**Reply** **form**

on the Consultation Paper 3

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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 **30 September 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\_CP3\_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\_CP3\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP3\_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 | Deutsche Boerse Group (DBG) |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | Germany |

# Questions

# 2.1 CDR 2017/567

1. Should the use of alternative data to perform the calculations (i.e. as described under Option 2 above) be feasible, what would be the costs and the benefits of such a change for different categories of market participants, including in relation to the change and run costs of reporting systems, data quality assurance and other relevant aspects? Do you have other comments on this potential change, e.g. on specific issues, challenges or alternatives that could be considered by ESMA in its assessment?

<ESMA\_QUESTION\_CP3\_1>

DBG does appreciate that ESMA is proposing a solution where FITRS and DVCAP data would not be used anymore for transparency calculations, meaning that trading venues would not have to provide quantitative data for the sole purpose of transparency calculations to FITRS or the DVCAP system. We see however three limitations to this proposal. First, ESMA currently has the possibility to use both data under transaction reporting and under FITRS to do some data checks and reconciliation between sources. If trading venues do not report any more to FITRS and DVCAP, this check won’t be possible. Second, whereas the quality of data provided by trading venues is rather high, we cannot vouch about other institutions and would see it problematic to abandon the most reliable source of data. Third, trading venues will still report data to the ESMA systems, at least as per Section 4.5 of the consultation paper, and the much more extensive amount of data requested by ESMA. Data to FITRS and DVCAP will indeed be more granular partly due the additional reports to be produced by ESMA in the future and it is unsure that ESMA can/wants to use other sources for this information.

If ESMA were to discontinue collection of data for FITRS and DVCAP, this would imply a significant change to existing processes; hence all reports would need to be reviewed and rationalised, in order to also minimise the ad-hoc/yearly data requests that ESMA is currently issuing; those requests are highly time consuming for trading venues.<ESMA\_QUESTION\_CP3\_1>

1. Do you agree with the proposal on the start day of application of the transparency calculations? Please explain.

<ESMA\_QUESTION\_CP3\_2>

Yes, DBG agrees with the proposal on the start day of application of the transparency calculations; in more detail the date shall be the one specified in Field 11 table 3 of Annex RTS 23 but it shall be considered in conjunction with the “venue of admission to trading” as per new Field 6b. Regarding the latter, we have already expressed serious reservations on how the field shall be designed; we would refer ESMA to our responses to Q66 to the ‘MiFIR Review Consultation Package of RTS 2 on transparency for bonds, structured finance products and emission allowances, draft RTS on reasonable commercial basis and review of RTS 23 on supply of reference data’ and to Q8 of the present document.

We would also insist that an easy process is set up to allow for the Competent Authority for an instrument newly listed to submit their estimates to the ESMA FITRS system, in order to ensure that those values will be accounted for, and not the values filled by default in the FITRS system; especially for the Average Daily Number of Transactions (useful for the determination of the tick size for shares), the identification of the Venue of admission should allow an easy identification of the Competent Authority and the submission of the relevant estimates.

<ESMA\_QUESTION\_CP3\_2>

1. Do you agree with the proposal on the denominator of the (i) ADT, (ii) ADNTE and (iii) for specifying daily traded parameter? Please explain.

<ESMA\_QUESTION\_CP3\_3>

Yes, DBG agrees with the different proposals. On the ADT and the ADNTE, the number of days used as denominator should be the number of days on which the instrument was available for trading on the Most Relevant Market in Terms of Liquidity (MRMTL). We understand that ESMA receives the information on our trading calendar providing all trading days for the year as well as the information on the days where the instrument was suspended from trading hence not available for trading.<ESMA\_QUESTION\_CP3\_3>

1. Do you agree with the proposal on the liquidity determination for shares? Please explain.

<ESMA\_QUESTION\_CP3\_4>

DBG would like to underline that currently, only 45pc of the shares listed on Xetra are considered as liquid, as per FITRS. The liquid flag determines for instance if systematic internalisers have any transparency requirements when trading on shares, or if specific negotiated transactions are possible. In order to foster transparency on trading in shares in the EU, the thresholds for the determination of the liquid flag shall be set sufficiently high enough, not to leave in our case more than half of the instruments in the dark. In that sense, and because the thresholds proposed by ESMA would produce similar results as currently, we would have appreciated that ESMA considers setting thresholds allowing for a significantly higher number of shares to be classified as liquid in the future. This remark holds as well for depositary receipts, ETFs and certificates, for which ESMA has not proposed any change.<ESMA\_QUESTION\_CP3\_4>

1. Do you agree with the proposal on the liquidity determination for other similar financial instruments? Please explain.

<ESMA\_QUESTION\_CP3\_5>

DBG does not know which instruments this refers to.<ESMA\_QUESTION\_CP3\_5>

1. Do you agree with the proposal to remove the field “holdings exceeding 5% of total voting rights” from the legal text but keeping it in the XML schema of the reporting without being obliged to report such information? Pease explain.

