**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 **15 October 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.

Data protection

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

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | EUROPEX |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |[x]
| Country/Region | Belgium |

# Questions

# 2.1 ITS on SI

1. Do you agree with the ESMA’s proposed approach? Please elaborate.

<ESMA\_QUESTION\_CP3\_36>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_36>

1. Do you think the fields included in the new form are exhaustive? If not, which other information are missing for the purpose of the template? Do you consider all requested fields to be needed? What is your perspective on the potential inclusion of a dedicated field for entering the MIC of the APA utilized by the SI during the notification submission process? Please elaborate.

<ESMA\_QUESTION\_CP3\_37>

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<ESMA\_QUESTION\_CP3\_37>

1. Do you think that two weeks would be a processing time long enough for the investment firms that intend to continue/start carrying out activities as SIs in any class of financial instruments to submit the new notification to the respective NCAs? Please elaborate.

<ESMA\_QUESTION\_CP3\_38>

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<ESMA\_QUESTION\_CP3\_38>

1. Are there any other suggestions you would like to propose? Please elaborate.

<ESMA\_QUESTION\_CP3\_39>

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<ESMA\_QUESTION\_CP3\_39>

# 2.2 RTS 3

1. Do you agree with the proposed amendments to RTS 3, including the Annex? If not, please explain.

<ESMA\_QUESTION\_CP3\_40>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_40>

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

<ESMA\_QUESTION\_CP3\_41>

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<ESMA\_QUESTION\_CP3\_41>

1. What is your preferred option for the frequency of reporting of data to ESMA from trading venues, and CTPs upon request: a) maintain bi-weekly reporting as present or b) switch to monthly reporting, on the 16th day of the month for the previous month? Please justify your answer and provide examples and data on the costs and benefits of your preferred approach.

<ESMA\_QUESTION\_CP3\_42>

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<ESMA\_QUESTION\_CP3\_42>

# 2.3 RTS 7

1. Do you agree with the proposed Article 1 – Definitions? Please explain.

<ESMA\_QUESTION\_CP3\_43>

Europex agrees with the proposed definitions related to circuit breakers, but recommends further specifying the definition of ‘algorithmic trading systems’. The proposed definition of algorithmic trading systems can be understood overly broad and might require exchange staff to know all about all the users' algorithmic trading systems, which could be difficult to implement or give rise to enforcement risks for matters outside of the exchange's control. Other areas of MiFID II cover market participant systems used for algorithmic trading, whilst draft RTS 7 intends to focus specifically on the trading venue systems. We suggest clarifying the scope of Article 1 (1)(a) by introducing the following changes (in bold and italic): "(a) ‘Algorithmic trading systems’ means any arrangements or systems of the trading venue that allow or enable algorithmic trading."

<ESMA\_QUESTION\_CP3\_43>

1. Do you agree with the proposed Article 17 – General principles in the establishment of Circuit Breakers)? Please explain.

<ESMA\_QUESTION\_CP3\_44>

Europex generally agrees with ESMA’s suggested approach for establishing circuit breaker principles. Regulated markets need sufficient flexibility to ensure that the parameters for halting trading are appropriately calibrated in a way which considers the liquidity of different asset classes and sub-classes, the nature of the market model and types of users and is sufficient to avoid significant disruptions to the orderliness of trading.

We do suggest clarifying the conditions for using only static or dynamic circuit breakers to include market characteristics. This could be best achieved by clarifying the conditions mentioned in Article 17(2) by introducing the following changes (in bold and italic): “2. Trading venues shall design the circuit breakers deployed for the instruments traded on the basis of a static and a dynamic reference price, unless the trading venue demonstrates to its national competent authority that due to market-specific ***characteristics and*** circumstances volatility is adequately managed deploying only a static or a dynamic reference price.”

<ESMA\_QUESTION\_CP3\_44>

1. Do you agree with the proposed Article 18 – General principles in the establishment of the methodology for the calibration of Circuit Breakers? Please explain.

<ESMA\_QUESTION\_CP3\_45>

Europex agrees with the suggested general principles in the establishment of the methodology for the calibration of circuit breakers.

