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

Technical Standards related to Consolidated Tape Providers and DRSPs, and assessment criteria for the CTP selection procedure

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\_CP2\_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\_CP2\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP2\_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 | Bundesverband der Wertpapierfirmen (bwf) |
| Activity | Investment Services |
| Are you representing an association? |  |
| Country/Region | Germany |

# Questions

Section 3 – RTS on input and output data of CTPs:

**Q1: Do you agree with grounding the assessment framework of the quality of transmission protocols on the identified categories of technical criteria?**

<ESMA\_QUESTION\_CP2\_1>

While we generally agree with the proposed framework, additional considerations should be taken into account. Specifically, the assessment should also evaluate the flexibility and extensibility of the protocols to accommodate future changes and evolving market needs.

<ESMA\_QUESTION\_CP2\_1>

**Q2: Do you believe that additional categories of technical criteria should be considered for the definition of minimum requirements of the quality of transmission protocols?**

<ESMA\_QUESTION\_CP2\_2>

In addition to the proposed criteria, the assessment should consider the protocol's flexibility and extensibility. This will ensure that the protocol can adapt to future changes and accommodate new features or requirements without requiring major modifications.

<ESMA\_QUESTION\_CP2\_2>

**Q3: Do you agree with the proposal of introducing a single set of requirements across the three asset classes (equity, bonds, derivatives), or do you believe that different requirements should be tailored for each asset class?**

<ESMA\_QUESTION\_CP2\_3>

While a single set of requirements can be technically feasible, it is essential to ensure that the protocol is sufficiently flexible and extensible to accommodate the specific needs of different asset classes. If necessary, additional data fields or modifications can be introduced to tailor the protocol to each asset class.

<ESMA\_QUESTION\_CP2\_3>

**Q4: Do you consider that the proposed minimum requirements for the technical criteria related to performance are technically feasible, coherent with the objective of high-quality data transmission to the CTP and in line with international standards? Please elaborate your response.**

<ESMA\_QUESTION\_CP2\_4>

While the proposed minimum requirements for performance are generally appropriate, we suggest adding specific requirements related to data availability and connection quality. These factors can significantly impact the overall quality of data transmission and should be considered in the assessment process. Shall the requirements be met on average? Or 95%, 99%, 100% of the time?

<ESMA\_QUESTION\_CP2\_4>

**Q5: Do you consider that the proposed minimum requirements for the technical criteria related to reliability are technically feasible, coherent with the objective of high-quality data transmission to the CTP and in line with international standards? Please elaborate your response.**

<ESMA\_QUESTION\_CP2\_5>

We agree with the proposed minimum requirements for reliability.

<ESMA\_QUESTION\_CP2\_5>

**Q6: Do you consider that the proposed minimum requirements for the technical criteria related to security are technically feasible, coherent with the objective of high-quality data transmission to the CTP, and in line with international standards and other EU regulatory frameworks on information security (e.g. DORA)? Please elaborate your response.**

<ESMA\_QUESTION\_CP2\_6>

We agree with the proposed minimum requirements for security.

<ESMA\_QUESTION\_CP2\_6>

**Q7: Do you consider that the proposed minimum requirements for the technical criteria related to compatibility are technically feasible, coherent with the objective of high-quality data transmission to the CTP and in line with international standards? Please elaborate your response.**

<ESMA\_QUESTION\_CP2\_7>

We agree with the proposed minimum requirements for compatibility.

<ESMA\_QUESTION\_CP2\_7>

**Q8: Do you agree with the proposed definition of “transmission of data as close to real time as technically possible”? If not, please explain.**

<ESMA\_QUESTION\_CP2\_8>

While we generally agree with the proposed definition, we believe it is essential to clarify that "real time" may have different interpretations depending on the specific use case. For post-trade OTC transactions, a slightly relaxed definition may be appropriate to account for the complexities involved in processing and reporting these transactions.

