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| Response Form to the Consultation Paper |
| MiFIR review report on the obligations to report transactions and reference data |

**Responding to this paper**

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

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

ESMA will consider all comments received by **20 November 2020.**

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

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_CP\_TRRF\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_TRRF\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_TRRF\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open Consultations” 🡪 “Consultation paper on MiFIR review report on the obligations to report transactions and reference data”).

**Publication of responses**

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

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper?**

This document will be of interest to all stakeholders involved in the securities markets. It is primarily of interest to competent authorities and firms that are subject to MiFID II and MiFIR – in particular, investment firms and credit institutions performing investment services and activities and trading venues. This paper is also important for trade associations and industry bodies, institutional and retail investors and their advisers, and consumer groups, as well as any market participant because the MiFID II and MiFIR requirements seek to implement enhanced provisions to ensure the transparency and orderly running of financial markets with potential impacts for anyone engaged in the dealing with or processing of financial instruments.

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | AFTI |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | France |

**Introduction**

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

<ESMA\_COMMENT\_CP\_TRRF\_1>

AFTI, business association of French post trade activities operators, has only analyzed questions with a direct impact on post trade activities, questions related to investors protection, in the field of RTO investment service.

AFTI has conducted this review in due collaboration with AMAFI, who will respond to the consultation.

AFTI is in solidarity with the responses made by this association on his respective perimeter.

## The proposals of evolutions contained in the CP are very heavy and structuring.

AFTI, together with AMAFI note that the proposed changes are far from being marginal and, if retained, would require market participants to make significant investments to comply with the new standards.

While we may understand some of the reasons leading to the proposals contained in this consultation, we would like to point out that financial institutions have invested extensively in the 2017/2018 period to comply with their MiFIR reporting obligations and, in the case of systematic internalisers, with their obligations in terms of market transparency and the provision of reference data.

We also would like to recall that modifying the reporting mechanism is a very long, difficult and costly process. Indeed, reporting a transaction and maintaining the accuracy of the declaration of any event that may affect the original transaction (cancellation, modification, etc.) involves numerous applications (beyond the creation of the file itself) for which a modification must be handled carefully (non-regression, etc.). The simple addition of a data item means its retrieval (it may be available but not in the desired location), its storage (for any control, for a possible correction of the declaration), its transmission in the declaration file.

## There is no evidence that there is a need for such evolutions

First of all, we consider that we do not have sufficient hindsight to envisage such structural changes just three years after the entry into force of MiFID II MiFIR.

More importantly, however, we note that the changes proposed in the CP are not supported by facts or in-depth analysis that would indicate that changes would be beneficial in terms of monitoring market abuse or market transparency. In other words, our initial analysis is that the cost-benefit balance is totally disproportionate.

## The context of Brexit must be considered

An in-depth modification of the MiFID II MiFIR rules cannot be envisaged without taking into account the developments that will be made in the UK. If the rules diverge too much between the UK and the EEA, then European financial institutions will face a double disadvantage. On the one hand, they will have to make heavy investments that will not be required from entities established in the UK. On the other hand, they will have to maintain two divergent systems in parallel for those which are also established in the UK. This is a strong factor in the deterioration of the competitiveness of the European financial markets.

## There is a need of consistency with the CMU objectives

It is rather paradoxical to increase significantly the constraints on European financial institutions, without the benefits on the functioning of the markets or their supervision being proven at a time when Europe's political objective is to develop its financial market in order to ensure its growth.

## In a nutshell

AFTI, together with AMAFI are very reserved about most of the CP's proposals. Such developments can only be envisaged on the basis of in-depth cost-benefit analyses, shared with the industry, with the aim of developing the European financial market and not constraining it.

<ESMA\_COMMENT\_CP\_TRRF\_1>

**Questions**

1. : Do you foresee any challenges for UCITS management companies and AIF managers in providing transaction reports to NCAs? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_1>

We understand that Asset Managers are opposed to scope widening and we support that position.

In this respect, declarative perimeter will have to be precise:

* Market Reporting
* Transfer Reporting, with data access difficulties
* Securities Reporting, with data access difficulties

With regards to market reporting, data to be transmitted by Asset Managers to brokers give rise to numerous problems

*Example:*

An Asset Manager, portfolio manager placing a client order under a management agreement to a broker throughout a CIB:

* Today the Asset Manager is not subject to RTD reporting and the Broker performs RTD reporting specifying that he has executed this transaction on the Asset Manager behalf.
* Tomorrow ESMA would like to know Asset Manager’s client for which it has placed the order to the Broker. Hence 2 possible use cases:
  + AM produces the additional RTD reporting
  + AM provides the broker with all mandatory information in order for the broker to produce full RTD reporting

AFTI’s members have faced similar choice when offering the RTO investment service to clients. Based on their experience they can state that:

* it led to significant investments
* although being an official alternative the option to transmit orders in the meaning of article 26(4) of MIFIR is not a valid option. Indeed, this set-up raises several main concerns should it be in terms of confidentiality of the data (identification of the client), responsibility, contractual relationships, operational tasks (handling the rejections, …) or technical means to provide the expected data.

