**Reply** **form: MiFIR Review**

RTS 2, RTS on reasonable commercial basis and RTS 23

|  |
| --- |
|  |

Responding to this paper

ESMA invites comments on all matters in the Consultation Paper and in particular on the specific questions in this reply form. 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 **28 August 2024.**

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:

* Insert your responses to the questions in the Consultation Paper in this reply form.
* Please do not remove tags of the type <ESMA\_QUESTION\_CP1\_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 responses, save the reply form according to the following convention: ESMA\_CP1\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP1\_ABCD.

* Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). 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.

Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings ‘Legal notice’ and heading ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’..

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Bundesverband deutscher Banken |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | Germany |

# Questions

**CP on the amendment of RTS 2**

1. Do you agree with the definition of CLOB trading systems proposed above? If not, please explain why.

<ESMA\_QUESTION\_CP1\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_1>

1. Do you consider that the definition should include other trading systems? Please elaborate.

<ESMA\_QUESTION\_CP1\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_2>

1. Do you agree that the description of periodic auction trading systems set out in Annex I of RTS 2 is relevant for specifying the characteristics of those trading systems in the revised RTS? If not, please elaborate.

<ESMA\_QUESTION\_CP1\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_3>

1. Do you agree to use ESA 2010 to classify bond issuers If not, please explain and provide alternatives on how clarify how to classify sovereign, other public and corporate issuers.

<ESMA\_QUESTION\_CP1\_4>

We consider the decision tree to be useful.

<ESMA\_QUESTION\_CP1\_4>

1. Do you agree with the proposed LiS pre-trade thresholds for bonds? In your answer, please also consider the analysis provided in sections 4.2.1.

<ESMA\_QUESTION\_CP1\_5>

In our view, the thresholds represent the lowest limits and should therefore not be lower.

<ESMA\_QUESTION\_CP1\_5>

1. Do you agree with the proposed LiS pre-trade thresholds for SFPs and EUAs? In your answer, please also consider the analysis provided in section 4.2.2.

<ESMA\_QUESTION\_CP1\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_6>

1. Do you agree with the approach taken for the illiquid waiver for bonds, SFPs and EUA? If you disagree with how the liquidity threshold is determined, please include your comments in Q11 for bonds, Q14 for SFPs and/or Q17 for EUAs.

<ESMA\_QUESTION\_CP1\_7>

The criteria mentioned appear to us to be comprehensible and appropriate.

<ESMA\_QUESTION\_CP1\_7>

1. Do you agree with the changes to post-trade fields summarised in Table 5? Please identify the proposal ID in your response.

<ESMA\_QUESTION\_CP1\_8>

Yes, we agree with all proposed changes to the post-trade fields.

<ESMA\_QUESTION\_CP1\_8>

1. Do you agree not to change the concept of “as close to real-time as technically possible”? If not, what would be in your view the maximum permissible delay?

<ESMA\_QUESTION\_CP1\_9>

Yes, we agree not to change the concept of “as close to real-time as technically possible”.

<ESMA\_QUESTION\_CP1\_9>

1. Do you agree with the changes proposed for the purpose of the reporting of OTC transactions?

<ESMA\_QUESTION\_CP1\_10>

Yes, we agree.