We support the intent that CTP data shall be a potential alternative to pre- and post-trade transparency market data derived directly from individual trading venues. However, processes which are not fully automated and require human intervention need to be considered. For post-trade OTC transactions, a slightly relaxed definition may be appropriate to account for the complexities involved in processing and reporting these transactions. We therefore propose to align this with the requirements in RTS 2 on transparency rules.

<ESMA\_QUESTION\_CP2\_8>

**Q9: Should ESMA consider specific rules for real-time transmission of transactions subject to deferred publication?**

<ESMA\_QUESTION\_CP2\_9>

First, it should be noted that the question stands alone without any reference in the explanatory text. The concept of real-time transmission may have limited value for data that is already subject to deferred publication (and therefore is already “historic”).

However, it is important to ensure that the transmission process is efficient and minimizes delays within the applicable deferral periods.

<ESMA\_QUESTION\_CP2\_9>

**Q10: Do you agree with the baseline proposal of adopting JSON as standards and format of data to be transmitted to the CTPs, or do you prefer alternative proposals? Please justify your answer and, if needed, provide additional advantages and disadvantages related to each proposal.**

<ESMA\_QUESTION\_CP2\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_10>

**Q11: Do you believe that the proposed standards and formats (baseline and any alternatives) are coherent with other CTP requirements (transmission protocols, real-time transmission and presentation of output data)? Please justify your answer.**

<ESMA\_QUESTION\_CP2\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_11>

**Q12: Do you find more suitable to prescribe one single format across the 3 CTPs (equity, derivatives, bonds) or to prescribe distinct formats according for different asset classes?**

<ESMA\_QUESTION\_CP2\_12>

See our response to Q2. A single format can be used across all asset classes, provided that the protocol is sufficiently flexible and extensible to accommodate the specific needs of each asset class. Additional data fields or modifications can be introduced as required. Thus, if a particular data field is not able to meet the needs of all asset classes, it can be multiplied for each category of asset class. Technically, it is possible to have three different sets of data fields in one set of requirements within the same data protocol. The only exception is that if different data protocols are required for different asset classes, one would abandon the concept of a single format. Any protocol and data format must be versionable and frequently reviewed.

<ESMA\_QUESTION\_CP2\_12>

**Q13: Do you support the proposals on core and regulatory data? In particular, are there other relevant fields to be added to the regulatory data? Furthermore, would you propose the inclusion of supplementary fields for input core market data beyond those intended for dissemination by the CTP?**

<ESMA\_QUESTION\_CP2\_13>

The same need for a flexible and extensible protocol applies to core and regulatory data. The core and regulatory data fields should be regularly reviewed and updated to ensure their relevance and completeness. Additional fields may be necessary to capture specific data points related to different asset classes or market segments. This also means that ESMA should be prepared to make changes if necessary.

<ESMA\_QUESTION\_CP2\_13>

**Q14: Do you support the proposal of machine-readable and human-readable formats outlined in this section?**

<ESMA\_QUESTION\_CP2\_14>

Yes, we support the proposal of both machine-readable and human-readable formats. Machine-readable formats are essential for automated processing and analysis, while human-readable formats are valuable for human interpretation and research.

Machine readability for advanced data users should be a publication in the same format as required for input data. We would also suggest that CTPs can decide to offer JSON and alternative protocols such as the FAST(FIX) protocol to their respective clients who may have implied this protocol.

Human readable formats need to have a downloadable version like csv files for research and analysis. Furthermore, for transparency purposes, a GUI/website should be available with pre-trade transparency (EBBO data) and post-trade transparency.

<ESMA\_QUESTION\_CP2\_14>

**Q15: Do you agree with the proposal of data quality measures and enforcement standards for input data?**

<ESMA\_QUESTION\_CP2\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_15>

**Q16: Do you agree with the proposal of data quality measures for output data?**

<ESMA\_QUESTION\_CP2\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_16>

Section 4 – RTS on the revenue distribution scheme of CTPs:

**Q17: On the basis of the issue presented in the above paragraph, what do you think is the right approach to identify a trading venue and group? How could a trading venue and a group be identified? How should the links with investment firms be determined?**

<ESMA\_QUESTION\_CP2\_17>

A more general comment on revenue distribution:

Before discussing any technological or governance-related design features, it should be remembered that a CT is not an end in itself. We see a certain risk that the implementation of a CT would put the CTP in a de facto "super monopolist" situation, which would further complicate the attempt to solve the existing deficiencies in terms of fair pricing and data quality.