<ESMA\_QUESTION\_CP3\_6>

Yes, DBG agrees with the proposal; we would however ask ESMA to ensure that the field will effectively be optional and that leaving it empty will not return an error message. Alternatively, the field could be removed altogether, as there is no value added for retaining it.<ESMA\_QUESTION\_CP3\_6>

# 2.2 RTS 1

1. Do you in general agree with the content of the proposed Tables 1a and 1b? Please specify (i) which fields you consider as not necessary (ii) any amendments that you consider necessary to the columns “Description and details to be published”, “Type of execution or publication venue”, “Type of trading system” to ensure that the information to be provided is clear and unambiguous (iii) the instruments and the circumstances when it is necessary to report the field price with a price notation different from “MONE” – Monetary value.

<ESMA\_QUESTION\_CP3\_7>

Regarding Table 1b, it appears that several questions arise, and clarifications from ESMA would be highly welcome:

* In general, the table includes some referential data which does not have to be reported for all records (e.g. price currency, price notation, quantity currency). This information could be reported separately – in another table – but including it for each individual record would increase the size of the reports significantly.
* Minded that the information to be reported will differ from one trading system to another, we believe that there should be a description provided for each system and each field to avoid any confusion and inconsistencies. For example, in the case of a Continuous Order book trading system, looking at Field 1 (Submission date and time) and Field 3 (Side), it is unclear if ESMA expects the different limits of the order book to be reported separately, with each limit corresponding to one record and all 10 limits simultaneously published (5 bids and 5 asks) with each one a different time stamp, a BUY or SELL indicator, and all other qualitative information repeated. When ESMA mentions “For trading systems, where the orders and quotes do not have to be published on an aggregated basis”, it actually does not provide elsewhere what shall be done to systems with publication on an aggregated basis. In the case of the “date and time for submission for execution into the trading system”, each record would provide a submission date and time for which we do not know to which of the aggregated orders it refers to, different timestamps for all order book limits making it impossible to reconstitute a snapshot of the order book at any given time. Because of the confusion between publication of records price limit by price limit and which date and time shall be selected, we strongly advise ESMA to adopt the following logic, which is the one Xetra and most exchanges currently follow: all 5 limits for each side of the order book are reported as a block with a single timestamp for all 10 records, the latter being the time and date at which an update in the best limits (5 buys and 5 sells) did trigger a new record, allowing to have all information in one line, both BUY and SELL sides. This solution has the advantage of providing a complete picture of the order book for each timestamp while significantly reducing the file size. In addition, when fewer than 5 limits on each side of the book are available, there is no confusion about whether some records have been missed or lost. We would suggest the following wording for Field 1 (in bold): (**~~Submission~~** date and time **reference**); **For continuous auction order book trading systems, the date and time at which an update in the order book triggered a modification of the best bid and offer price levels be it a price or a size.**
* Also in relation to field 3, for an auction, we wonder why the indicative price should be published twice, rather than having a specific value which would not be BUYI or SELL (i.e. “INDPRICE”). Indeed the requirements for periodic auction trading systems are that only the indicative price and volume shall be published.
* Field 1 (Submission date and time) and field 7 (Quantity) do not clearly specify the requirement for a system where orders are aggregated by price. Information shall be clear about aggregation of sizes for the respective price for example (reference to field 4 – Price). We would urge ESMA to redefine field 1 as suggested above and to distinguish between each type of trading systems as per RTS 1 Annex 1 Table 1.
* The field 11 “Trading system” is not easily applicable. Firstly, changes in RTS 2 should not apply to RTS 1, especially because Article 8 MiFIR does not apply to equity instruments and because RTS 1 Annex 1 Table 1 currently provides a taxonomy of the different trading systems which would not fit the values proposed in Table 1b, namely the reference to CLOB. Secondly, it should be clear that trading venues should provide the generic name that applies to their trading system, not to the trading phase; the discrepancy between current RTS 1 Annex 1 Table 1 and Field 11 does not help clarifying. So for a CLOB, this value would be displayed during the whole session, whether during continuous trading, periodic auction or trading halts; for a hybrid system, the same would apply. In this sense, it is not obvious that this information is particularly relevant, as it might be misleading. We would reiterate that this information, part of the reference data, shall be reported else-where.

Regarding the illustrations proposed in the document, Figure 3, which outlines the information to be made public in periodic auction trading systems, appears incorrect. According to RTS 1 Annex 1 Table 1, only “the price at which the auction trading system would best satisfy its trading algorithm […] and the volume potentially that would potentially be executable at that price […]” shall be reported. Consequently, only one price and one volume should be published. In no case it is required that bid or ask prices or sizes are provided. These requirements are not compliant with Table 1 – note that if no indicative price and volume can be displayed, no information should be provided, as the auction could not conclude. Requests for information on the order book in the case of an uncrossed book are unfounded and not compliant with the legal text.<ESMA\_QUESTION\_CP3\_7>

1. Do you agree with the proposed amendments to Article 4? Please explain.

<ESMA\_QUESTION\_CP3\_8>

No, DBG would not agree with all proposed amendments. Regarding the determination of the Most Relevant Market in Terms of Liquidity (MRMTL), we do agree that indeed a combination of the field 11 and a new field 6b “venue of admission to trading” in Table 3 of Annex RTS 23 would definitely improve the correct selection of the MRMTL for new listings. However, in paragraph 66, ESMA states that “the venue where the instrument is first admitted to trading or first traded should be selected among regulated markets. Only if the instrument is not admitted to trading or traded on a regulated market, the MRMTL shall be determined among the MTFs on which it is made available for trading as per data provided to FIRDS.” Even if ESMA were to consider only IPOs as per paragraph 67, regulated markets are not the exclusive place for those. IPOs, to only name those, can actually take place on any trading venue, including MTFs. On the Frankfurt Stock Exchange, IPOs do take place on our Prime Standard or on our General Standard segment, part of our Regulated Market, as well as on our Scale segment which is our EU SME Growth Market, an MTF. As a consequence, we would suggest two elements:

