**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.

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# General information about respondent

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

# Questions

# 2.1 ITS on SI

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

<ESMA\_QUESTION\_CP3\_36>

Euronext believes there needs to be a more robust notification process for SIs, taking into account in particular that there are now additional requirements set out in Art 15 of MiFIR. These oblige systematic internalisers to establish and implement transparent and non-discriminatory rules and objective criteria for the efficient execution of orders. In addition, SIs should have arrangements for the sound management of their technical operations, including the establishment of effective contingency arrangements to cope with risks of systems disruption. In our view it is important that this information is provided to the NCA on registering as an SI.

Currently there is an unlevel playing field between the authorisation requirements for trading venues compared with those for SIs. For example ITS19 requires substantial information to be provided by the operator of an MTF. It is not clear why similar information is not required of SIs when they represent today a major source of liquidity, accounting for more than 13% of the average value traded in European equities in June 2024 (source: BigXYT) and are deemed eligible execution venues for the purpose of the share trading obligation. Hence, in our view, a description of the business model and how regulatory compliance is maintained with the above requirements should at least be provided by SIs to maintain a level-playing field with Regulated Markets and MTFs.

<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>

As per our response to Q.36, Euronext believes that additional information relating to the functioning of the SI and details relevant to the new requirements as per Art 15 of MiFIR need to be included.

In addition, we suggest the SI should be identified via a MIC. We believe this is important so as not to deprive investors from valuable information on available liquidity. It would be relevant for post-trade transparency and could be used via delayed post-trade reports if need be (even with a 1 month delay). Indeed, being able to get at some point, information on where liquidity is executed in the EU by being able to identify on which SI this is done, is critical.

It is worth mentioning that this is already the case in the US, where similar types of execution brokers are identified for the purposes of post-trade transparency. For more visibility on the variation on the quality of information available in the US and the EU as a result please see for instance the US liquidity map <https://www.bmlltech.com/news/market-insight/bmll-market-lens-us-liquidity-maps> and the EU liquidity map <https://www.bmlltech.com/news/market-insight/bmll-market-lens-liquidity-maps>.

Therefore requiring a MIC to be assigned to each individual SI and included in the SI notification process would be a pre-requisite to enable this additional and valuable information to be provided to the market.

<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>

Please see our response to Q. 36 & Q. 37.

<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>

Yes, in general Euronext agrees with the proposed amendments to RTS3 with the exception of the reference to “sufficiently granular trading venue identifier” to identity the volumes executed under a reference price waiver. This segregation is done on the basis of the post-trade flags, coherently with the rest of the rules, and not by using a trading venue identifier. Using such as approach would not work, for example for a Dark venue that is using the same MIC of the lit book.

<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>

Euronext notes that ESMA is considering the use of JSON format for reporting in a number of areas (i.e. RTS3, RTS21, RTS22, RTS23 & RTS24). It is critical that any approach ESMA decides to take in relation to reporting formats must be holistic and seek to progressively extend to all areas and reporting layers; otherwise it will not produce benefits and instead would lead to additional complexity and unnecessary cost. It is critical that a thorough cost / benefit analysis is carried out by ESMA before proceeding with such a significant change.

Fundamentally, any evolution towards the JSON format must as a prerequisite receive full endorsement from all NCAs and commitment that they will also adjust their practices and requirements in favour of this new unique format. Euronext has experienced inefficiencies linked to NCAs that currently sometimes require and request different reporting formats for operational reasons for the same reporting purposes. A broader evolution towards JSON can only be meaningful and successful if such discrepancies can be dismantled in favour of a unique format that is used by all.

Lastly, given that this would be a significant structural change, it is important that sufficient implementation time is provided for this transition (between 6 – 12 months at a minimum) and it is necessary that any evolutions towards this only be taken in a context where it can be confirmed to the industry by ESMA that JSON would be the go-to format for the foreseeable future and that at a minimum, no new reporting format would be introduced or required in the coming 5 to 8 years.

