



European Securities and
Markets Authority

Reply form for the ESMA MAR Technical standards



Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper - Draft technical standards on the Market Abuse Regulation (MAR), published on the ESMA website ([here](#)).

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, please follow the instructions described below:

- i. use this form and send your responses in Word format;
- ii. do not remove the tags of type <ESMA_QUESTION_MAR_TS_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- iii. if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- i. if they respond to the question stated;
- ii. contain a clear rationale, including on any related costs and benefits; and
- iii. describe any alternatives that ESMA should consider

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Responses must reach us by **15 October 2014**.

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input/Consultations’.

Naming protocol - In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_MAR_CP_TS_NAMEOFCOMPANY_NAMEOFDOCUMENT: e.g. if the respondent were ESMA, the name of the reply form would be ESMA_MAR_CP_TS_ESMA_REPLYFORM or ESMA_MAR_CP_TS_ESMA_ANNEX1

Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that 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 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 ‘Disclaimer’.

General information about respondent

Are you representing an association?	No
Activity:	Non-financial counterparty
Country/Region	France



Introduction

Please make your introductory comments below, if any:

< ESMA_COMMENT_MAR_TA_1>
TYPE YOUR TEXT HERE
< ESMA_COMMENT_MAR_TA_1>

II. Buy-backs and stabilisation: the conditions for buy-back programmes and stabilisation measures

Q1: Do you agree with the approach set out for volume limitations? Do you think that the 50% volume limit in case of extreme low liquidity should be reinstated? If so, please justify.

<ESMA_QUESTION_MAR_TS_1>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MAR_TS_1>

Q2: Do you agree with the approach set out for stabilisation measures? If not, please explain.

<ESMA_QUESTION_MAR_TS_2>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MAR_TS_2>

III. Market soundings

Q3: Do you agree with ESMA's revised proposals for the standards that should apply prior to conducting a market sounding?

<ESMA_QUESTION_MAR_TS_3>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MAR_TS_3>

Q4: Do you agree with the revised proposal for standard template for scripts? Do you have any comments on the elements included in the list?

<ESMA_QUESTION_MAR_TS_4>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MAR_TS_4>

Q5: Do you agree with these proposals regarding sounding lists?

<ESMA_QUESTION_MAR_TS_5>

We have difficulties to judge on the thresholds as long as it is not clearly defined, which installations do count: Does it count only per installation? Does it count for a single legal entity and all of its installation or does it count even for an economic group of legal entities under common control and all its installations. Here one needs to take into account, that measures/transactions for the full scope of installations in an economic group are very seldom if they could happen at all. So for an economic group the 6 Mio tonnes threshold would be far too low as we think respective measures are not to be expected and the burden to implement a monitoring and compliance system in an economic group of legal entities would be far too high for the respective entities.

Here one needs to take into account the different types of industries: Whereas in the cement business single installations would rather not reach the threshold and will rarely be affected by any measure completely this might be different in other industries.

For energy intensive industries we see a similar issue for separated legal trading entities which do only serve the needs for the economic group that controls this trading entity. Either one foresees the threshold should apply similarly as for the operating entities as such (at least if the trading entity only covers the needs of the operating entities) and it is only caught, if the respective operating entities are caught by the threshold or the exemption could be similar to the EMIR one which enables Corporates to be exempted from a clearing obligation. The EMIR clearing exemption applies to “OTC derivative contracts entered into in order to reduce risks relating to the commercial or treasury financing activity of the NFC (Non Financial Counterparty)”. Insofar we propose to exempt EAMP who trade allowances in order to reduce risks associated with their commercial or industrial activity from the reporting obligation. This is justified as such activities are unlikely to have a significant price effect.

In addition, setting a threshold at 6 Mio tonnes would otherwise create distortion of competition within a single sector. This is because in a structure like the cement industry only a combination of a certain number of installations, which as single installations would never reach the 6 Mio tonnes threshold, would reach the threshold. But this means that only a certain part of the undertakings in the sector would be obliged for ad hoc disclosures, which do not only have effects on the market for CO2 emissions but also this underlying product markets and might qualify for such market as business secrets and competitively sensitive information. So all entities caught would need to make very difficult judgments between their potential duty to notify and the obligation not to publish competitively sensitive information as also competitors would then get knowledge.

