

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

Fields marked with * are mandatory.

Introduction

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

SECTION 2 will be available in English only.

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

Background of this public consultation

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

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

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

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

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

Responding to this consultation and follow up to the consultation

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

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

This consultation document contains three sections.

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

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

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

This consultation is open until 18 May 2020.

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

More information:

- [on this consultation](#)
- [on the consultation document](#)
- [on the protection of personal data regime for this consultation](#)

About you

* Language of my contribution

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

* I am giving my contribution as

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| <input type="radio"/> Academic/research institution | <input type="radio"/> EU citizen | <input type="radio"/> Public authority |
| <input type="radio"/> Business association | <input type="radio"/> Environmental organisation | <input type="radio"/> Trade union |
| <input checked="" type="radio"/> Company/business organisation | <input type="radio"/> Non-EU citizen | <input type="radio"/> Other |
| <input type="radio"/> Consumer organisation | <input type="radio"/> Non-governmental organisation (NGO) | |

* First name

Marc

* Surname

Feiler

* Email (this won't be published)

feiler@boerse-muenchen.de

* Organisation name

255 character(s) maximum

Börse München

* Organisation size

- ☐ Micro (1 to 9 employees)
- ☒ Small (10 to 49 employees)
- ☐ Medium (50 to 249 employees)
- ☐ Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

942998228508-51

* Country of origin

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

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

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| <input type="radio"/> Democratic Republic of the Congo | <input type="radio"/> Lesotho | <input type="radio"/> Saint Kitts and Nevis | <input type="radio"/> Zimbabwe |
| <input type="radio"/> Denmark | <input type="radio"/> Liberia | <input type="radio"/> Saint Lucia | |

* Field of activity or sector (if applicable):

at least 1 choice(s)

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

- ☐ Fund manager (e.g. asset manager, hedge funds, private equity funds, venture capital funds, money market funds, institutional investors), buy-side entity
- ☐ Benchmark administrator
- ☐ Corporate, issuer
- ☐ Consumer association
- ☐ Accounting, auditing, credit rating agency
- ☐ Other
- ☐ Not applicable

* Please specify your activity field(s) or sector(s):

Market Operator

* Publication privacy settings

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

☒ **Anonymous**

Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

☐ **Public**

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

☒ I agree with the [personal data protection provisions](#)

Choose your questionnaire

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

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

The **full version** comprises 87 additional questions addressing **more technical features**.

The full questionnaire is only available in English.

- ☐ I want to respond only to the **short version** of the questionnaire

- ☒ I want to respond to the **full version** of the questionnaire

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

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

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

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

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

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

5000 character(s) maximum

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

Börse München believes that the aim of MiFID II/MiFIR to convince investors in participating in capital markets due to a strengthened regulatory framework was not achieved. Although it includes useful rules, for example regarding increased transparency requirements, these rules are often leveraged by the complex interplay between market participants. A level playing field between Trading Venues (TV) and Systematic Internalisers (SI) is still not established.

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

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

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

5000 character(s) maximum

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

Börse München believes that the objectives of MiFID II/MiFIR to strengthen fair, transparent, efficient and integrated markets have not been achieved. In contrast, e.g. different rules on pre- and post-trade transparency requirements for Regulated Markets (RM) and Multilateral Trading Facilities (MTF) on the one hand and bilateral execution venues such as SIs and OTC on the other hand, led to an unlevel playing field. Trading venues such as RM and MTF face significant disadvantages due to more stringent requirements, which is reflected in an increase in dark trading (SI and OTC) and a decrease in lit trading resulting in less transparent markets.

The regulatory burden caused by MiFID II/MiFIR for all market participants was significant, especially for smaller players. The costs and benefits were therefore not balanced. Trading venues differ in their market and business models. It ranges from classical limit order books with automatized matching of orders to hybrid market models with human interventions in the execution of orders like at Börse München. This has to be acknowledged and goes hand in hand with being more proportionate in the regulation of trading venues. In the risk assessment it should for example be considered to also take into account the importance of the trading venue with respect to the trading volume. However, the principle of same business same rules needs to apply.

In Börse München's opinion the different components of the framework do not operate that well together to achieve the objectives. The example above shows that different requirements for the same activities easily lead to unfair competition and an unlevel playing field including consequences such as less transparency in some parts of the markets.

The MiFID II/MiFIR objectives to a certain extent correspond with the needs and problems in the EU financial markets. However, it can also be seen that the requirements, which are supposed to achieve the objectives, often have contradictory consequences, which put the EU financial markets at a disadvantage compared to other major markets such as the US, China and potentially in the near future the United Kingdom. A prominent example for this observation are the detrimental effects of the application of the ESMA tick size table for Non-EU shares.

Börse München does not necessarily agree that MiFID II/MiFIR provided the EU with added value, which is illustrated by the examples provided above.

Question 3. Do you see impediments to the effective implementation of MiFID II/MiFIR arising from national legislation or existing market practices?

- ☐ 1 - Not at all
- ☐ 2 - Not really
- ☒ 3 - Neutral
- ☐ 4 - Partially
- ☐ 5 - Totally
- ☐ Don't know / no opinion / not relevant

Question 3.1 Please explain your answer to question 3:

5000 character(s) maximum

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

Question 4. Do you believe that MiFID II/MiFIR has increased pre- and post-trade transparency for financial instruments in the EU?

- ☐ 1 - Not at all
- ☐ 2 - Not really
- ☐ 3 - Neutral
- ☒ 4 - Partially
- ☐ 5 - Totally
- ☐ Don't know / no opinion / not relevant

Question 4.1 Please explain your answer to question 4:

5000 character(s) maximum

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

Börse München believes that MiFID II/MiFIR increased pre- and post-trade transparency only partially. The main objective of MiFID II/MiFIR was to restore transparency by strengthening lit trading on multilateral trading venues, i.e. Regulated Markets (RMs) and Multilateral Trading Facilities (MTFs) in an attempt to improve price formation and investor protection. However, this has not been fully achieved. The market share of continuous lit order books is decreasing while the combined share of OTC and SI trading keeps growing. This has led to increased complexity and opacity of equity markets with further fragmentation of liquidity, which is destroying the price formation process. Börse München sees the need for improvements in order to increase pre- and post-trade transparency in particular regarding SIs and OTC trading.

Question 5. Do you believe that MiFID II/MiFIR has levelled the playing field between different categories of execution venues such as, in particular, trading venues and investment firms operating as systematic internalisers?

- ☒ 1 - Not at all
- ☐ 2 - Not really
- ☐ 3 - Neutral
- ☐ 4 - Partially
- ☐ 5 - Totally
- ☐ Don't know / no opinion / not relevant

Question 5.1 Please explain your answer to question 5:

5000 character(s) maximum

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

The main objective of MiFID II/MiFIR was to restore transparency by strengthening lit trading on multilateral trading venues, i.e. Regulated Markets (RMs) and Multilateral Trading Facilities (MTFs) in an attempt to improve price formation and investor protection. However, this objective has not been achieved. The market share of continuous lit order books is decreasing while the combined share of OTC and SI trading keeps growing.

While SIs are regulated under MiFID II as execution venues providing bilateral trading, they provide less transparency than on-exchange trading. This can be problematic when the distinction between purely bilateral and hybrid multilateral trading is blurred. In theory, every trade in an SI must take place against the proprietary account of the operator. SIs are prohibited, when dealing on their own account, from entering into matching arrangements with entities outside their group with the objective of carrying out de facto riskless back-to-back transactions in financial instruments outside trading venues. However, some investment firms seem to have developed models by which third party trading firms are able to provide liquidity to the customers of SIs.

Börse München believes that restricting SI trading to above LIS only would be an efficient way to incentivise lit trading and ensure the quality and robustness of the price formation process in line with the initial objective of MiFID II/MiFIR. It would also restore the level playing field between trading venues and SIs.

Question 6. Have you identified barriers that would prevent investors from accessing the widest possible range of financial instruments meeting their investment needs?

