



European Securities and
Markets Authority

Consultation Paper

**RTS specifying the scope of the consolidated tape for non-equity
financial instruments**



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:

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

ESMA will consider all comments received by **05 December 2016**.

In order to respond to this paper, please use the 'Reply form for the NET Consultation paper' also published on the ESMA website. 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 publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

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

Who should read this paper

All interested stakeholders are invited to respond to this discussion paper. It is of particular interest for potential consolidated tape providers (CTPs), potential users of CTPs as well as trading venues and approved publication arrangements (APAs) which data will be included in the consolidated tape.

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List of acronyms

APA	Approved Publication Arrangement
CA	Competent Authority
CP	Consultation Paper
CT	Consolidated Tape
CTP	Consolidated Tape Provider
ESMA	European Securities and Markets Authority
ETC	Exchange Traded Commodity
ETN	Exchange Traded Note
MIFID II	Markets in Financial Instruments Directive II – Directive 2014/65/EU of the European Parliament and the Council
RTS	Regulatory Technical Standard

1 Executive Summary

Reasons for publication

This consultation paper (CP) seeks stakeholders' views on the draft Regulatory Technical Standard (RTS) ESMA is required to draft under Article 65(8)(c) of Directive 2014/65/EU with regard to the consolidated tape for non-equity instruments.

The input from stakeholders will help ESMA in finalising this draft RTS. Respondents to the consultations are encouraged to provide the relevant data to support their arguments or proposals.

Contents

Section 2 introduces the topic. Section 3 addresses the issue of specialisation of the CT, whereas section 4 discusses which trading venues and APAs should be mandatorily included in the CT. Finally, the CP ends with section 5 which discusses the inclusion of new trading venues and APAs to the CT as well as the removal of a trading venue or APA from the CT.

Next Steps

On the basis of the responses to this CP, ESMA will finalise the draft RTS and submit the final report to the European Commission for endorsement.

2 Introduction

Article 65(8)(c) of MiFID II

ESMA shall develop draft regulatory technical standards specifying:

(c) the financial instruments data of which must be provided in the data stream and for non-equity instruments the trading venues and APAs which need to be included.

1. Directive 2014/65/EU¹ (MiFID II) provides for the possibility of establishment of a consolidated tape (CT) both for equity as well as for non-equity instruments. ESMA already submitted in September 2015 draft regulatory technical standard (RTS) 13 specifying the scope of the equity tape. This RTS was endorsed by the Commission on 2 June 2016². However, given the higher complexity of the non-equity tape and having in mind that the provisions on the non-equity tape of Article 65(2) of MiFID II will only apply as from September 2019, ESMA decided to deliver the draft RTS specifying the scope of the non-equity tape at a later stage.
2. Recital 118 of MiFID II acknowledges that the establishment of a non-equity CT is more difficult to implement than the equity CT. This is also reflected in the empowerment for the draft RTS which requires not only to specify the financial instruments data of which much be provided by the CT but also to specify the trading venues and APAs which have to be included in the tape. Compared to the very limited flexibility provided for specifying the scope of the equity CT, a more pragmatic approach appears therefore feasible for the non-equity CT.
3. ESMA considers it important to provide for a balanced draft RTS, which strikes the right balance between being sufficiently attractive for potential consolidated tape providers (CTPs) while allowing for a user-friendly approach. While having an all-encompassing CT in the non-equity space would have the advantage of offering a one-stop shop for users, one should bear in mind that too stringent requirements on the non-equity CT may render the business case for potential CTPs unattractive, thereby making it unlikely for a non-equity CT to emerge in the first place.

3 Specialisation of the CTP

4. To increase the probability of a viable business case for the non-equity CT, ESMA considers it sensible to allow CTPs to specialize in / provide services covering only one or

¹ Directive 2014/65 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, OJ L 173, 12.6.2014, p. 349.

² Commission Delegated Regulation (EU) .../... of 2.6.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorization, organisational requirements and the publication of transactions for data reporting services providers.

a group of asset classes rather than the entire very heterogeneous universe of non-equity instruments.