According to Level 1 Art. 13 the obligation to make pre-trade and post-trade data available on a reasonable commercial basis RCB) applies to CTPs likewise to other data vendors.

According to Level 1 Art. 22a trading venues and APAs (‘data contributors’) have the obligation with regard to shares, ETFs and bonds that are traded on a trading venue, and with regard to OTC derivatives as referred to in Article 8a (2), to transmit the relevant data to the CTP without renumeration other than the revenue distribution. With this Obligations in mind the CTP has a very distinctive role from a competition perspective.

Therefore, we remain sceptical whether a CTP in form of a commercial “for profit” entity will be the best governance structure for the intended purpose. Furthermore, the tender process to select a CTP which will be given a five years mandate will be a challenging exercise in many respects and will require ESMA, if desired or not, to exercise a “competition mandate” with regard to fair pricing of fees for CT data.

In this context we would like to draw the attention to a related aspect which raises our concern: As outlined in paragraph 109 of the CP, CTPs are granted discretionary power to determine the portion of their revenues to be redistributed to data vendors. This provision creates a potential conflict of interest, given that CTPs are for-profit entities. There is a risk that CTPs may prioritize their own share of the revenues over the share set for redistribution of revenues to data vendors, especially if the CTP unilaterally increases his own share.

The concept of a reasonable commercial basis (RCB) is unlikely to effectively address this conflict, as it relies on subjective judgments and may not be sufficient to prevent CTPs from prioritizing their own interests. To ensure fair redistribution, it is essential to establish a transparent and objective framework that clearly defines the criteria for determining the redistribution split. In our view a governing/advisory board, comprising stakeholders from CTPs, data vendors, and users of the CT, should have a significant say in this decision (cf. our answer to Q51). Additionally, regulatory bodies such as the European Commission (EC) and the European Securities and Market Authority (ESMA) should have permanent seats on the board with a veto right to provide oversight and safeguard the interests of market participants.

Regarding the above question (on how to identify trading venues):

We wonder why ESMA wants to use the operational MIC instead of the segment MIC for criterion 1. If a market can be identified as an SME market, it will usually only be available at the segment MIC level.

<ESMA\_QUESTION\_CP2\_17>

**Q18: Do you agree with the above assessment? If not, please explain.**

<ESMA\_QUESTION\_CP2\_18>

Cf. our response regarding the assessment of the identification of trading venues and groups in Q17.

<ESMA\_QUESTION\_CP2\_18>

**Q19: For the identification of the venue of first admission to trading, do you prefer option (A) use of FIRDS, option (B) the CTP collects the relevant information itself? Please explain and provide any alternative option you consider more appropriate.**

<ESMA\_QUESTION\_CP2\_19>

A combination of FIRDS and CTP data collection is recommended to ensure the accuracy and timeliness of the information. FIRDS should be regularly updated, and the CTP should collect and verify the relevant information to avoid data delays and quality issues. The data will be cross-checked with publicly available data and should therefore also be incentivised to be up to date and correctly reported.

<ESMA\_QUESTION\_CP2\_19>

**Q20: Do you agree that a flag indicating that the transaction was subject to an LIS waiver should be information to be sent to (but not published by) the CTP? If not, please explain.**

<ESMA\_QUESTION\_CP2\_20>

Yes, it should be sent. While the CTP may not need to publish the LIS waiver flag (as suggested by the DP), it should be included in the data transmitted to the CTP for internal tracking and analysis purposes.

We even would see some benefit if the information would be made public that a transaction was published in accordance with the provisions of the LiS regime.