- ☐ 1 - Not at all
- ☐ 2 - Not really
- ☐ 3 - Neutral
- ☐ 4 - Partially
- ☒ 5 - Totally
- ☐ Don't know / no opinion / not relevant

Question 6.1 If you have identified such barriers, please explain what they would be:

5000 character(s) maximum

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

The current regulatory framework – MiFID II in combination with the PRIIPs and Prospectus Regulations - sets wrong incentives for corporate bond issuers. Provisions designed to improve investor protection had the opposite effects. They beguiled issuers into

- not issuing a KID,
- not defining the target market or only a very limited one and
- denominating bonds in very high amounts above 100.000 EUR.

This ultimately leads to retail investors being excluded from trading these products.

The aim of MiFID II/MiFIR was to strengthen the regulatory framework in order to increase transparency, to better protect retail investors and to rebuild trust in financial markets after the financial crisis. It was closely connected to the political will to encourage retail investors to engage again in capital markets. However, reality shows a different picture.

The current regulatory framework – MiFID II in combination with the PRIIPs and Prospectus Regulations - sets for example wrong incentives for corporate bond issuers. Provisions designed to improve investor protection had the opposite effects. They beguiled issuers into not issuing a KID, not defining the target market or only a very limited one and denominating bonds in very high amounts above 100.000 EUR. This ultimately leads to retail investors being excluded from trading these products. The combined impact of MiFID II/MiFIR, the PRIIP and Prospectus Regulations shows detrimental effects.

KID

- A significant number of corporate bonds are classified as PRIIPs. Börse München is concerned about this high number as also simple corporate bonds with make-whole call provisions are included.

Target Market

- Distributing banks consider the target market with every sale by comparing the target market data with the customer characteristics. In practice this too often excludes retail investors from suitable investment products.

Denomination

- The Prospectus Regulation maintained the incentive for issuers to issue bonds with a denomination higher than 100.000 EUR. These are in principle not tradable for retail investors.

Therefore, Börse München asks the European Commission to carefully review these provisions and to remove these barriers, which prevent retail investors from accessing simple financial products such as corporate bonds.

Section 2. Specific questions on the existing regulatory framework

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

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

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

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

PART ONE: PRIORITY AREAS FOR REVIEW

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

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

I. The establishment of an EU consolidated tape¹

1. Current state of play

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

1.1. Reasons why a consolidated tape has not emerged

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

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

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

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

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

5000 character(s) maximum

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

Börse München believes that the lack of a valid use case is the main reason why an EU consolidated tape as defined by MiFID II/MiFIR has not emerged yet. The viability and potential attractiveness of a CT ultimately depends on the existence of a valid business case. A convincing use case is particularly important to ensure that the tape does not add cost (i.e. infrastructure and maintenance costs) without any clear benefits. In Börse München's view this would make it a disproportionate intervention.

Börse München is convinced that even after the establishment of a CT, there will be a continuous demand for offerings and feeds of data vendors. Thus, policy makers need to carefully assess whether the benefits of a CT would be balanced by the costs that market participants would incur by using the CT. Market participants have already pointed out that imposing the CT will involve additional cost for firms as they would continue subscribing to their current market data solutions for their trading strategies. It has to be considered that a CT may lead to important implementation cost with very little benefit. In that regard the implementation

of data aggregation is an illustrative example where significant implementation costs as well as additional complexity in terms of managing data were involved by only extremely low take-up by end-users.

Question 7.1 Please explain your answers to question 7:

5000 character(s) maximum

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

Börse München is convinced that a CT will not solve the current market structure issues in the EU. It cannot be considered as a substitute for adequate market structure and rigorous enforcement rules. An important precondition for a reliable CT is the improvement of off-venue data quality as well as the coverage of all execution venues.

It should also be acknowledged that data vendors already operate as a quasi-consolidated tape and hence can be seen as serious competition. The underlying issue is that quality data reported by SIs and OTC operators is lacking. Moreover, data vendors are hesitant to aggregate such data with highly reliable data. However, if data quality of SI and OTC data is improved, data vendors would be in a position to consolidate an even broader range of data thereby increasing transparency. It is worth questioning what additional benefits a CT could add. Börse München believes that services offered by data vendors will continue to be attractive to market participants, also after the establishment of a CT. Data vendors have unparalleled expertise in the area of providing comprehensive services that go beyond the sphere of data aggregation (i. e. news, reference data, historical data and analysis tools).

In order to improve the quality of off-venue data, the Market Model Typology (MMT) should be implemented across all trading and execution venues as well as OTC trades. The quality, reliability and consistency of flagging of SI and OTC data is an issue as for example incorrect classification and flagging of transactions is rather common.

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

Please explain your answer:

5000 character(s) maximum

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

Apart from opposing the general idea of introducing a CT, Börse München is strongly against amending the current CT framework to include pre-trade data.

1.2. Availability and price of market data

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

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

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

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

Please explain your answer:

5000 character(s) maximum

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

Börse München would like to highlight that market data is the outcome of a dynamic price formation process. It is a joint product with trade execution meaning that it is not possible to generate one without the other as most activities of an Exchange deliver both trading and price formation.

Börse München welcomes ESMA's recommendation to maintain the transparency plus approach with regard to the RCB. We think – as far as we can comment and observe – that the development of market data prices is consistent with the notion of what constitutes a reasonable commercial basis. The current legal framework already contains an ample selection of requirements to ensure that prices are transparent, reasonable, commercial and non-discriminatory.

1.3. Use cases for a consolidated tape

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

	1	2	3	4	5	N. A.
	(disagree)	(rather not agree)	(neutral)	(rather agree)	(fully agree)	

Transaction cost analysis (TCA)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring best execution	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Documenting best execution	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Better control of order & execution management	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Regulatory reporting requirements	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Market surveillance	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Liquidity risk management	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Making market data accessible at a reasonable cost	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Identify available liquidity	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Portfolio valuation	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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

5000 character(s) maximum

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

2. General features of the consolidated tape

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

During the EC workshop, the ESMA consultation, conferences and stakeholder meetings, it became clear that a majority of market participants believe that EU financial markets would benefit from the establishment of a CT. ESMA made the following recommendations² which appear very important for the success of an EU consolidated tape:

- ensuring a **high level of data quality** (supervisory guidance complemented with amendments of the Level 1 and 2 texts);

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

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

- **Whether pre-trade data should be included in CT:** the argument has been made that the US model for a consolidated quotation tape comprises pre-trade quotes because of the **order protection rule** contained in Regulation National Market System (NMS). The order protection rule eliminated the possibility of orders being executed at a suboptimal price compared to orders advertised on exchanges and it established the National Best Bid and Offer (NBBO) requirement that mandates brokers to route orders to venues that offer the best displayed price. Although some stakeholders strongly support a quotation tape, others have expressed reservations, either because there is no order protection rule in the European Union or because they do not support the establishment of such a rule in the EU which could be encouraged by the establishment of a pre-trade tape. Stakeholders also argue that a quotation tape will be very expensive and that latency issues in collecting, consolidating and disseminating transaction data from multiple venues will always lead to a co-existence of the CT and proprietary exchange data feeds.
- **What should be the latency of the tape:** Many stakeholders argue that the tape should be “real-time”, implying minimum standards on latency such as a dissemination speed of between 200 and 250 milliseconds (“fast as the eye can see”). Other stakeholders support an end of day tape.
- **How to fund the tape and redistribute its revenues:** stakeholders have mixed views on the optimal funding model. They also caution against some aspects of the US model, where the practice of redistribution of CT revenues has, in their view, provided market participants with an incentive to provide quotes to certain venues that rebate more tape revenue, without necessarily contributing to better execution quality.