<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>

Euronext supports a switch to monthly reporting (option B) as this will reduce workload associated with regulatory reporting and we do not see the necessity for maintaining bi-weekly reporting. A monthly provision of data would help us in internal reconciliations and checks since we have several procedures that are executed on the basis of data aggregations on the basis of a calendar-month period. Nonetheless, we would highlight that sufficient time is given for trading venues to implement the required changes in their systems to adapt to the new requirements.

<ESMA\_QUESTION\_CP3\_42>

# 2.3 RTS 7

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

<ESMA\_QUESTION\_CP3\_43>

Yes, Euronext agrees with these definitions.

<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>

We generally agree with the approach but it is important that it is acknowledged in the RTS that there should be flexibility and that there are instances where the use of only static or only dynamic circuit breakers can have merits due to the specificities of the market.

As an example, the requirement for both static and dynamic circuit breakers should be relaxed when the fair price of an instrument may change significantly due to the nature of the product, such as in the case of option contracts. Another instance is when there are additional trading constraints, such as the case of securitised derivatives using the RFE (Request For Execution) model, where trades can only be executed within Liquidity Provider quotes.

There needs to be sufficient flexibility provided so that specific characteristics are taken into account and any process established for trading venues to provide information to their NCAs on this should not be overly burdensome.

Furthermore, in certain situations, neither static nor dynamic circuit breakers are the right mechanisms to ensure price continuity. The discretion that ESMA leaves to trading venues to determine the parameters should extend to the mechanisms themselves where the market operator can explain and justify these specific situation.

Euronext would ask for ESMA to consider this further and to include it Article 17(2) as follows (in bold): “[…] unless the trading venue demonstrates to its national competent authority that due to market-specific circumstances volatility is adequately managed deploying only a static or a dynamic reference price **or neither.”;** as well as in Article 17(3) as follows: “[…] The assessment should specifically encompass cases where the trading venue has decided to rely either on a static or on a dynamic reference price **or to rely neither on a static nor on a dynamic reference price”**. The trading venue should assess the products where this is the case and demonstrate how price continuity is ensured in case a circuit breaker should apply or not at all.

<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>

The proposed requirements set out in Article 18 are quite rigorous and stringent and likely to be very onerous to comply with. We believe there needs to be a balanced and practical approach taken to ensuring a trading venue establishes a clear and appropriate methodology on the calibration of its circuit breakers. In particular, we suggest this should be done at asset class level or for a specific group of instruments, as it is not practical to expect it to be done per each individual financial instrument.

<ESMA\_QUESTION\_CP3\_45>

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

<ESMA\_QUESTION\_CP3\_46>

We are generally fine with the information that must be disclosed except for Art 19(1)(d) and (f) as set out below. However, while Euronext supports transparency to the market in this regard, there should be flexibility provided as to where information on the functioning and effects of circuit breakers has to be disclosed, as it may not be the case that it is all published on the website, but is still publicly available.

In addition, it is critical that any sensitive information should not be required to be disclosed as there is a risk that this could impact trading behaviours and potentially be misused. This would compromise and undermine the ability of trading venues to ensure the orderly functioning of its markets. Therefore it is important that discretion is left with the trading venues as to the detail of the information that should be disclosed.

Regarding the specific information set out in Article 19:

* Art 19(1)(d) – in cases where boundaries change frequently throughout the day (e.g., dynamic collars on derivatives), Euronext believes the requirement can be satisfied by communicating the logic used to determine the collar ranges, rather than providing the specific collars. This approach meets the regulatory requirement and at the same time reduces the impact on real-time market data.

Art 19(1)(f) - please see our response in Q. 47.

<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>

Euronext does not believe this is necessary to disclose on our website as information on circuit breakers is already disclosed in real-time.

<ESMA\_QUESTION\_CP3\_47>

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

<ESMA\_QUESTION\_CP3\_48>

From our analysis of the proposed template, Euronext supports this approach. We would emphasise again that it is important we can group instruments together.

