Reply form

**On the Guidelines on Liquidity Management Tools of UCITS and open-ended AIFs**

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. 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 **8 October 2024.**

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

Instructions

In order to facilitate analysis of responses to the Call for Evidence, respondents are requested to follow the below steps when preparing and submitting their response:

• Insert your responses to the questions in the Call for Evidence in this reply form.

• Please do not remove tags of the type < ESMA\_QUESTION\_GLMT\_0>. 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\_GLMT\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP1\_GLMT \_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 <https://www.esma.europa.eu/press-news/consultations/consultation-liquidity-management-tools-funds> 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 heading ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’.

**Who should read this paper?**

This document will be of interest to alternative investment fund managers, AIFs, management companies, UCITS, and their trade associations, depositories and their trade associations, as well as professional and retail investors investing into UCITS and AIFs and their associations.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | German Banking Industry Committee |
| Activity | Banking |
| Country / Region | Germany |

# Questions

1. Do you agree with the list of elements included under paragraph 17 of Section 6.5.1 of the draft guidelines that the manager should consider in the selection of LMTs? Are there any other elements that should be considered?

<ESMA\_QUESTION\_GLMT\_1>

We believe the list to be accurate.

<ESMA\_QUESTION\_GLMT\_1>

1. Should the distribution policy of the fund be considered in the selection of the LMTs? What are the current practices in relation to the application of anti-dilution levies by third party distributors (e.g.: whether the third party corrects the price by adding the anti-dilution levy to the fund NAV)?

<ESMA\_QUESTION\_GLMT\_2>

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<ESMA\_QUESTION\_GLMT\_2>

1. Do you agree that among the two minimum LMTs managers should consider the merit of selecting of at least one quantitative LMT and at least one ADT, in light of the investment strategy, redemption policy and liquidity profile of the fund?

<ESMA\_QUESTION\_GLMT\_3>

The combination of a quantitative LMT and an ADT seems appropriate; however, it seems more sensible to leave the corresponding selection or combination to the fund company.

<ESMA\_QUESTION\_GLMT\_3>

1. Do you see merit in developing further specific guidance on the depositaries’ duties, including on verification procedures, with regards to LMTs?

<ESMA\_QUESTION\_GLMT\_4>

No - In accordance with the UCITS and AIFM Directives, the depositary must, as part of the exercise of its supervisory obligations, carry out verifications on the processes and procedures for which the management company is responsible. The depositary shall thus ensure that appropriate procedures for the management of the funds are in place in all circumstances. The depositaries will expand their existing control procedures to ensure the correct use of LMTs. We agree to the proposed guidelines in paragraph 25 of section 6.5.1. We do not think it is necessary to add any other specific guidance.

<ESMA\_QUESTION\_GLMT\_4>

1. Do you agree with the list of elements included under paragraph 28 of Section 6.5.2 of the draft guidelines to be included in the LMT policy? Are there any other elements that, in your view, should be included in the LMT policy?

<ESMA\_QUESTION\_GLMT\_5>

We agree to the elements listed in paragraph 28 of section 6.5.2. Please note that point i (procedures to ensure the operational readiness and effectiveness of the manager and relevant stakeholders – e.g.: depositary, accounting, distributors and other services providers – in the event of the activation of LMTs) is key for depositaries/custodians who can also act as asset servicers (including Transfer Agent and Fund administrator). Depositaries, Custodians and Asset servicers (and more generally all the actors in the chain if applicable) must be able to monitor and operationally process the tools by taking into account the volume of processing. We don't see any other items to add to this list.

<ESMA\_QUESTION\_GLMT\_5>

1. In your view, what are the elements of the LMT policy that should be disclosed to investors and what are the ones that should not be disclosed? Please provide reasons for your answer.

<ESMA\_QUESTION\_GLMT\_6>

On the elements of the LMT policy listed in paragraph 28 of section 6.5.2, we believe that only elements h and p should be brought to the attention of investors.

The other points are part of the detailed internal procedure for LMTs (included in the risk management framework) set up by the asset manager. Those elements are not useful to the investor in the context of the investment decision and are even likely to blur his analysis of the elements that are important for his decision-making. The information provided to investors must remain simple, understandable and not misleading.