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
High level of data quality						

	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mandatory contributions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mandatory consumption	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Full coverage	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Very high coverage (not lower than 90% of the market)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Real-time (minimum standards on latency)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The existence of an order protection rule	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Single provider per asset class	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Strong governance framework	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 11.1 Please explain your answers to question 11 and provide if possible detailed suggestions on how the above success factors should be implemented (e.g. how data quality should be improved; what should be the optimal latency and coverage; what should the governance framework include; the optimal number of providers):

5000 character(s) maximum

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

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

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

5000 character(s) maximum

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

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

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The CT should be funded on the basis of user fees	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Fees should be differentiated according to type of use	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Revenue should be redistributed among contributing venues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In redistributing revenue, price-forming trades should be compensated at a higher rate than other trades	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The position of CTP should be put up for tender every 5-7 years	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

5000 character(s) maximum

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

3. The scope of the consolidated tape

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Shares pre-trade ³	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shares post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
ETFs pre-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

ETFs post-trade						
Corporate bonds pre-trade						
Corporate bonds post-trade						
Government bonds pre-trade						
Government bonds post-trade						
Interest rate swaps pre-trade						
Interest rate swaps post-trade						
Credit default swaps pre-trade						
Credit default swaps post-trade						
Other						

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

Question 15.1 Please explain your answers to question 15:

5000 character(s) maximum

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

Another important element in the design of the CT will be to determine the exact content of the information that a pre- and/or post-trade CT should consolidate in relation to the information already disseminated under the MiFIR pre- and post-trade transparency requirements. While Article 65 of MIFID II and the relevant regulatory technical standards

specify the exact content of the post-trade information a CT should consolidate under the current framework, there is no such specification for pre-trade information.

Question 16. In your view, what information published under the MiFID II /MiFIR pre- and post-trade transparency should be consolidated in the tape (all information or a subset, any additional information)?

Please explain your answer, distinguishing if necessary by asset class and pre- and post-trade. Please also explain, if relevant, how you would identify the relevant types of transactions or trading interests to be consolidated by a CT:

5000 character(s) maximum

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

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3.2. The Official List of financial instruments in scope of the CT

To provide market participants with legal clarity, a CT would benefit from a list setting out, within a given asset class, the exact scope of financial instruments that need to be reported to the CT. This section discusses, for each asset class, how to best create an “**Official List**” of financial instruments that would feature in the CT, having regard to the feasibility of producing such a list.

Shares

There are different categories of shares traded on EU trading venues, including: (i) shares admitted to trading on a Regulated Market (RM) - for which a prospectus is mandatory; (ii) shares admitted to trading on an Multilateral Trading Facility (MTF) (e.g. small cap company listed on the small cap MTF) with a prospectus approved in an EU Member State; (iii) shares traded on an EU MTF without a prospectus approved in a EU Member State (e.g. US blue chip company listed on a US exchange but also traded on a EU MTF). While the first two categories have a clear EU footprint and should be considered for inclusion in the CT, the inclusion of the latter category is more questionable because it consists of thousands of international shares for which the admission's venue or the main centre of liquidity is not in the EU.

Question 17. What shares should in your view be included in the Official List of shares defining the scope of the EU consolidated tape?

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	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Shares admitted to trading on a RM	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shares admitted to trading on an MTF with a prospectus approved in an EU Member State	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 17.1 Please explain your answers to question 17:

5000 character(s) maximum

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

Question 18. In your view, should the Official List take into account any additional criteria (e.g. liquidity filter to capture only sufficiently liquid shares) to capture the relevant subset of shares traded in the EU for inclusion in the consolidated tape?

Please explain your answer:

5000 character(s) maximum

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

Question 19. What flexibility should be provided to permit the inclusion in the EU consolidated tape of shares not (or not only) admitted to an EU regulated market or EU MTF?

Please explain your answer:

5000 character(s) maximum

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

ETFs, Bonds, Derivatives and other financial instruments

Question 20. What do you consider to be the most appropriate way of determining the Official List of ETFs, bonds and derivatives defining the scope of the EU consolidated tape?

Please explain your answer and provide details by asset class:

5000 character(s) maximum

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

4. Other MiFID II/MiFIR provisions with a link to the consolidated tape

4.1. Equity trading and price formation

The share trading obligation ('STO') requires that EU investment firms only trade shares on eligible execution venues, unless the trades are non-systematic, ad-hoc, irregular and infrequent ("*de minimis*" exception) or do not contribute to the price discovery process. The STO can pose an issue when EU investment firms wish to trade international shares admitted to a stock exchange outside the EU as not all stock exchanges outside the EU are recognised as equivalent. The European Commission recognised as equivalent certain stock exchanges located in the United States, Hong Kong

and Australia, with the consequence that those stock exchanges are eligible execution venues for fulfilling the STO. In addition, ESMA provided, in coordination with the Commission, further guidance on the scope of the STO.

Question 21. What is your appraisal of the impact of the share trading obligation on the transparency of share trading and the competitiveness of EU exchanges and market participants?

Please explain your answer:

5000 character(s) maximum

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

The objective of MiFID II/MiFIR to bring back more trading into lit markets (i.e. Regulated Markets and MTFs) to increase transparency and improve the price formation process and investor protection was not successful. The market share of continuous lit order book is decreasing while the combined share of OTC and SI trading is increasing. This has resulted in more complex equity markets and further fragmentation of liquidity. Although the STO has not delivered on increasing transparency, Börse München believes that it can have a significant positive impact on the transparency of share trading and the competitiveness of EU exchanges.

The share trading obligation (STO) remains necessary and is an important cornerstone of the overall aim of MiFID II/MiFIR to enhance the efficiency, resilience and integrity of financial markets in the EU. For the STO to be fully functional, further work on clearly determining which shares should be considered EU shares is necessary. The approach should avoid undue complexity and be based on predictable and meaningful criteria as laid down under Question 22.

Question 22. Do you believe there is sufficient clarity on the scope of the trades included or exempted from the STO, in particular having regards to shares not (or not only) admitted to an EU regulated market or EU MTF?

- ☐ 1 - Not at all
- ☒ 2 - Not really
- ☐ 3 - Neutral
- ☐ 4 - Partially
- ☐ 5 - Totally
- ☐ Don't know / no opinion / not relevant

Question 22.1 Please explain your answer to question 22:

5000 character(s) maximum

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

Börse München believes that there is not sufficient clarity on the scope of the trades included or exempted from the STO. For the STO to be fully functional, further work on clearly determining which shares should be considered EU shares is necessary. The approach should avoid undue complexity and be based on predictable and meaningful criteria.

To determine which shares should be considered as EU shares, Börse München thinks that ISIN should be the main indicator. However, as recognised by ESMA, this approach is not suitable in all cases.

Complimentary criteria are therefore necessary. First, the ISIN should be used. Second, the primary listing venue should be considered, i.e. in case where the issuer is domiciled in a third country and listed in the EU and vice versa. Third (i.e. for dual-listed companies), the investment firm should consider best execution,

meaning the venue where this can best be achieved. The scope of the STO should be extended to ETFs in order to incentivize lit trading and investor protection in this growing asset class.

The Swiss case is a prominent example that a similar scenario for future third countries lacking an equivalence decision by the EC should be avoided. Due to Switzerland not being considered as equivalent anymore, Swiss shares could not be traded in the EU anymore according to Article 23 MiFIR (STO). Börse München believes that limiting the STO to EU27 shares would prevent a similar scenario in the future where – as in the case with Switzerland – attractive and liquid third country shares would not be tradable anymore at Börse München or any other EU trading venue.

Question 23. What is your evaluation of the general policy options listed below as regards the future of the STO?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Maintain the STO (status quo)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Maintain the STO with adjustments (please specify)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Repeal the STO altogether	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Question 23.1 Please explain your answers to question 23:

5000 character(s) maximum

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

As pointed out in Question 21, the share trading obligation (STO) remains necessary and is an important cornerstone of the overall aim of MiFID II/MiFIR to enhance the efficiency, resilience and integrity of financial markets in the EU. For the STO to be fully functional, further work on clearly determining which shares should be considered EU shares is necessary. The approach should avoid undue complexity and be based on predictable and meaningful criteria. Börse München suggests the following adjustments/clarifications:

To determine which shares should be considered as EU shares, Börse München thinks that ISIN should be the main indicator. However, as recognised by ESMA in their CP on the transparency regime for equity and equity-like instruments, this approach is not suitable in all cases. Complimentary criteria are therefore necessary. First, the ISIN should be used. Second, the primary listing venue should be considered, i.e. in case where the issuer is domiciled in a third country and listed in the EU and vice versa. Third (i.e. for dual-listed companies), the investment firm should consider best execution, meaning the venue where this can best be achieved. The scope of the STO should be extended to ETFs in order to incentivize lit trading and investor protection in this growing asset class.