<ESMA\_QUESTION\_CP2\_20>

**Q21: Could the determination of the pre-trade volume be done differently by the CTP (e.g. proxy this volume with the pre-trade data received) but at the same time sufficiently accurately? If yes, please explain.**

<ESMA\_QUESTION\_CP2\_21>

Cf. our answer to Q20: The CTP may be able to use proxy data to estimate pre-trade volume, but the accuracy of this method should be carefully evaluated. A combination of pre-trade data and other relevant factors may be necessary to obtain a reliable estimate. If the CTP separates flagged trades from non-flagged trades, a proxy for pre-trade volume would not be necessary and it would be transparent that LiS waivers and flags are active. Thus, this would also give the opportunity to cross-check the transparency numbers for the redistribution mechanism.

<ESMA\_QUESTION\_CP2\_21>

**Q22: Do you agree that the methodology to distribute the revenues should require the conversion of the values into percentages? If not, please explain.**

<ESMA\_QUESTION\_CP2\_22>

Cf. also our answer to Q17.

While converting absolute values into percentages can provide a clear and comparable basis for revenue distribution, other approaches may also be considered. The chosen methodology should be transparent, fair, and aligned with the objectives of the revenue distribution scheme.

It is a good idea to incentivise SMEs, young instruments and transparency by increasing the revenue share based on these criteria. As stated in paragraphs 262-266 of the CP, the total fee income is based on costs plus a reasonable margin for the RCB to add value and provide these incentives.

However, it remains unclear on which guiding principles the proposed methodology is based. Even though the Level 1 text requires that these factors by using the relevant trading volumes shall be weighted, it is difficult to find an objective justification for the proposed weights. It would be interesting to learn whether ESMA has undertaken alternative modelling exercises, apart from using different factors in the scenarios used in Example 2 (Table 7-8, Figures 2-6)? We wonder whether a criterion could be found for the benefit value against which the magnitude of the contribution could be estimated and tested. We are thinking of a multi-factor model, such as factor analysis or regression, against which the foreseen incentives can be optimised.

In addition to transaction volumes, one could also include a liquidity contribution factor, which is typically more necessary for SMEs and young instruments. These liquidity contributions could also be a cost for the TV and could therefore be compensated by the CTP. Another proxy could be the number of instruments (that actually provide capital to companies) which have a price above a certain volume threshold at least once a day. These instruments could be calibrated against the requested weights from Level 1 text and would add economic value to the Capital Markets Union.

<ESMA\_QUESTION\_CP2\_22>

**Q23: Do you agree with the transactions to include and exclude for the determination of the volume for criteria #1 and #2? If not, please explain.**

<ESMA\_QUESTION\_CP2\_23>

The transactions included and excluded for the determination of volume should be carefully considered to ensure that the revenue distribution scheme is fair and equitable. Any changes to the inclusion or exclusion criteria should be carefully evaluated and justified.

<ESMA\_QUESTION\_CP2\_23>

**Q24: What would be your view on the frequency of redistribution? Which issues do you foresee in the redistribution process? How could those issues be solved? Please explain.**

<ESMA\_QUESTION\_CP2\_24>

The frequency of redistribution should be determined based on the specific needs and characteristics. We could think of a quarterly or monthly redistribution of revenues

<ESMA\_QUESTION\_CP2\_24>

**Q25: Do you agree with the proposed timeline for the update of the list of data contributors and the identified issues? How could the issues be solved? Please explain.**

<ESMA\_QUESTION\_CP2\_25>

Any new platform will be integrated as quickly as possible. New platforms may be compensated on a cost basis, as for market data.

<ESMA\_QUESTION\_CP2\_25>

**Q26: What would be your view on the issues for the first year of operations of the CTP? How could those issues be solved? Please explain.**

<ESMA\_QUESTION\_CP2\_26>

We do not see a problem with a CTP aggregating market data only from the day it becomes operational and vendors are connected with a certain threshold of market turnover. Furthermore, clarification is needed how the one-year period shall be calculated (e.g. calendar year vs. rolling-window)?