* ESMA should broaden the field 6b in RTS 23 beyond IPOs only. Indeed, focusing only on this way to raise capital is reductive and excludes other means like for example private placements and direct listings. Moreover, some corporate actions could imply the creation of a new ISIN and it is crucial that the transparency calculations are based on the metrics assessed from the trading venue where the corporate action is initiated. Consequently, ESMA would need to list all occasions where capital is raised on a capital market or where there is a corporate action as events involving the selection of the “venue of admission”.
* ESMA should make the new field 6b available to all trading venues, and not only to regulated markets. Aware that the above opens an error margin with confusion between trading venues as to whether they should declare themselves as the “venue for admission to trading”, we would suggest defining differently the new field in RTS 23. In order to distinguish between an IPO, a private placement or a direct listing or a dual listing, ESMA could provide a list of all relevant operations which comprise a first admission to trading – see previous bullet – and add, to exclude the irrelevant trading venues, for example as a criterion the requirement that the listing or the corporate action did take place “at the request of the issuer” which would guarantee that “sole admissions to trading” where no capital is raised and no issuer request was submitted are excluded or that trading venues where no capital is raised are ticking the box.

We would hence reformulate Article 4(4) as follows: “Until the most relevant market in terms of liquidity for a specific financial instrument is determined in accordance with the procedure specified in paragraphs 1 to 3, the most relevant market in terms of liquidity shall be the **~~regulated market~~** **trading venue** where that financial instrument is first admitted to trading or first traded**~~, or in cases where the financial instrument is not made available for trading on a regulated market in the Union, the multilateral trading facility where that financial instrument is first admitted to trading or first traded~~**, based on fields 11 (Date and time of admission to trading or date of first trade) and 6b (Venue of admission to trading) in Table 3 of Annex of Commission Delegated Regulation (EU) 2017/585. **The Venue of admission to trading is defined as the trading venue where the IPO, private placement, direct listing or dual listing took place, as well as the corporate action, and where the operation took place at the request of the issuer where applicable**.”

Besides this crucial aspect, DBG agrees with the clarification on the start date for the transparency calculations and the simplification for new instruments with insufficient activity to perform the calculations.<ESMA\_QUESTION\_CP3\_8>

1. Do you agree with the proposed amendment to Article 6 of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_9>

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<ESMA\_QUESTION\_CP3\_9>

1. Do you agree with the proposed amendments to Article 7 of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_10>

DBG agrees with the proposals from ESMA; we would suggest in particular regarding the point developed in paragraph 78 that the approach for the estimate of the average daily turnover accounting for “other previous or similar financial instrument of the same issuer” should also apply for the calculation of the estimate of the average daily number of transactions in RTS 11 where the same instrument might see its ADNT reset whereas there was no change of ISIN and hence no change in the ADNTE.

We would also on this occasion ask clarification from ESMA regarding the transparency parameters stored in the FITRS system. It is indeed the case that sometimes values for the same instrument differ between the XML files and the values available on the ESMA website (ESMA registers). Confirmation as to which value shall be considered as correct would be appreciated and included into the ESMA Q&As. Ideally, because all systems get the information from the XML files, the latter would be considered as the gold source.<ESMA\_QUESTION\_CP3\_10>

1. Do you agree with the proposed amendments to Article 8 of RTS 1? Please explai.

<ESMA\_QUESTION\_CP3\_11>

Yes, DBG agrees with the proposed amendments to Article 8.<ESMA\_QUESTION\_CP3\_11>

1. How could ESMA take into account international best practices and competitiveness for the determination of the threshold up to which SIs have to be pre-trade transparent? Please explain.

<ESMA\_QUESTION\_CP3\_12>

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<ESMA\_QUESTION\_CP3\_12>

1. Do you agree with the new AVT buckets and related SMS? Would you set a higher SMS for the AVT bucket [0-10000) (e.g. 10,000)? Please explain.

<ESMA\_QUESTION\_CP3\_13>

DBG regrets that the changes into the Level 1 text did not bring a deeper reflexion on the EU market structure with significant changes at Level 2, in particular regarding the methodology for the determination of the SMS. Nevertheless, DBG appreciates that ESMA has gone into a deeper analysis of SI transactions and accounted for the fact that in 2023 more than 97% of the turnover was done on transactions with a value lower than 20,000 EUR, and about 60% on transactions with a value lower than 10,000 EUR. The thresholds set at 2xSMS and 100% of the SMS bring significantly higher transparency for all buckets beyond the smallest one.