In relation to cases where the venue must provide a rationale for using only dynamic circuit breakers, it is important that one single answer is acceptable for this, as it would not be possible to set out in detail the mechanism for each instrument.

<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>

Yes, given DORA is the reference legislation in the finance sector regarding digital operational resilience, we believe provisions outside of DORA covering this policy area should be amended or, ideally, repealed to avoid overlapping and possibly contrasting requirements.

<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>

Yes, Euronext agrees.

<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>

We acknowledge that the DORA reporting requirements are applicable only to ICT related incidents whilst MIFID requirements might have wider scope encompassing also other types of incident. However, we believe provided that market operators keep records of any incident there is no objective reason to depart from the DORA approach in terms of reporting and therefore we suggest to remove entirely Article 23.

<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>

* **Amendments to Article 6 of RTS 7**

With reference to Article 6(2)(b) of RTS 7, we note that the obligation for trading venues to request prior authorisation from the NCA in the case of outsourcing of critical functions has been maintained. This provision, however, seems not in line with the approach taken in DORA where sub-paragraph 3 of Article 28(3) of DORA in relation to agreements with ICT service providers related to critical functions, requires only a prior notification to NCAs. Similarly, guidelines related to cloud outsourcing in respect of critical and important functions provides for notification only approach.

We would support a notification only approach under Article 6 of RTS 7 especially where the trading venue and service provider are members of the same group and under common control. Clarification should be made to reflect the reality of outsourcing within organisations of this nature.  This is required to address the absence of a distinction depending on the nature of the service provider under RTS 7 (Article 6). From a Euronext perspective, this distinction concerns whether the service provider is delivering services within the Group or for third parties. Requiring legal entities to request and obtain pre-approval from NCAs for outsourcing to other legal entities within the same Group does not value or recognize the dimension of EU affiliates and/or intragroup companies such as Euronext.

Therefore, we propose the following amendment:

2. Trading venues shall report to the competent authorities their intention to outsource operational functions in the following cases:

(a) where the service provider provides the same service to other trading venues;

(b) where critical operational functions necessary for business continuation would be outsourced, in which case the trading venues shall request a prior authorisation from the competent authority.

***“In cases under a and b above where the trading venue belongs to a trading venue group, and the intended outsourcing is carried out within the trading venue group, notification of the intended outsourcing shall be provided to the competent authorities of the relevant trading venue.”***

We suggest a new ‘Trading venue group’ definition should be introduced as follows:

***‘Trading venue group’ means a group consisting of more than one trading venue, which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation”***

* **Amendments to Articles 16 (New article 14) and 17 “Business Continuity”**

We believe that even though DORA requirements refer to “ICT business continuity plan” in the implementation practice trading venues will be maintaining a holistic approach establishing one single business continuity that cover all types of incident and recovery scenarios. Therefore we call for a consistent approach between RTS 7 and DORA in order to avoid overlaps and avoid duplication that might lead to divergent approach and uncertainty. Some of the minimum contents envisaged by the new Article 14 of RTS 7 “Business Continuity” are ICT related and, therefore, already covered by the scope of DORA’s plan. In particular, the provision contained in the proposed Article 14(2)(c) - which envisages the adoption of maximum timeframes for the recovery of assets and data - seems already covered by the requirements contained under Article 24 of RTS on risk management framework. Therefore we would recommend ESMA to reconsider this approach by removing to requirements under the new article 14 of RTS 7 (or at least letter (c) and (d)) and provide further guidelines in relations to supervisory expectations regarding the scope and content of the business continuity plan for trading venues under both RTS 7 and DORA jointly, following a holistic approach.

Similarly in relation to Article 17 of RTS 7 we believe that the MiFID requirements in terms of review business continuity arrangements should be aligned to the DORA requirements without the need to keep separate provisions in RTS 7.

<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>