Börse München would also advocate the deletion of the first exemption provided for under Article 23 of MiFIR (i.e. for shares that are traded on a “non-systematic, ad-hoc, irregular and infrequent”) under the STO as we consider that it has not been clarified in a conclusive manner. It has been subject to discretionary interpretation and therefore not worked out well in practice.

The second exemption under Article 23 MiFIR (“are carried out between eligible and/or professional counterparties and do not contribute to the price discovery process”) should be maintained and strictly limited its use to transactions not contributing to the price discovery process. In practice, this would mean that the OTC space is limited to technical trades. In order to allow for clear and efficient rules, Börse München supports reviewing the current Level 2 list of eligible transactions under this exemption and tying its enforcement to an appropriate flagging of trades via MMT under the governance of ESMA.

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
SIs should keep the same current status under the STO	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
SIs should no longer be eligible execution venues under the STO	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Question 24.1 Please explain your answers to question 24:

5000 character(s) maximum

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

SIs should stay eligible execution places for the purpose of the STO but their activity should be limited to trades above LIS (see Question 26).

Question 25. Do you consider that other aspects of the regulatory framework applying to systematic internalisers should be revisited and how?

Please explain your answer:

5000 character(s) maximum

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

While SIs are regulated under MiFID II as execution venues providing bilateral trading, they provide less transparency than on-exchange trading. This can be problematic when the distinction between purely bilateral and hybrid multilateral trading is blurred. In theory, every trade in an SI must take place against the proprietary account of the operator. SIs are prohibited, when dealing on their own account, from entering into matching arrangements with entities outside their group with the objective of carrying out de facto riskless back-to-back transactions in financial instruments outside trading venues. However, some investment firms seem to have developed models by which third party trading firms are able to provide liquidity to the customers of SIs. Thus, Börse München believes that the transparency regime for SI has to be revisited as set out under Question 26, in particular to ensure a level-playing field between trading venues and SIs.

Question 26. What would you consider to be appropriate steps to ensure a level-playing field between trading venues and systematic internalisers?

Please explain your answer:

5000 character(s) maximum

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

Börse München believes that market structure improvements are a prerequisite for a successful CMU. Equities market structure needs to become less complex and build on lessons learned from MiFID II to truly support lit trading. The main objective of MiFID II/MiFIR was to restore transparency by strengthening lit trading on multilateral trading venues, i.e. Regulated Markets (RMs) and Multilateral Trading Facilities (MTFs) in an attempt to improve price formation and investor protection. However, more than 2 years after the implementation of MiFID II/MiFIR, the objective has not been achieved. The market share of continuous lit order books is decreasing while the combined share of OTC and SI trading keeps growing. Börse München believes that restricting SI trading to above LIS only would be an efficient way to incentivise lit trading and ensure the quality and robustness of the price formation process in line with the initial objective of MiFID II/MiFIR.

SI regime

- The large in scale (LIS) threshold should be used as the main tool to delineate lit and dark trading.
- Below LIS would be confined to RMs and MTFs. These trades contribute to price formation. RMs and MTFs would in principle always be subject to real-time pre- and post-trade transparency creating a lit space for these trades.
- SI activity would be restricted to above LIS only. Above LIS trading constitutes a legitimate dark space in which trades are not subject to pre-trade transparency and would benefit from delayed post-trade transparency. This applies to both multilateral trading venues (RMs and MTFs) and bilateral execution venues (SI).

More generally, there are questions raised as to whether the current MiFID II/MiFIR framework is sufficiently conducive of the price discovery process in equity trading, in light of various elements of complexity (e.g. fragmentation of trading, multiplicity of order types, exceptions to transparency requirements, variety of trading protocols).

Question 27. In your view, what would merit attention to further promote the price discovery process in equity trading?

Please explain your answer:

5000 character(s) maximum

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

4.2. Aligning the scope of the STO and of the transparency regime with the scope of the consolidated tape

For shares, in light of the strong parallel between the scope of the STO and the scope of the CT (see section “Official List”), there may be merit in aligning the two. At the same time, should the scope of the STO be the same as the scope of the CT, special consideration should be given to the treatment of international shares.

Question 28. Do you believe that the scope of the STO should be aligned with the scope of the consolidated tape?

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

Question 28.1 Please explain your answer to question 28:

5000 character(s) maximum

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

Similarly, both for equity and non-equity instruments, there may also be merit in aligning, where possible, the scope of financial instruments covered by the CT with the scope of financial instruments subject to the transparency regime.

Question 29. Do you consider, for asset classes where a consolidated tape would be mandated, that the scope of financial instruments subject to pre- and post-trade requirements should be aligned with the list of instruments in scope of the consolidated tape?

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

Question 29.1 Please explain your answer to question 29:

5000 character(s) maximum

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

4.3. Post-trade transparency regime for non-equities

For non-equity instruments, MiFID II/MiFIR currently allows a deferred publication of up to 2 days for post-trade information (including information on the transaction price), with the possibility of an extended period of deferral of 4 weeks for the disclosure of the volume of the transaction. In addition, national competent authorities have exercised their discretion available under Article 11(3) of MiFIR. This resulted in a fragmented post-trade transparency regime within the Union. Stakeholders raised concerns that the length of deferrals and the complexity of the regime would hamper the success of a CT.

Question 30. Which of the following measures could in your view be appropriate to ensure the availability of data of sufficient value and quality to create a consolidated tape for bonds and derivatives?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Abolition of post-trade transparency deferrals	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shortening of the 2-day deferral period for the price information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Shortening of the 4-week deferral period for the volume information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Harmonisation of national deferral regimes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Keeping the current regime	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 30.1 Please explain your answer to question 30:

5000 character(s) maximum

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

II. Investor protection⁴

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

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

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

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

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

		2				
	1		3	4	5	

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

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

Quantitative elements for question 31.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 31.1:

5000 character(s) maximum

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

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

	Yes	No	N.A.
Product and governance requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs and charges requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conduct requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

1. Easier access to simple and transparent products

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

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

5000 character(s) maximum

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

The aim of MiFID II/MiFIR was to strengthen the regulatory framework in order to increase transparency, to better protect retail investors and to rebuild trust in financial markets after the financial crisis. It was closely connected to the political will to encourage retail investors to engage again in capital markets. However, reality shows a different picture.

As outlined under question 6, we see various burdens for retail investors to invest in corporate bonds due to the combined effects of MiFID II, PRIIPs and Prospectus Regulations.

Another example, which represents a barrier for retail investors to easily access simple investment products is the current tick size regime. An analysis of Börse München reveals that up to 95% of the shares traded at Börse München, which were affected by the newly calibrated tick size regime, need to be traded at unfavorable prices since the end of September 2019. We have already shared our findings with ESMA.

EU trading venues are caught in a situation where trading venues outside the EU become more attractive due to favorable tick size requirements. As the affected instruments are often third country shares, retail investors may be driven out of the EU resulting in less trading volume on EU trading venues. The application of the tick size regime to third country shares traded on EU trading venues results in larger spreads and higher costs for these shares.

The tick size regime should only cover EU27 shares with a EU27 ISIN. Third country shares, that are traded on EU trading venues, would remain outside the scope. Consequently, retail investors would be able to trade these shares to similar prices compared to the share's home markets. In addition, EU trading venues would be able to compete with trading venues outside the EU as third country shares would not be affected by larger spreads and higher costs due to the tick size calibrations. In this way, trading volume on EU trading venues could be ensured.