However, because we would indeed consider that the smallest bucket is the one to set up with most care, we believe that the relevant thresholds for this bucket could be defined differently from the other buckets. We would raise two points:

1. ESMA shows that in particular in the past years a vast majority of the trading takes place for instruments with an average trade size below 10,000. As per current the SMS applying is 10,000 and the minimum quote size is 1,000. The proposed threshold #1 would be again 10,000 and the threshold #2 would be 5,000, hence a minimal change compared to the current situation for the majority of the flow on shares (70% of the turnover in 2021, 74% in 2022 and 60% in 2023);
2. Compared to our platform Xetra, the (0-10,000) bucket actually covers transactions below our average trade size (10,300 EUR for continuous trading only for FY 2023 and 11,800 EUR for Jan-August 2024 for all trades and liquid and illiquid stocks). Had the first bucket been divided into more buckets, the SMS would have grown larger but due to the construction of the buckets (the first bucket is five times broader than the following five), the requirements remain pretty much unchanged contrary to the spirit of the Level 1 text condemning the “very low levels of pre-trade transparency provided by systematic internalisers in equity instruments” (see Recital 13, Regulation 2024/791).

Hence for the smallest bucket, assuming it will not be divided into more buckets, we would suggest that the SMS shall not be defined as the midpoint of the bucket but either 75% or 100%, meaning 7,500 or 10,000, in order to significantly bring more transparency. Within the framework defined at Level 1, we think that systematic internalisers would have no problem hedging nor closing their positions and hence the minimum quoting size could be set at 100% of the SMS, hence 7,500 or 10,000 EUR.<ESMA\_QUESTION\_CP3\_13>

1. Do you agree with ESMA’s proposal of the new threshold#1 for shares? Please explain.

<ESMA\_QUESTION\_CP3\_14>

Please refer to our response to Q13; while we do agree that a higher transparency would be achieved for all buckets above the 10,000-AVT, the first bucket is problematic and the threshold #1 cannot be set at 10,000 for this bucket.<ESMA\_QUESTION\_CP3\_14>

1. Do you agree with ESMA’s proposal of the new threshold#2 for shares? Please explain.

<ESMA\_QUESTION\_CP3\_15>

Please refer to our response to Q13; while we do agree that a higher transparency would be achieved for all buckets above the 10,000-AVT, the first bucket is problematic and the threshold #2 cannot be set at 5,000 for this bucket.<ESMA\_QUESTION\_CP3\_15>

1. Do you agree with the new AVT buckets and related SMS? Would you set a lower SMS for the AVT bucket [0-10000) (e.g. 5,000)? Please explain.

<ESMA\_QUESTION\_CP3\_16>

Consistent with our response to Q13, the average trade size for Depositary Receipts on our platform Xetra was close to 8,000 EUR for FY 2023 for continuous trading and 8,500 EUR for Jan-Aug 2024, hence we would suggest the same as for shares: the SMS shall be set at 7,500 or 10,000 to allow for significantly higher transparency and for the sake of consistency with trading on our trading venue. However, in no case we would set a lower SMS than 5,000.<ESMA\_QUESTION\_CP3\_16>

1. Do you agree with ESMA’s proposal of the new threshold#1 for DRs? Please explain.

<ESMA\_QUESTION\_CP3\_17>

Please refer to our response to Q16; while we do agree that a higher transparency would be achieved for all buckets above the 10,000-AVT, the first bucket is problematic and the threshold #1 cannot be set at 10,000 for this bucket.<ESMA\_QUESTION\_CP3\_17>

1. Do you agree with ESMA’s proposal of the new threshold#2 for DRs? Please explain.

<ESMA\_QUESTION\_CP3\_18>

Please refer to our response to Q16; while we do agree that a higher transparency would be achieved for all buckets above the 10,000-AVT, the first bucket is problematic and the threshold #2 cannot be set at 5,000 for this bucket.<ESMA\_QUESTION\_CP3\_18>

1. Do you agree with the new AVT buckets and related SMS? Please explain.

<ESMA\_QUESTION\_CP3\_19>

Similar to our response to Q13 on shares, we suggest further analysis to determine thresholds that will effectively result in increased transparency for ETFs in the market. The proposal would as we see have little meaningful impact and will only add complexity by adding more buckets. We do regret that a change in policy, with the aim to bring more transparency to the ETFs market is not undergone. Indeed, the large flows executed on platforms like RFQ systems remain with limited transparency and detrimental impact on the price formation process, as well as on the accessibility and liquidity of the overall ETF market. We would ask ESMA to consider this further and propose changes that will have a more positive impact on transparency to the benefit of both investors and the overall market.<ESMA\_QUESTION\_CP3\_19>

1. Do you agree with ESMA’s proposal of the new threshold#1 for ETFs? Please explain.

<ESMA\_QUESTION\_CP3\_20>

See our response to Q19.<ESMA\_QUESTION\_CP3\_20>

1. Do you agree with ESMA’s proposal of the new threshold#2 for ETFs? Please explain.

<ESMA\_QUESTION\_CP3\_21>

See our response to Q19.<ESMA\_QUESTION\_CP3\_21>

1. Do you agree with the proposed amendments to Article 11 of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_22>

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1. Do you agree with the proposed new Article 11a of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_23>

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1. Do you agree with the proposed new Article 11b of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_24>

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1. Do you agree with the proposed amendments to Article 12 of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_25>

After careful consideration and impact assessment on our systems, we would not agree with the naming convention proposed in Article 12(1). Indeed, a number of products currently disseminated by our systems would be impacted via technical protocols and would have a significant impact on existing market data fees, especially in relation to trade messages. Trading venues should continue to have flexibility to technically organise their ‘key’ public data feeds in a competitive environment, in the way they determine to be most efficient.<ESMA\_QUESTION\_CP3\_25>