<ESMA\_QUESTION\_CP2\_26>

**Q27: Do you agree with ESMA preferred proposal to set the weights of the revenue redistribution scheme to 4.5, 4.0 and 1.5 for the small trading venue criterion, the young instruments criterion and the transparent instruments criterion, respectively? If not, please explain.**

<ESMA\_QUESTION\_CP2\_27>

Cf. our answer to Q22. The methodology and the respective weights are presented without any explanatory text. It would be interesting to learn whether ESMA has undertaken alternative modelling exercises, apart from using different factors in the scenarios used in Example 2 (Table 7-8 Figures 2-6). We wonder whether a benefit value criterion could be found against which the magnitude of the contribution could be estimated and tested. We are thinking of a multi-factor model, such as factor analysis or regression, against which the foreseen incentives can be optimised.

<ESMA\_QUESTION\_CP2\_27>

**Q28: Would you consider appropriate that the weight (percentages) sum to 10 (100%)? If not, please explain and provide your alternative proposal for the weights (percentages).**

<ESMA\_QUESTION\_CP2\_28>

Cf. our answer to Q27. Why recalibrate the weights to a sum of 10 if it was a percentage anyway? If so, just keep the sum of 100%.

<ESMA\_QUESTION\_CP2\_28>

**Q29: Do you agree with the proposed (i) frequency of the determination of the weights (ii) timing of determination of the weights (iii) timing of application of the weights? If not, please explain.**

<ESMA\_QUESTION\_CP2\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_29>

**Q30: Do you agree with the proposed text? Have you identified any missing points or issues?**

<ESMA\_QUESTION\_CP2\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_30>

**Q31: Do you agree with ESMA’s proposal on the criteria for a potential suspension of redistribution in case of serious and repeated breach by the CTP? If not, which alternative or/and additional criteria would you consider relevant?**

<ESMA\_QUESTION\_CP2\_31>

No objections so far. More in general: What action is taken if a data contributor is not willing to contribute as required? Is the suspension of revenue distribution a sufficient incentive? Or more in general, how can an obligation to contribute be enforced?

<ESMA\_QUESTION\_CP2\_31>

**Q32: Do you agree with ESMA’s proposal on the procedure for the suspension and the resumption of redistribution? If not, which alternative approach would you consider suitable?**

<ESMA\_QUESTION\_CP2\_32>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_32>

**Q33: Do you agree with ESMA’s proposal on the timing of the procedure for the suspension and the resumption of redistribution? If not, which alternative approach would you consider suitable?**

<ESMA\_QUESTION\_CP2\_33>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_33>

**Q34: Do you agree with ESMA’s proposal regarding a one-week timeframe for data contributors to furnish evidence of non-breaches? If you disagree, could you suggest an alternative approach that you find appropriate?**

<ESMA\_QUESTION\_CP2\_34>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_34>

**Q35: Do you agree with ESMA’s expectation on the notification to be made by the CTP to the competent authority of the data contributor once a suspension has been triggered?**

<ESMA\_QUESTION\_CP2\_35>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_35>

**Q36: Do you agree with ESMA’s proposal on the approach to the retained revenue? In your view, which rate should apply to compound the interest on retained revenue?**

<ESMA\_QUESTION\_CP2\_36>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_36>

Section 5 – RTS on the synchronisation of business clocks

**Q37: Do you agree with the proposed approach on synchronisation to reference time? If not, please explain.**

<ESMA\_QUESTION\_CP2\_37>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_37>

**Q38: Do you support a timestamp granularity of 0.1 microseconds for operators of trading venues whose gateway-to-gateway latency is smaller than 1 millisecond? If not, please explain. Would you argue for an even smaller granularity? If yes, please explain.**

<ESMA\_QUESTION\_CP2\_38>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_38>

**Q39: Do you support the proposed approach on the level of accuracy for trading venue members, participants or users? If not, please explain.**

<ESMA\_QUESTION\_CP2\_39>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_39>

**Q40: Do you agree with the proposed approach on traceability to UTC? If not, please explain.**

<ESMA\_QUESTION\_CP2\_40>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_40>