<ESMA\_QUESTION\_CP3\_45>

1. Do you agree with the proposed Article 19 – Disclosure requirement regarding circuit breakers? Please explain.

<ESMA\_QUESTION\_CP3\_46>

Europex supports increasing transparency in the area of circuit breakers, including the changes to MiFID Article 48 on circuit breakers which require exchanges to publish the methodology underpinning their circuit breakers and the conditions under which they trigger. However, Recital 19 of ESMA’s draft RTS 7 aims to prohibit the public disclosure of circuit breaker parameters by exchanges. Such a proposed prohibition would substantially reduce transparency of circuit breaker information, as disclosure of circuit breaker parameters is a common industry practice for derivatives exchanges around the world. Disclosure of the applied circuit breaker methodology and parameters allows market participants to know ex-ante under which circumstances the circuit breakers would be activated and anticipate the consequences of activation, aiding to predictability and market trust. Therefore, trading venues should further have the option to disclose the circuit breaker parameters.

As explained in more detail in our response to Q47, there are however compelling reasons not to publicly disclose the frequency exchange systems and controls trigger and the alerts these systems produce.

<ESMA\_QUESTION\_CP3\_46>

1. Article 19(1)(f) mandates trading venues to disclose “information on the triggering of circuit breakers, with at least an annual frequency”. Do you support such disclosure, and do you think ESMA should further specify the type of information that should be disclosed? Please explain.

<ESMA\_QUESTION\_CP3\_47>

Whilst it is beneficial for the wider market for exchanges to disclose the methodology that underpins their circuit breakers and their calibration, there are compelling reasons to maintain confidentiality around the frequency exchange systems and controls trigger and the alerts these systems produce. Disclosure of exchange alerts risks eroding market confidence due to the difficulties for the wider public to interpret their meaning, fuelling unnuanced sentiment on such number being too high or too low. In response, exchanges would have to consider the perception of the frequency alerts trigger by the wider public when calibrating their systems and controls, distracting from their principal responsibility to provide fair and orderly markets.

If ESMA is nevertheless adamant on the disclosure of circuit breaker alerts, Europex strongly advises to limit such disclosure to publication by competent authorities and under extraordinary circumstances. The disclosure of the frequency alerts trigger should be accompanied by the necessary context that would allow the public to understand their meaning.

1. Difficulties in interpreting the meaning of exchange alerts risks eroding market confidence

Exchanges employ a diverse suite of configurable systems and controls as part of their market supervision and market surveillance practices. It is inherently difficult to understand the meaning of alerts produced by these systems and controls absent sufficient experience and thorough knowledge of the trading platform, market surveillance and supervision systems and practices, products and market characteristics and circumstances. Moreover, the interpretation of exchange alerts is not always straightforward, and alerts are therefore carefully analysed by market supervision teams, and if necessary, discussed with senior management in a market surveillance committees or management boards to ultimately ensure an appropriate course of action is taken by the exchange.

Moreover, the exchange’s systems and controls can be calibrated in varying levels of sensitivity to serve different purposes. It is thereby impossible to distil from the frequency a certain exchange control triggers whether such information is an indication of a healthy market or not. An event that resulted in an alert being triggered, as for example a sudden price movement in a futures contract, or the specific trading behaviour of a market participant, could, following in depth review, be permissible and warrant no further action. For similar reasons, the number of alerts is not a statistic that can be compared or benchmarked across exchanges.

More specifically, in the area of circuit breakers, exchanges may employ different controls that would qualify as “price collars” as well as “trading halts” under draft RTS 7 and are calibrated in various levels of sensitivity. The wider public may perceive the market as unstable or overly risky when frequent alerts are disclosed, even when the alerts are part of the normal protective mechanisms the exchange employs. Disclosure of alerts could thereby erode market confidence deterring participation and may ultimately harm liquidity and the overall health of the market.

1. Mandatory disclosure of alerts risks distracting the exchange from its principal responsibility to maintain fair and orderly markets

The mandatory disclosure of alerts produced by internal controls in the area of market supervision and surveillance is highly unusual and sets a concerning precedent. Whilst some circuit breaker alerts are disclosed to the market at the time the mechanism triggers, the vast majority of alerts produced by the exchange’s systems and controls are confidential and are normally only disclosed to competent authorities as part of supervisory arrangements.

The exchange calibrates its systems and controls to ensure that attention is drawn to for example certain price movements, trading behaviour or build up in positions. The frequency alerts trigger provides little to no indication about market quality as such on a standalone basis, but may result in public concern about what these alerts mean. Ultimately, the exchange could be forced to consider the perception of the frequency alerts trigger when calibrating its systems and controls, distracting from its principal responsibility to maintain fair and orderly markets.