Finally recital 51 of the MAR states that the requirement to publicly disclose information in the emission allowance market should be limited “to only those EU ETS operators which, by virtue of their size and activity, can reasonably be expected to be able to have a significant impact on the price of emission allowances.” The focus on minimum thresholds does not reflect recital 51 as it completely neglects the important criterion of an operator’s activity in the market.

<ESMA_QUESTION_MAR_TS_5>

Q6: Do you agree with the revised requirement for DMPs to maintain sounding information about the point of contact when such information is made available by the potential investor?

<ESMA_QUESTION_MAR_TS_6>

In relation to point 39 and 40 of the consultation paper, we believe that further guidance is needed to allow disclosing market participant to assess on a case by case basis whether the information under consideration meets the criteria of inside information.

To our view, relevant information is already collected by the authorities at national and EU level – see Directives 2003/87 and 2009/29 Article 7: “The operator shall inform the competent authority of any changes planned in the nature or functioning, or an extension, of the installation which may require updating of the greenhouse gas emissions permit” In addition, Guidance Document 7, states that “Operators shall submit any relevant planned or effective changes to the capacity, activity level and operation of an installation to the CA before 31 December of each year. Relevant changes are changes that could have an impact on the installation’s allocation. (Art. 7 of the revised ETS Directive and Art. 24 of the CIMS)”.

All required information is de facto provided at the end of the year to the national authorities. Why introduce a double burden on ETS participants? Why is it not sufficient? In addition, there

are information such as plant closure that can definitely not be provided too early for obvious social reasons.

In addition, in relation to entity-specific, non-public information held by individual market participants we wish to specifically raise concern in relation to “information relevant to the capacity and utilization of installations, including planned or unplanned availability of such installations”. As a rule such information is strictly business sensitive and – if disclosed publicly - would allow competitors to draw conclusions on the installation’s operation mode. Industrial manufacturers would face great risks in that intra- and extra-EU competitors would gain access to information about their production performance. The publication of planned emissions, for instance, would allow competitors to easily estimate to which degree a certain plant will be producing in the future. If a competitor now adapted his production pattern according to this information, this could be classified as “signaling” under antitrust regulations. We therefore urge ESMA not to include the above mentioned wording on capacity utilization etc. in its recommendation to the European Commission.

If operators in the scope of the EU ETS need to disclose insider information this should only be done in an anonymised way that does not allow competitors to gain access to business sensitive information. An independent institution that collects operators’ data and produces a projection of the future emissions could be envisaged. Only the total emissions are eventually of interest with respect to the proper functioning of the market. Publishing emissions projections based on anonymized data would not produce conflicts with antitrust regulations.

<ESMA_QUESTION_MAR_TS_6>

Q7: Do you agree with these proposals regarding recorded communications?

<ESMA_QUESTION_MAR_TS_7>

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<ESMA_QUESTION_MAR_TS_7>

Q8: Do you agree with these proposals regarding DMPs’ internal processes and controls?

<ESMA_QUESTION_MAR_TS_8>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MAR_TS_8>

IV. Accepted Market Practices

Q9: Do you agree with ESMA's view on how to deal with OTC transactions?

<ESMA_QUESTION_MAR_TS_9>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_9>

Q10: Do you agree with ESMA's view that the status of supervised person of the person performing the AMP is an essential criterion in the assessment to be conducted by the competent authority?

<ESMA_QUESTION_MAR_TS_10>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_10>

V. Suspicious transaction and order reporting

Q11: Do you agree with this analysis regarding attempted market abuse and OTC derivatives?

<ESMA_QUESTION_MAR_TS_11>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_11>

Q12: Do you agree with ESMA's clarification on the timing of STOR reporting?

<ESMA_QUESTION_MAR_TS_12>
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<ESMA_QUESTION_MAR_TS_12>

Q13: Do you agree with ESMA's position on automated surveillance?

<ESMA_QUESTION_MAR_TS_13>
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<ESMA_QUESTION_MAR_TS_13>

Q14: Do you have any additional views on the proposed information to be included in, and the overall layout of the STORs?

<ESMA_QUESTION_MAR_TS_14>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_14>

Q15: Do you have any additional views on templates?