<ESMA\_QUESTION\_CP1\_10>

1. Do you agree with the liquidity thresholds set out in Table 7 above? If not, please provide an alternative approach.

<ESMA\_QUESTION\_CP1\_11>

No, we do not agree with the proposed liquidity thresholds, they should be doubled instead. The proposed thresholds are arbitrarily chosen, their level is neither derived nor technically justified. Instead, everything is subordinated to the propagated goal of massively increasing market transparency. While the creation of market transparency is a key element to deepen capital markets, it is ultimately merely the means to an end. The liquidity of a bond is measured according to whether it changes hands frequently or only rarely within a defined period. Therefore, the definition of a liquid market in Art. 2(1)(17) of MiFIR is correctly based on whether a “market in which there are ready and willing buyers and sellers on a continuous basis” exists. Currently, ESMA regularly calculates the liquidity of all outstanding bonds with the help of detailed parameters. In practice, ESMA only classifies a relatively small number of bonds as liquid – which ultimately reflects the nature of these financial instruments, as very few bonds change hands frequently. Following the MiFIR Review, the issuance size will serve as proxy. While this approach generally makes sense, it is of the essence to calibrate the sizes correctly. Incorrectly calibrated proxies bear the risk to dry out markets, since market participants will not be motivated to make liquidity available. This would lead to a tightening of the market and/or a deterioration of prices. This is because the traditional form of bond trading is a bilateral transaction concluded directly between investment firm and investor. Since this way of trading is associated with risks for the investment firm, setting the thresholds at too low a level can make it impossible for investment firms to hedge the associated risk. This in turn disturbs the equilibrium between supply and demand, thus decreasing the opportunities for investors to sell bonds in their portfolio on the secondary market, if necessary. It should also be acknowledged that post-trade transparency data will be directly reflected “as is” in the consolidated tape. Therefore, with a transparency regime that dries up markets, the consolidated tape will be useless. Against this backdrop, the liquidity thresholds should be doubled.

In more detail:

Liquidity threshold for sovereign bonds:

In its consultation paper, ESMA proposes that sovereign bonds with an issuance volume of 1 billion EUR be classified as liquid. From our assessment, this threshold is far too low for sovereign bonds. For example, German government bonds typically have an issuance size of 20-24 billion EUR. When a new sovereign bond is introduced to the market, it usually has an initial issuance size of 4-6 billion EUR and is later topped up. From experience, even a German government bond with an issue size of 4-6 billion EUR is not considered as liquid; it only becomes so with an issuance volume of at least 6 billion EUR. Because only from that point in time, there are enough willing buyers and sellers for such a bond.

Hence, for sovereign bonds, the liquidity threshold should be raised to 5 or 6 billion. Classifying some bonds as liquid when in fact, they are not means implementing market measures which are ineffective and maybe even have detrimental effects.

Issuance size with respect to covered bonds

In addition, other than stated by ESMA in its consultation paper (page 40, para. 91) we are of the view, that for covered bonds, it would be better to focus on the issuance size rather than the bond issuance outstanding amount. This is because the issuance outstanding amount has limited practical indications for covered bonds. Illiquid issuances, for example, those that started with 150 million and became attractive due to the coupon, market environment, and good spread, and were subsequently increased multiple times, resulting in an outstanding issuance amount of 500 million or more. Despite this, these bonds are still considered illiquid by all investors and other market participants because they were increased according to demand. Therefore, the outstanding issuance amount cannot be used as a standard measure.

This all comes back to the fact, that within bond markets there usually is no regular trading activity (i.e. ready and willing buyers and sellers on a continuous basis).

<ESMA\_QUESTION\_CP1\_11>

1. Do you agree with the proposed thresholds specified in the above Tables? If not, please justify by providing qualitative data to your analysis and differentiating per asset class.

<ESMA\_QUESTION\_CP1\_12>

No, we do not agree with the proposed thresholds in Tables 10-12. The proposed transactions sizes are neither in sync with market needs nor technically justified. Instead, everything is subordinated to the propagated goal of massively increasing market transparency. This is exacerbated by inappropriate liquidity thresholds and the neglection of introducing a quantitative measurement acoording to Article 11(4)(e) of MiFIR. The rating of a bond, i.e. investment grade (IG) or high-yield (HY) should be used as a proxy for the required qualitative analysis. As to the quantitative analysis of the transaction size, sizes should distinguish between 2 and 5 m € (cat. 1) and 5 to 50 m € (cat. 3) for IG bonds, and between 1 and 2 m € (cat. 2) and 2 and 50 m € (cat. 4) for HY bonds. Any transaction size above 50 m € should qualify as very large (cat. 5). Setting the thresholds in line with market realities is essential for keeping markets liquid. It should also be acknowledged that post-trade transparency data will be directly reflected “as is” in the consolidated tape. Therefore, with a transparency regime that dries up markets, the consolidated tape will be useless. Please also see answer 11.

