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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 | Société Générale |
| Activity | Other |
| Are you representing an association? |[ ]
| Country/Region | France |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_BEEX\_1>

Société Générale is one of the leading European banking and financial services groups headquartered in the European Union. Société Générale has over 138,000 members of staff in 63 countries and supports individual clients, businesses and institutional investors around the world by offering a wide range of advisory services and tailored banking and financial solutions.

Société Générale welcomes the opportunity to comment on the proposed modifications to best execution reports required under article 27(3) of MiFID II (“RTS 27 reports”) and article 27(6) MiFID II (“RTS 28 reports”).

Regarding RTS 27 reports, we had welcomed the 2 years suspension provided by MiFD II “quick fix” (Directive (EU) No. 2021/338), but we continue to believe that the best thing to do would be to **permanently remove RTS 27 reports**.

We are all the more convinced of this as:

* as acknowledged in the consultation itself, RTS 27 reports are rarely read by market participants, and are clearly not used in the setting of their best execution policy. One of the main reasons for this is that market participants use sophisticated Transaction Cost Analysis tools and data from their own recent transactions to update their execution policy, while quarterly RTS 27 reports rely on data dating back up to three months. Although we appreciate ESMA’s efforts to simplify the process to publish quarterly report, the proposed changes would not address the structural flaws that make the RTS 27 reports irrelevant to most market participants.
* The cost benefit analysis in the consultation doesn’t provide any convincing evidence that the modified RTS 27 reports would entail any increased interest from market participants.
* In terms of costs, the cost benefit analysis states that “ESMA believes that the overall costs that would be associated with the implementation of the potential proposals included in this CP are proportionate to the benefits” but doesn’t provide any quantitative data, figures or evidence to support this statement. This is all the more disturbing as entities required to produce quarterly RTS 27 reports under the current text already had to provide significant investments that revealed highly disproportionate to the benefits brought by the reports.
* The Consolidated Tapes that are set to be put in place under the revised MiFIR (as per the Commission’s proposal published on 25 November) will provide real-time data on executed transactions, that are far more valuable for the assessment of the quality of execution and the adaptation of best execution policies than quarterly data (be they detailed as they are under current RTS 27 or aggregated as proposed in the consultation). Collective efforts should hence be focused on the effective emergence of consolidated tapes, rather than on the implementation of modified RTS 27 reports.
* It should be noted that, further to their consultation on the Wholesale Market Review, UK authorities have recently confirmed (Policy Statement 21/20 on “Changes to UK MIFID’s conduct and organisational requirements”) the permanent removal of RTS 27 and RTS 28 reports. In this context, requiring EU market participants to engage in further investments with no evidence of any benefit would negatively affect the attractiveness of EU financial markets.

On this ground, Société Générale supports the permanent removal of RTS 27 reports. We note that this removal would be consistent with the proposal by the Commission, in the CMU package published on 25 November, to delete article 27(3) MiFID II.

Similarly, Société Générale calls for the **permanent** **removal of the annual RTS 28 reports**, that are clearly not used by our clients in their current form, and for which we have no reason to believe that the proposed modifications would entail an increased interest.

We note that this removal has already been confirmed by UK authorities through their Policy Statement 21/20 providing for “Changes to UK MIFID’s conduct and organisational requirements”, on the ground of a consultation that clearly confirmed the absence of interest of market participants.

Again, we disagree with the Cost Benefit Analysis in Annex II, since ESMA does not provide any quantitative estimate of the investment required to update RTS 28 reports, while our experience tends to indicate that the proposed changes would entail non negligeable one-off and maintenance costs, for no clear benefit.

<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>

As mentioned in our preliminary remarks, Société Générale supports the permanent withdrawal of RTS 27 reports and won’t hence answer on the scope of venues for a possible new RTS 27.

<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>

Société Générale does not agree with the proposed level of granularity.