1. Do you agree with the proposed amendments to Table 3 of Annex I of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_26>

DBG would have general comments and remarks on Table 3 Annex 1 RTS 1:

* Reference data like price currency or price notation included in Table 3 should ideally be available in another report, however separately from the post trade reporting to allow for lighter files and information kept to the most relevant (see also our response to Q7).
* Current market data feeds use short codes or even numbers to identify specific fields. This is to ensure efficiency in data transmission. Usage of the exact same field identifiers does make sense for the display on websites but not for market data feeds used by DRSPs. The current consumers of DRSPs (trading members, market data vendors) are already capable of interpreting these data without any problem.
* Discrepancies in the regulation lead to issues: Although RTS 1 (even in the version proposed in the consultations) offers up to 17 digits after the decimal point for quantity and price, according XML DATEQU only allows up to five digits after the decimal point for “Vol Ccy”. This leads to severe problems for the upload of DATEQU XML files to ESMA (rejections).

In addition, DBG would have some comments/remarks on specific fields:

* Field #8 “venue of execution”: We believe that it would be useful that SIs can be identified for example via a delayed post-trade report and the identification is possible using a MIC for each SI and potentially each relevant asset class, not via the simplistic value SINT. This information can be relevant for investors to have an accurate picture of the liquidity in the EU, as it is already the case in the US for similar execution venues.Field #10 “trading systems”: The values for this field shall solely be based on the taxonomy established in Table 1 of Annex 1, which is not modified following changes in the Level 1 texts – those are only for non-equity instruments. We believe that the value CLOB shall not be included as only defined in RTS 2.
* Field #14 “Flags”: The format proposed by ESMA is not in line with FIX MMT. It is essential to adopt a harmonised approach, so we suggest ESMA further reviews this to ensure consistency with FIX MMT format, content and architecture. MMT is based on an architecture at different levels that should be reflected here.

<ESMA\_QUESTION\_CP3\_26>

1. Do you agree with the proposed amendments to Table 4 of Annex I of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_27>

DBG would have appreciated that the changes proposed for Table 4 do reflect the activities that developed in the EU in the past years as well as those following the entry into application of MiFID II and MiFIR. In that sense, it is questionable why the flagging which relates only to systematic internalisers/investment firms would be entirely removed with the proposal to delete flags SIZE, ILQD and RPRI, DUPL and ACTX; we would expect that new, better defined and more precise flags are proposed.

Moreover, we believe that the development of some activities like block trading, trading at midpoint for SIs or trading at close would benefit from being identified in the future – some of the flags having been introduced by the FCA in April 2024 (<https://www.fca.org.uk/publication/policy/ps23-4.pdf> and <https://www.handbook.fca.org.uk/instrument/2023/FCA_2023_19.pdf>) or are already present in FIX MMT. We would suggest that the following flags are introduced:

|  |  |  |  |
| --- | --- | --- | --- |
| **Flag** | **Name** | **Type of execution or publication venue** | **Description** |
| CLSE | Market closing price flag | RM, MTF, APA | Benchmark transactions executed at the market closing price. |
| MIDP | Midpoint transaction | APA | Transactions executed at midpoint under Article 17a.2 of Regulation (EU) No 791/2024. |
| NTLS | Pre-trade large in scale trade flag | RM, MTF | Transaction executed as a result of the application of the large in scale waiver for at least one of the matched orders for the purpose of Article 4.1 c) of Regulation (EU) No 600/2014 except if deferred publication applies. |
| NI | Non-Immediate Publication | RM, MTF, APA | Transaction for which publication has been deferred for other reasons than their size for the purpose of Article 7.1 of Regulation (EU) No 600/2014. |

<ESMA\_QUESTION\_CP3\_27>

1. Would you consider that the SIZE, ILQD, RPRI flags could be removed? Please, explain.

<ESMA\_QUESTION\_CP3\_28>

As mentioned in our response to Q27, DBG is unsure what the reasons are for the flags to be misused or unused and for this to be the reasons for them to be deleted. Moreover, it seems inconsistent with one of the aims of the MiFIR Review which was to bring more transparency to systematic internalisers’ activities through a description of their activities to competent authorities and an increase in the transparency thresholds. Flags defined to be able to assess and monitor SI’s activities should be available especially in RTS 1 post trade reporting in order to provide detailed and sufficient information to market participants.<ESMA\_QUESTION\_CP3\_28>

1. Would you consider that the ACTX flag could be removed? Please, explain.

<ESMA\_QUESTION\_CP3\_29>

DBG understands that the ACTX flag allows for identifying agency cross transactions. We would note that one of the reasons why this flag is not used might be because of the way those transactions are conducted by investment firms and the fact that the crossing is not as ‘simple’ as the flag’s description indicates. For this we would refer to the FIA EPTA’s paper: ‘Mind the Transparency Gap - Identifying a Wholly Unreported Segment of Addressable Liquidity in European Equity Markets’, published in April 2024 (<https://www.fia.org/epta/articles/new-paper-identifies-unreported-segment-liquidity-european-equity-markets>).<ESMA\_QUESTION\_CP3\_29>

1. Would you further reduce the maximum time for disclosing pre-trade transparency “as close to real-time as technically possible”? If so, what maximum limit would you suggest? Please explain.