In addition, we would like to point out that form our point of view, the transaction volume of sovereign bonds and other public bonds cannot be equated with the one for covered bonds. This is disproportionate, as the two asset classes have a completely different clientele and completely differ in their liquidity assessment. Covered bonds or corporate bonds with an issuance size of 500 million EUR have a certain predefined group of buyers and around 450 million are already been placed and the remaining 50 million remain in free flow. With regard to sovereign bonds, around 100 million EUR are traded every day due to the enormous issuance size of e.g. German government bonds of around 20-24 billion EUR. Hence, the business case differs significantly compared to covered or corporate bonds, as the buyers of sovereign bonds are preferably central banks, hedge funds or banks, which buy and sell hundreds of millions back and forth as part of their treasury investment. The activity of the buy- and sellside can, thus, not be compared to the one in other asset classes.

<ESMA\_QUESTION\_CP1\_12>

1. Do you agree with the maximum deferral period set out in the tables above?

<ESMA\_QUESTION\_CP1\_13>

No, we do not agree with the proposed maximum deferral periods in Tables 10-12. Just like the thresholds for liquidity and transaction size, the deferrals are not in sync with market realities. All criteria combined will have the effect that the liqudity of bonds will suffer. Generally, we note that in most cases price deferrals end at the end of the trading day. In combination with both liquidity thresholds and transaction sizes set at too low a level, this will dramatically increase the risk for liquidity providers since they will not be able to unwind most deals within this short time frame. This in turn will disturb the equilibrium between supply and demand, thus decreasing the opportunities for investors to sell bonds in their portfolio on the secondary market, if necessary. It should also be acknowledged that post-trade transparency data will be directly reflected “as is” in the consolidated tape. Therefore, with a transparency regime that dries up markets, the consolidated tape will be useless. Please see page 8 of [ICMA position paper: Proposal for a new post-trade transparency regime for the EU corporate bond market](https://www.icmagroup.org/assets/documents/Regulatory/Secondary-markets/ICMA-position-paper-Proposal-for-a-new-post-trade-transparency-regime-for-the-EU-corporate-bond-market-December-2021-081221.pdf) for a market sensitive calibration and our answers to Q11 and Q12.

<ESMA\_QUESTION\_CP1\_13>

1. Do you agree with a static determination of liquidity and determine that all SFPs are illiquid? If not, can you suggest any alternative methodology on how to define liquidity for SFPs?

<ESMA\_QUESTION\_CP1\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_14>

1. Do you agree not to introduce changes to the threshold size currently applicable to SFPs as provided in RTS 2?

<ESMA\_QUESTION\_CP1\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_15>

1. Do you agree with the maximum duration proposed?

<ESMA\_QUESTION\_CP1\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_16>

1. Do you agree with a static determination of liquidity and determine that all EUA are liquid? If not, can you suggest any alternative methodology on how to define liquidity for EUAs?

<ESMA\_QUESTION\_CP1\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_17>

1. Do you agree with the proposed framework for the deferral regime for EUAs? If not, please suggest an alternative methodology.

<ESMA\_QUESTION\_CP1\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_18>

1. Do you agree with the classification of ETCs and ETNs as types of bonds?

<ESMA\_QUESTION\_CP1\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_19>

1. Do you agree with the liquidity determination for ETCs and ETNs. If not, please suggest an alternative approach to the liquidity determination.

<ESMA\_QUESTION\_CP1\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_20>

1. Do you agree with the pre- and post-trade thresholds? If not, please suggest an alternative methodology.

<ESMA\_QUESTION\_CP1\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_21>

1. What is your view in relation to the implementation of the supplementary deferral regime for sovereign bonds?

<ESMA\_QUESTION\_CP1\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_22>

1. Do you agree not to make any changes to the temporary suspension of transparency obligations framework as it currently in RTS 2?

<ESMA\_QUESTION\_CP1\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_23>

1. Do you have any further comment or suggestion on the draft RTS? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_24>

1. What level of resources (financial and other) would be required to implement and comply with the draft amended RTS and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale and complexity of the activities of your organisation, where relevant.

<ESMA\_QUESTION\_CP1\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_25>

**CP on the RTS on reasonable commercial basis**

1. Do you agree to the general approach used to specify the costs and margin attributable to the production and distribution of market data? Please elaborate.

