

# Reply form for the Consultation Paper on MAR review report



## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on the MAR review report published on the ESMA website.

### *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, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA\_QUESTION\_CP\_MAR\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- 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:

- 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.

### **Naming protocol**

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

ESMA\_CP\_MAR\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

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

ESMA\_CP\_MAR\_ESMA\_REPLYFORM or

ESMA\_CP\_MAR\_ANNEX1

### **Deadline**

Responses must reach us by **29 November 2019**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.



### ***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](http://www.esma.europa.eu) under the headings 'Legal notice' and 'Data protection'.



## General information about respondent

Name of the company / organisation	Börse Stuttgart
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

## Introduction

*Please make your introductory comments below, if any:*

<ESMA\_COMMENT\_CP\_MAR\_1>  
TYPE YOUR TEXT HERE  
<ESMA\_COMMENT\_CP\_MAR\_1>



**Q1. Do you consider necessary to extend the scope of MAR to spot FX contracts? Please explain the reasons why the scope should or should not be extended, and whether the same goals could be achieved by changing any other piece of the EU regulatory framework.**

<ESMA\_QUESTION\_CP\_MAR\_1>  
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**Q2. Do you agree with ESMA's preliminary view about the structural changes that would be necessary to apply MAR to spot FX contracts? Please elaborate and indicate if you would consider necessary introducing additional regulatory changes.**

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**Q3. Do you agree with this analysis? Do you think that the difference between the MAR and BMR definitions raises any market abuse risks and if so what changes might be necessary?**

<ESMA\_QUESTION\_CP\_MAR\_3>  
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**Q4. Do you agree that the Article 30 of MAR "Administrative sanctions and other administrative measures" should also make reference to administrators of benchmarks and supervised contributors?**

<ESMA\_QUESTION\_CP\_MAR\_4>  
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<ESMA\_QUESTION\_CP\_MAR\_4>

**Q5. Do you agree that the Article 23 of MAR "Powers of competent authorities" point (g) should also make reference to administrators of benchmarks and supervised contributors? Do you think that is there any other provision in Article 23 that should be amended to tackle (attempted) manipulation of benchmarks?**

<ESMA\_QUESTION\_CP\_MAR\_5>  
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**Q6. Do you agree that Article 30 of MAR points (e), (f) and (g) should also make reference to submitters within supervised contributors and assessors within administrators of commodity benchmarks?**



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**Q7. Do you agree that there is a need to modify the reporting mechanism under Article 5(3) of MAR? Please justify your position.**

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**Q8. If you agree that the reporting mechanism should be modified, do you agree that Option 3 as described is the best way forward? Please justify your position and if you disagree please suggest alternative.**

<ESMA\_QUESTION\_CP\_MAR\_8>  
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**Q9. Do you agree to remove the obligation for issuers to report under Article 5(3) of MAR information specified in Article 25(1) and (2) of MiFIR? If not, please explain.**

<ESMA\_QUESTION\_CP\_MAR\_9>  
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**Q10. Do you agree with the list of fields to be reported by the issuers to the NCA? If not, please elaborate.**

<ESMA\_QUESTION\_CP\_MAR\_10>  
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**Q11. Do you agree with ESMA's preliminary view?**

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**Q12. Would you find more useful other aggregated data related to the BBP and if so what aggregated data? Please elaborate.**

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**Q13. Have market participants experienced any difficulties with identifying what information is inside information and the moment in which information becomes inside information under the current MAR definition?**

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**Q14. Do market participants consider that the definition of inside information is sufficient for combatting market abuse?**

<ESMA\_QUESTION\_CP\_MAR\_14>  
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**Q15. In particular, have market participants identified information that they would consider as inside information, but which is not covered by the current definition of inside information?**

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**Q16. Have market participants identified inside information on commodity derivatives which is not included in the current definition of Article 7(1)(b) of MAR?**

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**Q17. What is an appropriate balance between the scope of inside information relating to commodity derivatives and allowing commodity producers to undertake hedging transactions on the basis of that information, to enable them to carry out their commercial activities and to support the effective functioning of the market?**

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**Q18. As of today, does the current definition of Article 7(1)(b) of MAR allow commodity producers to hedge their commercial activities? In this respect, please provide information on hedging difficulties encountered.**

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**Q19. Please provide your views on whether the general definition of inside information of Article 7(1)(a) of MAR could be used for commodity derivatives. In such case, would safeguards enabling commodity producers to undertake hedging transactions based on proprietary inside information related to their commercial activities be needed? Which types of safeguards would you envisage?**

<ESMA\_QUESTION\_CP\_MAR\_19>  
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**Q20. What changes could be made to include other cases of front running?**

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**Q21. Do you consider that specific conditions should be added in MAR to cover front-running on financial instruments which have an illiquid market?**