<ESMA\_QUESTION\_CP3\_30>

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<ESMA\_QUESTION\_CP3\_30>

1. Do you agree with the proposed amendments to Article 15 of RTS 1? If not, please explain.

<ESMA\_QUESTION\_CP3\_31>

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<ESMA\_QUESTION\_CP3\_31>

1. Which option do you prefer: Option A (status quo), Option B (add layer for technical trades), Option C (add layer for technical trades and waivers)? Please explain.

<ESMA\_QUESTION\_CP3\_32>

DBG would be in favour of Option C, with an additional set of information covering technical trades and pre-trade transparency waivers. We believe that detailed information would allow ESMA to improve data quality, ensure a consistent treatment of technical trades during the performance of the transparency calculations, and use FITRS for the volume cap calculations. Looping back to Q1 of the consultation paper, we are wondering how this amended table would fit with Option 2 where no quantitative data is collected anymore in the FITRS and DVCAP systems.<ESMA\_QUESTION\_CP3\_32>

1. Do you agree with the proposed amendments to Annex IV of RTS 1 in relation to Option B and Option C? Please explain.

<ESMA\_QUESTION\_CP3\_33>

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<ESMA\_QUESTION\_CP3\_33>

1. Do you agree with the proposed amendments to Articles 16 to 19 of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_34>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_34>

1. Do you agree with the proposed different application dates for the different provisions in Article 20 of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_35>

No DBG does not agree with the different application dates. Firstly, setting out different application dates for different provisions of equity transparency means that some processes common to all reporting for equity and non-equity transparency will differ at one point, which makes implementation extremely challenging. Reporting will indeed diverge within RTS 1 and RTS 23 but also with RTS 2 and RTS 3. From a project implementation viewpoint, this significantly increases costs and resource requirements to make such changes for different project times.

Given our responses to questions on RTS 1, we have identified a number of fields which are unclear and will require more information before trading venues can start the implementation – referring to Table 1b, the deadline of May 2025 seems impossible to respect, assuming the final report is published in March 2025. We hence would ask ESMA to try to align timelines wherever possible, between linked texts like RTS 1, RTS 2, RTS 23, RTS 3, and that the single timeline will allow for sufficient time and ensure a consistent approach for implementation once the final details are published.<ESMA\_QUESTION\_CP3\_35>

# 2.3 Input / Output data RTS (equity CTP)

1. Do you agree with the proposal for the Data related to the status of individual financial instruments? If not, please explain.

<ESMA\_QUESTION\_CP3\_55>

Before going into detail on this question, DBG would like to provide some general comments affecting RTS1 and the new RTS on data input and output to the equity CTP.

Firstly, and although this aspect is not a concern for the present consultation, we would mention as a precautionary note that transparency requirements proposed by regulators should not have impact on how exchanges organize their trading business. This should be considered a clear principle for any regulatory action in the context of transparency and the CTP. Not adhering to this principle could finally damage well-functioning markets by introducing unintended consequences for the CMU, while interfering with Trading Venue’s rights of doing business.

Secondly, we recommend ESMA to keep RTS 1 and RTS NEW separated from each other and to include regulatory data (applicable only to TVs) solely into the RTS NEW, in combination with only those data fields derived from RTS 1 which would have to be submitted to the CTP. We would consider this to be a clearer set of information for any affected party involved and facilitating correct implementation of regulation (supporting IT developers and others) while minimizing risks of misinterpretation and errors.

Thirdly, data format or data protocols should only be defined for the data submission to the CTP, but not for data providers proprietary data feeds. While we appreciate regulators considerate approach to potentially reduce the burden of providing data feeds in different versions due to regulation, we would consider it more beneficial that the industry decides to adopt this approach or not. As long as the data is being delivered in a format and protocol as requested to the CTP, data providers should be free to decide how they design their proprietary feeds.

Fourthly, proposed adaptions to RTS 1 may already be significant for data providers and especially smaller exchanges could struggle to deliver on the requirements. Existing data feeds would need to be overhauled (format adaptions, potentially new data content, eventually as well new protocols), potentially as well affecting complex exchange processes behind the data feeds, while business continuation will be of essence. Adaptions within existing data feeds, and the processes behind, require sufficient time and funding. Therefore we ask ESMA to allow at least 12 -18 months for more complex necessary adaptions.

Hence, for the same reasons there may be merit to allow the CTP to start with the existing data feeds available today, both for bonds and for equities.

In general, we urge ESMA that requests for the exchanges’ internal operating data be kept as limited as possible. In the end data feeds may become overly noisy with plenty of “regulatory data”, while not being interesting for all market participants, but only a few.

As regards ESMA’s question, DBG agrees that any data related to the status of individual financial instruments should refer to the trading venue, identified by the segment MIC, or the operating MIC (in case segment MIC would not be available). It must be noted though, that in terms of individual financial instruments, the same instrument can be traded in several currencies within the same system/MIC, yet it may have different statuses, meaning that one currency could be halted while trading continues in another. This may, nevertheless, differ from trading venue to trading venue. We therefore suggest maintaining some degree of flexibility, especially taking note of different trading models and systems within the industry.