Question 32.1 Please explain your answer to question 32:

5000 character(s) maximum

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

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

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

Question 33.1 If your answer to question 33 is on the negative side, please indicate in the text box which amendments you would like to see introduced to ensure that retail investors receive adequate protection when purchasing products considered as complex under MiFID II/MiFIR:

5000 character(s) maximum

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

Securitized derivatives are not defined as an independent category at Level 1 and cannot benefit from differentiated and homogenized rules. Börse München supports the introduction of a separate category for securitized derivatives under MiFID II and calls for the introduction of differentiated rules for these instruments. The current definition of securitized derivatives is not appropriate. MiFID II requirements that by default apply to securitized derivatives are inconsistent such as:

- Securitized derivatives are covered by the clearing obligation for trading on a regulated market (Article 29 MiFIR).
- MiFID II rules on position limits apply to securitized derivatives (Article 57, 58 MiFID II).

Also with regard to reporting requirements to supervisory authorities such as in the context of reporting reference data by trading venues, differentiated rules for securitized derivatives are necessary in order to ensure efficient mechanisms.

The above mentioned requirements for securitized derivatives offer no added value for investor protection and the functioning of financial markets since they intend to reduce risks that do not exist with cash market instruments. The bundling of products with very different characteristics for regulatory purposes may lead to unintended consequences when applying these rules. Hence, Börse München strongly supports a dedicated definition for securitized derivatives at Level 1 and corresponding differentiated rules for these instruments.

2. Relevance and accessibility of adequate information

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

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

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

	Yes	No	N. A.
Professional clients and ECPs should be exempted without specific conditions.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Only ECPs should be able to opt-out unilaterally.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Professional clients and ECPs should be able to opt-out if specific conditions are met.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
All client categories should be able to opt out if specific conditions are met.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Question 34.1 Please explain your answer to question 34 and in particular the conditions that should apply:

5000 character(s) maximum

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

Börse München believes that professional clients and eligible counterparties have sufficient knowledge and understanding of financial products, which allows them to assess these products on their own and consequently make informed decision. They should be exempted from ex-ante cost information obligations without specific conditions. This information should only be provided to them if it is requested.

Additionally it should be possible for retail clients to opt-out of ex-ante cost disclosure by means of explicit declaration. Adequate investor protection can be ensured by making such an agreement revocable, if further requirements would be necessary to grant opt-outs, only knowledge and/or experience criteria should be relevant.

Another aspect is the need of paper-based information. This relates also to the Commission's **Green Deal**, the **Sustainable Finance Agenda** and the consideration that more and more people use online tools to access financial markets. Currently, MiFID II/MiFIR requires all information to be provided in a "durable medium", which includes electronic formats (e.g. e-mail) but also paper-based information.

Question 35. Would you generally support a phase-out of paper based information?

- ☐ 1 - Do not support
- ☐ 2 - Rather not support
- ☐ 3 - Neutral
- ☐ 4 - Rather support
- ☒ 5 - Support completely
- ☐ Don't know / no opinion / not relevant

Question 35.1 Please explain your answer to question 35:

5000 character(s) maximum

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

Against the background of the ongoing digitalization efforts in all spheres, Börse München believes that the MiFID II provisions which encourage and/or foresee information to be provided on paper rather than electronically are rather outdated. Moreover, the waste of resources should be considered in the context of the sustainability efforts by the EU. Paper based information should be the exemption rather than the rule and only provided if the customer so requests.

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

	Yes	No	N. A.
General phase-out within the next 5 years	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
General phase out within the next 10 years	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
For retail clients, an explicit opt-out of the client shall be required.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
For retail clients, a general phase out shall apply only if the retail client did not expressly require paper based information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 36.1 Please explain your answer to question 36 and indicate the timing for such phase-out, the cost savings potentially generated within your firm and whether operational conditions should be attached to it:

5000 character(s) maximum

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

Some retail investors deplore the lack of comparability of the cost information and the absence of an EU-wide database to obtain information on existing investment products.

Question 37. Would you support the development of an EU-wide database (e.g. administered by ESMA) allowing for the comparison between different types of investment products accessible across the EU?

- ☐ 1 - Do not support
- ☒ 2 - Rather not support
- ☐ 3 - Neutral
- ☐ 4 - Rather support
- ☐ 5 - Support completely
- ☐ Don't know / no opinion / not relevant

Question 37.1 Please explain your answer to question 37:

5000 character(s) maximum

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

Börse München rather not supports the establishment of an EU-wide database for the comparison of investment products. We believe that this would most likely involve additional requirements and costs with only little added value. Instead, already existing databases and tools, which fulfill the purpose of comparing investment products, should be used. Börse München favors market driven solutions in this context.

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

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

All transferable securities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
All products that have a PRIIPs KID/ UICIS KIID	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Only PRIIPs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 38.1 Please explain your answer to question 38:

5000 character(s) maximum

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

Question 39. Do you agree that ESMA would be well placed to develop such a tool?

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

Question 39.1 Please explain your answer to question 39:

5000 character(s) maximum

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

3. Client profiling and classification

MiFID II/MiFIR currently differentiates between retail clients, professional clients and eligible counterparties. In line with the procedure and conditions laid down in the Annex of MiFID II, retail clients can already “opt-up” to be treated as professional clients. Some stakeholders indicated that the creation of an additional client category (‘semi-professional investors’) might be necessary in order to encourage the participations of wealthy or knowledgeable investors in the capital market. In addition, other concepts related to this classification of investors can be found in the draft

Crowdfunding Regulation which further developed the concept of sophisticated investors⁵. The CMU-Next group suggested a new category of experienced High Net Worth (“HNW”) investors with tailor made investor protection rules⁶.

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

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

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

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

Question 40.1 Please explain your answer to question 40:

5000 character(s) maximum

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

Börse München would welcome the introduction of a separate category, which would include retail investors that have sufficient experience and financial means to understand the risks attached to the respective financial products.

Question 41. With regards to professional clients on request, should the threshold for the client's instrument portfolio of EUR 500 000 (See Annex II of MiFID II) be lowered?

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

Question 41.1 Please explain your answer to question 41:

5000 character(s) maximum

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

Question 42. Would you see benefits in the creation of a new category of semi-professionals clients that would be subject to lighter rules?

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

Question 42.1 Please explain your answer to question 42:

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

As pointed out under question 40, Börse München would welcome a separate category retail investors that have sufficient experience and financial means to understand the risks attached to the respective financial products. However, these lighter rules should rather be linked to experience than to profession.

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Suitability or appropriateness test	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Information provided on costs and charges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Product governance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 43.1 Please explain your answer to question 43:

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

Question 44. How would your answer to question 43 change your current operations, both in terms of time and resources allocated to the distribution process ?

Please specify which changes are one-off and which changes are recurrent:

5000 character(s) maximum

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

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

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

Question 45.1 Please explain your answer to question 45 and in particular the minimum amount that a retail client should hold and any other applicable criteria you would find relevant to delineate between retail and semi-professional investors:

5000 character(s) maximum

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

4. Product Oversight, Governance and Inducements

The product oversight and governance requirements shall ensure that products are manufactured and distributed to meet the clients' needs. Before any product is sold, the target market for that product needs to be identified. Product manufacturers and distributors should thus be well aware of all product features and the clients for which they are suited. To do so, distributors should use the information obtained from manufacturers as well as the information which they have on their own clients to identify the actual (positive and negative) target market and their distribution strategy.

There is a debate around the efficiency of these requirements. Some stakeholders criticise that the necessary information was not available for all products (e.g. funds). Others even argue that this approach adds little benefit to the suitability assessment undertaken at individual level. Similar doubts are mentioned with regards to the review of the target market, in particular for products that don't change their payment profile. Concerns are raised that the current application of the product governance rules might result in a further reduction of the products offered.

Question 46. Do you consider that the product governance requirements prevent retail clients from accessing products that would in principle be appropriate or suitable for them?

