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

RTS 2, RTS on reasonable commercial basis and RTS 23

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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.

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# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Italian -Banking Association |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | Italy |

# 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>

We have gathered no considerations against the definition of Central Limit Order Book (CLOB) trading systems (TS) as discussed and presented under par. 15 to 21, i.e. combining elements of a continuous auction TS and elements of a periodic auction TS system, both parts subjected to the respective requirements of pre-trade transparency, as set out in Annex I of RTS 2.

<ESMA\_QUESTION\_CP1\_1>

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

<ESMA\_QUESTION\_CP1\_2>

We have not gathered suggestions on other trading systems (TS) that could be included in the definition of CLOB TS, also in consideration of the fact that the former appears sufficiently comprehensive, to the purposes explained by ESMA in the relevant paragraphs.

<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>

We have not gathered considerations against the period auction TS set out in Annex I of RTS 2.

<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>

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<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>

Despite the duration of the current public consultation, there was not sufficient time for our members to run some test and provide feedback on whether the proposed pre-trade LIS thresholds for non-equity instruments (under table 3) are appropriate or deserve an adjustment.

<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>

See our answer to Q.5 as the same considerations apply.

<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>

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<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>

In our opinion, changes to post-trade fields summarised in Table 5 (given that the majority of them are not linked to the MiFIR Review, as ESMA explained) will have implications for investment firms once APAs will have adopted and complied with them, hence changed the settings required to publish such information. It is important to recall that fix messages by investment firms were amended at the end of 2023 and, despite marginally, these would now go under a further amendment process which will presumably have cost implications, proportionally higher for smaller institutions in relative terms.

<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>

We agree with ESMA not to change the concept of what constitutes nowadays the *“maximum permissible delay*” and concept of “*close to real-time as technically possible*”. With specific regards to the latter, as ABI understands by its members, the fact “*close to real-time as technically possible currently allows for a maximum delay of 5 minutes*” (as stated under par. 63) represents (technically) a *safe-harbour* for those entities (typically smaller, or with smaller amounts in OTC-transactions) which are capable to comply with the relevant transparency provisions’ timeframe thanks to partially-automated or “less-fast” processes, not in a *literal real-time fashion* but still remaining underneath the “5 minutes threshold”. Hence, we agree with ESMA not to change the two above-mentioned concepts, so that the current legislative framework first of all i) will continue to offer a reasonable and flexible time-buffer to allow for small differences in the technical capabilities of investment firms in this scope and, secondly, ii) will continue to embed a measure of proportionality, which is crucial in respect of those entities which have a smaller business/transactions’ turnover and, consequently, are more limited in terms of investing on technical enhancements.

Having said all the above, ABI recognises though that the 5-minutes maximum delay envisaged by ESMA appears excessively tight for OTC derivatives transactions, due to intrinsic features of this specific asset class, compared to other asset classes in the non-equity space. More in detail:

1. the complexity of the booking process, i.e. the recording of multitude of data which is fundamental to identify the financial instrument at issue, quite different for instance than the business case of bonds, where the ISIN would be sufficient;
2. the need to adopt and use some information that the (other) counterparty is required to provide;
3. the timelines associated to the generation and acquisition of specific codes such as, for instance, the UTI (Unique Transaction Identifier) and the UPI (Unique Product Identifier);
4. it is important to note that the features above are reflected in the need to interact with many IT systems, both internal and external, in order to detect and record the transaction.

Given the absence of a mandatory time limit prescribed by the EU Co-Legislators at Level-1, we would ask ESMA to take into consideration the important material issues mentioned above on OTC derivative transactions.