**Q41: Do you agree with the proposed accuracy levels for APAs, SIs, DPEs and CTPs? If not, please explain.**

<ESMA\_QUESTION\_CP2\_41>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_41>

**Q42: Do you think that more stringent requirements should be set for SIs compared to DPEs considering they have pre-trade transparency obligations? If not, please explain.**

<ESMA\_QUESTION\_CP2\_42>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_42>

Section 6 – RTS/ITS on the authorisation and organisational requirements for DRSPs

**Q43: Do you agree with the approach proposed by ESMA?**

<ESMA\_QUESTION\_CP2\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_43>

**Q44: Do you agree to include new authorisation provisions on ownership structure and internal controls for APAs and ARMs?**

<ESMA\_QUESTION\_CP2\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_44>

**Q45: Do you have any further comments or suggestions on the draft RTS? Please elaborate your answer.**

<ESMA\_QUESTION\_CP2\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_45>

**Q46: Do you agree with the approach proposed by ESMA?**

<ESMA\_QUESTION\_CP2\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_46>

**Q47: Do you foresee specific conflicts of interests that may arise between (i) CTP and data contributors and (ii) CTP and clients and users?**

<ESMA\_QUESTION\_CP2\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_47>

**Q48: What other elements, if any, should be included in the RTS on authorisation of CTPs?**

<ESMA\_QUESTION\_CP2\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_48>

**Q49: What other elements, if any, should be included in the RTS on authorisation of CTPs?**

<ESMA\_QUESTION\_CP2\_49>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_49>

Section 7 – Criteria to assess CTP applicants

**Q50: How would you define retail investors, academics and civil society organisations for the purpose of the CTP?**

<ESMA\_QUESTION\_CP2\_50>

The group of users that have free access should be complemented with usage for “non-commercial purposes”.

<ESMA\_QUESTION\_CP2\_50>

**Q51: What are in your view the most important elements that should be taken into account when defining the governance structure of the CTP?**

<ESMA\_QUESTION\_CP2\_51>

We see the opportunity to introduce a new market infrastructure utility provider which operates on the RCB principle. As a new entrant, it should be much easier to optimise the legal framework for a data provider that charges fees based on cost recovery and a reasonable margin.

It is essential that the CT is governed in a way that reflects the interests of all stakeholders, including data contributors and users. To achieve this, the governance body/board should have broad representation, including data users (from the buy and sell sides, as well as other users), data contributors, and vendors. It is also important to ensure that the advisory body/board has proportionate representation, with no one segment dominating. This means that different communities, such as data contributors and data users, should have equal voting rights. Finally, the EC and ESMA should have permanent voting rights.

The advisory body/board should have voting rights on decisions relating to:

* Pricing policies/fees
* Revenue sharing scheme (if applicable)
* Simple, easy-to-use licensing policies
* Data content, standardisation
* Data quality
* Speed and connectivity
* Futureproofing the tape – it needs to continue to meet market demand to grow.

It is essential that a robust Conflict of Interest Policy forms part of the governance scheme.

In terms of technology, CTPs should provide open, neutral, and transparent data platforms on which trading data is made available to all users and by all required providers and owners who are obliged to share data under MiFIR. The core technical aspects should include requirements for seamless integration, straight-through processing and adherence to global data standards. Furthermore, the potential replacement of the current CT provider should be facilitated by using open-source software wherever possible. A legal commitment to make the software and CTP data available free of charge would enable ESMA to appoint a replacement CTP more easily if necessary.

It is important to consider the long-term financial viability of the CTPs. Given that they will constitute a long-term infrastructure, and in practical terms it remains uncertain whether it will be feasible to replace an operating CTP every five years. Therefore, we are of the opinion that it is worthwhile to consider the function of CTPs – as mandated monopolists – to be close to public utilities, even though they are operated as for-profit companies, however under the restriction of the reasonable commercial basis (RCB) principle.

We further recommend that CTPs issue regular reports on the data quality of the various data contributors in order to foster higher quality standards which are clearly needed. In order to enforce these standards, we fully support that – as an enforcement mechanism – data contributors which do not comply with the required standards on a continuous basis, shall be subject to a retained or even reduced revenue distribution.