5. In line with the approach of RTS 2 on non-equity transparency which was endorsed by the Commission on 14 July 2016³, ESMA therefore proposes to allow for the specialisation of the CT according to the following asset classes:
 - a) Bonds (except ETCs and ETNs and structured finance products);
 - b) ETCs and ETNs bond types;
 - c) Structured finance products;
 - d) Securitised derivatives;
 - e) Interest rate derivatives;
 - f) Foreign Exchange Derivatives;
 - g) Equity derivatives;
 - h) Commodity derivatives;
 - i) Credit derivatives;
 - j) Contract for differences;
 - k) C10 derivatives;
 - l) Emission allowance derivatives; and
 - m) Emission allowances
6. A CTP would be free to specialise its data offering according to the above asset classes. It could specialise in only one asset class, offer the entire spectrum of asset classes or any combination.
7. ESMA is aware that specialisation according to the nature of the financial instrument is not an obvious consequence of the MiFID II empowerment in Article 65(8)(c) to specify the scope of the non-equity CT. However, specialisation appears to be justified by the clear

³ Commission Delegated Regulation (EU) .../... of 14.7.2016 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 derivatives

intention of legislators to provide for an environment that is likely to lead to the provision of one or more consolidated tapes that will be of real value to users of data.

Q1: Do you agree with ESMA's proposal to allow non-equity CTPs to specialize their offering? Do you agree to the level of specialisation proposed or would you recommend a less granular or more granular approach?

4 The trading venues and APAs to be included

8. In ESMA's view CTPs should not be required to collect information from all trading venues and APAs since the costs of including all those sources – trading venues and APAs - would be very high while the added value for users of adding sources with only minor activity is limited. Therefore, ESMA recommends allowing CTPs to exclude trading venues and APAs of insufficient size.
9. ESMA assessed a number of different options to deem a source as significant enough to be mandatorily included in the CT, reaching from including a source if the market share in any instrument is above a certain threshold to assessing the whole reporting activity of a source. In ESMA's view the entire data stream in a particular asset class of a trading venue or APA should be included in the CT if the size of the source taking into account all instruments of that specific asset class reported by the source exceeds a certain threshold.
10. ESMA proposes that the threshold should be determined both in terms of the volume and the number of transactions reported. This approach would ensure that not only sources that report a high volume of transactions are covered in the CT but also sources that account for a large number of reported transactions but would not meet the volume condition as such (such as certain venues for bonds based on a continuous order book, executing numerous trades but of only little volume).
11. ESMA therefore suggests to require the inclusion of a trading venue or APA into the CT if the trading venue or APA meets any of the thresholds based on the volume and number of transactions reported on a per asset class level (i.e. either a volume *or* a number of transactions condition)

Q2: Do you agree that the threshold determining whether a trading venue or APA needs to be included in the CT should be based both on the volume and the number of transactions? If not, please explain and present an alternative approach.

12. Under this approach a source would be required to be included in the CT if it meets at least one of the following thresholds:
 - The cumulated volume of trades as defined in table 4 of Annex II of RTS 2 reported by the source over a period of 6 months exceeds 2.5% of the total volume reported in the Union over the same period on all trading venues and OTC in the relevant non-equity asset class; or

- The number of trades reported by the source over a period of 6 months exceed 2.5% of the total number of transactions reported in the Union over the same period on all trading venues and OTC in the relevant asset class.

Q3: Do you agree with the proposed level for the threshold? In particular, do you agree that the threshold is set at the same level across all asset classes and for both the volume and number of transactions? If not, please explain why and propose an alternative approach.

13. Should the CTP opt for specialization, exceeding the threshold would only require the inclusion of the data of the relevant asset class(es) where the CT has been allowed to operate. i.e. the CT would only have to purchase the data stream of asset classes it covers based on its specialisation decision.
14. This approach does not appear to be overly challenging in terms of calculations. ESMA considers that trading venues and APAs are best placed to perform this assessment, since they have aggregated information on the numerator, i.e. the volume and number of trades reported per asset class.
15. An alternative approach could require CTPs to perform the assessment. However, ESMA considers that this approach has the drawback that each CT would have to carry out these calculations for each potential source i.e. trading venue and APA, which appears very burdensome, whereas requiring APAs and trading venues to perform the assessment would only require one assessment per APA/trading venue and ensures that the assessment is performed by the entity that is best placed to assess its level of activity.
16. ESMA understands that determining the denominators of these tests, i.e. the volume and the number of trades reported for all trading venues and APAs in the Union may create some challenges. However, ESMA considers that this information will be available once the MiFID II regime starts applying as of 3 January 2018. ESMA is assessing whether it could compute and publish the denominators needed for the calculations alongside the transparency calculations.

Q4: Which entity should perform the calculations? Should it be the data source, i.e. trading venues and APAs, or the CTP?

17. In order to ensure a smooth transition into the new regime and to treat all trading venues and APAs on the same basis, ESMA considers it important to provide for the test being carried out on basis of the same reference period. ESMA therefore proposes that the first assessment on whether the minimum thresholds to be mandatorily included in the CT are reached should be carried out and the results thereof published by 1 March 2019 based on data covering the second half of 2018, i.e. 01 July 2018 to 31 December 2018. The following assessments would be carried out and published twice a year, that is by 1 September 2019 and 1 March and 1 September of the following years.