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

Question 46.1 Please explain your answer to question 46:

5000 character(s) maximum

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

Some requirements with regard to the MiFID II product governance obligations such as the target market definition resulted in a significant administrative burden on manufactures and distributors without ensuring a higher level of investor protection. The Level 3 measures that offer certain exemptions for the non-advised client business should be taken into account in the level 1 review of the MiFID II/MiFIR.

The concrete differentiation between a positive and a negative target market leads to practical difficulties in implementation as some criteria that refer to a negative target market cannot be used as a counterargument

to a positive one. The definition of a negative target market increases complexity and thus usefulness of the requirement to define a negative target market should be looked at.

Moreover, the Guidelines on MiFID II product governance requirements for example require issuers to define a target market for every product, including classic bonds and retail banks must consider the target market for every buy order by comparing the target market with the individual customer's characteristics.

Unfortunately, Börse München observes (as outlined also under question 6) that there is an increasing trend towards issuers of classic bonds defining the target market as "institutional" irrespective of whether the bonds are suited for retail investors or not. Börse München identified this as one barrier for retail investors to trade these bonds as retail banks are not allowed to sell these bonds to retail investors. The reasons why issuers do not consider retail investors in their target market definition may vary (e.g. to reduce the risk of being sued by retail investors). However, regulators should ensure that the target market definition is not adversely used by issuers to prohibit retail investors from investing in products like simple corporate bonds that otherwise suit them.

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

	Yes	No	N. A.
It should only apply to products to which retail clients can have access (i.e. not for non-equities securities that are only eligible for qualified investors or that have a minimum denomination of EUR 100.000).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
It should apply only to complex products.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other changes should be envisaged – please specify below.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Simplification means that MiFID II/MiFIR product governance rules should be extended to other products.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The regime is adequately calibrated and overall, correctly applied.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 47.1 Please explain your answer to question 47:

5000 character(s) maximum

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

Further, even though ESMA clarified in its guidelines that the sale of products outside the actual target market is possible in so far as this can “be justified by the individual facts of the case”, distributors seem reluctant to do so even if the client insists. This consultation is therefore assessing if and how the product governance regime could be improved.

Question 48. In your view, should an investment firm continue to be allowed to sell a product to a negative target market if the client insists?

- ☐ Yes
- ☐ Yes, but in that case the firm should provide a written explanation that the client was duly informed but wished to acquire the product nevertheless.
- ☐ No
- ☒ Don't know / no opinion / not relevant

Question 48.1 Please explain your answer to question 48:

5000 character(s) maximum

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

As mentioned under question 46, the concrete differentiation between a positive and a negative target market leads to practical difficulties in implementation as some criteria that refer to a negative target market cannot be used as a counterargument to a positive one. The definition of a negative target market increases complexity and thus the usefulness of the requirement to define a negative target market should be looked at.

MiFID II/MiFIR establishes strict rules for investment firms to accept inducements, in particular as regards the conditions to fulfil the quality enhancement test and as regards disclosures of fees, commissions and non-monetary benefits.

Question 49. Do you believe that the current rules on inducements are adequately calibrated to ensure that investment firms act in the best interest of their clients?

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

Question 49.1 Please explain your answer to question 49:

5000 character(s) maximum

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

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

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

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

Question 50.1 Please explain your answer to question 50:

5000 character(s) maximum

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

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

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

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

Question 51.1 Please explain your answer to question 51:

5000 character(s) maximum

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

Question 52. Would you see merit in setting out an EU-wide framework for such a certification based on an exam?

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

Question 52.1 Please explain your answer to question 52:

5000 character(s) maximum

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

5. Distance communication

Provision of investment services via telephone requires ex-ante information on costs and charges (please consider also ESMA's guidance on this matter). When a client wants to place an order on the phone, the service provider is obliged to send the cost details before the transaction is executed, a requirement which may delay the immediate execution of the order. Further, MiFID II/MiFIR requires all telephone communications between the investment firm and its clients that may result in transactions to be recorded. Due to this requirement, several banks argue to have ceased to provide telephone banking services altogether.

Question 53. To reduce execution delays, should it be stipulated that in case of distant communication (phone in particular) the cost information can also be provided after the transaction is executed?

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

Question 53.1 Please explain your answer to question 53:

5000 character(s) maximum

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

Question 54. Are taping and record-keeping requirements necessary tools to reduce the risk of products mis-selling over the phone?

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

Question 54.1 Please explain your answer to question 54:

5000 character(s) maximum

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

6. Reporting on best execution

Investment firms shall execute orders on terms most favourable to the client. The framework includes reporting obligations on data relating to the quality of execution of transactions whose content, format and periodicity are detailed in Delegated Regulation 2017/575 (also known as 'RTS 27'). The best execution framework also includes reporting obligations for investment firms on the top five execution venues in terms of trading volumes where they executed client orders and information on the quality of information. Delegated regulation 2017/576 (also known as 'RTS 28') specifies the content and format of that information.

Question 55. Do you believe that the best execution reports are of sufficiently good quality to provide investors with useful information on the quality of execution of their transactions?

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

Question 55.1 Please explain your answer to question 55:

5000 character(s) maximum

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

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Comprehensiveness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Format of the data	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Quality of data	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 56.1 Please explain your answer to question 56:

5000 character(s) maximum

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

Question 57. Do you believe there is the right balance in terms of costs between generating these best execution reports and the benefits for investors?

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

Question 57.1 Please explain your answer to question 57:

5000 character(s) maximum

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

III. Research unbundling rules and SME research coverage⁷

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

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

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

The introduction of the prohibition of research-related benefits (also known as the MiFID II research unbundling rules) has accelerated a decrease in spending on investment research. This has a rather negative impact on research for SMEs and may have reinforced a general trend to reduce research spending. Mostly affected by this is the coverage of the smallest companies in the equities sphere. Therefore, the impact of MiFID II's unbundling rules should be assessed and alternative means to improve liquidity of SME shares should be considered.

In our opinion the unbundling rules have led to an increase in importance of sponsored research and other means of attracting potential investors (e.g. by participating in investor conferences). As a consequence, the costs of going and being public rise equally for SMEs. This creates further hurdles for SMEs that want to finance themselves via public capital markets and is obviously contradictory to the aims of the Capital Markets Union.

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

1. Increase the production of research on SMEs

1.1. EU Rules on research

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

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

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

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

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

Introduce a specific definition of research in MiFID II level 1	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Authorise bundling for SME research exclusively	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Exclude independent research providers' research from Article 13 of delegated Directive 2017 /593	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Prevent underpricing in research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Amend rules on free trial periods of research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 59.1 Please explain your answer to question 59 and in particular if you believe preventing underpricing in research and amending rules on free trial periods of research are relevant:

5000 character(s) maximum

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

MiFID II requires research to be unbundled and thus to be priced separately from the execution of financial instruments. It cannot be supplied anymore as part of a bundled service that is paid by execution fees.

Pre-MiFID II, research was supplied as part of a bundled service, paid by execution fees. Research post-MiFID II is required to be unbundled and priced separately from execution of financial instruments.

A growing number of SMEs are paying independent research providers to write research and take the initiative in approaching investors directly. However, this is challenging due to potential conflict of interests and a lack of recognition and coverage limitations due to budget constraints.

As a result of unbundling rules, fund managers are prevented from accepting research on small companies provided by brokers for free. The rules should be amended to allow brokers to send SME-research reports to fund managers without having to establish a research contract with them. In doing so, a threshold could be established for what should be considered an SME. We propose to define a SME being a company having a market capitalisation up to 1 bn. Euro. Obviously, these companies are most affected by the unbundling rules.

Furthermore, to facilitate the capital increase by an initial public offering, which will be of utmost importance especially after the Corona-crisis, we propose to exempt the research unbundling of all companies irrespective of their size for a certain transition period, e.g. ending three years after the IPO. This would leave every company more time to implement an adequate IR strategy in order to reach investors in an efficient way.

1.2. Alternative ways of financing SMEs research

Alternative ways of financing research could help foster more SME research coverage. Operators of regulated markets and SME growth markets could be encouraged to set up programs to finance research on SMEs whose financial instruments are admitted on their markets. Another option would be to fund, at least partially, SME research with public money.