With a view to producing aggregated reports instead of the current detailed RTS 27 reports, one could consider that the proposed level of granularity makes sense. Still, we would like to insist on several aspects:

* The level of granularity proposed relies on liquidity when it comes to shares and some derivatives (the DTO qualification being a proxy in that domain), but solely on the nature of the instrument when it comes to bonds or securitized derivatives. This means that the proposed categories would aggregate instruments with little common features. Bluntly speaking, assessing Best Execution on that ground would be like evaluating mammals’ abilities by averaging figures for elephants (German Bund) and mouses (Romanian govies).
* We are concerned with the costs linked to the development of such aggregated reports. Typically, information about the features of transactions undertaken as an SI and information about the nature, the liquidity status or DTO status of the said instrument may not be kept in the same database, meaning that the production of the proposed reports would require non negligeable developments.
* We are not convinced that the investments required to develop the new reports would serve any real purpose, as we have no reason to believe that the reports using the proposed level of granularity would be more useful for market participants and would generate more interest than the current ones.

With this in mind, we support the permanent deletion of RTS 27 reports.

<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>

Société Générale does not agree with the proposed metrics to report the execution quality.

The same remarks as for Q2 apply: (i) the level of aggregation would deprive most metrics from any relevance, (ii) the performance of computations would require significant developments and (iii) we do not see what unanswered needs the computed metrics would answer. Indeed, the proposed new RTS 27 reports seem to be a solution looking for a problem.

In the current context, we believe that collective efforts on accessibility to market data and assessment of the execution quality should rather be focused on the emergence of effective consolidated tapes, eg with easy and cheap access for all market participants.

With this in mind, we support the permanent deletion of RTS 27 reports.

<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>

Société Générale does not answer to this question, as we support the permanent deletion of RTS 27 reports.

<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>

Our experience of RTS 28 reports is that investors show little, if any, interest for the reports, as they use sophisticated tools to select their execution partners, so that the list of the 5 main venues / brokers used is not relevant to them.

We note that this lack of interest was confirmed by the consultation launched by the UK authorities on that same topic.

On this ground, we do not believe that the examination of “good or bad practices of reporting by investment firms under the current RTS 28” is of any use, and we support the permanent deletion of RTS 28 reports.

<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>

As mentioned above, our experience is that RTS 28 reports are not used by market participants for whom they have been designed.

We hence support their permanent deletion.

Still, if RTS 28 reports were to be maintained, we see only additional complexity and no merit in the split of reports on the ground of tick size liquidity bands.

<ESMA\_QUESTION\_BEEX\_6>

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

<ESMA\_QUESTION\_BEEX\_7>

As mentioned above, our experience is that RTS 28 reports are not used by market participants for whom they have been designed.

We hence support their permanent deletion.

Still, if RTS 28 reports were to be maintained, we would support the deletion of firms’ obligation to report as part of the top five list, the percentage of the executed orders that were passive and aggressive orders.

With regards to the inclusion of information on received payments for order flow in the summary on the firms’ achieved execution quality, we believe that a clarification of which practices are precisely targeted would be a prerequisite.

<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 do not agree with the cost benefit analysis as it has been described in Annex II.

The common experience on RTS 27 and RTS 28 reports is that they have been costly to implement, and are rarely, if ever, used by market participants for whom they have been designed.

On this ground, any proposal for change – eg any proposal that would not equate to the permanent removal of RTS 27 and 28 reports – should be based on a thorough and quantitative analysis of (i) the additional costs entailed by the proposed modifications and (ii) the increased relevance of the reports for the intended users.

We find no such analysis in the cost benefit analysis.

<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>

As already mentioned, we consider that the recently published proposals by the European Commission “amending Regulation (EU) No 600/2014 as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders” and “amending Directive 2014/65/EU on markets in financial instruments” are game changers when it comes to RTS 27 and RTS 28 reports.

Indeed, and further to the 2 years suspension provided by MiFD II “quick fix” (Directive (EU) No. 2021/338), the proposal related to MiFID II aims at deleting article 27.3. MiFID II, which would deprive RTS 27 reports from their legal basis.

Even more importantly, the proposal related to MiFIR focuses on the emergence of effective Consolidated Tapes that would gather data related to executed transactions across the Union. When it comes to the assessment of the quality of execution, such CTs would undoubtedly be more useful than the RTS 27 and 28 reports, that so far have met very limited demand across market participants. We hence believe that the collective efforts should be directed towards the success of such CTs, and that, because of the investments that they would require and in the absence of any evidence of an increased interest from market participants, the proposed modifications to RTS 27 and RTS 28 reports would mostly be a distraction of resources.

On this ground, we advocate for the permanent removal of RTS 27 and RT 28 reports.

<ESMA\_QUESTION\_BEEX\_9>