<ESMA\_QUESTION\_GLMT\_6>

1. Do you agree with the above definition of “exceptional circumstances”? Can you provide examples of additional exceptional circumstances, not included under paragraph 30 of Section 6.5.3.1 of the draft guidelines, that would require the manager to consider the activation of suspension of subscriptions, repurchases and redemptions, having regard to the interests of the fund’s investors?

<ESMA\_QUESTION\_GLMT\_7>

The complete suspension of redemption is the ‘heaviest sword’ imaginable, as the investor has an illiquid asset from the moment of suspension. His trust in the ability to liquidate is completely disappointed. This can have consequences that threaten the investor's existence. In this respect, this measure must be linked to extraordinary circumstances. The terms are to be interpreted narrowly.

<ESMA\_QUESTION\_GLMT\_7>

1. Do you agree with the elements of the LMT plan included under paragraph 32 of Section 6.5.3.1 of the draft guidelines to be included in the LMT plan? Is there any other element that should be considered?

<ESMA\_QUESTION\_GLMT\_8>

We agree and consider such a plan to be of crucial importance. The aim must be to enable investors to access their assets as quickly as possible.

<ESMA\_QUESTION\_GLMT\_8>

1. Do you agree with the above list of elements to calibrate the suspensions of subscriptions, repurchases and redemptions? Is there any other element that should be considered?

<ESMA\_QUESTION\_GLMT\_9>

We are not in favor of setting a threshold for the triggering of the suspension of redemption/subscriptions. This mechanism is appropriate to exceptional market circumstances and is only used as a last resort by discretionary decision of the asset manager which must document the activation. The stakeholders currently operate without a threshold without any evidence of abuse on the part of management companies, which use it as a last resort sparingly because there are reputational issues.

<ESMA\_QUESTION\_GLMT\_9>

1. Do you agree with the proposed criteria for the selection of redemption gates? Is there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_10>

The allocation is appropriate. However, it is also crucial here that the administrator should only be able to apply the LMTs if there is a reason.

<ESMA\_QUESTION\_GLMT\_10>

1. What methodology should be used and which elements should be taken into account when setting the activation threshold of redemption gates?

<ESMA\_QUESTION\_GLMT\_11>

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<ESMA\_QUESTION\_GLMT\_11>

1. Do you agree that the use of redemption gates should not be restricted in terms of the maximum period over which they can be used? Do you think that any differentiation should be made for funds marketed to retail investors? Please provide concrete cases and examples in your response.

<ESMA\_QUESTION\_GLMT\_12>

It should be borne in mind that LMTs always constitute a restriction of investors' rights. Excessive freedom in the use of LMTs can make investing in funds unattractive, as full availability can no longer be guaranteed. For certain fund types, there are statutory and appropriate restrictions (e.g. ELTIFs). The use of LMTs should not result in the character of a fund investment – namely the fundamental possibility of redemption at any time – being restricted, albeit through the back door. LMTs are also no substitute for poor liquidity management overall.

<ESMA\_QUESTION\_GLMT\_12>

1. What is the methodology that managers should use to calibrate the activation threshold of redemption gates to ensure that the calibration is effective so that the gate can be activated when it is needed? Do you think that activation thresholds should be calibrated based on historical redemption requests and the results of LSTs?

<ESMA\_QUESTION\_GLMT\_13>

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<ESMA\_QUESTION\_GLMT\_13>

1. In order to ensure more harmonisation on the use of redemption gates, a fixed minimum activation threshold, above which managers could have the option to activate the redemption gate, could be recommended. Do you think that a fixed minimum threshold would be appropriate, or do you think that this choice should be left to the manager?

<ESMA\_QUESTION\_GLMT\_14>

This should be left to the manager.

<ESMA\_QUESTION\_GLMT\_14>

1. If you think that a fixed minimum threshold should be recommended, do you agree that for daily dealing funds (except ETFs and MMFs) it should be set as follows:

<ESMA\_QUESTION\_GLMT\_15>

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<ESMA\_QUESTION\_GLMT\_15>

a) at 5% for daily net redemptions; and

<ESMA\_QUESTION\_GLMT\_0>

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<ESMA\_QUESTION\_GLMT\_0>

b) at 10% for cumulative net redemptions received during a week?

