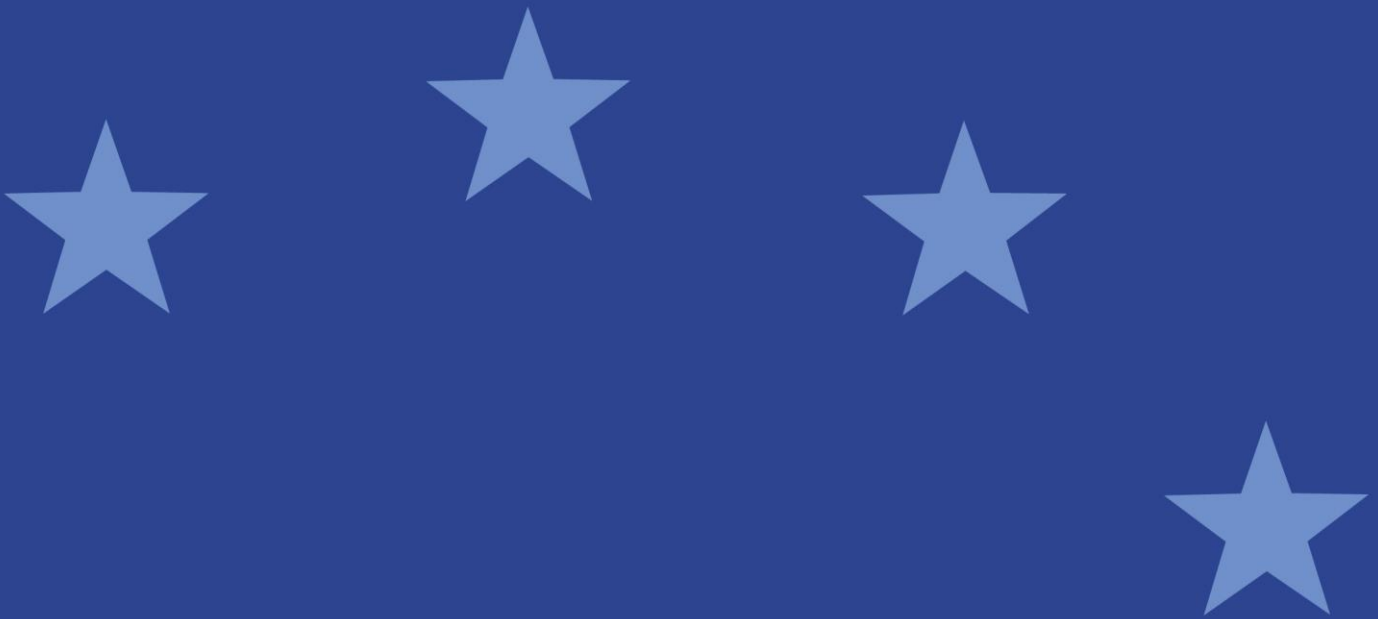




European Securities and  
Markets Authority

## **Response Form to the Consultation Paper on the review of certain aspects of the Short Selling Regulation**





## Responding to this paper

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions. 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 **19 November 2021**.

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. use this form and send your responses in Word format (**pdf documents will not be considered except for annexes**);
3. Please do not remove tags of the type <ESMA\_QUESTION\_SSRR\_1>. **Your response to each question has to be framed by the two tags corresponding to the question.**
4. 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.
5. When you have drafted your response, name your response form according to the following convention: ESMA\_SSRR\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_SSRR\_ABCD\_RESPONSEFORM.
6. 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 Review of MAR Guidelines on delay in the disclosure of inside information and interactions with prudential supervision").

### Publication of responses

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

### Data protection

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



## **Who should read this paper**

All interested stakeholders are invited to respond to this consultation paper. This consultation paper is primarily of interest to issuers of financial instruments admitted to trading or traded on a trading venue, investment firms, market makers, primary dealers, persons who engage in short sales or transactions resulting in net short positions. Responses are also sought from any other market participant including trade associations and industry bodies, institutional and retail investors, consultants and academics.



## General information about respondent

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

### Please make your introductory comments below, if any.

<ESMA\_QUESTION\_SSRR\_0>

Euronext operates Regulated Trading Venues, a CCP and Central Security Depositories in 8 EEA Countries. As an operator of Regulated Markets, Euronext appreciates the opportunity to respond to this Consultation.

<ESMA\_QUESTION\_SSRR\_0>

### Q1 Does ESMA's analysis confirm the observation that you made in your perimeter of competency? Please provide data to support your views?

<ESMA\_QUESTION\_SSRR\_1>

When markets are stressed we believe **maintaining liquidity is essential**. Market participants need continued access to markets as a way to respond to changing market circumstances. In essence, it is our experience that the short selling bans do not per sé add value to overall market quality as they tend to lead to decreased market liquidity. We refer to a paper published by [Optiver](#) that concludes:

*"By artificially removing the chance for some market participants to sell, asset price formation will become less accurate, preventing the financial market from reflecting the real economy."*

In normal market conditions, short selling plays an important role in price discovery. However, in the extreme market conditions we have experienced during the start of the COVID-19 pandemic, it can potentially contribute to unnecessary downward pressure on share prices.