Question 60. Do you consider that a program set up by a market operator to finance SME research would improve research coverage?

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

Question 60.1 Please explain your answer to question 60:

5000 character(s) maximum

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

In our opinion market operators provide neutral infrastructure services to its market participants and stakeholders (investors and issuers). Hence it should not be their task to set up programs to finance SME research. Otherwise, market operators would abandon their proven neutrality and actively intervene in the competition between listed companies. They would become market participants themselves and ultimately might be - in the eyes of potential investors - responsible or liable for the research. This is contradictory to the tasks of a market operator set by the applicable legal framework.

According to that market operators are currently facing regulatory burdens when distributing research reports originally provided by research firms for their listed SMEs. Any program set up by a market operator to finance and distribute SME research would raise complex legal questions, e.g. notification obligations with the NCAs, maintenance of insider lists and/or plausibility checks regarding the research reports as a consequence of such distribution.

Question 61. If SME research were to be subsidised through a partially public funding program, can you please specify which market players (providers, SMEs, etc.) should benefit from such funding, under which form, and which criteria and conditions should apply to this program:

5000 character(s) maximum

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

We do not agree with the idea that SME research should be subsidised through a partially public funding program.

Authorising the bundling of SME research (combined with the Amendment of Article 13 of delegated Directive 2017/593 to exclude independent research providers' research from Article 13 of delegated Directive 2017/593) is fully sufficient to improve research coverage and without asking the questions "why" and "how" the public should subsidize a public funding program and in particular without asking who is liable for the distribution of public funds and possible errors in the production of research.

The growing use of artificial intelligence and machine learning in financial services can help to foster the production of research on SMEs. In particular, algorithms can automate collection of publically available data and deliver it in a format that meets the analysts' needs. This can make equity research, including on SMEs, less costly and more relevant.

Question 62. Do you agree that the use of artificial intelligence could help to foster the production of SME research?

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

Question 62.1 Please explain your answer to question 62:

5000 character(s) maximum

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

The use of Artificial Intelligence (AI) could in some cases be used to help foster the production of SME research. However, it has to be considered that the SME spectrum is so heterogeneous that uniform patterns cannot be applied here as easily as in large global companies. Such analyses should at least be complemented by human-made research to meet market demand for qualitative investment research and not restrict the research analysts' access to pre-AI analysed figures or make it more difficult for them to form an assessment based on data that can be used or delivered by the technology. The research analysts' qualitative assessment of its investment research is what investors value most.

1.3. Promote access to research on SMEs and increase quality of research

The lack of access to SME research deprives issuers from visibility and financing opportunities. However, access to SME research can be improved by creating a EU-wide SME research database.

The creation of an EU database compiling research on SMEs would ensure the widest possible access to research material. Via this public EU-wide database, anyone could access and download research on SMEs for free. Such a tool would allow investors to access research in a more efficient manner and at a lower cost, while improving SMEs visibility.

Question 63. Do you agree that the creation of a public EU-wide SME research database would facilitate access to research material on SMEs?

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

Question 63.1 Please explain your answer to question 63:

5000 character(s) maximum

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

The creation of a public EU wide SME research database would inevitably lead to additional cost and administrative burdens for listed companies covered. This also applies to cases in which companies have no interest in research or international investors typically do not exist.

In addition, a public research database may not be perceived by professional investors as the most reliable source to work with as it would be completely different from the traditional sources of information they are used to, that are all offered by the private sector.

Question 64. Do you agree that ESMA would be well placed to develop such a database?

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

Question 64.1 Please explain your answer to question 64:

5000 character(s) maximum

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

In our opinion this would be far beyond ESMA's mandate. It is neither an institution to develop and implement a database for research to foster cross-border investments nor a (private) data supplier/distributor nor any other kind of market participant. Technical issues aside, the role of ESMA as a supervisory authority should not be diluted. Otherwise, potential investors may be under the impression that the available data have been verified by ESMA and can be used as a reliable basis for their investment decision.

Where issuer-sponsored research meets the conditions of Article 12 of Delegated Directive (EU) 2017/593, it can qualify as an acceptable minor non-monetary benefit. One condition is that the relationship between the third party firm and the issuer is clearly disclosed and that the information is made available at the same time to any investment firm wishing to receive it or to the general public. However, issuers and providers of investment research consider that the conditions listed under Article 12 would in most cases not apply to issuer-sponsored research. As a result, issuer-sponsored research would not qualify as acceptable minor non-monetary benefit.

Question 65. In your opinion, does issuer-sponsored research qualify as acceptable minor non-monetary benefit as defined by Article 12 of Delegated Directive (EU) 2017/593?

- ☐ 1 - Disagree
- ☐ 2 - Rather not agree
- ☐ 3 - Neutral
- ☒ 4 - Rather agree
- ☐

- 5 - Fully agree
- ☐ Don't know / no opinion / not relevant

Question 65.1 Please explain your answer to question 65:

5000 character(s) maximum

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

This approach may increase the production of SME research but as this would be non-independent analysis, it may not be so attractive for the investors and not so effective in improving the liquidity.

Question 66. In your opinion, does issuer-sponsored research qualify as investment research as defined in Article 36 of Delegated Regulation (EU) 2017/565?

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

Question 66.1 Please explain your answer to question 66:

5000 character(s) maximum

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

In addition, Article 37 of Delegated Regulation (EU) 2017/565 provides rules on conflict of interests for investment research and marketing communication. Investment research is defined in Article 36 of delegated regulation 2017/565. However, issuers and providers of investment research consider that the definition of Article 36 would in most cases not apply to issuer-sponsored research which as a result, would not qualify as investment research. As a consequence, the rules on conflict of interests applicable to marketing documentation would apply to issuer-sponsored research.

Question 67. Do you consider that rules applicable to issuer-sponsored research should be amended?

- ☐ 1 - Disagree
- ☐ 2 - Rather not agree
- ☐ 3 - Neutral

- ☐ 4 - Rather agree
- ☐ 5 - Fully agree
- ☐ Don't know / no opinion / not relevant

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

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

Question 68.1 Please explain your answer to question 68:

5000 character(s) maximum

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

IV. Commodity markets⁸

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

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

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

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

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

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

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

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

Quantitative elements for question 69.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 69.1:

5000 character(s) maximum

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

1. Position limits for illiquid and nascent commodity markets

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

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

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

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

	1 (most appropriate)	2 (neutral)	3 (least appropriate)	N. A.
Current scope	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A designated list of 'critical' contracts similar to the US regime	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 71.1 Please explain your answer to question 71:

5000 character(s) maximum

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

Question 72. If you believe there is a need to change the scope along a designated list of ‘critical’ contracts similar to the US regime, please specify which of the following criteria could be used.

For each of these criteria, please specify the appropriate threshold and how many contracts would be designated ‘critical’.

- ☐ Open interest
- ☐ Type and variety of participants
- ☐ Other criterion:
- ☐ There is no need to change the scope

Question 72.1 Please explain your answer to question 72:

5000 character(s) maximum

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

ESMA has questioned stakeholders on the actual impact of position management controls. Stakeholder views expressed to the ESMA consultation appear diverse, if not diverging. This may reflect significant dissimilarities in the way position management systems are understood and executed by trading venues. This suggests that further clarification on the roles and responsibilities by trading venues is needed.

Question 73. Do you agree that there is a need to foster convergence in how position management controls are implemented?

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

Question 73.1 Please explain your answer to question 73:

5000 character(s) maximum

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

Question 74. For which contracts would you consider a position limit exemption for a financial counterparty under mandatory liquidity provision obligations ?

This exemption would mirror the exclusion of the related transactions from the ancillary activity test.