Same issues were detected on the brokers’ side (for example how to handle an order for which not all the needed data have been received?)

In absolute terms that Asset Manager chooses between producing RTD by itself or by transmitting data to Broker this leads to a major costs’ constraint.

<ESMA\_QUESTION\_TRRF\_1>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_2>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_3>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_4>

1. : Do you envisage any challenges in increasing the scope including derivative instruments traded through an SI as an alternative to the expanded ToTV concept? Please justify your position and if you disagree please suggest alternatives.

<ESMA\_QUESTION\_TRRF\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_5>

1. : Do you agree that the extension should include all Systematic Internalisers regardless of whether they are SI on a mandatory or voluntary basis? Please justify your position.

<ESMA\_QUESTION\_TRRF\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_6>

1. : Do you envisage any challenges with the approach described in paragraphs 45-46 on the scope of transactions to be covered by the extension? Please justify your position and indicate your preferred option for SIs under the mandatory regime explaining for which reasons. If you disagree with all of the outlined options, please suggest alternatives.

<ESMA\_QUESTION\_TRRF\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_7>

1. : Do you foresee any challenges with the proposal to replace the reference to the term “index” in Article 26(2)(c) with the term “benchmark” as defined under the BMR? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_8>

1. : Which of the three options described do you consider the most appropriate? Please explain for which reasons and specify the advantages and disadvantages of the outlined options. If you disagree with all of the outlined please suggest alternatives.

<ESMA\_QUESTION\_TRRF\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_9>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_10>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_11>

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<ESMA\_QUESTION\_TRRF\_11>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_12>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_13>

1. : Did you experience any difficulties with the application of the defined list concept? If yes, please explain.

<ESMA\_QUESTION\_TRRF\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_14>

1. : Do you foresee any challenges with the approach as outlined in the above proposal? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_15>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_16>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_17>

1. : Do you foresee any challenges with the approach outlined in paragraphs 75 and 76? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_18>

Yes (see answer to question 19)

<ESMA\_QUESTION\_TRRF\_18>

1. : Do you foresee any difficulties with the implementation of an additional code generated by the trading venue to be disseminated down the transaction chain in order to link all transactions pertaining to the same execution? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_19>

Yes

We understand that this will allow regulators to instantly and clearly retrieve different reporting related to the same transaction (in the case of additional reporting) or to a homogeneous group (in the case or global orders).

ESMA/2014/1570 Consultation Paper concluded (§178. Page 596) that “*although the report matching number would in theory be useful information for competent authorities, there are many practical difficulties for its implementation.”*

Indeed, to allow a direct and total transactions identification, 2 new references would need to be introduce with substantial impacts within their implementation by non-executing registrants.

Practically registrant would have to manage 2 references:

Example:

Client A sells 100 securities

Client B sells 200 securities

Client C sells 300 securities

Investment Firm places a 600 securities sell order

Broker sends the order on the market, order is executed in 2 parts:

1. A TVTIC1 150 Securities sell
2. A TVTIC2 450 Securities sell

Broker will report:

* A 150 securities sell on behalf of the investment company including TVTIC1 reference
* A 450 securities sell on behalf of the investment company including TVTIC2 reference

Investment Firm (**in INTC mode**) will report:

* A 150 securities sell facing the Broker that would have to include TVTIC1 and REF INTC1
* A 450 securities sell facing the Broker that would have to include TVTIC2 and REF INTC1
* A 100 securities buy facing client A that would include REF INTC1
* A 200 securities buy facing client B that would include REF INTC1
* A 300 securities buy facing client C that would include REF INTC1

The addition of these 2 references implies:

* For TVTIC reference: extraction along all the order transmission chain, distribution within the reporting and storage
* For « INTC »: creation, persistence (especially uniqueness and incrementation), distribution within the reporting and storage.

The question of their evolutions in case of transactions modification is also raised. In the previous mentioned example, suppose that the 150 and 450 securities sells are cancelled and replaced by 3 100 securities sells:

* We should probably need a new “INTC” reference
* And thus modify the 3 reporting facing the broker because they are not containing the proper “INTC” reference anymore

Enforce such references had been found too heavy at the inception; consider their introduction in retrospect does not mitigate any implementation difficulties but does increase cost and risks (it is always very complicated to introduce originally unaddressed features).