As a general point, we believe it is important to keep markets open as much as possible. However, where regulators decide to temporarily suspend short selling, **regulatory alignment across Europe** would support effectiveness.

The current regulatory framework allows for a national competency which leads to choices made in a relative national framework. Any outcome of such a decision will likely be less optimal compared to an EU wide coordinated effort. As an operator of several EU based exchanges with a combined liquidity pool we have closely witnessed the challenges of national measures diverging per market. We urge regulators to focus on supervisory convergence to the extent possible when deciding on emergency measures.

<ESMA\_QUESTION\_SSRR\_1>

### Q2 What are your views on the proposed clarifications?



<ESMA\_QUESTION\_SSRR\_2>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_SSRR\_2>

**Q3 Do you agree with the proposed clarification?**

<ESMA\_QUESTION\_SSRR\_3>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_SSRR\_3>

**Q4 What are your views regarding the exclusion or, alternatively, a percentage-based weighting approach, for indices, baskets and ETFs in the context of long – term bans?**

<ESMA\_QUESTION\_SSRR\_4>  
We agree with ESMA's view in paragraph 121 of the Consultation Paper: indices, baskets and ETFs should be excluded from the scope of the long term bans. It is our view that short selling activity in these products is low and that the hedging activity in these products is quite prevalent and should not be impacted by any ban.

<ESMA\_QUESTION\_SSRR\_4>

**Q5 Do you agree with the proposed alignment of the conditions to adopt measures under Article 20 and Article 28 of SSR?**

<ESMA\_QUESTION\_SSRR\_5>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_SSRR\_5>

**Q6 Do you agree with the proposed amendments to Article 24 of Delegated Regulation 918/2012?**

<ESMA\_QUESTION\_SSRR\_6>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_SSRR\_6>

**Q7 Do you agree with the proposed amendments to the SSR and, more specifically, the mediation procedure under Article 23 of SSR?**

<ESMA\_QUESTION\_SSRR\_7>  
We would reiterate our position that we see no added benefit of short selling measures per se but should a National Competent Authority decide on a short term measure, a level playing field is highly relevant. In this light the proposed procedure would be beneficial to the cross border nature of securities markets.

<ESMA\_QUESTION\_SSRR\_7>

**Q8 What are your views on ESMA's proposal to include subscription rights in the calculation of NSPs in shares?**



<ESMA\_QUESTION\_SSRR\_8>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_SSRR\_8>

**Q9 Do you agree with this proposal to reinforce the third-party’s commitment? If not, please elaborate. If yes, would you either (A) keep the three types of locate arrangements, but increase the level of commitment of the third party to a firm commitment for all types of arrangements, or (B) simplify the regime to keep only one type of firm locate arrangement?**

<ESMA\_QUESTION\_SSRR\_9>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_SSRR\_9>

**Q10 Do you agree with this introducing a five-year-long record-keeping obligation for locate arrangements? If not, please justify your answer.**

<ESMA\_QUESTION\_SSRR\_10>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_SSRR\_10>

**Q11 Do you agree with reinforcing and harmonising sanctions for “naked short selling” along the proposed lines? If not, please justify your answer.**

<ESMA\_QUESTION\_SSRR\_11>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_SSRR\_11>

**Q12 Do you consider that shares with only 40% of their turnover traded in a EU trading venue should remain subject to the full set of SSR obligations?**

<ESMA\_QUESTION\_SSRR\_12>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_SSRR\_12>

**Q13 Do you consider that NCAs should take any other qualitative but specific parameter into account in the identification of the shares subject to the full set of SSR obligations even if they are more heavily traded in a third-country venue? If yes, please elaborate**

<ESMA\_QUESTION\_SSRR\_13>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_SSRR\_13>

**Q14 Would you modify the threshold for the public disclosure of significant NSPs in shares? If yes, at which level would you set it out? Please justify your answer, if possible, with quantitative data.**

<ESMA\_QUESTION\_SSRR\_14>



TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SSRR\_14>

**Q15 Would you agree with the publication of anonymised aggregated NSPs by issuer on a regular basis? If yes, which would be the adequate periodicity for that publication?**

<ESMA\_QUESTION\_SSRR\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SSRR\_15>

**Q16 Have you detected problems in the identification of the issued share capital to fulfil the SSR notification/publication obligations? If yes, please describe and indicate how would you solve those issues.**

<ESMA\_QUESTION\_SSRR\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SSRR\_16>

**Q17 Do you agree with the establishment of a centralised notification and publication system for natural and legal persons to communicate their NSPs? In your view, which would be the benefits or shortcomings this system would bring? Please explain.**

<ESMA\_QUESTION\_SSRR\_17>

While we understand that having an aggregated set of data for the EU markets would be favourable, we question the need for this exercise to be undertaken in scope of this particular area and at this moment in time.

The SSR is focused on national competency and ESMA reconfirms this approach in this Consultation Paper. For this reason we see no need for aggregated data building for this purpose only. In addition, policymakers are currently working on a strategy for supervisory data. In anticipation of this approach, we urge ESMA to not undertake any efforts that would be potentially duplicative with potential additional costs to be borne by regulators and market participants.

<ESMA\_QUESTION\_SSRR\_17>