1. MiFID II Level 1 does not require the disclosure of circuit breaker alerts

MiFID II level 1 legislation does not require the disclosure of circuit breaker alerts, or even mentions them.

If ESMA is adamant on public disclosure of circuit breaker alerts, Europex strongly advises to limit such disclosure to publication by competent authorities and under extraordinary circumstances, as for example occurred in May 2023 when the European Parliament Economic Affairs Committee (ECON) organised a public hearing on the functioning of commodity derivatives markets in response to the energy crisis in Europe and invited ESMA and NCA officials to affirm. Moreover, our suggested approach is in line with MiFID II level 1 legislation and allows ESMA and NCAs to weigh the advantages and disadvantages of disclosure, and ensure that the provided information is concise, comprehensive and provides the necessary context.

<ESMA\_QUESTION\_CP3\_47>

1. Do you agree with the proposed template to report information to NCAs? Please explain.

<ESMA\_QUESTION\_CP3\_48>

Europex generally agrees with the suggested template for reporting information to NCAs. We stress that operationally it should be possible to leave fields open when for example a section doesn’t apply to a trading venue. To underline this point, it would be appropriate to include "where applicable" in those fields of the template where the provision of information is optional.

<ESMA\_QUESTION\_CP3\_48>

1. Do you agree with the proposal to delete Articles 15 of RTS 7 ('Business continuity arrangements')? Please explain.

<ESMA\_QUESTION\_CP3\_49>

Article 14 (2) (c) of draft RTS 7 introduces a requirement for the BCP to state "the maximum time to resume the trading activity and the amount of data that may be lost in the IT system". Europex stresses that the provision does not provide for any flexibility for extraordinary circumstances when the exchange would not be able to define such maximum time ex ante, as for example the inception of war.

Moreover, it is unclear whether the word 'maximum' applies only to time, or to the amount of data that you are allowed to lose. We suggest clarifying this article providing by splitting the provision into (c) the maximum time expected to resume the trading activity in circumstances where the BCP is capable of dealing with the incident, and (d) the maximum amount of data that may be lost in the IT system.

<ESMA\_QUESTION\_CP3\_49>

1. Do you agree with the proposed way forward on Article 8 of RTS 7 ('Testing of trading systems')? Please explain.

<ESMA\_QUESTION\_CP3\_50>

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<ESMA\_QUESTION\_CP3\_50>

1. Do you agree with the proposed way forward on Article 23 of RTS 7 ('Security and limits to access')? Please explain.

<ESMA\_QUESTION\_CP3\_51>

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<ESMA\_QUESTION\_CP3\_51>

1. Do you agree with the proposed amendments to Article 6 of RTS 7 ('Outsourcing and procurement'), Article 16 ('Business continuity plan') and Article 17 ('Periodic review of business continuity arrangements')? Please explain.

<ESMA\_QUESTION\_CP3\_52>

Article 6 of the draft RTS makes use of a broad definition of trading venue services in scope of the reporting requirement. In Article 6(2)(a) one of the regulatory notice requirements for outsourcing is 'where the service provider provides the same service to other trading venues'. This is a very broadly defined provision, and could cover for example software commonly used by businesses as Microsoft office, office cleaning services or an office taxi service, if another exchange also uses such services.  Europex suggests aligning the draft RTS with Article 40(b) of MiFID II, which refers to 'essential operating services'. Moreover, Article 6 only refers to new outsourcing arrangements and does not provide any clarity on how to deal with existing contracts, or when a different service provider is used for an existing service.

Furthermore, Europex stresses that the scope of the reporting obligation for non-essential outsourcing is overly broad. Article 6 (4) introduces a catch all reporting obligation for outsourcing arrangements not subject to prior authorisation, which would cover all non-essential outsourced services regardless of their relevance to the operation of an exchange or monetary value.

<ESMA\_QUESTION\_CP3\_52>

1. Do you suggest the deletion of other RTS 7 provisions due to the amendments to Article 48 of MiFID II? Please explain.

<ESMA\_QUESTION\_CP3\_53>

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<ESMA\_QUESTION\_CP3\_53>

1. Do you suggest the amendment to other provisions of RTS 7, due the amendments to Article 48 of MiFID II? Please explain.

<ESMA\_QUESTION\_CP3\_54>

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<ESMA\_QUESTION\_CP3\_54>