	Yes	No	N.A.
Nascent	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Illiquid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 74.1 Please explain your answer to question 74:

5000 character(s) maximum

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

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

	Yes	No	N. A.
A financial counterparty belonging to a predominantly commercial group that hedges positions held by a non-financial entity belonging to the same group	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A financial counterparty	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 75.1 Please explain your answer to question 75:

5000 character(s) maximum

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

2. Pre-trade transparency

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

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

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

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

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

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

V. Derivatives Trading Obligation⁹

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

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

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

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

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

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

Quantitative elements for question 77.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 77.1:

5000 character(s) maximum

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

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

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

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

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

Question 79.1 Please explain your answer to question 79:

5000 character(s) maximum

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

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

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

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

Question 80.1 Please explain your answer to question 80:

5000 character(s) maximum

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

VI. Multilateral systems

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

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

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

- ☐ 1 - Disagree
- ☒ 2 - Rather not agree
- ☐

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

Question 81.1 If your response to question 81 is rather negative, please indicate which amendments you would suggest and why:

5000 character(s) maximum

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

The following market structure proposal would enhance the ability of MiFID II/MiFIR provisions to increase investor protection and further the level playing field amidst concerns about the impact of dark trading on financial markets and the price formation process.

Börse München believes that restricting SI trading to above LIS only would be an efficient way to incentivise lit trading and ensure the quality and robustness of the price formation process in line with the initial objective of MiFID II/MiFIR. The large in scale (LIS) threshold should be used as the main tool to delineate lit and dark trading. Above LIS trading constitutes a legitimate dark space in which trades are not subject to pre-trade transparency and would benefit from delayed post-trade transparency. This applies to both multilateral trading venues (RMs and MTFs) and bilateral execution venues (SI). Below LIS would be confined to RMs and MTFs. These trades contribute to price formation. RMs and MTFs would in principle always be subject to real-time pre- and post-trade transparency creating a lit space for these trades. Dark trading should be limited by reducing the number of available waivers to the large in scale (LIS) as well as order management facility (OMF) waivers. The main purpose of the waiver regime is to protect market participants from adverse market impact. The OMF waiver should be maintained as the orders become pre-trade transparent and thus contribute to pre-trade transparency. By limiting the waiver regime to the LIS and OMF waiver, the double volume cap (DVC) mechanism would be repealed. OTC would be restricted to trades in shares not subject to the STO.

As set out under Question 2, Börse München believes that the objectives of MiFID II/MiFIR to strengthen fair, transparent, efficient and integrated markets have not been achieved. In contrast, lighter regulatory requirements for non-exchange/off-market execution venues leads to unfair competition at the detriment of transparency and investor protection. Regulated markets face significant disadvantages due to more stringent requirements, which is reflected in an increase in dark trading (SI and OTC) and a decrease in lit trading resulting in less transparent markets. Börse München therefore supports a level playing field with the same conditions for all categories of market players.

Closing regulatory gaps such as also requiring SIs to apply the tick size regime is certainly a step in the right direction which ensures the harmonization of competitive conditions to some extent. However, more needs to be done in order to strengthen lit trading. Börse München therefore advocates the market structure improvements laid down under 81.1. The equities market structure needs to become less complex and build on lessons learned from MiFID II to truly support lit trading.

VII. Double Volume Cap¹⁰

MiFID II/MiFIR introduced a Double Volume Cap ('DVC') to curb "dark" trading by limiting, per platform and at EU level, the use of certain waivers from pre-trade transparency. Some stakeholders have criticized the DVC as a too complex

process failing to reduce off-exchange trading in the EU. For instance, according to a 2019 Oxera study, the equity market share of systematic internalisers has risen to 25% since application of the DVC while the share of on venue trading is declining. For example, the market share of CAC40 shares trading on the primary stock exchange (Euronext) fell from 75% in 2009 to 62% in 2018 and Oslo Børs's market share of trading on OBX-listed shares dropped from 95% in 2009 to 62% in 2018. The proportion of public order book trading on the primary exchange in major equity indices has declined to between 30% and 45% of overall on-venue trading. The Commission services are seeking stakeholder's views on their experience with the DVC and its impact on the transparency in share trading.

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards the objective of more transparency in share trading.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more transparency in share trading.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More transparency in share trading correspond with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The DVC has provided EU added value	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Quantitative elements for question 82.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 82.1:

5000 character(s) maximum

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

VIII. Non-discriminatory access¹¹

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

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

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

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

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

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

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

- ☐ 1 - Disagree
- ☐ 2 - Rather not agree
- ☐ 3 - Neutral
- ☐ 4 - Rather agree
- ☐ 5 - Fully agree

☐ Don't know / no opinion / not relevant

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

Please explain your reasoning and specify which countries:

5000 character(s) maximum

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

IX. Digitalisation and new technologies

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

Furthermore, it is evident that digitalisation and new technologies are transforming the financial industry across sectors, impacting the way financial services are produced and delivered, with possible emergence of new business models. The digital transformation can bring huge benefits for the investors as well as efficiencies for industry. To promote digital finance in the EU while properly addressing the new risks it may bring, the Commission is considering proposing a new Digital Finance strategy building on the work done in the context of the FinTech action plan and on horizontal public consultations. The Commission recently published [two public consultations focusing on crypto assets and operational resilience in the financial sector](#), and may consult later this year on further topics in the context of the future Digital Finance strategy.

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

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

Please explain your answer:

5000 character(s) maximum

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

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

Please explain your answer:

5000 character(s) maximum

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

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

Please explain your answer:

5000 character(s) maximum

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

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

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

Question 89.1 Please explain your answer to question 89:

5000 character(s) maximum

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

The online environment puts a strong focus on providing products to customers as fast as possible, with as few barriers as possible. As far as financial services are concerned, this might endanger retail clients if they do not take enough time to reflect on purchasing complex financial products. On the other hand, making the product quick and easy to purchase (e.g. speedy or 'one-click' products) makes it easier for clients to buy and sell at least simple investment products online. Taking all of the above into consideration, the Commission would like to gather feedback on whether certain rules in the MiFID II/MiFIR framework on marketing and provision of information to clients should be adjusted to better suit the provision of services online.

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

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

Question 90.1 Please explain your answer to question 90:

5000 character(s) maximum

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

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

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

Question 91.1 Please explain your answer to question 91:

5000 character(s) maximum

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

X. Foreign exchange (FX)

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

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

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

Question 93. Which supervisory powers do you think national competent authorities should be granted in the area of spot FX trading to address improper business and trading conduct on that market?

Please explain your answer:

5000 character(s) maximum

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

Section 3. Additional comments

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

Please, where possible, include examples and evidence.

5000 character(s) maximum

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

Product interventions: Measures from Supervisory Authorities must be the ultima ratio. Börse München believes in the guiding principle of an informed and competent investor. An important aspect of investor protection is the protection against abusive behavior of untrustworthy providers at the “grey” capital market. Investors need to receive adequate information for making informed investment decisions, there should be transparent regulatory requirements for providers as well as the possibility for investors to legally enforce their investor interests. Product interventions make sense as ultima ratio of supervisory authorities to protect investors. However, the respective provisions in Article 39-43 MiFIR have to be applied with utmost care. Legal uncertainties caused by unclear measures only leads to disadvantages for investors and issuers.

ESMA Data Reporting: Unclear rules and processes lead to considerable extra work. MiFIR defines comprehensive requirements for trading venues regarding the reporting of transparency and reference data (Article 27 and 22 MiFIR). Despite significant efforts of all parties involved, the quality of the ESMA database remains rather poor. In order to ensure a sustainable solution to the problems, Börse München sees also responsibility laying with ESMA. ESMA must solve the deficits in their data base model, publish a “golden source” for reference data and adjust the processes for data reporting that do not work in practice.

Question 94. Have you detected any issues beyond those raised in previous sections that would merit further consideration in the context of the review of

MiFID II/MiFIR framework, in particular as regards to the objective of investor protection, financial stability and market integrity?

Please explain your answer:

5000 character(s) maximum

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



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

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Useful links

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

[More on this consultation \(https://ec.europa.eu/info/publications/finance-consultations-2020-mifid-2-mifir-review_en\)](https://ec.europa.eu/info/publications/finance-consultations-2020-mifid-2-mifir-review_en)

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

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

Contact

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