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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 | European Association of Public Banks |
| Activity | Issuer Association |
| Are you representing an association? |[x]
| Country/Region | Belgium |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_BEEX\_1>

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<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>

We understand that the crucial question for RTS 27 reports is if these reports should be re-instated. Based on the evidence we have with these reports so far, we do not think that they provide meaningful information which justifies the efforts in producing these reports. Neither have these reports been widely used by prospective recipients so far (measured by observed page views) nor are they helpful for investment firm’s own decisions to determine suitable best execution venues. We do not expect that the proposed modifications of RTS 27 reports would change that.

In this context, we very much welcome the fact that the EU-COM has proposed a deletion of Art. 27 (3) [RTS 27] as part of the Capital Markets Union package.

In case the RTS 27 reports would be re-instated in spite of the obvious questions regarding their usefulness, we propose that in addition to the deletion of market makers from the list of execution venues that are required to report under RTS 27, the “other liquidity provider” should be deleted. The latter is not involved in quotation to a significant extent. In addition, there still remain difficulties with definition of the “other liquidity provider” – regardless of guidance provided by ESMA in its Q&A 18 in the “Best execution” section of the “MiFID II and MiFIR investor protection and intermediaries topics”.

Apparently, best ex reporting for other liquidity provider seems to be mainly relevant for CFDs (page 14, section 34). Therefore, as a fallback, only “other liquidity providers” providing liquidity in CSDs should be subject to the best execution reporting requirements.

We do not agree that reports shall be published via a planned EU Single Access Point (ESAP) according to Article 5 (3) of RTS 27 (new). This is an additional administrative burden which is not in proportion to the questionable benefit the report has for the recipients.

<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>

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<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 take a very critical view of the changes proposed in this section. It almost seems as if the market should be thinned out by raising the requirements for best ex reporting unnecessarily. Many of the requirements cannot be met by systematic internalisers, which will lead – in consequence - to their exclusion from the market. Overall, the complexity of the requirements and necessary corresponding implementation efforts (apart from the fact that in some cases implementation is factually impossible) are disproportionate to the benefits for the market.

We oppose the introduction of a so-called "median transaction". In addition, as regards equity instruments traded on a trading venue, there may be such a thing as a median transaction, the publication of which could lead to a knowledge gain for the market. However with regard to non-equity instruments, such publication of data would be much more complex and, in the context of derivatives outright meaningless. As a result, the institutions would have a very high cost (since currently the necessary data in order to determine the parameters of such a “median transaction” is not stored in the corresponding systems of the institutions) for no or little gain in knowledge for the market.

With regard to costs, we would like to note that these vary per customer group. This stresses the point that there is no “median transaction” that provides meaningful information for all market participants. In addition, retail clients receive a cost statement in the PRIIPs KID; for wholesale clients, the cost statement was in many cases abolished in the MiFID Quick Fix for good reason. It is therefore neither necessary nor in line with recent developments to provide cost information via best ex reporting.

With regard to "further information on costs", we would like to point out that this is not feasible for derivatives. Corresponding statements are only possible with regard to bonds and equity instruments. However, the disclosure of costs in the best execution reporting contradicts the facilitations recently made in the MiFID Quick Fix.

Also the calculation of the speed of execution for a median monetary transaction size is not feasible for systematic internalisers.

<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>

Already the deadline of three months is currently not feasible. Then - especially with the envisaged changes - a one-month deadline is cannot be complied with.

<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>

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<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>

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<ESMA\_QUESTION\_BEEX\_6>

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

<ESMA\_QUESTION\_BEEX\_7>

We are convinced that the best ex report are and will not be read by the investor, neither in the current nor in the adjusted form. Based on the evidence we have with these reports so far, we do not think that they provide meaningful information which justifies the efforts in producing these reports. We could not observe any significant use by customers and therefore consider the market relevance of the reports very low (\*). It is therefore assumed that investors cannot or do not make any meaningful comparisons between firms on the basis of this data (recital (9) DIRECTIVE (EU) 2021/338). Relevance of the RTS 28 reports is apparently for regulatory purposes only. We do not think that modifications to the RTS 28 reports will significantly change this outcome. Therefore the RTS 28 reports should be abolished. As the UK (FCA) will delete RTS 27/28 (https://www.fca.org.uk/publication/policy/ps21-20.pdf), we believe that there will be a serious competitive disadvantage for EU institutions if this obligation is maintained. We therefore strongly advocate the abolition of best ex reporting.

In case the RTS 28 report requirement were maintained, we see only limited informative value for individual customers with regard to the extended disclosure requirements for PFOF.

(\*) We did a rough survey amongst our members and were provided with the following data (accesses include both TOP 5 report as well as quality of execution report and it should be noted, that these accesses might not even be done by clients / private individuals but rather by professionals or eligible counterparties): Bank 1: 1000 clients – 10 accesses per year = **1%** / Bank 2: 1500 clients – 7 accesses per year = **0,47 %** / Bank 3: 8000 clients – 11 accesses per year = **0,14 %** / Bank 4: 25.000 clients – 4 accesses per year = **0,02 %.**

<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>

We strongly object to the cost benefit analysis in Annex II. Given the fact that there are significant doubts that the RTS 27 and 28 reports provide meaningful information to the public and market participants justifying the costs to the industry in the EEA we believe ESMA should have considered abolishing the obligation to provide both reports altogether. It had already been decided as part of the MiFID II quick fix to suspend the RTS 27 obligation. With this background, we believe that any cost benefit analysis on future obligations has to discuss in detail the pros and cons of abolishing both reports. But the existing cost benefit analysis does not cover this important topic at all.

<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>

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<ESMA\_QUESTION\_BEEX\_9>