<ESMA_QUESTION_MAR_TS_15>
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<ESMA_QUESTION_MAR_TS_15>

Q16: Do you have any views on ESMA's clarification regarding "near misses"?

<ESMA_QUESTION_MAR_TS_16>
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<ESMA_QUESTION_MAR_TS_16>

VI. Technical means for public disclosure of inside information and delays

Q17: Do you agree with the proposal regarding the channel for disclosure of inside information?

<ESMA_QUESTION_MAR_TS_17>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_17>

Q18: Do you believe that potential investors in emission allowances or, more importantly, related derivative products, have effective access to inside information related to emission allowances that have been publicly disclosed meeting REMIT standards as described in the CP, i.e. using platforms dedicated to the publication of REMIT inside information or websites of the energy market participants as currently recommended in the ACER guidance?

<ESMA_QUESTION_MAR_TS_18>
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<ESMA_QUESTION_MAR_TS_18>

Q19: What would be the practical implications for the energy market participants under REMIT who would also be EAMPs under MAR to use disclosure channels meeting the MAR requirements for actively disseminating information that would be inside information under both REMIT and MAR?

<ESMA_QUESTION_MAR_TS_19>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_19>

Q20: Do you agree with ESMA's proposals regarding the format and content of the notification?

<ESMA_QUESTION_MAR_TS_20>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_20>

Q21: Do you agree with the proposed records to be kept?

<ESMA_QUESTION_MAR_TS_21>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_21>

VII. Insider list

Q22: Do you agree with ESMA's proposals regarding the elements to be included in the insider lists?

<ESMA_QUESTION_MAR_TS_22>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_22>

Q23: Do you agree with the two approaches regarding the format of insider lists?

<ESMA_QUESTION_MAR_TS_23>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_23>

VIII. Managers' transactions format and template for notification and disclosure

Q24: Do you have any views on the proposed method of aggregation?

<ESMA_QUESTION_MAR_TS_24>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_24>

Q25: Do you agree with the content to be required in the notification?

<ESMA_QUESTION_MAR_TS_25>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_25>

IX. Investment recommendations

Q26: Do you agree with the twofold approach suggested by ESMA of applying a general set of requirements to all persons in the scope and additional requirements to so-called “qualified persons” and “experts”?

<ESMA_QUESTION_MAR_TS_26>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_26>

Q27: Should the issuance of recommendations “on a regular basis” (e.g. every day, week or month) be included in the list of characteristics that a person must have in order to qualify as an “expert”? Can you suggest other objective characteristics that could be included in the “expert” definition?

<ESMA_QUESTION_MAR_TS_27>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_27>

Q28: Are the suggested standards for objective presentation of investment recommendation suitable to all asset classes? If not, please explain why.

<ESMA_QUESTION_MAR_TS_28>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_28>

Q29: Do you agree with the proposed standards for the objective presentation of investment recommendations and how they apply to the different categories of persons in the scope? If not, please specify.

<ESMA_QUESTION_MAR_TS_29>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_29>

Q30: Do you agree with the proposed standards for the disclosure of interest or indication of conflicts of interests and how they apply to the different categories of persons in the scope? If not, please specify.

<ESMA_QUESTION_MAR_TS_30>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_30>

Q31: Do you consider the proposed level of thresholds for conflict of interest appropriate for increasing the transparency of investment recommendation?

<ESMA_QUESTION_MAR_TS_31>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_31>

Q32: Do you think that the positions of the producer of the investment recommendation should be aggregated with the ones of the related person(s) in order to assess whether the threshold has been reached?

<ESMA_QUESTION_MAR_TS_32>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_32>

Q33: Do you agree that a disclosure is required when the remuneration of the person producing the investment recommendation is tied to trading fees received by his employer or a person related to the employer?

<ESMA_QUESTION_MAR_TS_33>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_33>

Q34: Do you agree with the proposed standards relating to the dissemination of recommendation produced by third parties? If not, please specify.

<ESMA_QUESTION_MAR_TS_34>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_34>

Q35: Do you consider that publication of extracts rather than the whole recommendation by news disseminators is a substantial alteration of the investment recommendation produced by a third party?

<ESMA_QUESTION_MAR_TS_35>
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<ESMA_QUESTION_MAR_TS_35>