As regards “instrument status start date and time” and “instrument status end date and time,” for the avoidance of doubt, we need to clarify that this information is generally not available simultaneously. Usually, a status message is sent when the event occurs, but without any end date. Hence, DBG strongly appreciates ESMA’s comment in paragraph 277 that this information should be provided to the extent possible. Similarly, the “instrument status end date and time” would be sent once/if available (which is not the case for all FESE exchanges), but without reference to the earlier start date, which would make the technical setup much more complex. This issue seemingly also relates to the new logic ESMA suggested to introduce to the reporting under RTS 23; Fields 10, 11 and 12 would contain several values for the whole life cycle of the instrument. This logic of storing information by permanently re-screening the past records for the same instrument adds significant processing time and storage constraints on trading venues’ systems (see our response to the relevant ESMA consultation paper). Any changes to the current systems would dive deeper into complex existing processes at exchanges, significantly adding to the cost burden and requiring sufficient time to adapt to regulatory requirements, without providing major benefits compared to the current system. Alternatively, the resumption of trading could be interpreted as a signal of reinstatement activity.

In the light of the above, we would recommend to ideally delete # 4 “System Status end date and time”.<ESMA\_QUESTION\_CP3\_55>

1. Do you agree with the proposal for the data related to the status of status of systems matching orders? Would you consider that other identifiers of the trading system type should be used? Please explain?

<ESMA\_QUESTION\_CP3\_56>

Regarding regulatory data, DBG needs to note that the requested information is often not available in the form proposed by ESMA, and if available, it may be not as granular nor as harmonized as suggested. Creating such information for implementation into data feeds would be extremely costly and time-intensive, as it would require adapting complex internal systems and processes. We hence urge that requests for the exchanges’ internal operating data be kept as limited as possible and focus on what is truly necessary to be provided in a proportionate scenario, while considering any already existing alternatives.

Furthermore, looking at Table 4 of the new RTS it seems that ESMA labels # 2 “Trading System Type” and #11 of Table 1b – “Trading System” slightly differ on terminology, while the data content seems to be the same. We recommend adapting to one terminology. In any case DBG is concerned about the notion of Trading System/Type overall as it is unclear how this should be implemented. The information requested is rather referring to trading modes, than trading systems. MMT does provide an existing solution in this respect already and is already widely used in the industry.

On a precautionary note and regarding outages, it is important to understand that there are good reasons why information on outages cannot be included in data feeds. To the best of our knowledge there is no data feed available in the market providing such information. However, information boards exist on exchange’s homepages, while such messages are not being included within exchange data feeds due to the following reasons. Firstly, in case an outage occurs, the necessary activities and processes to identify the outage, affected components, cause, and expected resumption of the business occur outside of data feeds and are highly manually driven. Direct access to data feeds by humans to submit outage information is strictly avoided in order to reduce manual risks that could compromise data quality. Secondly, there may be an outage in the technical component of data dissemination, in which case no information could be submitted via the data feed. This would mean that the publication of the status would not be possible if integrated into the data feed. Hence, we recommend abstaining from requesting information on outages via trading venue data feeds and remain focused on the best practices as developed together with ESMA for now. Instead, the CTP could be included in the exchange outage communication and display any relevant information on its website, providing a consolidated view.

We would also like to point out as well, that we do not fully agree with point 280 of ESMA’s CP. While Systematic Internalizes predominantly trade electronically today and may execute at mid-point (i.e., matching orders), we consider ESMA’s assumption that the status of systems matching orders applies only to trading venues to not be fully correct.

Similarly, point 281 refers to trading venue trading phases as “interesting information for investors” and to be displayed by the CTP. However, we would like to recall that the CTP is not intended for trading purposes, and thus such information would be unnecessary and burdensome for data contribution and create noise for data users when using the CTP.<ESMA\_QUESTION\_CP3\_56>

1. Do you agree that the pre-trade data to the CTP should be that included in Table 1b in section 4.1.3.1 except for fields 8 and 9? Please explain.

<ESMA\_QUESTION\_CP3\_57>

Before looking at the details of data fields, DBG strongly appreciates the clarification in paragraph 285 that for the CTP for shares and ETFs only the first bid and offer are being required, as outlined in L1. It is of essence that this is iterated into the new RTS, too, to ensure that the data requested from providers for the consolidated tape aligns with the L1 agreement on pre-trade data (anonymized real-time pre-trade EBBO on the first level of depth). Data providers should not be required to provide more data than what is needed for the CTP to be operational and according to the L1 agreement. While we appreciate ESMAs comments in paragraph 285 of the CP, as well as Recital (5) of the new RTS on input/output data for shares and ETFs CTP, we realize that Article 6 (1) (i) needs to be slightly adapted in order to reflect paragraph 285 accordingly. Hence, Article 6 (1) (i) needs to be adapted as follows: “by reference to each first best bid and first best offer price in the trading system at any point in time”. Consequently, as regards the input table, in particular, depth of book should correspond to the level of depth that the CTP needs to provide to the end customer, i.e. only the best bid and offer and corresponding volumes.

As regards the pre-trade data related information derived from Table 1b we would like to make the following comments:

As regards # 1 of Table 1 b – “Submission date and time” – we would recommend to apply the “update date and time” for any pre-trade events as the submission date and time reflects the “Update time”. This time stamp would cover all events changing pre-trade information, be it for an update on price, volume, amendments or cancel, other.