<ESMA\_QUESTION\_CP1\_26>

The costs of market data, which in many cases is not only desirable from a business policy perspective but also required by regulation, have reached dimensions in recent years that have become a market obstacle. In this respect, legislative intervention was more than necessary. The decisive factors now will be implementation and monitoring. In our view, the general approach is appropriate. Specifically, it is very important that market data users are not charged for market data according to the value that the market data represents to them (cf. para 170 on page 65 of the consultation paper). The prices charged to customers must be purely cost-based, that is, reflecting the costs of producing and disseminating data.

<ESMA\_QUESTION\_CP1\_26>

1. Do you agree with the proposed approach to cost calculation based on the identification of different cost categories attributable to the production and dissemination of market data (i.e. (i) infrastructure costs; (ii) connectivity costs; (iii) personnel costs; (iv) financial costs; (v) administrative costs)? Please elaborate.

<ESMA\_QUESTION\_CP1\_27>

Yes, the division into these different categories seems plausible.

<ESMA\_QUESTION\_CP1\_27>

1. Do you agree with the proposal of apportioning costs based on the use of resources (i.e., infrastructure, personnel, software…) for each service provided? Do you think the methodology to be used to apportion costs should be further specified? Please elaborate.

<ESMA\_QUESTION\_CP1\_28>

We agree with the proposal.

<ESMA\_QUESTION\_CP1\_28>

1. Do you agree that the net profit as defined in Article 3 of the draft RTS can be a representative proxy of the margin applicable to data fees and would you include additional principles to define when a margin can be considered reasonable? Please elaborate.

<ESMA\_QUESTION\_CP1\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_29>

1. Do you agree with the proposed template for the purpose of information reporting to NCAs on the cost of producing and disseminating data and on the margin applied to data? Please elaborate, including if further information should in your view be added to the template.

<ESMA\_QUESTION\_CP1\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_30>

1. What are in your view the obstacles to non-discriminatory access to data taking into consideration the current data market data policies and agreements?

<ESMA\_QUESTION\_CP1\_31>

It should be noted that the main reason for the current unsatisfactory market situation is the oligopoly on the provider side/sell side. While users need the data because they cannot continue their business operations legally or in fact without it, providers can dictate the price. Ultimately, this is detrimental to the capital market as a whole. That is why the price must be based on the real costs in the future, with providers receiving an appropriate margin. In any case, the price must not be based on the economic value for the user (cf. para 170 on page 65 of the consultation paper). Price transparency and strict criteria for price differentiation are of the utmost importance. <ESMA\_QUESTION\_CP1\_31>

1. What are the elements which could affect prices in data provision (e.g. connectivity, volume)? Do they vary according to the use of data made by the user or the type of user? Please elaborate.

<ESMA\_QUESTION\_CP1\_32>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_32>

1. Do you agree with ESMA’s proposal on how to set up fee categories. Please justify your answer.

<ESMA\_QUESTION\_CP1\_33>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_33>

1. Regarding redistribution of market data, do you agree with the analysis of ESMA? If not, please elaborate on the possible risks you identify and possible venues to mitigate these. In your response please elaborate on actual redistribution models.

<ESMA\_QUESTION\_CP1\_34>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_34>

1. Are there any other terms and conditions in market data agreements beyond the ones listed in this section which you perceive to be biased and/or unfair? If yes, please list them and elaborate your answer.

<ESMA\_QUESTION\_CP1\_35>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_35>

1. Please provide your view on ESMA’s proposal in respect to (i) the obligation to provide pre-contractual information, (ii) general principle on fair terms, (iii) the language of the market data agreement, (iv) the market data agreement conformity with published policies and (v) the provision on fees and additional costs.

<ESMA\_QUESTION\_CP1\_36>

In our view, ESMA's proposal is well suited to tackling the existing problems that ultimately harm the entire capital market. In our opinion, the decisive factors are transparency of the contractual terms and conditions and a fair regulation of use. Unbundling in Art. 13 RTS draft is equally necessary, as it is common market practice to offer only "large packages" at a correspondingly high price, even though only a small part of them is needed.

<ESMA\_QUESTION\_CP1\_36>

1. According to your experience, has the per-user model been inserted in the market data agreements as an option for billing? If yes, do you have experience in the usage of this option? Is the proposed wording of this option in the draft RTS useful? What are in your views the obstacles to its use?

