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| Reply form  |
| For the Consultation Paper (CP) on ESMA’s Opinion on the trading venue perimeter |



28 January 2022 | ESMA70-156-5287

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **29 April 2022**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**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.

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**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, investment firms and market operators that are subject to MiFID II and MiFIR. This paper is also important for trade associations and industry bodies, institutional and retail investors, their advisers, consumer groups, as well as any market participants because the MiFID II and MiFIR requirements concern the market structure of the EU and the perimeter of trading that should be considered as multilateral and regulated as such.

1. Do you agree with the interpretation of the definition of multilateral systems?

<ESMA\_QUESTION\_TVPM\_1>

Yes, and we, the Electronic Debt Markets Association, EDMA (more information at [www.edmae.org](http://www.edmae.org/)), welcome the additional step taken by ESMA in publishing a Consultation Paper with regard to this Opinion. We are in favour of ensuring a consistent approach to a common regulatory framework for all multilateral systems so that systems offering similar services are regulated consistently across the Union (including where such services operate across different trading protocols or business models).

EDMA members agree with all four key aspects of the definition of multilateral system identified by ESMA in the draft Opinion.

<ESMA\_QUESTION\_TVPM\_1>

1. Are there any other relevant characteristics to a multilateral system that should be taken into consideration when assessing the trading venue authorisation perimeter?

<ESMA\_QUESTION\_TVPM\_2>

No. ESMA has identified all of the relevant characteristics of a multilateral system, as defined by MiFID II. Although we expect that characteristics will emerge as innovation and market practices change, possibly with the intention of avoiding regulation or with the intention of staying outside of the perimeter and we look forward to continuing to work with ESMA to ensure the assessment of the trading venue perimeter remains alert to relevant characteristics.

In our reading of Paragraph 14 of the preamble we note broadcasting is not a defining characteristic or a requirement for a system to be considered multilateral. This is not sufficiently clear when reading Paragraph 14 of the preamble when discussing bulletin boards.

We consider that, to introduce any additional new elements to the definition of multilateral system beyond the four key aspects already set out in MiFID, will only serve to complicate, and not clarify the situation and would be counterproductive to the regulatory intention.

<ESMA\_QUESTION\_TVPM\_2>

1. In your experience, is there any communication tool service that goes beyond providing information and allows trading to take place? If so, please describe the systems’ characteristics.

<ESMA\_QUESTION\_TVPM\_3>

EDMA agrees with ESMA that firms should assess their systems against MiFID II and the Opinion and evaluate whether or not their systems fall within or outside of the trading venue perimeter.

<ESMA\_QUESTION\_TVPM\_3>

1. Are you aware of any EMS or OMS that, considering their functioning, should be subject to trading venue authorisation? If yes, please provide a description.

<ESMA\_QUESTION\_TVPM\_4>

Yes. For example, third-party operated EMS and OMS systems that allow users to interact with trading interests, such as single dealer quotes (as described in Figure 2 on page 17), should be considered as multilateral systems.

EDMA members consider that any entity that aggregates or consolidates trading interests from multiple third parties and meets all four key aspects of the definition of multilateral system should be required to seek authorisation as a trading venue.

We welcome the distinction drawn by ESMA between genuine Execution Management Systems (EMS) and systems that appear to be an EMS, but in fact constitute a multilateral system that requires authorisation. The diagrams provided are particularly helpful in making this distinction.

For clarity and as a peripheral observation, we would like ESMA to clarify whether in Figure 1 that, for the purposes of assessing whether a system can be considered as multilateral, third country trading venues would be treated in the same way as EU trading venues.

<ESMA\_QUESTION\_TVPM\_4>

1. Do you agree that Figure 4 as described illustrates the operation of a bilateral system operated by an investment firm that should not require authorisation as a trading venue?

<ESMA\_QUESTION\_TVPM\_5>

Yes,although we would like to see clarification that the intent of [4.2 (66)] is to prevent Bank A initiating a request to trade with Client A…N, rather than preventing a desk of Bank A trading with another desk of Bank A.

EDMA is of the view that bilateral negotiation protocols, which never allow more than one buyer and one seller to interact on a particular trade negotiation, should not be in scope because, in true bilateral systems, buyers and sellers are not in price competition with each other. Any system which puts multiple parties in competition with each other for liquidity provision should be in scope. By distinction from operating a multilateral system, bilateral trading functionality essentially elevates, and makes more efficient, the process of two parties communicating via e-mail or instant message.

<ESMA\_QUESTION\_TVPM\_5>

1. Do you agree that a “single-dealer” system operator by a third party, as described in Figure 5, should be considered as a multilateral system? If not, please explain.

<ESMA\_QUESTION\_TVPM\_6>

EDMA agrees that a “single-dealer” system operated by a third party, as described in Figure 5, should be considered as a multilateral system where that third party configures the operating conditions of the 'single-dealer' system with the Dealer not being capable of such configuration.

ESMA has correctly identified the role of governance of the system as the distinction between Figure 4 and Figure 5. In Figure 4 the Dealer itself sets the rules of the “single-dealer” system and should not be considered multilateral, regardless of whether they develop the technology in-house or outsource the system technology. In Figure 5 instead the third-party provider sets the rules of the “single-dealer” system and should be considered multilateral.

<ESMA\_QUESTION\_TVPM\_6>

1. Do you agree that systems pre-arranging transactions that are formalised on a trading venue, even when arranged in a multilateral way, should not be required to be authorised as trading venues? Do you agree with the justification for such approach?

<ESMA\_QUESTION\_TVPM\_7>

Yes, we agree. Systems pre-arranging transactions that are formalised on a trading venue should not themselves be required to be authorised as a trading venue, subject to the proviso that the onus must be on such multilateral systems to ensure that all such pre-arranged transactions are ultimately formalised on a trading venue, as per Paragraph 82 of the consultation, failing which the pre-arranging system should itself seek authorisation as a trading venue.

However, we disagree with the view in Paragraphs 78 and 80 of the consultation that pre-arranging systems should be considered as an extension of the trading venue where the transaction is ultimately finalised. Trading venues should only be responsible for the compliance of their own systems and venues with applicable laws and regulations. Trading venues should not be responsible for ensuring the compliance of pre-arranging systems.

<ESMA\_QUESTION\_TVPM\_7>

1. Are there any other conditions that should apply to these pre-arranged systems?

<ESMA\_QUESTION\_TVPM\_8>

No, the most important point is that these pre-arranging systems ensure that all pre-arranged transactions are ultimately formalised on a trading venue failing which they are required to be authorised themselves.

<ESMA\_QUESTION\_TVPM\_8>

1. Are there in your views any circumstances where it would not be possible for an executing trading venue to sign contractual arrangements with the pre-arranging platforms? If yes, please elaborate

<ESMA\_QUESTION\_TVPM\_9>

Yes. EDMA disagrees with the view in Paragraphs 78 and 80 of the consultation that pre-arranging systems should be considered as an extension of the trading venue where the transaction is ultimately finalised. Trading venues should only be responsible for the compliance of their own systems and venues with applicable laws and regulations. Trading venues should not be responsible for ensuring the compliance of pre-arranging systems.

It is important to note that trading venues neither necessarily know if a pre-arranging system has been involved nor require connectivity with pre-arranging systems. As such, the formalisation of a pre-arranged transaction on a trading venue can happen independently from the pre-arranging system, with the two participants themselves submitting the pre-arranged transaction to a trading venue.

<ESMA\_QUESTION\_TVPM\_9>