As regards # 3 of Table 1 b – “Buy, Sell” – we generally agree, however, there is no level information attached to the data, which would normally be the case for order books. Hence, we would recommend to adapt the wording to “Best Bid” instead of “Buy” and “Best Ask” instead of “Sell”.

As regards # 4 of Table 1 b – “Price” - we would like to point out that ESMA does not propose how trading venues should deal with transparency of auctions, where there are only indicative prices being issued, which may regularly happen. It seems that there is no requirement being considered in this respect.

As regards # 8 of Table 1 b – “Quantity Currency” – we are convinced that this may not be necessary, at least DBG does not use it. Instead, the field # 5 “Price Currency” is sufficient referring to the price and respective volume at the same time. In case ESMA hears back similarly from other respondents as well, we would ask for this field to be removed from the table.

As regards # 9 of Table 1 b – “aggregated orders” - DBG agrees that it does not apply to the pre-trade data to be submitted to the CTP. We would appreciate for this to be laid out with more clarity in the new RTS, perhaps drawing on the explanation provided in paragraph 286 of the CP.

As regards #11 of Table 1b – “Trading System” – DBG is concerned about the notion of Trading System as it is unclear, how this should be implemented. The information requested is rather referring to trading modes, that trading systems. MMT does provide an existing solution in this respect already.

Again, we strongly recommend having a clearly distinct list of input and output data for the CTP separate from RTS 1, with any regulatory data required only for provision to the CTP. This would make it easier for market participants to access clear and undisputed information when implementing. Additionally, data harmonisation should ideally be requested only for provision to the CTP. Hence, we propose to include a list of pre-trade data relevant data fields in the new RTS.

On another note, but in the context of pre-trade information, respectively the derivation of the EBBO, we would like to promote the CTP to be required to provide the BBO in a properly sequenced way, which could eliminate the impact of network latency variability and/or geography ensuring a display of the data in the correct order. It would ensure as much accuracy as possible while providing a continuous feed as requested by ESMA. A properly sequenced feed is not only beneficial for data users, but it would avoid introducing systemic flaws. Concerns of an systematically flawed EBBO would increase if in the future the EBBO would have to disclose the MICs. This could have significant and unintended consequences on contributing parties, which are contributing from widely distributed locations around the EU, which must be avoided by all means.<ESMA\_QUESTION\_CP3\_57>

1. Do you agree with the proposal for the output table? Please explain.

<ESMA\_QUESTION\_CP3\_58>

As regards Table 5 in the New RTS in input and output data to the CTP we would like to make the following comments:

As regards #1 – “Entry date and time” – we would like to suggest to use the “Update date and time” for any pre-trade events. This time stamp would cover all events changing pre-trade information, be it for an update on price, volume, amendments or cancel, other. Please see as well our comment to this under Q 57. An order entry could have happened several weeks ago, still resting in the order book, but without any action.

As regards # 3 and # 7 – “Best Bid” and “Best Offer” – we would like to suggest a clarification to “First Best Bid” and “First Best Offer” in line with our comments and proposal lined out under Q 57.

As regards # 4 and #8 – “Best Bid currency” and “Best Offer Currency” – we would like to note that, while indeed the same instrument could be traded in different currencies in the EU, we cannot imagine a sensible consolidation of prices in different currencies. Instead, there may be different EBBOs per currency. In this case, however, one single currency field would be sufficient.

As regards # 6 – “EBBO timestamp” – we assume that it refers to the time of creation, hence we would recommend to define it accordingly as “date and time of the EBBO calculation”.

As regards # 12 and # 13 – “Dissemination date and time” and “Publication date and time” – we understand that ESMA proposes that # 12 refers to the dissemination time of EBBO or auction information has been disseminated by the CTP, and # 13 refers to “Date and time when the transaction was published by a trading venue or APA”. While we seek clarity as regards our understanding being correct, we would agree with it in case ESMA would confirm it. However, we would recommend a terminology change in in both description fields for better understand: # 12 should replace “order” by “pre-trade information” and for # 13 we would suggest to replace the current text with “Date and time when the transaction was published by a trading venue or APA”.<ESMA\_QUESTION\_CP3\_58>

1. Do you agree with the proposal for the input and output tables for the post-trade eq-uity CTP? Please explain.

<ESMA\_QUESTION\_CP3\_59>

DBG generally agrees with ESMAs proposals but would like to refer to all our comments to Q 55-58 for details.

DBG sees merit in adding selected further data fields to the output table for the CTP. There may be merit, considering to request to route through “Alert flag” being submitted to the CTP from APAs. Furthermore, in case the CTP would detect any shortcomings as regards contributed data affecting the CTPs ability to provide a 100% secure EBBO a “data quality alert” might be sensible too. This is important to inform the market about unclear data quality of certain input data, while not holding back any information. Data users hence can decide for themselves how to use the data.

<ESMA\_QUESTION\_CP3\_59>

# 2.4 Flags in RTS 2

1. Do you agree with the proposed amendments to flags in Table 3 of Annex II or RTS 2? In particular, do you consider that the flag ‘ACTX’ should be deleted?

<ESMA\_QUESTION\_CP3\_60>

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<ESMA\_QUESTION\_CP3\_60>