18. ESMA considers that newly licensed APAs and trading venues should only be required to carry out the assessment where at the time of carrying out and publishing the results of the assessment they already reported transactions covering the whole 6-month reference period. Hence, assuming that a trading venue starts operating on 1 August 2018, the results of the first assessment would be published by 1 September 2019 based on reported transactions covering the period 1 January 2018 to 30 June 2019. Following this first assessment, the results of the next and all the following assessments would be published by 1 March and 1 September of 2020 and the following years.

Q5: Do you agree with the proposed calculation and publication frequency? Do you agree that only trading venues and APAs that have reported transactions covering the full reference period of 6 months should be required to carry out the assessment? If not, please explain why and propose an alternative solution.

5 Inclusion of a new source and removal of a source

19. RTS 13 requires CTPs for equity instruments to include data from new trading venues or new APAs as soon as possible and in any case no later than 6 months after the start of the trading venues or the APA's operations. This approach aims at allowing CTPs sufficient time to put in place the necessary arrangements for integrating the new source in its data stream and secure a robust access to information.

20. ESMA considers it appropriate to provide for a similar approach also in the context of the CT for non-equity financial instruments once a source meets the thresholds making its inclusion into the CT mandatory: the effective inclusion of a source would start no later than 6 months after the first assessment when the thresholds are exceeded.

21. Contrary to the equity CT where all sources have to be included unless the data source ceases its activity, a source to the non-equity CT may not have to be included anymore where it does not meet the thresholds. To avoid a situation of frequent changes of the sources to be included in the CT, ESMA suggests that a trading venue or an APA that falls below the thresholds of the minimum size for three consecutive periods would be no longer required to be included in the CT. Its removal would be authorised right after the relevant assessment date.

22. In case a source was already mandatorily included in the CT at an earlier point in time and after a period of not meeting the thresholds, is meeting again the thresholds and therefore has to be reinserted into the tape, ESMA proposes that this should happen within 3 months. This approach appears to be justified given the previous contractual relation between the CTP and the trading venue/APA which is expected to contribute to a quicker reintegration of this source into the electronic data stream of the CTP.

23. In any case, a CT will be free to include also sources that report trades below the thresholds if it wishes to do so.

Q6: Do you consider it appropriate to provide for a grace period of up to 6 months after the first assessment date for including new sources into the data stream? Do you consider the proposed length appropriate?

Q7: Do you agree that a source be only excluded if the thresholds are not met for at least three consecutive periods? If not, what do you consider to be the appropriate length of time?

6 Annexes

6.1 Annex I

Summary of questions

Q1: Do you agree with ESMA's proposal to allow non-equity CTPs to specialize their offering? Do you agree to the level of specialisation proposed or would you recommend a less granular or more granular approach?

Q2: Do you agree that the threshold determining whether a trading venue or APA needs to be included in the CT should be based both on the volume and the number of transactions? If not, please explain and present an alternative approach.

Q3: Do you agree with the proposed level for the threshold? In particular, do you agree that the threshold is set at the same level across all asset classes and for both the volume and number of transactions? If not, please explain why and propose an alternative approach.

Q4: Which entity should perform the calculations? Should it be the data source, i.e. trading venues and APAs, or the CTP?

Q5: Do you agree with the proposed calculation and publication frequency? Do you agree that only trading venues and APAs that have reported transactions covering the full reference period of 6 months should be required to carry out the assessment? If not, please explain why and propose an alternative solution.

Q6: Do you consider it appropriate to provide for a grace period of up to 6 months after the first assessment date for including new sources into the data stream? Do you consider the proposed length appropriate?

Q7: Do you agree that a source be only excluded if the thresholds are not met for at least three consecutive periods? If not, what do you consider to be the appropriate length of time?

6.2 Annex II

Commission mandate to develop regulatory technical standards

Article 65(8)(c) MiFID II

ESMA shall develop draft regulatory technical standards specifying:

(d) the financial instruments data of which must be provided in the data stream and for non-equity instruments the trading venues and APAs which need to be included.