Based on the issues presented above, there follow some considerations in support of those stances:

1. at EU level it has been already recognized the peculiar features of the OTC derivatives vis-à-vis other asset classes, by introducing (where necessary) an ad-hoc regime specifically tailored to them, in the context of the MiFIR review for both Transaction Reporting and Post Trade Transparency requirements;
2. other extra-EU jurisdictions have addressed this issue and adopted an alternative way forward vis-à-vis the one proposed by ESMA. For example, the Dodd-Frank Act (DFA, Code of Federal Regulations Title 17, Chapter, Part 43) provides for the concept of “*as soon as technologically practicable after execution*” which is not too far from the EU concept of “*as close to real-time as technically possible*”, particularly when it comes to taking into account potential technical constraints. However, the DFA does not provide for a specific, precise mandatory deadline for allowing a delay;
3. finally, we would deem it important to refrain from setting a 5-minutes maximum delay specifically in the OTC derivatives space also in light of the attention paid, at EU level, to the need to ensure competitiveness of EU financial markets, which is welcome (for instance, we refer to “ESMA - Building more effective and attractive capital markets in the EU”, May 2024).

<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>

In light of making any legislative text leaner, we agree with the changes proposed by ESMA for the purposes of the reporting of OTC transactions, i.e. removing the provisions under Art.7(5) and (6) of RTS 2, given that the reviewed L1 text of MiFIR, as at Art.21(a), is now embedding the statements previously under RTS 2, Art.7(5) and (6). However, an alternative solution to removing the text under Art.7(5)(6) of RTS 2 could have been that of amending the L2 legal text in Art.7(5)(6) of RTS 2, making them consistent to the wording of the reviewed MiFIR L1 text, as per Art.21(a).

Aside from the above, ABI takes the opportunity offered by this question for a few further considerations on the newly set “Designated Publishing Entity” regime (DPE). We have welcomed the clarifications provided by ESMA via its [Public Statement n. 74-2134169708-7345, dated 22 July 2024](https://www.esma.europa.eu/sites/default/files/2024-07/ESMA74-2134169708-7345_Public_statement_on_DPE_regime.pdf) ([[1]](#footnote-2)) as it complements some important necessary information our members were wondering about during the course of this public consultation. Particularly, for sake of legal certainty, it was appreciated the information that «(…) *the new DPE regime for post-trade transparency becomes fully operational on 3 February 2025. Therefore, ESMA expects that as of 3 February 2025, registered DPEs, which are party to a transaction, will make the transaction public through an APA. (…) ESMA expects that the current approach relying on Systematic Internalisers (SIs) to make transactions public through an APA should stop applying as of this date*». Equally useful it was found the following «(…) *Investment firms intending to become DPEs are encouraged to register with their NCA, indicating the classes of financial instruments for which they wish to take up this function (see Table 1 below) along with other identifying information requested by the NCAs (e.g. LEIs). NCAs will transmit the information regarding the DPEs for specific classes of financial instruments to ESMA so that the information is included in the future DPE public register. The granting of the DPE status can start anytime from now on*.»

Thanks to the information available in the Statement, some important uncertainties were clarified, and it has been made possible for interested parties to start considering whether to qualify as DPEs (for one or more classes of financial instruments). However, we believe that the Statement could have been the right occasion for ESMA to provide some further indications to local NCAs (and indirectly to the relevant stakeholders) in terms of how NCAs intend(ed) to receive contacts by investment firms interested in further details on the DPE qualification and to assess whether and how to apply (locally) to qualify as DPEs (contact offices/emails, templates, and any information relevant for the DPE application). The Statement could have been also a tool to make clear whether NCAs would have (had) some degrees of discretion in setting out the application forms for DPEs application.

<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>

Unfortunately, ABI is not in a position to express a view on the proposals regarding the liquidity thresholds set out in Table 7.

<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>

Unfortunately, ABI is not in a position to express a view on the proposed thresholds.

<ESMA\_QUESTION\_CP1\_12>

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

<ESMA\_QUESTION\_CP1\_13>

Unfortunately, ABI is not in a position to express a view on the proposed maximum deferral period.

<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>

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<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>

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<ESMA\_QUESTION\_CP1\_15>

1. Do you agree with the maximum duration proposed?

<ESMA\_QUESTION\_CP1\_16>

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<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>

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<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>

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<ESMA\_QUESTION\_CP1\_18>

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

<ESMA\_QUESTION\_CP1\_19>

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<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>

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<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>

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<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>

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<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>

Unfortunately, ABI is not in a position to express a view on the proposal to keep unchanged the framework of temporary suspension of transparency obligations as currently drafted under RTS2.