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**Q22. What market abuse and/or conduct risks could arise from pre-hedging behaviours and what systems and controls do firms have in place to address those risks? What measures could be used in MAR or other legislation to address those risks?**

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**Q23. What benefits do pre-hedging behaviours provide to firms, clients and to the functioning of the market?**

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**Q24. What financial instruments are subject to pre-hedging behaviours and why?**

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**Q25. Please provide your views on the functioning of the conditions to delay disclosure of inside information and on whether they enable issuers to delay disclosure of inside information where necessary.**

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**Q26. Please provide relevant examples of difficulties encountered in the assessment of the conditions for the delay or in the application of the procedure under Article 17(4) of MAR.**

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**Q27. Please provide your view on the inclusion of a requirement in MAR for issuers to have systems and controls for identifying, handling, and disclosing inside information. What would the impact be of introducing a systems and controls requirement for issuers?**

<ESMA\_QUESTION\_CP\_MAR\_27>  
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**Q28. Please provide examples of cases in which the identification of when an information became “inside information” was problematic.**

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**Q29. Please provide your views on the notification to NCAs of the delay of disclosure of inside information, in those cases in which the relevant information loses its inside nature following the decision to delay the disclosure.**

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TYPE YOUR TEXT HERE  
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**Q30. Please provide your views on whether Article 17(5) of MAR has to be made more explicit to include the case of a listed issuer, which is not a credit or financial institution, but which is controlling, directly or indirectly, a listed or non-listed credit or financial institution.**



<ESMA\_QUESTION\_CP\_MAR\_30>  
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**Q31. Please provide relevant examples of difficulties encountered in the assessment of the conditions for the delay or in the application of Article 17(5) of MAR.**

<ESMA\_QUESTION\_CP\_MAR\_31>  
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**Q32. Please indicate whether you have found difficulties in the assessment of the obligation to disclose a piece of inside information under Article 17 MAR when analysed together with other obligations arising from CRD, CRR or BRRD. Please provide specific examples.**

<ESMA\_QUESTION\_CP\_MAR\_32>  
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**Q33. Do you agree with the proposed amendments to Article 11 of MAR?**

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**Q34. Do you think that some limitation to the definition of market sounding should be introduced (e.g. excluding certain categories of transactions) or that additional clarification on the scope of the definition of market sounding should be provided?**

<ESMA\_QUESTION\_CP\_MAR\_34>  
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**Q35. What are in your view the stages of the interaction between DMPs and potential investors, from the initial contact to the execution of the transaction, that should be covered by the definition of market soundings?**

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**Q36. Do you think that the reference to “prior to the announcement of a transaction” in the definition of market sounding is appropriate or whether it should be amended to**



**cover also those communications of information not followed by any specific announcement?**

<ESMA\_QUESTION\_CP\_MAR\_36>  
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**Q37. Can you provide information on situations where the market soundings regime has proven to be of difficult application by DMPs or persons receiving the market sounding? Could you please elaborate?**

<ESMA\_QUESTION\_CP\_MAR\_37>  
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<ESMA\_QUESTION\_CP\_MAR\_37>

**Q38. Can you provide your views on how to simplify or improve the market sounding procedure and requirements while ensuring an adequate level of audit trail of the conveyed information (in relation to both the DMPs and the persons receiving the market sounding)?**

<ESMA\_QUESTION\_CP\_MAR\_38>  
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**Q39. Do you agree with ESMA's preliminary view on the usefulness of insider list? If not, please elaborate.**

<ESMA\_QUESTION\_CP\_MAR\_39>  
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**Q40. Do you consider that the insider list regime should be amended to make it more effective? Please elaborate.**

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**Q41. What changes and what systems and controls would issuers need to put in place in order to be able to provide NCAs, at their request, the insider list with the individuals who had actually accessed the inside information within a short time period?**

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**Q42. What are your views about expanding the scope of Article 18(1) of MAR (i.e. drawing up and maintain the insider list) to include any person performing tasks through which they have access to inside information, irrespective of the fact that they act on behalf or on account of the issuer? Please identify any other cases that you consider appropriate.**

<ESMA\_QUESTION\_CP\_MAR\_42>  
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**Q43. Do you consider useful maintaining the permanent insider section? If yes, please elaborate on your reasons for using the permanent insider section and who should be included in that section in your opinion.**

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**Q44. Do you agree with ESMA's preliminary view?**

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**Q45. Do you have any other suggestion on the insider lists that would support more efficiently their objectives while reducing the administrative work they entail? If yes, please elaborate how those changes could contribute to that purpose.**

<ESMA\_QUESTION\_CP\_MAR\_45>  
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**Q46. Does the minimum reporting threshold have to be increased from Euro 5,000? If so, what threshold would ensure an appropriate balance between transparency to the market, preventing market abuse and the reporting burden on issuers, PDMRs, and closely associated persons?**