<ESMA\_QUESTION\_CP1\_37>

TYPE YOUR TEXT HER Per-user fees are quite common. However, they have already led to unjustified pricing. There are known cases where a new calculation was made even in the case of a representative due to illness, because a new user was now active, although the first user was unable to use it. With regard to the "per-user fees" (Art. 12 RTS draft), it should therefore be clarified that this can only ever refer to the number of possible uses.

<ESMA\_QUESTION\_CP1\_37>

1. Do you agree with ESMA’s proposal on penalties? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_38>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_38>

1. Do you agree with ESMA’s proposal on audits? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_39>

The burden of proof regulation in Art. 15 Para. 1 RTS draft is very welcome, because the party claiming a breach of contract must also be able to prove it. It should be made clear that the provisions of Art. 15 Para. 2 RTS draft cannot be deviated from to the detriment of the user.

<ESMA\_QUESTION\_CP1\_39>

1. Would you adopt any additional safeguards to ensure market data agreements terms and conditions are fair and unbiased? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_40>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_40>

1. Do you agree with the standardised publication template set out in Annex I of the draft RTS? Do you have any comments and suggestions to improve the standardised publication format and the accompanying instructions? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_41>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_41>

1. Do you agree with the proposed list of standard terminology and definitions? Is there any other terminology used in market data policies that would need to be standardised? If yes, please give examples and suggestions of definitions.

<ESMA\_QUESTION\_CP1\_42>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_42>

1. Do you consider that the “user-id” and the “device” should still be considered as “unit of count” for the display and non-display data respectively? Do you think (an)other unit(s) of count can better identify the occurrence of costs in data provision and dissemination and if yes, which?

<ESMA\_QUESTION\_CP1\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_43>

1. Do you foresee other types of connectivity that should be defined beside “physical connection” to quantify the level of data consumption? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_44>

1. Do you think there is any other information that market data providers should disclose to improve the transparency on market data costs and how prices for market data are set? If yes, please provide suggestions.

<ESMA\_QUESTION\_CP1\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_45>

1. Do you agree with the approach on delayed data proposed by ESMA? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_46>

1. Do you agree with the proposal not to require any type of registration to access delayed data? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_47>

1. ESMA proposes the RTS to enter into force 3 months after publication in the OJ to allow for sufficient time for preparation and amendments to be made by the industry. Would you agree? Would you suggest a different or no preparation time? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_48>

1. Do you have any further comment or suggestion on the draft RTS? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_49>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_49>

1. What level of resources (financial and other) would be required to implement and comply with the RTS and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale and complexity of the activities of your organisation, where relevant.

<ESMA\_QUESTION\_CP1\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_50>

**CP on the amendment of RTS 23**

1. Do you agree with the proposal for a daily reporting of reference data for both transaction reporting and transparency purposes?

<ESMA\_QUESTION\_CP1\_51>

Yes, we consider this proposal to be appropriate and would ask that the reference data reporting be strictly implemented in the administrative execution as well. The reference data is required to determine whether a transaction report in accordance with Art. 26 MiFIR is to be made. If the reference data is reported too late, a trading venue reference may not be ascertainable and the transaction reports can no longer be properly carried out.

<ESMA\_QUESTION\_CP1\_51>

1. For the purposes of both equity and non-equity transparency, do you prefer to retain the MiFIR identifier as currently defined or to rely on other fields for classification purposes? If latter, please outline the proposed solution.

<ESMA\_QUESTION\_CP1\_52>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_52>

1. Is in your view, the granularity level of the MiFIR identifier adequate for the purposes of MiFIR transparency in the equity and non-equity space? If not, how should it be adjusted?

<ESMA\_QUESTION\_CP1\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_53>

1. How do you expect the change in scope of instruments subject to transparency to impact transparency reference data? Would you agree to maintain the current whole set of reference data for non-equity instruments, currently in RTS 2, in RTS 23? If not, please specify which reference data should not be retained in the view of the revised scope.

<ESMA\_QUESTION\_CP1\_54>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_54>

1. Do you agree with deleting Field 5 of RTS 2, Annex IV, and use the CFI code for the purposes of derivatives’ contract type classification?