<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>

ABI takes the opportunity of this question to highlight some considerations on the “*Transfers of financial instruments between two clients with no price paid (e.g. donations or gifts)*” as reported under Table 10 e 11 (of paragraph 4.1.3.3) of the [ESMA’s “Manual on Post-Trade Transparency](https://www.esma.europa.eu/sites/default/files/2023-07/ESMA74-2134169708-6870_Manual_on_post-trade_transparency.pdf)”, in particular, on our reading which would suggest the exclusion thereof of such transfers from the post-trade transparency (PTT), as also envisaged by Art.12 of RTS2.

Under said Manual, such Transaction Type is in scope of the PTT obligation, both for operations done on- or off-venues. ABI understands that such requirement is seemingly based on the combined reading of Art.12 of RTS 2, which recalls Art.2(5) of Delegated Regulation 2017/590 on Transaction Reporting. On the basis of its members’ feedback, ABI nourishes some reservations on such inclusion and, in fact, supports its exclusion from the scope of PTT, as explained thereafter.

The overarching logic and ultimate objective of the PTT regime is to ensure and contribute to the so-called “price formation process” thanks to the “price discovery” process. On this basis, it is difficult to see if and how “transfers of financial instruments where no price is paid”, might contribute to the objective mentioned above (as it the case for donations and gifts). Differently, we acknowledge the rationale that includes these types of transactions within the scope of transaction reporting (TR) since they imply a change in property (in the final beneficial owner). As we understand, scoping these transactions within the TR relies on a “concept of transaction” which was laid down by the EU Level-1 legislation for the mere purposes of Delegated Regulation (UE) 2017/590 (Articles 2(1) e 3(1)), that encompasses also the transfers.

In consideration of the above, we would ask ESMA to take the opportunity of this consultation work to assess whether there is room for excluding the above-mentioned Transaction Type “with no price paid” from the scope of application of post-trade transparency within the Art.12 of RTS 2 or, rather, ii) to re-assess the whole set of Level 3 rules dealing with the “transfers of financial instruments between two clients with no price paid”, in line with the “Manual on Post-Trade Transparency”.

Eventually, ABI underlines the importance of an appropriate calibration and phase-in of the (currently proposed) amended level-2 legislative provisions, considering the several adjustments these will imply to the internal systems and procedures of banks and investments firms.

<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>

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<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>

First of all, we would like to underline how crucial is the topic of the fair and non-discriminatory access to market data by intermediaries and market participants. Banks and investment firms have seen in recent years a continuous and consistent growth in the costs spent for market data and indices. There is, indeed, a growing need of financial data and information from financial institutions, driven by regulatory demands (e.g. ESG, Prudential Supervision) or compliance. On the other end, there is a continuous increase of the prices for such information by info providers, even beyond the inflation rate. We therefore welcome ESMA development of a RTS on ‘reasonable commercial basis’ related to MIFID/MIFIR market data, which are part of the issue.

Having said that, we agree with the general approach used to specify the costs and margin attributable to the production and distribution of market 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, we agree with the proposed approach to the cost calculation based on the identification of different cost categories and we find it appropriate to the evolution observed in the offering of market data services over recent years.

<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<ESMA\_QUESTION\_CP1\_37>

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

<ESMA\_QUESTION\_CP1\_38>

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<ESMA\_QUESTION\_CP1\_38>

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

<ESMA\_QUESTION\_CP1\_39>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

In our opinion, firstly, it would be appropriate to provide for a distinction between the entry into force and the actual application of the RTS on RCB provisions. Secondly, a three-months timeframe does not appear sufficient to manage and thoroughly comply to the new provisions. Hence, ABI considers it appropriate to provide for the RTS to enter into force at least 6 months after the publication in the OJEU. Further to this, as it regards systematic internalisers (SI), among which smaller financial entities can be found, we believe the application of the RCB provisions should provide for an extra time for adjustments, also in consideration of the combination of a number of other legislative adjustments SI will be subject to (as for instance is the case for Clock Synchronization, Non-Equity Transparency, etc.).