<ESMA\_QUESTION\_GLMT\_0>

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<ESMA\_QUESTION\_GLMT\_0>

1. Do you agree with the proposed criteria for the selection of the extension of notice period? Are there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_16>

Yes, but extending the notice period should not be a substitute for a general notice period that may have chosen too short.

<ESMA\_QUESTION\_GLMT\_16>

1. According to the revised AIFMD and UCITS Directive, the extension of notice periods means extending the period of notice that unit-holders or shareholders must give to fund managers, beyond a minimum period which is appropriate to the fund. In your view, for RE and PE funds: i) what would be an appropriate minimum notice period; and ii) would the extension of notice period be an appropriate LMT to select?

<ESMA\_QUESTION\_GLMT\_17>

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<ESMA\_QUESTION\_GLMT\_17>

1. Do you think the length of the extension of notice periods should be proportionate to the length of the notice period of the fund? Do you think a standard/ maximum extended notice period should be set for UCITS?

<ESMA\_QUESTION\_GLMT\_18>

Yes, because otherwise there is a risk that the general notice period will be set too short to be well positioned in the market. In particular, there should be a maximum period for investors in UCITS.

<ESMA\_QUESTION\_GLMT\_18>

1. Do you agree with the above criteria for the activation of the extension of notice period? Are there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_19>

The redemption pressure on the individual fund should be the deciding factor. This will typically be greater in a tense market situation, but can also arise due to other reasons in normal market circumstances.

<ESMA\_QUESTION\_GLMT\_19>

1. Do you have any comments on the guidance on the calibration of the extension of notice periods?

<ESMA\_QUESTION\_GLMT\_20>

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<ESMA\_QUESTION\_GLMT\_20>

1. Do you agree with the above criteria for the selection of redemptions in kind? Are there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_21>

We believe that the use of this tool should be reserved for professional investors as long as the assets received are eligible directly by these institutions according to any regulatory constraints.

In addition, it is necessary to take into account the nature of the assets, some of which are indivisible in proportion (derivatives, loans, real estate, etc.).

Therefore, asset managers of funds open to professionals and non-professionals should not select this tool and prefer another quantitative LMT such as the gates for example.

<ESMA\_QUESTION\_GLMT\_21>

1. Do you agree with the above criteria for the activation of redemptions in kind? Are there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_22>

We agree with the criterion in point 67 in subsection 2.5.4 / Activation (page 21) (guidelines 47 in subsection 6.5.3.4 on page 63) but we don't agree with point 68 (guidelines 48) for the Depositary acting as an independent third party to carry out an additional valuation of the assets repurchased in kind.

To recall, the depositary's due diligence must enable it to ensure that the asset manager has a framework that allows it to:

- apply the rules for valuing financial instruments as defined by the UCI's prospectus and ensure that they comply with pricing policy defined by the AM

- to check the permanence of the method chosen by the AM

- periodically check that this valuation method is appropriate

- determine and control the source of the price used for the valuation of the instrument

- ensure that deviations from the pricing policy have been documented and brought to the attention of the AM's internal control

- establish a price independently. In this respect, and more specifically, the depositary verifies that the Asset manager has put in place procedures enabling it to value the instruments which do not have a market price, either on an ad hoc or permanent basis

Under no circumstances the depositary has to recalculate the price of financial instruments which is the responsibility of the Asset manager, in particular with regard to which concerns unlisted securities.

On the other hand, it seems important to us in order to ensure a fair treatment between the professional investors that the fund's auditor be able to certify the valuation of the assets to be redeemed in kind.

Against this background, the guidelines 48 in subsection 6.5.3.4 should be amended to " In case of the activation of redemptions in kind, an independent third party (e.g.: the fund auditor, ~~depositary~~) should perform an additional ~~the~~ valuation of the asset(s) to be redeemed in kind".

<ESMA\_QUESTION\_GLMT\_22>

1. Do you think that redemptions in kind should only be activated on the NAV calculation dates?

<ESMA\_QUESTION\_GLMT\_23>

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<ESMA\_QUESTION\_GLMT\_23>

1. What are the criteria to be followed by the managers for the selection of the assets to be redeemed in kind in order to ensure fair treatment of investors?