<ESMA\_QUESTION\_CP\_MAR\_46>  
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**Q47. Should NCAs still have the option to keep a higher threshold? In that case, should the optional threshold be higher than Euro 20,000? If so, please describe the criteria to be used to set the higher optional threshold (by way of example, the liquidity of the financial instrument, or the average compensation received by the managers).**



<ESMA\_QUESTION\_CP\_MAR\_47>  
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**Q48. Did you identify alternative criteria on which the reporting threshold could be based? Please explain why.**

<ESMA\_QUESTION\_CP\_MAR\_48>  
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**Q49. On the application of this provision for EAMPs: have issues or difficulties been experienced?**

<ESMA\_QUESTION\_CP\_MAR\_49>  
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**Q50. Did you identify alternative criteria on which the subsequent notifications could be based? Please explain why.**

<ESMA\_QUESTION\_CP\_MAR\_50>  
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<ESMA\_QUESTION\_CP\_MAR\_50>

**Q51. Do you consider that the 20% threshold included in Article 19(1a)(a) and (b) is appropriate? If not, please explain the reason why and provide examples in which the 20% threshold is not effective.**

<ESMA\_QUESTION\_CP\_MAR\_51>  
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**Q52. Have you identified any possible alternative system to set the threshold in relation to managers' transactions where the issuer's shares or debt instruments form part of a collective investment undertaking or provide exposure to a portfolio of assets?**

<ESMA\_QUESTION\_CP\_MAR\_52>  
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**Q53. Did you identify elements of Article 19(11) of MAR which in your view could be amended? If yes, why? Have you identified alternatives to the closed period?**

<ESMA\_QUESTION\_CP\_MAR\_53>  
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<ESMA\_QUESTION\_CP\_MAR\_53>

**Q54. Market participants are requested to indicate if the current framework to identify the closed period is working well or if clarifications are sought.**

<ESMA\_QUESTION\_CP\_MAR\_54>  
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**Q55. Please provide your views on extending the requirement of Article 19(11) to (i) issuers, and to (ii) persons closely associated with PDMRs. Please indicate which would be the impact on issuers and persona closely associated with PDMRs, including any benefits and downsides.**

<ESMA\_QUESTION\_CP\_MAR\_55>  
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**Q56. Please provide your views on the extension of the immediate sale provided by Article 19(12)(a) to financial instruments other than shares. Please explain which financial instruments should be included and why.**

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TYPE YOUR TEXT HERE  
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**Q57. Please provide your views on whether, in addition to the criteria in Article 19(12) (a) and (b), other criteria resulting in further cases of exemption from the closed period obligation could be considered.**

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**Q58. Do you consider that CIUs admitted to trading or trading on a trading venue should be differentiated with respect to other issuers? Please elaborate your response specifically with respect to PDMR obligations, disclosure of inside information and insider lists. In this regard, please consider whether you could identify any articulation or consistency issues between MAR and the EU or national regulations for the different types of CIUs, with regards for example to transparency requirements under MAR vis-à-vis market timing or front running issues.**

<ESMA\_QUESTION\_CP\_MAR\_58>  
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**Q59. Do you agree with ESMA’s preliminary view? Please indicate which transactions should be captured by PDMR obligations in the case of management companies of CIUs.**

<ESMA\_QUESTION\_CP\_MAR\_59>  
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**Q60. Do you agree with ESMA’s preliminary view? If not, please elaborate.**

<ESMA\_QUESTION\_CP\_MAR\_60>  
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**Q61. What persons should PDMR obligations apply to depending on the different structures of CIUs and why? In particular, please indicate whether the definition of “relevant persons” would be adequate for CIUs other than UCITs and AIFs.**

<ESMA\_QUESTION\_CP\_MAR\_61>  
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**Q62. ESMA would like to gather views from stakeholders on whether other entities than the asset management company (e.g. depository) and other entities on which the CIUs has delegated the execution of certain tasks should be captured by the PDMR regime.**

<ESMA\_QUESTION\_CP\_MAR\_62>  
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**Q63. Do you agree with ESMA’s conclusion? If not, please elaborate.**

<ESMA\_QUESTION\_CP\_MAR\_63>  
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**Q64. Do you agree with ESMA preliminary view? Please elaborate.**

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**Q65. Do you agree with ESMA’s preliminary views? Do you consider that specific obligations are needed for elaborating insider lists related to CIUs admitted to traded or traded on a trading venue?**



<ESMA\_QUESTION\_CP\_MAR\_65>  
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**Q66. Please provide your views on the abovementioned harmonisation of reporting formats of order book data. In addition, please provide your views on the impact and cost linked to the implementation of new common standards to transmit order book data to NCAs upon request. Please provide your views on the consequences of using XML templates or other types of templates.**

<ESMA\_QUESTION\_CP\_MAR\_66>

In relation to the specific proposal to harmonize the requirements under MiFIR Art. 25 for trading venues to use XML templates in accordance with the ISO 20022 methodology, Börse Stuttgart considers this to be a reasonable approach. XML templates would allow more flexible amendments of information, easier validation from trading venues and easier processing for regulators. However, Börse Stuttgart suggests to take a phased approach with enhancing of the content only in a second step if required.

