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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 | European Association of Public Banks |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | Europe |

**Introduction**

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

<ESMA\_COMMENT\_CP\_TRRF\_1>

Our comments are based on feedback we have received from publicly-owned commercial banks.

<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>

The principle of „same business, same rules“ should apply to ensure a level playing field.

<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>

To avoid repeated enumerations in the legal text, the term "firm" should be legally defined, significantly increasing the legibility and clarity of the legal text.

<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>

It should be clearly stated in the level 1 text who is responsible to transmit a copy of the reports to the CA of the host MS. This would be the responsibility of the home MS CA and executed via ESMA TREM.

<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>

No.

<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>

As an alternative to the ESMA proposal, there should be a transformation of Opinion ESMA70-156-117 into a corresponding L1-text.

The broadening of the reporting obligation will lead to a creation of ISINs for instruments whose terms are bilaterally negotiated due to the investment needs of counterparties. These ISINs will not add any meaningful transparency to the market. Instruments would be found in the FIRDS database that are not ToTV, needing an extra flag in order for market participants for the purposes of the relevant sections in the MiFIR, where the ToTV concept applies, to filter ToTV instruments.

Furthermore, with regard to non-ToTV instruments solely traded on SIs, SIs are not in competition with exchange traded products. There is no need for an alignment of transparency requirements. The fact that opt-in SIs will face additional reporting obligations might result in fewer market participants opting in the SI regime.

Therefore, with respect to ESMA’s outlined ‘ToSI’ concept, SI in general do not compete with TVs and have a role as liquidity providers. An expansion of transaction reporting requirements to products which are either naturally OTC products or illiquid might further prevent the role of SI as vital liquidity providers in derivative markets. These impacts on liquidity do not seem justified.

ESMA’s proposals in the CP also raise practical problems because they ignore the complexity of the subject. The question of what is to be considered ToTV plays a role in transaction reporting, and also with regard to pre- and post-trade transparency, the trading obligation and the reporting of reference data. The transaction reporting obligation only plays a subordinate role in this respect. The procedure to deal conclusively with this question in the consultation paper on transaction reporting seems to be appropriate.

In particular, attention should be paid to competition aspects. For example, the same day FIRDS SI reporting requirement inadvertently makes public the type of instrument/trade being traded by the SI, displaying the Market Identifier Code (MIC) of the SI as well as the country where the SI is located. Having to publish ISINs to FIRDS with the MIC attached significantly expands transparency for illiquid ToTV instruments (e.g. complex Interest Rate Derivatives). Making information public which is not reported in the post-trade reporting requirement due to its calibration based on instrument liquidity status risks undermining the transparency regime.

Publication of this instrument activity data enables market participants to identify and observe the trading activity of other firms, and theoretically extends the obligations not just for traded deals but into the pre-trade space as well. The possible identification of an SI as a counterparty allows market participants to extrapolate certain information and anticipate the hedging position of an SI, thereby inhibiting an SI to trade on normal market terms. This in turn impacts the ability of the SI to maintain liquidity provision capability to its clients. The possibility to mask the MIC and the country when reporting instruments on a same day basis to FIRDs, in order to anonymise the data and provide for consistency with the transparency regime, should be introduced.

<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>

No, there should be a transformation of Opinion ESMA70-156-117 into a corresponding L1-text.

<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>

There should not be any extension of the current transaction reporting regime. The objective of applying an LPF between SIs and TVs only applies to ToTV products which are already reportable under the current regime. OTC derivatives are covered by EMIR reporting obligations – including any life-cycle events. Supervisory authorities already have all the required data at hand – the extension of the transaction reporting regime to OTC instruments or instruments traded on SIs is superfluous.

<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>

Yes, the implementation of the proposals would lead to practical problems. There might be discussions whether the ESMA benchmark register is to be considered as golden source and how to proceed, if a benchmark is falsely not included in the register. Most importantly, however, it is unclear how ESMA’s approach to decouple the transaction reporting obligations arising from the list of financial instruments defined in Annex II Section C of MiFID II could be legally justified.

<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>

ESMA should check that indices are to be treated in the same way as baskets pursuant to Art. 26(3)(c) MiFIR, so that the index components would have to be disclosed.

<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>

The FIRDS system should be upgraded so that the database contents meet usual quality requirements and allow for automated processing.

<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>

The FIRDS system should be upgraded so that the database contents meet usual quality requirements and allow for automated processing.

<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>

The proposed text for an amended Article 27 does not reflect all current practical issues. A reconciliation with Article 26(2)(a) is missing according to which financial instruments “for which a request for admission to trading has been made” are subject to the transaction reporting obligation.