<ESMA\_QUESTION\_CP2\_51>

**Q52: Should the CTP include representation of other stakeholders within their governance structure?**

<ESMA\_QUESTION\_CP2\_52>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_52>

**Q53: Do you agree with the proposed approach on the assessment of necessity of joint application?**

<ESMA\_QUESTION\_CP2\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_53>

**Q54: Which minimum requirements on identifying and addressing potential conflicts of interest would you consider relevant?**

<ESMA\_QUESTION\_CP2\_54>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_54>

**Q55: To score the applicants on their development expenditure and operating costs, ESMA intends to look at the costs the applicant will need to cover on an annual basis. Do you agree with this approach? If not, which alternative approach would you deem more appropriate?**

<ESMA\_QUESTION\_CP2\_55>

A transparent, accurate and verifiable cost assessment is paramount at all stages and for all stakeholders. It constitutes an important selection criterion in the tender process (scoring), it defines the basis for the usage fees chargeable (with the reasonable commercial basis margin as a function of costs) and finally it has a direct impact (based on the CTPs fee structure) on the amount of revenues available for redistribution to data providers.

Therefore, an ongoing cost monitoring on an annual basis appears to be preferential in principle. However, the monitoring process itself will create additional costs which will be borne by the users of the tape as part of their fees. Accordingly, given that the initial cost assessment is accurate, it could be considered that an annual adjustment could alternatively be based on an official statistical inflation index.

In paragraph 262 of the CP costs are listed including “financial costs”. In general, the calculation of infrastructure or personal costs which are directly attributable (including amortisations) does not give raise to controversy. While we agree that amortisations clearly should be part of the allocated costs, we are sceptical with respect whether other financial costs shall be included because of differences in taxes, business models, capital structures etc.

<ESMA\_QUESTION\_CP2\_55>

**Q56: The simplicity of the fee structure and licensing models can be scored by taking into account the number of tiers, fee types and licensing models. Does this accurately reflect simplicity? If not, would you propose a different approach to assess simplicity? Please elaborate.**

<ESMA\_QUESTION\_CP2\_56>

It is essential that a straightforward fee structure and licence model are put in place. With regard to the RCB on market data, the licensing models are cost-based and do not differentiate between the use of the data, with the exception of the free data for retail investors, academics, civil society organisations and other non-commercial purposes. The only differentiating factors are the amount of data and low latency. Consequently:

* The fees set by the CTP pricing policy must comply with the RCB principle outlined in Article 13 of MiFIR.
* Fees should be set based on a simple system and not be based on multiple terms.
* Pricing based on the value created using CTP data should be prohibited.
* Pricing differentiation shall only allow for professional subscribers (strictly based on technical factors as latency and data volume) with free access to retail investors, academics, civil society organisations and competent authorities.
* Pricing shall be client based, with a pricing policy based on the legal entity of the client/customer.
* Clients shall be free to decide how they use and further process the data received from the tape (e.g. within display or non-display applications).

<ESMA\_QUESTION\_CP2\_56>

**Q57: The approach proposed for the assessment of the ability of CTP applicants to process data is grounded on the assessment of the technological infrastructure in ensuring scalability, low-latency, accuracy and security throughout the data lifecycle. Do you agree with this approach, or would you consider additional elements to be assessed?**

<ESMA\_QUESTION\_CP2\_57>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_57>

**Q58: Which is the minimum speed of dissemination you would consider appropriate for the CTP? Please distinguish between asset classes (and for the case of the equity CTP, between pre- and post-trade date).**

<ESMA\_QUESTION\_CP2\_58>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_58>

**Q59: The proposed approach to data quality would reward additional commitments and measures that CTP applicants intend to put in place. Do you agree with this approach ? What additional commitments and measures would you consider appropriate?**

<ESMA\_QUESTION\_CP2\_59>

In accordance with MiFIR, the CTP is required to have systems in place that can effectively check the completeness of the data provided, identify obvious errors, and request the re-submission of data. Standardisation of the post-trade bond tape using the FIX Trading Community's "MMT" typography will be a key aspect of data quality. It is of the utmost importance to accurately identify addressable liquidity and to accurately show what has traded, with no duplications or omissions, in order to reduce systemic market risk. Market participants use this data in many different ways depending on their needs and business models, e.g. to calculate liquidity, price disappearances among different venues and other calculations. They all have in common, that it is of utmost important that the data is complete and correct. We therefore ask ESMA to consider only tender bids which will ensure that the CTP focuses on improving data quality through additional voluntary measures.

