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| 30 September 2021 |

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| Response form for the Consultation Paper on Review of the MiFID II framework on best execution reports |
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| Date: 30 September 2021 |

**Responding to this paper**

ESMA invites responses to the questions set out throughout this Consultation Paper and summarised in Annex II. Responses are most helpful if they:

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

ESMA will consider all comments received by **Thursday 23th December 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 steps below when preparing and submitting their response:

* Insert your responses to the consultation questions in this form.
* Please do not remove tags of the type <ESMA\_QUESTION\_BEEX\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* 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.
* When you have drafted your response, name your response form according to the following convention: ESMA\_BEEX\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_BEEX\_ABCD\_RESPONSEFORM.
* 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 on Review of the MiFID II framework on best execution reports’).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. If you do not wish for your response to be publicly disclosed, please clearly indicate this by ticking the appropriate box on the website submission page. 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 ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’.

**Who should read this paper?**

This document is of interest to execution venues, investment firms and their associations, investors, consumer associations, as well as any market participant engaged in the execution of orders under the MiFID II framework.

# General information about respondent

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| Name of the company / organisation | Börse Stuttgart |
| Activity | Regulated Market |
| Are you representing an association? |  |
| Country/Region | Germany |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_BEEX\_1>

As trading venue that provides full pre- and post-trade transparency requirements, Börse Stuttgart appreciates any efforts to improve transparency. It is crucial that the revision of the best execution reporting requirements set out in RTS 27 result in meaningful and informative reporting to enable true comparability of execution quality between trading venues. Therefore, we support ESMA's request to thoroughly overhaul the best execution reports which have proven to fail their purpose of providing market participants with useful and comparable best execution information.

However, while agreeing to overhaul the reports, ESMA should be careful to strike the right balance between simplification and the value of the information provided by the reports, especially with respect to the proposed criteria and metrics. A simplification should not result in metrics that are inadequate to measure core best execution criteria such as implicit cost (spread) or quoting presence. The content of the reports should be meaningful and useful both for retail and institutional investors. Therefore, we believe that the re-designed reports should be easily accessible and fully harmonized. At the same time, we ask that the new regulations be designed in such a way that fair competition is guaranteed, especially with regard to smaller trading venues without fully automated trading systems, and that they do not completely lose access to best execution orders due to an unbalanced selection of indicators compared to large trading venues.   
  
Against the background that the EU Commission wants to have the Consolidated Tape as a replacement for the RTS 27 reports and wants to abolish the latter, we are of the opinion that the RTS 27 reports should, however, be retained and not replaced by the CT. The CT only shows transaction prices - without quotation presence, execution quality, speed of execution etc. This would mean a deterioration of the best execution measurement because current MIFID II rules define best execution more broadly than solely taking transaction prices into account.

<ESMA\_COMMENT\_ BEEX\_1>

1. **: Do you agree with the proposed scope in terms of execution venues for the reporting under a possible new RTS 27?**

<ESMA\_QUESTION\_BEEX\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_BEEX\_1>

1. **: Do you agree with the proposed level of granularity by types of financial instruments instead of individual financial instruments under a new potential reporting regime? In particular, do you agree with the two proposed categories concerning shares (i.e., shares considered to have a liquid market and shares not considered to have a liquid market)? If not, please state the reasons for your answer and clarify what alternative categorisations you would propose in order to have a meaningful level of granularity for a new reporting regime.**

<ESMA\_QUESTION\_BEEX\_2>

We appreciate the proposal to reduce granularity and to aggregate on the basis of types of financial instrument and consider the suggested differentiation between instruments having a liquid/non-liquid market to be useful. However, a reduction of granularity should not lead to a reduction in the informative value of the data. Grouping instruments into segments can also mean a loss of transparency. In particular, it is no longer recognisable whether the trading venue trades a few or many instruments in one of the aggregated segments. Comparability is then only possible to a limited extent. In addition, with only a small number of instruments, the values determined can come about rather randomly, as outlined in the response to question Q3.

<ESMA\_QUESTION\_BEEX\_2>

1. **: Do you agree with the proposed metrics to report the execution quality obtained by execution venues?**

<ESMA\_QUESTION\_BEEX\_3>

We appreciate ESMA’s intention to reduce the number of metrics in order to make the best execution reports more concise and readable. However, it is of utmost importance to ensure that the simplification of the metrics does not result in a loss of informative value with regard to the criterion to be measured. We believe that ESMA needs to strike the right balance between simplification and information value in order to enable fair comparisons. Depending on the trading model and the focus of a trading venue, individual metrics cannot be assessed correctly or only with the corresponding background information about the venue’s trading model. Without using this information, the proposed metrics would generally lead to a preference for large trading venues with fully automated systems and restrict competition. The informative value and quality of the selected key figures is very important here. We have some additional comments on the metrics mentioned in the consultation paper:

* *Total nominal or monetary value of all transactions in financial instruments that were executed in the previous quarter, excluding, where applicable, commissions and accrued interest:* The total nominal/monetary volume of transactions has little informative value with regard to the quality and liquidity of a trading venue. It only shows the extent to which trading offers were accepted. For the liquidity of a trading venue, however, it is much more important to what extent tradable offers (e.g. by market makers) are available. In our view, a much better indicator for the liquidity of a trading venue is the average or median volume of published offers (pre-trade transparency/quotes) or a metric showing the presence of such offers over the course of the day. Such indicators already exist in the current RTS 27 reports (table 8: average volume at best bid and offer / table 8: average quote presence).
* *Median monetary transaction value per type of financial instrument in the previous quarter of the year*: This indicator shows whether larger or smaller trades were executed on a trading venue, which depends in particular on the structure of the connected participants/clients. A trading venue with a focus on professional clients will most likely show a higher volume than a trading venue with a focus on order flow of retail clients. It is a quantitative rather than a qualitative metric. Again, we believe it is insufficient to look only at transactions that have actually taken place. Even without actual transactions, trading volume is provided and liquidity is offered. The willingness of trading venues to offer liquidity and thus providing quotes for trading at any time (i.e. outside of openings of the primary markets) should be taken into account. Furthermore, although the median is less sensitive to outliers, we believe that there might be merit in publishing the average as well. Indeed, it seems odd to provide a median calculated across the same instrument type, but with different liquidity profiles (beside the distinction between liquid and non-liquid).
* *Bid-offer spread in relation to a median transaction*: The metric is not sufficiently defined and it is not clear if the median transaction is based on instrument or instrument-type level. Moreover, averaging absolute spreads across instruments with very different price levels, hence tick sizes and spreads, does not make sense. Average relative spreads (expressed as a percentage of the transaction price) make more sense**.** Moreover, ESMA should consider different trading hours and distinguish between periods when the primary market is open and when it is closed, with average spreads listed separately for each trading period.
* *Number of designated market makers*: This metric is insufficient as a single market maker does not necessarily represent poor likelihood of execution. A single market maker can be very present and continuously post quotes without worsening likelihood of execution. The current best execution reports contain metrics such as the average quote presence, the number of periods without quotes and the average duration of periods without a quote some of which should be taken into account to adequately assess the likelihood of execution.

<ESMA\_QUESTION\_BEEX\_3>

1. **: Have you observed good or bad practices of reporting by execution venues under the current RTS 27 that can be relevant for the elaboration of proposals to enhance access and user-friendliness of this information? Please provide specific examples if possible.**

<ESMA\_QUESTION\_BEEX\_4>

It is crucial that the reports are easily available and free of charge and the suggested format seems appropriate as well. At Börse Stuttgart, we publish the best execution reports transparently and without restrictions on our website in csv format together with a user guide explaining the different fields and metrics.

<ESMA\_QUESTION\_BEEX\_4>

1. **: Have you observed good or bad practices of reporting by investment firms under the current RTS 28 that can be relevant for the elaboration of proposals to enhance access and user-friendliness of this information? Please provide specific examples if possible.**

<ESMA\_QUESTION\_BEEX\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_BEEX\_5>

1. **: Do you agree with the classification for reporting proposed in Annex I of the possible new RTS 28, especially with regard to the suggested methodology for the reporting on equity instruments? If not, what alternative categorisations would you propose?**

<ESMA\_QUESTION\_BEEX\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_BEEX\_6>

1. **: Do you agree with the proposals for a possible review of RTS 28?**

<ESMA\_QUESTION\_BEEX\_7>

Börse Stuttgart believes that the reports published under RTS 28 provide useful and insightful information on investment firms’ execution practices. However, more detailed information could be provided by investment firms especially regarding payments made or received, discounts, rebates, or non-monetary benefits. This includes, for each venue identified, the aggregate amount of any payment for order flow received, transaction fees paid, or transaction rebates received. We suggest that all flows where conflicts of interest might arise are published in a separate table, independently from their inclusion to the top 5 rankings. Those flows would include flows where the investment firm routes orders to their own SI, to an MTF they operate, or to venues they receive payment for order flow from. In each case, the traded volume and the payments received would be included, if applicable.

<ESMA\_QUESTION\_BEEX\_7>

1. **: Do you agree with the cost benefit analysis as it has been described in Annex II?**

<ESMA\_QUESTION\_BEEX\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_BEEX\_8>

1. **: Are there any additional comments that you would like to raise and/or information that you would like to provide?**

<ESMA\_QUESTION\_BEEX\_9>

Börse Stuttgart agrees with regulators that the best execution reports are rarely read, as is evidenced by the very low numbers of views on the websites of venues and investment firms. They lack consistency and include high volumes of data and currently do not enable stakeholders to make meaningful comparisons on the basis of the information they contain. We understand that ESMA limits its proposals to Level 2 regulation while it accounts for potential future Level 1 legislation to establish a Consolidated Tape (CT) under MiFID II. However, besides reducing reporting requirements or harmonising the reports, we believe that there are Level 1 and Level 2 changes that are needed to strengthen best execution in the EU.

First, the balance between dark trading and transparent trading should be framed appropriately, market structure is key to deliver best execution and dark trading should be thoroughly limited. Dark venues may serve as useful execution venues at times for large trades, but their lack of transparency affects best execution obligations. Darkness and fragmentation impact best execution: Trading in dark venues reduces the information available for the price formation process as most dark orders could contribute to price formation. By reducing the depth in lit order books, dark trading fragments the order flow, which can have adverse selection risks and results in higher spreads.Discriminatory access and rules (OTC and SI) and discretionary trading (OTC) also raise issues of level-playing-field and conflicts of interests.

Fragmentation, darkness, and poor SI and OTC data quality also deprive brokers and investors of a clear fully consolidated picture of liquidity. Retail investors cannot easily determine whether they receive best execution. In that regard, a CT with post-trade information that is accessible, complete (covers all transactions), and of high quality would enhance best execution data and improve transaction cost analysis, compliance analysis, liquidity risk analysis, valuation of positions, etc.

<ESMA\_QUESTION\_BEEX\_9>