The costs are hard to estimate until further clarity is provided on the specific changes that would be required. Providing XML to all regulators would require some development and testing for exchanges and Börse Stuttgart thinks that the greater the changes, the higher the costs will be. Moreover, additional costs for regulators would finally be passed on to market participants and be added to all the costs already incurred by MiFID II. We would hence urge that a cost-benefit analysis is conducted before any measure is decided. Any further increase in costs would have to be proportionate and reasonable, and the benefits clearly demonstrated.

Börse Stuttgart believes the T+1 data reporting would meet the requirements for NCAs for the specific purpose of market surveillance. In addition, it needs to be highlighted that this data cannot be delivered intraday. These requirements cover a significant amount of data and T+1 would give sufficient time for venues to submit it in the required format and with the required fields, including personal client code information. This is also important as the current industry standard – which is to our knowledge applied by the majority of European trading venues – requires a batch processing end of day to match order data and personal client code information.

<ESMA\_QUESTION\_CP\_MAR\_66>

**Q67. Please provide your views on the impact and cost linked to the establishment of a regular reporting mechanism of order book data.**

<ESMA\_QUESTION\_CP\_MAR\_67>

Börse Stuttgart does not see a need for establishing an EU framework for cross-market order book surveillance by a regular reporting mechanism. Rather than centralizing cross order book surveillance, the ad hoc reporting framework should be maintained.

MiFIR Art. 25 is intended to put financial authorities in a position to efficiently monitor financial markets. Therefore, in case of suspicion and on request, they are provided with information stored by trading venues and investment firms to detect and investigate potential cases of market abuse – thus, enabling financial authorities to analyze and evaluate suspicious behavior of market participants in a concrete case.



It remains unclear whether the proposal of the establishment of an EU framework for cross-market order book surveillance is based on a needs assessment and thus where exactly the added value might lie. Further, ESMA does not provide any evidence as regards potential shortcomings or deficiencies of the existing regime. Hence, the report falls short to argue in a sufficiently precise manner how this system could be improved by establishing cross-order book surveillance.

The advantage of the current system in place is that trading venues only need to provide a subset of data on request (and not all available data). Transfer and processing of smaller subsets of data is easier and faster than submitting the entire data pool. Examining entire data pools instead of relevant data only for concrete case specific questions of potential market abuse may also lead to confusion and even wrong conclusions. Moreover, Börse Stuttgart is concerned about the daily amount of data for record-keeping the NCA would receive under a regular reporting mechanism. The IT infrastructure of the receiving NCAs would need to be heavily enhanced (servers, storage, lines) which would need to be ensured well in advance before a daily data transfer could be started.

Börse Stuttgart believes that a proposal for a regular reporting mechanism needs to be considered very carefully and must be accompanied by an impact assessment, as trading venues have already invested significant resources and costs into developing systems to comply with the current requirements. All in all, no clear advantages of a regular reporting mechanism are evident and thus Börse Stuttgart thinks that the current ad hoc reporting mechanism should be maintained.

<ESMA\_QUESTION\_CP\_MAR\_67>

**Q68. In particular, please: a) elaborate on the cost differences between a daily reporting system and a daily record keeping and ad-hoc transmission mechanism; b) explain if and how the impact would change by limiting the scope of a regular reporting mechanism of order book data to a subset of financial instruments. In that context, please provide detailed description of the criteria that you would use to define the appropriate scope of financial instruments for the order book reporting.**

<ESMA\_QUESTION\_CP\_MAR\_68>

As stated under Q67, Börse Stuttgart does not see the need for a daily reporting and record keeping system. ESMA does not provide any evidence as regards potential shortcomings or deficiencies of the ad hoc reporting mechanism and it falls short to argue in a sufficiently precise manner where exactly the advantages of a regular reporting mechanism lay. Considering potential significant costs the change to a regular reporting mechanism may entail, Börse Stuttgart thinks that such a proposal must be accompanied by an impact assessment. That being said, Börse Stuttgart believes that the current ad hoc reporting mechanism should be maintained.

<ESMA\_QUESTION\_CP\_MAR\_68>

**Q69. What are your views regarding those proposed amendments to MAR?**

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**Q70. Are you in favour of amending Article 30(1) second paragraph of MAR so that all NCAs in the EU have the capacity of imposing administrative sanctions? If yes, please elaborate.**



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**Q71. Please share your views on the elements described above.**

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