Accordingly, we do not approve of 2 references addition and would like to emphasize the need of sufficient anteriority with the reporting exploitation before any change.

<ESMA\_QUESTION\_TRRF\_19>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_20>

Yes

This information is irrelevant considering market surveillance.

We understand that this information might be relevant for the regulator for other needs such as allowing better knowledge of financial market participants, identifying market trends, … but costs related to this change seems to us disproportionate to the aim pursued.

Moreover, what are the consequences if the investor has different client classification with several financial institutions?

If this information would have to be communicated impacts would be significant:

* Information collection (the registrant is not systematically the entity managing client relationship)
* Being able to store the information within used repositories for reporting production
* Disclose the information taking into account a new message template

In the absence of more precisions on information usage by the regulators we are not in a position of suggesting alternative solution.

<ESMA\_QUESTION\_TRRF\_20>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_21>

1. : Which of the two approaches do you consider the most appropriate? Please explain for which reasons.

<ESMA\_QUESTION\_TRRF\_22>

AFTI advises to remove short selling flag, without modifying file format, field might become available for another change.

In this case, a field meaning change raises the issue of data archiving.

<ESMA\_QUESTION\_TRRF\_22>

1. : Do you foresee any challenges with the outlined approaches? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_23>

1. : Do you foresee any challenges with the outlined approach to pre-trade waivers? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_24>

1. : Have you experienced any difficulties with providing the information relating to the indicators mentioned in this section? If yes, please explain and provide proposals on how to improve the quality of the information required.

<ESMA\_QUESTION\_TRRF\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_25>

1. : Do you foresee any challenges with this proposal? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_26>

1. : Do you agree with this approach? If not, please clarify your concerns and propose alternative solutions

<ESMA\_QUESTION\_TRRF\_27>

No

MIFIR article 26 allows today an Investment Firm that does not execute the transaction to

* Either produce an additional reporting to the one of the executing entity
* Or disclose to the executing entity all mandatory information in order for it to perform the complete reporting

The solution of an entity transmitting orders in the mean of the article 26(4) of MIFIR has been taken in due consideration when the entry into force of the new reporting. The complexity of tis implementation (technical, legal, …) has been considered disproportionate and unacceptable. Thus, in France around 90% of non-executing entities have preferred to produce additional reporting.

We understand the intent behind this proposition but force an entity to declare on behalf of another entity once this has provided it with all mandatory information can in no way dimmish solution complexity and brings no answer to issues raised by that time:

* Adjustment of orders transmission chains to integrate declaration data (ie. Voice orders?)
* What executing entity should have to do when waiting for an order “with data” but some are missing or incorrect? Refuse to take the order or execute it? (No Data = No trade?)
* Who is responsible of client’s data?
* How to manage reporting rejections? (follow up, amendment, …)
* How to translate this relationship contractually?
* How to manage reported data confidentiality, especially recipient’s total identification?

Contrariwise this obligation will generate new impacts, even for not affected entities. Since the details shall be included in the transmission of that order, we believe it may impact the way orders are currently transmitted and may lead an executing investment firm, should it be required to produce the complete reporting, to::

* either maintain 2 types of orders transmission (with data / without data)
* Or force all its other clients to adapt to an orders transmission format with data, even if that means to let empty fields

It is important to note that the issues listed above are the same whatever the size of the non-executing investment firm. Thus, even if the envisaged obligation was limited to a sub-group of Investment Firms (the “small entities” as named in this Consultation Paper) and assuming such classification could be created, the complexity of this way to report will remain intact.

Of course such measure exists within EMIR and SFTR but unlike for OTC derivatives or Securities Financing Transactions, data to be provided to the regulators in compliance with MIFIR are sensitive ones that go far beyond the ones strictly defining (or precising) a transaction; moreover they also relate to natural persons, giving a quite very detailed description of them.

<ESMA\_QUESTION\_TRRF\_27>

1. : Do you agree with this analysis? If not, please clarify your concerns and propose alternative solutions.

<ESMA\_QUESTION\_TRRF\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_28>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_29>

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<ESMA\_QUESTION\_TRRF\_29>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_30>

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<ESMA\_QUESTION\_TRRF\_30>

1. : Are there any specific aspects relating to the ISIN granularity reported in reference data which need to be addressed? Is the current precision and granularity of ISIN appropriate or is (for certain asset classes) a different granularity more appropriate?

<ESMA\_QUESTION\_TRRF\_31>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_31>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_32>

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<ESMA\_QUESTION\_TRRF\_32>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_33>

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