<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>

TYABI takes the opportunity offered by this question to express appreciation over ESMA’s considerations in the scope of RCB, as they acknowledge a number of doubts and reservations emerged in recent years in the scope of “reasonable commercial terms” and market data providers. Specifically, ABI understands from its members that, on average, market data policies and contracts have, over time, become more and more complex or less intelligible, and this has born implications in terms of unexpected costs or impediments to replace a market data provided with another.

ABI welcomes that in level-1 legislation (i.e. MiFIR Review, Regulation EU 2845/2023) mandates ESMA to draft technical standards to:

* harmonise the notion and actual qualification of “fair contractual terms”;
* clarify what shall be intended for “non-discriminatory access” to market data;
* identify and harmonise the content, format and terms and wording of market data policies;
* list and detail the cost items that might be included in the calculation of costs for the actual production, provision and diffusion of such data. This offers a future safeguard for more rationality in the determination of market data services’ fee structures.

Consequently, ABI agrees with ESMA’s proposals in the RCB scope but it underlines the need that the actual legal text of the newly drafted RTS (available from page 303 onward of the CP) be slightly amended in order to include an essential principle (mandated by MiFIR Review and reiterated on pages 64-84 of this CP) which, however, is not made explicit within the Articles of the current version of the draft RTS on RCB, i.e. “(…) *ensure that it is* ***not*** *possible for trading venues, APAs, CTPs and systematic internalisers to charge for data according to the* ***value*** *that the data represents to individual users.* (…)”, as it mandated under Recital 12 of Regulation 2024/791 (i.e. MiFIR Review). In ABI’s opinion, the appropriate place to complement the legal text with such principle might be under Art.3 (“Principles in setting a reasonable margin for market data”), Art. 4 (“Obligation to provide market data on a non-discriminatory basis”) or otherwise under Art. 5 of the draft RTS (“Differentials in fees”). Eventually, ABI would suggest also to **complement the above-mentioned principle** – about the “value” that data represent to individual users – with a wording which would also exclude the possibility for data providers to charge for the data on the basis of the **use of such data** made by an individual user.

As it specifically regards Section 12 on page 84, ***Access and Content of Delayed Data***, in the scope of free-of-charge access to market data after 15 minutes since their publication, in ABI’s opinion the draft RTS on RCB presented in the CP should be amended to present the same kind of wording, clarity and level of detail as that of the “[*Guidelines on* MiFID2-MiFIR *obligations on market data*](https://www.esma.europa.eu/sites/default/files/library/esma70-156-4263_guidelines_mifid_ii_mifir_obligations_on_market_data.pdf)”. Indeed, analysis carried along with our members seems to bring up some inconsistencies in terms of terminology uses and the draft RTS should ideally leverage as much as possible on the wording, clarify and level of details of the above-mentioned Guidelines on Market Data.

<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>

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<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>

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<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>

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<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

As it regards ESMA’s proposal to consider a future migration of the Reference-Data reporting format from XML to JSON (pages 144-146 of the CP), ABI is not in a position to express support to it for the time being, as our members consider necessary to engage in a detailed assessment of a potential migration, across business functions, processes and products. Besides this, as it also emerged during ESMA’s Open Hearing on 28th of June, any future assessment of a timeline for the potential adoption of the new JSON format will have to take into consideration not only an estimate of costs for the EU, but also the need for both the XML and JSON formats to coexist for an undefined timeframe, as it will be necessary (for banks, infrastructures and the EU at wide) to allow for no interruption, or disruptions, with Communication and Reporting Systems of entities outside the EU which will presumably continue to use the XML format for some time after the EU future potential migration.

<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>

We agree with the adjustments proposed by ESMA consisting in identifying DPEs when they report reference data. We have no further suggestions to make in this regard.

<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>

We appreciated this question but, unfortunately, we have not gathered sufficient specific feedback on its scope.

<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>

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<ESMA\_QUESTION\_CP1\_73>

1. <https://www.esma.europa.eu/sites/default/files/2024-07/ESMA74-2134169708-7345_Public_statement_on_DPE_regime.pdf> [↑](#footnote-ref-2)