<ESMA\_QUESTION\_CP1\_55>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_55>

1. Do you agree with the proposed alignment between RTS 23 and RTS 2 as set out in this section? Please provide details on which alignment is (not) feasible and why, considering the impact in terms of comprehensiveness and consistency of the reported information.

<ESMA\_QUESTION\_CP1\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_56>

1. As it concerns “underlying type” classification, do you agree with the proposed reliance on CFI and other reporting fields? With specific regards to Field 27, do you have proposals on how that field may be streamlined?

<ESMA\_QUESTION\_CP1\_57>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_57>

1. Do you see additional room for simplification and/or alignment of reference data for transaction reporting and transparency purposes? What would be the impact in terms of one-off and ongoing costs, benefits and change management of such simplifications, in particular with respect to reducing and consolidating data flows to ESMA that exist currently?

<ESMA\_QUESTION\_CP1\_58>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_58>

1. Do you have suggestions on how the fields mentioned above may be improved and streamlined?

<ESMA\_QUESTION\_CP1\_59>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_59>

1. Do you agree with the above assessment of the necessary adjustments to be made in the RTS 23 to accommodate for the identifying reference data?

<ESMA\_QUESTION\_CP1\_60>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_60>

1. Do you see a need to specify the ‘date by which the reference data are to be reported’ different from the date of application or have other comments with regards to the proposed timeline? If so, please specify.

<ESMA\_QUESTION\_CP1\_61>

To implement the reference data reporting obligation, all requirements must be known in detail in order to be able to programme the IT systems. The fact that a number of other complex IT systems will have to be built or existing systems will have to be reprogrammed in parallel leads to the overall implementation load being very high. The reference data reporting obligation is therefore only a sub-project of a comprehensive implementation project. As there may also be dependencies between the various reporting lines, adequate implementation deadlines are essential. Against this background, we consider an application date of at least 18 months after entry into force to be necessary.

<ESMA\_QUESTION\_CP1\_61>

1. Are there any other international developments or standards agreed at Union or international level that should be considered for the purpose of the development of the RTS on reference data?

<ESMA\_QUESTION\_CP1\_62>

For all reporting obligations, the exact requirements and the associated costs must be taken into account. Even when using data based on international standards, it must be borne in mind that they come at a cost. Even cost differences can arise, for example, depending on the time at which the data has to be purchased. For example, it is considerably more expensive to buy data real time than at a later point in time, e.g. the next day. Care must therefore be taken not to set the requirements unnecessarily high.

<ESMA\_QUESTION\_CP1\_62>

1. Do you agree with the changes proposed in the tables above? Should any other changes be considered to align the MiFIR reporting specifications with the international standards, EMIR and / or SFTR?

<ESMA\_QUESTION\_CP1\_63>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_63>

1. Do you foresee any challenges with the proposed approach under which the CSDR publications would be integrated in FIRDS?

<ESMA\_QUESTION\_CP1\_64>

We see no benefits to integrate such data in FIRDS as the demand to have ALL relevant reference data needed for penalties calculation available in a single central database is not fulfilled by this incremental change, hence, there is no use going beyond the CSDR REFIT requiring “to publish a list of financial instruments”.

<ESMA\_QUESTION\_CP1\_64>

1. Do you have any comments with regards to the inclusion of additional fields in the instrument reference data published by ESMA to indicate whether the instrument is in the scope of CSDR and to specify which MIC corresponds to a venue with the highest turnover or the most relevant market in terms of liquidity?

<ESMA\_QUESTION\_CP1\_65>

Re. line 359, to ensure consistency, such flag could be derived centrally by ESMA based on other reference data, such as CFI. However, it is not clear if CSDs would need to consider the new ESMA flag in future or continue to apply CSDR SDR penalties for any ISINs listed in FIRDS unless for shares subject to Short Selling regulation exemption.

Re. line 360, in general, the addition of any new data fields to be considered by CSDs for penalties calculations requires sufficient lead time to make the functional changes, however, we see no benefits to integrate such data in FIRDS as it falls short of the concrete demand to have ALL relevant reference data needed for penalties calculation available in a single central database – this demand is not fulfilled by this incremental change, i.e. causes costs with no benefits associated. In detail, we wonder why the new information should be added to FIRDS instead of FITRS (as it is the case for shares), more concretely the “FITRS non-equity file”.