<ESMA\_QUESTION\_CP2\_59>

**Q60: The proposed approach to modern interface and connectivity is grounded on the assessment of the interface technology in terms of reliability, scalability, low latency and security. Do you agree with this approach, or would you consider additional elements to be assessed?**

<ESMA\_QUESTION\_CP2\_60>

Yes, provided that the additional criteria mentioned in Q59 are taken into account. It is essential that the CTP provides for both all types of usage (display and non-display, human and API). In terms of operational and cyber reliability, it is sufficient to state that the CTP is governed by DORA in the same way as any other ICT provider. It may be that the CTP itself could be considered a critical ICT provider, which would increase the administrative and financial burden and bring the CTP under DORA supervision. On the other hand, each CTP user must determine whether the CTP ICT service is "important" to their firm. We can envision a scenario where firms assert that the CTP is merely an additional data source, not a primary function under DORA. This approach could streamline the administrative burden for the user firm.

<ESMA\_QUESTION\_CP2\_60>

**Q61: Do you agree with the proposed approach to record keeping, based on the provision of document supporting intended compliance?**

<ESMA\_QUESTION\_CP2\_61>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_61>

**Q62: The proposed approach to resilience, business continuity and cyber risks is grounded in assessing mandatory DORA requirements applicable to CTPs as a first step (selection criterion), to then reward additional commitments and measures CTPs applicants intended to put in place to mitigate and address outages and cyber-risk . Do you agree with this approach? What additional commitments and measures would you consider appropriate?**

<ESMA\_QUESTION\_CP2\_62>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_62>

**Q63: Do you agree with the use of the Power Utilisation Effectiveness (PUE) as the metric to assess the energy consumption of the CTP? If not, which alternative approach would you favour?**

<ESMA\_QUESTION\_CP2\_63>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_63>

Annex II – Cost Benefit Analysis:

**Q64: What costs do you expect in order to comply with the proposed minimum requirements for the quality of transmission protocols? What benefits do you expect? Please indicate to what role (data contributor, CTP, or CT user) your response refers.**

<ESMA\_QUESTION\_CP2\_64>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_64>

**Q65: What costs do you expect in order to comply with the proposed data format for input and output data? What benefits do you expect? Please indicate to what role (data contributor, CTP, CT user) your response refers.**

<ESMA\_QUESTION\_CP2\_65>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_65>

**Q66: Do you expect the benefits from the proposed real time data transmission requirement for input data to outweigh the operational costs borne by data contributors?**

<ESMA\_QUESTION\_CP2\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_66>

**Q67: Do you think that the input and output data fields strike a balance between reporting burden for data contributors/CTPs and benefits for CT users?**

<ESMA\_QUESTION\_CP2\_67>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_67>

**Q68: Do you think that the proposed data quality requirements are sufficient to achieve the CT’s objectives without generating excessive compliance burdens? Please explain.**

<ESMA\_QUESTION\_CP2\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_68>

**Q69: Which costs do you expect to implement the revenue distribution scheme? Please differentiate between one-off and on-going costs, between fixed and variable costs as well as between direct and indirect costs.**

<ESMA\_QUESTION\_CP2\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_69>

**Q70: Which costs do you expect to implement the suspension and the resumption of the revenue distribution scheme? Please differentiate between one-off and on-going costs, between fixed and variable costs as well as between direct and indirect costs.**

<ESMA\_QUESTION\_CP2\_70>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP2\_70>