<ESMA\_QUESTION\_GLMT\_24>

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<ESMA\_QUESTION\_GLMT\_24>

1. How should redemptions in kind be calibrated?

<ESMA\_QUESTION\_GLMT\_25>

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<ESMA\_QUESTION\_GLMT\_25>

1. Do you agree that managers should consider the merit of avoiding the simultaneous activation of certain ADTs (e.g.: swing pricing and anti-dilution levies)? Please provide examples when illustrating your answer.

<ESMA\_QUESTION\_GLMT\_26>

In any case, for private customers, the simultaneous activation of several such ADTs is likely to be difficult to understand. This requires in-depth calculations that are unlikely to be carried out by a private customer.

<ESMA\_QUESTION\_GLMT\_26>

1. Do you agree with the list of elements provided under paragraph 56 of Section 6.5.4 of the draft guidelines? Is there any other element that should be included in the estimated cost of liquidity?

<ESMA\_QUESTION\_GLMT\_27>

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<ESMA\_QUESTION\_GLMT\_27>

1. Do you have any other comments on the proposed general guidance on ADTs?

<ESMA\_QUESTION\_GLMT\_28>

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<ESMA\_QUESTION\_GLMT\_28>

1. Do you agree with the above criteria for the selection of redemption fees? Is there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_29>

The criteria appear to be sensible and comprehensible.

<ESMA\_QUESTION\_GLMT\_29>

1. Do you have any views on how to set the activation thresholds for redemption fees?

<ESMA\_QUESTION\_GLMT\_30>

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<ESMA\_QUESTION\_GLMT\_30>

1. Do you have any comments the calibration of redemption fees?

<ESMA\_QUESTION\_GLMT\_31>

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<ESMA\_QUESTION\_GLMT\_31>

1. Do you agree with the above criteria for the selection of swing pricing? Is there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_32>

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<ESMA\_QUESTION\_GLMT\_32>

1. Under which circumstances should the manager consider the activation of swing pricing?

<ESMA\_QUESTION\_GLMT\_33>

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<ESMA\_QUESTION\_GLMT\_33>

1. Do you agree with the above principles that a manager should follow in order to recalibrate the swing factor? Is there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_34>

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<ESMA\_QUESTION\_GLMT\_34>

1. Do you have any comments on the proposed guidance on the calibration of swing pricing?

<ESMA\_QUESTION\_GLMT\_35>

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<ESMA\_QUESTION\_GLMT\_35>

1. As dual pricing is a LMT which is not particularly used in most Member States, stakeholders’ feedback on the selection, activation and calibration of this LMT is especially sought from those jurisdictions where this is used.

<ESMA\_QUESTION\_GLMT\_36>

We witnessed a continued decrease of appetite for dual pricing, due to complexity and costs. To the best of our knowledge, this tool is not offered by any large asset servicers in most Member States.

Before implementing this tool, Asset servicers (Fund administrators, Transfer Agents, Custodians, Depositaries, etc.) would call for a feasibility analysis in their respective tools (for both methodologies) and a large adaptation period for all stakeholders as developing this tool would require significant resources.

<ESMA\_QUESTION\_GLMT\_36>

1. Do you agree with the above criteria for the selection of ADL? Is there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_37>

Yes, the criteria appear appropriate here as well. In particular, it ensures that the disadvantages of large redemptions are not borne by the remaining investors, so that the purpose is well served in this way.

<ESMA\_QUESTION\_GLMT\_37>

1. Do you agree with the above criteria for the activation of ADL? Is there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_38>

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<ESMA\_QUESTION\_GLMT\_38>

1. Do you agree that ADL should be calibrated based on the same factor used to calibrate swing factors?

<ESMA\_QUESTION\_GLMT\_39>

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<ESMA\_QUESTION\_GLMT\_39>

1. Do you have any comments on the selection, activation and calibration of ADL?

<ESMA\_QUESTION\_GLMT\_40>

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<ESMA\_QUESTION\_GLMT\_40>

1. Do you agree with the above definition of “exceptional circumstances”? Can you provide examples of additional exceptional circumstances, not included under the above paragraph?

