-Display Data

Non-Display Data should mean all the data which does not meet the definition of Display Data.

vii. Market Data

Market Data should mean the data trading venues, SIs, APAs and CTPs have to make public for the purpose of the pre-trade and post-trade transparency regime. Therefore, market data includes the details set out in Annex I of RTS 1 and Annex I and Annex II of RTS 2.

viii. Derived Data

²¹ Except for the cases where Article 9(2) and 9(3) of Delegated Regulation 2017/567 or Article 87(2) and 87(3) of Delegated Regulation 2017/565 apply.



Derived Data should mean data created as a result of the transformation or combination of the raw data originally generated by market data providers with other data provided by different sources that cannot be used to materially replace or substitute the original data.

ix. Real-time Data

Real-time Data should mean market data delivered with a delay of less than 15 minutes after publication.

x. Delayed Data

Delayed Data should mean market data made available 15 minutes after publication.

xi. Historical Data

Historical Data should mean this part of Delayed Data which is made available later than the end of the following business day after publication.



Annex III – Correspondence table

As of 1 January 2022, certain MiFID II provisions should be read as a reference to new MiFIR provisions as specified in Regulation (EU) No 2019/2175, and as further supplemented by relevant Level 2 acts. Please see the correspondence table below:

Correspondence Table	
MiFID II	MiFIR (new)
Article 4(1)(52)	Article 2(1)(34)
Article 4(1)(53)	Article 2(1)(35)
Article 64(1)	Article 27(g)(1)
Article 64(2)	Article 27(g)(2)
Article 65(1)	Article 27(h)(1)
Article 65(2)	Article 27(h)(2)