6.3 Annex III

Draft regulatory technical standard on the scope of the non-equity tape

COMMISSION DELEGATED REGULATION (EU) .../...

of []

**amending Commission Delegated Regulation (EU) No 148/2013
supplementing Regulation (EU) No xxx/2016 of the European Parliament
and of the Council on authorization, organizational requirements and the
publication of transactions for data reporting services providers**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/65/EU of 15 May 2014 of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU⁴, and in particular Articles 65(8)(c) thereof,

Whereas:

- (1) Commission Delegated Regulation xxx/2016 sets out details specifying the publication of transactions by consolidated tape providers (CTPs), including the scope of the consolidated tape for shares, depositary receipts, ETFs, certificates and other similar financial instruments.
- (2) The provisions on the consolidated tape for bonds, structured finance products, derivatives and emission allowances will apply 21 months after the date of application of MiFID II. It is important to provide market participants with certainty as to the scope of the consolidated tape for those non-equity instruments sufficiently ahead before the application of the provisions.
- (3) In order to establish a framework that provides commercial incentives for operating a consolidated tape for non-equity tape, consolidated tape providers should be allowed to operate a consolidated tape covering only a particular asset class or a subset of asset classes.

⁴ OJ L 173, 12.6.2014, p. 349

- (4) CTPs should include those APAs and trading venues in its electronic data stream that publish information on transactions above a minimum threshold. This approach ensures that the CTP publishes information that is of significance from a user perspective while avoiding high costs stemming from including information published by all APAs and trading venues which would be of limited added value for users.
- (5) It is appropriate to require APAs and trading venues to carry out the assessment for determining whether their activity is significant enough to be mandatorily included in the consolidated tape since those are the best placed to assess their level of activity and it is the most cost efficient approach since it ensures that in a multi-CTP environment the assessment has to be performed only once.
- (6) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date. In order to ensure a smooth transition into the new regime, it is necessary that some provisions in this Regulation referring to the first calculation of the criteria determining whether an APA or trading venue should be included in the consolidated tape already apply from 1 March 2019.
- (7) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (8) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council³,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) No xxx/2016 is amended as follows:

- (1) The following Article 15a is inserted

Article 15a

Scope of the consolidated tape for bonds, structured finance products, emission allowances and derivatives

1. A CTP shall be allowed to include in its electronic data stream data one or more of the following asset classes as defined in Commission Delegated Regulation (EU) No xxx/2016 [non-equity transparency]:

- (a) Bonds, excluding ETCs and ETNs;
- (b) ETC and ETNs bond types;
- (c) Structured finance products;
- (d) Securitised derivatives;
- (e) Interest derivatives;
- (f) Foreign exchange derivatives;
- (g) Equity derivatives;
- (h) Commodity derivatives;
- (i) Credit derivatives;
- (j) Contracts for differences;
- (k) C10 derivatives;
- (l) Emission allowance derivatives; and
- (m) Emission allowances.

2. A CTP shall include in its electronic data stream data made public according to Articles 10 and 21 of Regulation (EU) No 600/2014 from APAs and trading venues that meet at least one of the following criteria:

- (a) The number of transactions published in an asset class as specified in paragraph 1 is equal to or larger than 2.5% of the total number of transactions in the relevant asset class published in the Union by all APAs and trading venues during the same period;
- (b) The volume of transactions published in an asset class as specified in paragraph 1 is equal to or larger than 2.5% of the total volume of transactions in the relevant asset class published in the Union by all APAs and trading venues during the same period.

3. For the purposes of paragraph 2(b), the volume of transactions as defined in **Table 4 of Annex II of Commission Delegated Regulation (EU) No xxx/2016 [non-equity transparency]** shall be used.

4. APAs and trading venues shall perform the calculations referred to in paragraph 2 and publish the results thereof on their website by 1 March 2019 and by 1 September 2019 and by 1 March and 1 September of the following years on the basis of transactions published covering a 6-month reference period. The reference period for the calculation to be performed by 1 March shall begin on 1 July and end on 31 December of the previous year. The reference period for the calculation to be performed by 1 September shall begin on 1 January and end on 30 June of the same year.
5. By way of derogation to paragraph 4, APAs and trading venues shall perform for the first time the calculations and publish the results thereof on their website only after they published transactions covering the full reference period.
6. A CTP shall include the data made public by any APA or trading venue that meets one of the criteria set out in paragraph 2 in its electronic data stream as soon as possible, and in any case no later than six months after one of the criteria has been met.
7. A CTP shall be allowed to remove those APAs and trading venues from its electronic data stream which do not meet any of the criteria set out in paragraph 2 for three consecutive assessment periods.
8. Without prejudice to paragraph 6, where an APA or trading venue meets one of the criteria set out in paragraph 2 and had been previously included in the electronic data stream of the CTP before meeting the conditions in paragraph 7, the CTP shall reinsert this APA or trading venue in its electronic data stream no later than three months after one of the criteria has been met.

Article 2

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from the date that appears second in the second subparagraph of Article 93(1) of Directive 2014/65/EU, except for the provisions in paragraph 4 and 5 of Article 15a which shall apply as from 1 March 2019.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President



*[For the Commission
On behalf of the President]*

[Position]