<ESMA\_QUESTION\_GLMT\_41>

Yes, similar to the suspension, the outsourcing to side pockets should only be a last resort. This applies all the more to avoid abuse.

<ESMA\_QUESTION\_GLMT\_41>

1. In your view, how the different types of side pockets (physical segregation vs. accounting segregation ) should be calibrated and in which circumstances one should be chosen over the other? Please provide examples including on whether the guidance should be different for UCITS and AIFs.

<ESMA\_QUESTION\_GLMT\_42>

In France for example, accounting segregation is not possible by regulation. There should therefore be no conditions that point further towards physical or accounting separation. The process of physical segregation in France is functional and is described by an AMF 2011-25 doctrine. It must be able to apply indiscriminately to UCITS and AIFs as long as it is justified (i) by the exceptional conditions described in paragraph 105 and (ii) in the interest of investors.

<ESMA\_QUESTION\_GLMT\_42>

1. Do you have any comments on the calibration of side pockets?

<ESMA\_QUESTION\_GLMT\_43>

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<ESMA\_QUESTION\_GLMT\_43>

1. Do you have any comment on the proposed guidance on disclosure to investors?

<ESMA\_QUESTION\_GLMT\_44>

See answer to question 45.

<ESMA\_QUESTION\_GLMT\_44>

1. Do you agree that investors should be informed of the fact that the manager can activate selected and available LMTs and that this information should be included in the fund’s rules and instruments of incorporation?

<ESMA\_QUESTION\_GLMT\_45>

We agree with ESMA's proposals and urge that they be marked as final. Particularly in markets where funds are brokered by intermediaries, the question often arises as to whether the latter may need to provide additional information or even issue corresponding warnings. LMTs serve only to improve the fund manager's management of the fund. Their application affects the legal relationship between the investor and the fund company/manager. In this respect, there is no need to impose additional or further obligations on the intermediary. This should also be clarified in the regulations.

<ESMA\_QUESTION\_GLMT\_45>

1. Which parts of the LMT policy, if any, should be disclosed to investors?

<ESMA\_QUESTION\_GLMT\_46>

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<ESMA\_QUESTION\_GLMT\_46>

1. In your view, how much time would managers need for adaptation before they apply the guidelines, in particular for existing funds?

<ESMA\_QUESTION\_GLMT\_47>

We should not see the adaptation times necessary only for asset managers. In the event that all LMTs should be implemented (in particular dual pricing), a significant transition period should be provided to ensure their implementation by all stakeholders in the value chain (Asset managers, depositaries/custodians, asset servicers (e.g. fund administrator or transfer agent) and market data provider, distributor, regulator, etc.). Transition periods will be necessary to allow all stakeholders in all Member States to carry out the necessary developments to be able to deal with all the tools, thus guaranteeing a level playing field within the EU.

<ESMA\_QUESTION\_GLMT\_47>

1. Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the technical proposal develop by ESMA as regards the policy objecting of achieving a set of minimum standards by which all managers across Member States should select, activate and calibrate LMTs? Which other types of costs or benefits would you consider in that context?

<ESMA\_QUESTION\_GLMT\_48>

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<ESMA\_QUESTION\_GLMT\_48>

1. Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the technical proposal develop by ESMA as regards the policy objecting of achieving a set of minimum standards by which all managers across Member States should provide disclosure to investors on the selection, activation and calibration of LMTs? Which other types of costs or benefits would you consider in that context?

<ESMA\_QUESTION\_GLMT\_49>

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<ESMA\_QUESTION\_GLMT\_49>

1. Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the technical proposal develop by ESMA as regards the policy objecting of achieving a set of minimum standards by which all managers across Member States arrange their governance for the selection, activation and calibration of LMTs? Which other types of costs or benefits would you consider in that context?

<ESMA\_QUESTION\_GLMT\_50>

We agree to the general approach and with the fact of homogenizing with a set of minimum standards on selection, activation and calibration of LMTs and thus obtaining a level playing field. As said previously, ESMA must consider the operational capacity of all stakeholders to provide functional tools therefore allowing a sufficient compliance period to achieve this.

<ESMA\_QUESTION\_GLMT\_50>