<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>

The outlined approach would effectively manifest the problem of polluting FIRDS with reference data on non-ToTV instruments. The concept of issuers does not make much sense in a derivatives context. The terminology of admitting to trading also does not lead to any logical conclusion in the context of SI for derivatives.

<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>

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<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>

It might be advisable to upgrade the FIRDS system so that the database contents meet the usual quality requirements and allow for automated processing. It is doubtful that FIRDS would be able to process further amounts of data, especially on a daily basis.

<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>

A detailed analysis of all consequences that would result from the proposal is missing. A consultation paper on transaction reporting is not the appropriate place to propose such very far-reaching amendment to Article 27.

<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>

The deletion of Art. 4 MAR would ensure that only the reporting requirements under Art. 26 and 27 could be designed as to fully serve the detection of market abuse and no other reporting regime would be necessary. The proposal would reduce complexity and costs for both regulatory authorities and reporting firms.

<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>

The proposal to identify “chains of transactions” contradicts the approach according to which the market side has to report its details of the transaction. Besides the necessary identification and processing, the proposed dissemination of the additional code along the transaction chain would require setting up a completely new process. Reporting entities involved would have to ensure correct and timely interaction with respective intermediaries along the transaction reporting chain. There is an increased risk for potential failures and additional time-consuming processes with regard to the transmission of the new code to reporting entities. A mapping of a connecting element in all reports will encounter difficulties in implementation to an extent that the goal to enable CAs to link all transactions cannot be achieved.

A possible obligation to specify a TVTIC for transactions in third countries will lead to practical problems, since the relevant TVs are not subject to MiFIR and therefore cannot be obliged to generate a TVTIC. Those subject to the reporting obligation would not be able not fully comply with it.

<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>

The proposal to identify “chains of transactions” contradicts the approach according to which the market side has to report its details of the transaction. A mapping of a connecting element in all reports will encounter difficulties in implementation to an extent that the goal to enable CAs to link all transactions cannot be achieved. OTC derivatives are predominantly used for the purpose of risk management between dealer banks. Regulators’ need to link all transactions pertaining to the same transaction chain might be less relevant in this context and not justify the creation of a separate code.

Organised trading platforms outside the EU should not be included. It will not be feasible to get these entities to comply with such obligation, since the relevant TVs are not subject to MiFIR and cannot be obliged to generate a TVTIC. European entities subject to the transaction reporting requirements will face enormous difficulties in setting up correct files for their reports.

<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>

There should be significant problems if the client category stored in the customer master data were to be fed into the transaction report. These are separate systems. It is also not apparent that the CA needs this data for market surveillance purposes. “Suitability“ and “market trends“ are not relevant in the context of transaction reporting. Not even the very broad norm of Article 24 is aimed at monitoring suitability obligations. Thus, the last sentence in Art. 26(6) as proposed by ESMA should not be added.

<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>

As this field has in the past years not been of any use, it should be deleted.

<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>

It is not possible to make meaningful use of the information on whether a transaction is a short sale. Short sales must meet the requirements of Regulation (EU) No. 236/2012. The CA therefore has the necessary data; an additional data source is dispensable.

<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>

The designation to identify short sales should be omitted from the transaction report.

<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>

According to par. 193 of ESMA70-156-2756, Art. 18(2) is to be deleted without replacement. Since this also eliminates the possibility of using a waiver, the proposal in the CP has no effect

<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>

There seem to be no requirements for ARMs/APAs to pass on this information free of charge to the market participants. However, CAs should receive this information in the context of post-trade requirements anyway.

<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>

ESMA should clearly state that the filling of an additional reporting field (buy-back yes/no) would replace Article 5(3) MAR. Sufficient lead time for necessary implementation should be considered.

<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. It is not comprehensible that transmitting investment firms are favored at the expense of larger investment firms. This proposal effectively intervenes in civil law to achieve supervisory objectives. Experience in the context of EMIR REFIT and the introduction of mandatory reporting by FCs for small NFCs proves that the market has experienced severe problems since the obligations of cooperation of NFCs were not specified on L2.

<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>

Yes.

<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>

The proposal would put an end to the consolidation of various reporting requirements. The constant increase in reporting requirements underscores the need for a conscientious examination of the options for consolidation. Double reporting should be avoided and the goal should be the convergence of the different reporting systems.

<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>

ANNA DSB at present generates ISINs for derivatives reported under Art. 26. The FIRDS Database is ISIN-based and represents reportable products/instruments under MiFIR. The ISIN as a global and standardised instrument/product identifier has been well established in MiFIR reporting practice. A potential use of the UPI as an alternative identifier for OTC derivatives would result in higher complexity and additional implementation efforts. The use of the UPI instead of the ISIN under Art. 26 would require clear and precise guidance.

<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>

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<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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<ESMA\_QUESTION\_TRRF\_33>