<ESMA\_QUESTION\_CP1\_65>

1. Do you support inclusion of the new fields listed above?

<ESMA\_QUESTION\_CP1\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_66>

1. Do you agree with the amendment listed above for the existing fields?

<ESMA\_QUESTION\_CP1\_67>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_67>

1. With regards to monitoring of de-listing and re-admission, which option is preferable in your view: (i) reporting by the trading venue of all previous trading periods in the repeatable fields 10, 11 and 12 or (ii) implementing adequate reporting logic of events impacting the instrument (new, modification, termination etc) in order to enable ESMA to reconstruct all trading periods?

<ESMA\_QUESTION\_CP1\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_68>

1. Do you support suppressing the reporting of the fields listed above?

<ESMA\_QUESTION\_CP1\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_69>

1. Do you foresee any challenges with the use of JSON format comparing to XML? Please provide estimates of the costs, timelines of implementation and benefits (short- and long term) related to potential transition to JSON.

<ESMA\_QUESTION\_CP1\_70>

Yes, we see considerable challenges if there were to be a switch from XML to JSON. XML is the format commonly implemented for reporting obligations. This applies both in the EU – e.g. for reports in accordance with EMIR, MiFIR and SFTR – as well as in the USA – Dodd-Frank Act – and in Asia. Switching to JSON would be very cost-intensive and time-consuming without generating any practical benefits. It would also lead to a divergence of formats in the EU on the one hand and outside the EU on the other hand. This would hamper efficiency. We therefore strongly oppose a switch to JSON.

Moreover, in its “Study on data formats and transmission protocols“ (ESMA12-437499640-2360) ESMA itself acknowledges JSON‘S „relatively low level of adoption: JSON is not as extensively embraced by the market data contributors for trade data distribution, which may result in a less favorable response among some data contributors“. This is not only true for trade data in a narrow sense but also for transaction data in a wider sense. We strongly encourage ESMA to stick to its own study that also includes a section entitled „Suggested actions for proofing the outcome of the study“, namely the following actions: „With regards to the revision of ESMA technical choices, qualify in greater details the future needs and consider the current technical infrastructure’s constraints. […], conduct a proof of concept for validating the suitability and viability of the recommended solutions.“ To our knowledge these actions have not been taken to date. However, only if those actions delivered clear positive results could a switch from XML to JSON be envisaged for the future. Even then, we’d strongly recommend not to introduce JSON with a big bang but with a phased-in approach. Meaningful data is of utmost importance for keeping up market integrity. Against this backdrop, neither data delivery by investment firms nor data analysis by competent authorities must be hampered in any way. The best way to achieve this would be to keep the XML format.

<ESMA\_QUESTION\_CP1\_70>

1. In addition to including a field to identify the DPE, are there any other adjustments needed to enable comprehensive and accurate reporting of reference data by the DPEs?

<ESMA\_QUESTION\_CP1\_71>

The legislator has failed to introduce a provision in Article 27 of MiFIR concerning which party is responsible for the reporting of reference data. This should be made up for as soon as possible by providing for a provision analogous to Article 21a of MiFIR. In the meantime, this specification should be made at Level 2. Therefore, we do not agree with the proposal in para 384 according to which in case both counterparties are DPEs, each of them should report reference data to ESMA. In order to avoid inconsistent reports, Article 27 should be specified in the same way as Article 21a of MiFIR, i.e. only the DPE that sells should report the reference data to ESMA. <ESMA\_QUESTION\_CP1\_71>

1. With regards to the categorisation of classes of financial instruments for the purpose of the DPE register, how such classes should be designated in the register? Is there any further information that should be included in the register to ensure its usability and interoperability with other relevant systems? Do you foresee any practical implementation challenges, and if so, how they could be mitigated?

<ESMA\_QUESTION\_CP1\_72>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_72>

1. Are any other adjustments needed to enable comprehensive and accurate reporting of Article 8a(2) derivatives under RTS 23?

<ESMA\_QUESTION\_CP1\_73>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_73>