Reply Form

**to the Consultation Paper on Draft technical advice concerning MAR and MiFID II SME GM**

Responding to this Consultation Paper

ESMA invites comments on all matters in this Consultation Paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **13 February 2024.**

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

Instructions

In order to facilitate analysis of responses to the 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\_LATA\_0>. Your response to each question has to be framed by the two tags corresponding to the question.

• If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.

• When you have drafted your responses, save the reply form according to the following convention: ESMA\_CP1\_ LATA\_nameofrespondent.

 For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP1\_ LATA\_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* under the heading *‘Your input - Consultations’.*

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

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

**Who should read this paper?**

All interested stakeholders are invited to respond to this consultation paper. This consultation paper is of primary interest to issuers, including SMEs, and trading venues, but responses are also sought from any other market participant including trade associations and industry bodies, institutional and retail investors, consultants and academics.

# General information about respondent

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

# Questions

1. Do you agree with the definition of protracted processes provided?

<ESMA\_QUESTION\_LATA\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_LATA\_1>

1. Do you agree with the identified categories of processes and general principles?

<ESMA\_QUESTION\_LATA\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_LATA\_2>

1. Do you agree that for protracted processes that are entirely internal to the issuer the moment of disclosure should be the moment when the corporate body having the decision power has taken the decision to commit to the outcome of the process?

<ESMA\_QUESTION\_LATA\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_LATA\_3>

1. Do you agree that in presence of a governance structure that foresees the approval of another body further to the management body’s decision, the disclosure obligation should take place as soon as possible after the decision of the first body?

<ESMA\_QUESTION\_LATA\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_LATA\_4>

1. Do you agree that for protracted processes involving the issuer and another party different from a public authority, the moment of disclosure should be when the competent bodies/persons of all parties involved, having the decision power under national law or bylaws, have taken the decision to sign off to the agreement?

<ESMA\_QUESTION\_LATA\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_LATA\_5>

1. Do you agree that for protracted processes that are driven by a public authority with the involvement of the issuer, the moment of disclosure should be when the issuer has received the final decision from the public authority, even where the issuer and the public authority previously exchanged preliminary information that may on its own amount to inside information?

<ESMA\_QUESTION\_LATA\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_LATA\_6>

1. Do you agree that for protracted processes that are triggered by the issuer and whose final outcome is decided by a public authority, two separate processes should be identified, and the moment of disclosure should occur upon completion of each of them as above outlined?

<ESMA\_QUESTION\_LATA\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_LATA\_7>

1. Do you agree that a hostile takeover can be considered a one-off event? Do you agree with the moment for disclosure identified for takeover processes?

<ESMA\_QUESTION\_LATA\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_LATA\_8>

1. Do you agree with the proposed approach in relation to financial reports, profit warnings, earning surprises and forecasts? In particular, do you agree that profit warnings and earning surprises are to be considered as one-off events and as such should not be included in the list of protracted processes?

<ESMA\_QUESTION\_LATA\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_LATA\_9>

1. Do you agree with the proposed approach in relation to recovery and resolution protracted process?

<ESMA\_QUESTION\_LATA\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_LATA\_10>

1. Do you consider the list of protracted processes sufficiently comprehensive? Do you agree with the proposed moment of disclosure? Would you add or remove any process?

<ESMA\_QUESTION\_LATA\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_LATA\_11>

1. Do you agree that the inside information to be delayed may in some cases be assessed against more than one announcement, whenever a clear conclusion about the issuer’s position on the subject matter cannot be drawn exclusively on the basis of the very latest communication?

<ESMA\_QUESTION\_LATA\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_LATA\_12>

1. Do you agree with the list of communications presented in Article 4 of the draft delegated act? Do you consider it sufficiently comprehensive, or do you deem that any other cases should be added?

<ESMA\_QUESTION\_LATA\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_LATA\_13>

1. Do you agree with the list of situations where there is a contrast between the inside information to be delayed and the latest announcement or communication as presented by ESMA in [Annex II] of the proposed Delegated Act (Annex IV of this CP)? Do you consider it sufficiently comprehensive, or do you deem that any other situations should be added?

<ESMA\_QUESTION\_LATA\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_LATA\_14>

1. Do you have any views on the methodology used to conduct the analysis?

<ESMA\_QUESTION\_LATA\_15>

Euronext agrees that ESMA’s proposed approach for the methodology to be used seems appropriate.

We would however reiterate points that we previously highlighted on this topic that it is important that these requirements ensure a harmonised format is used and do not lead to duplicate requirements.

Regarding the ITS that ESMA is tasked with drafting:

* (b) to determine appropriate arrangements, systems and procedures for trading venues to comply with the requirement in paragraph 1, third subparagraph, and
* (c) to determine the format and the timeframe for provision of the requested data in paragraph 1, third subparagaph.

It would be helpful if ESMA could clarify that this will align with MiFIR Art 25 and RTS24 so that no other duplicative arrangements are envisaged and that there will be both a common format and template set for RTS 24 (under MiFIR Art 25) as currently different NCAs ask for different formats. We believe this is a key issue. Given this topic is currently under consideration by ESMA as part of the MiFIR Review, we urge ESMA to take these points on board and ensure a streamlined outcome.

The risk of duplicate requirements needs to be fully addressed and therefore, we believe it should be made clear that if the trading venue already provides order data to its NCA on an on-going basis under Art 25 MiFIR and RTS24, these MAR provisions will not apply. Otherwise, there is a concern that a trading venue may end up having to provide the same data twice (firstly as part of on-going submission on a daily basis, and then secondly should another NCA request it on an ad-hoc basis) and potentially in different formats of this point is not addressed (e.g. csv and xml) which seems extremely onerous when the NCA already has the data.

As a final comment, and as per our response to the ESMA Consultation on RTS24, we suggest ESMA should consider some more fundamental changes in approach to RTS24, and instead of requiring entities to report to individual NCAs, it would be more efficient and streamlined if these reports were submitted directly to a central hub, such as ESMA, and that each NCA can then retrieve the required information. The need for a centralised system here is clear and would significantly reduce issues with respect to information exchanges between entities and different NCAs, and indeed between NCAs themselves.

This would address concerns arising from this new Cross Market Order Surveillance Mechanism as it is critical that this does not lead to duplicative and additional reporting requirements for trading venues; and it seems the issue that needs to be addressed generally relates to the exchange of information between NCAs. We believe a central hub for this information would solve this issue.

<ESMA\_QUESTION\_LATA\_15>

1. Do you agree that the methodology of calculation in Article 78(1) of CDR 2017/565 to assess if the SME GM meets the 50% criterion is suitable? Please explain.

<ESMA\_QUESTION\_LATA\_16>

Yes Euronext agrees the methodology remains suitable.

However, we have a general point about Article 77(2) of [Regulation 2017/565](https://gbr01.safelinks.protection.outlook.com/?url=https%3A%2F%2Feur-lex.europa.eu%2Flegal-content%2FNL%2FTXT%2F%3Furi%3DCELEX%253A02017R0565-20220802&data=05%7C02%7Cgleeson%40euronext.com%7C2131bb1dd3674b847c9a08dcc684bfde%7C315b1ee5c224498b871ec140611d6d07%7C0%7C0%7C638603520705066484%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=SWFywSu%2F8jgkp%2Bp5F56aFMsJGVdp47fOOe1ItEtjMvs%3D&reserved=0), as we suggest more clarity could be provided to the definition regarding issuers of bonds only on a SME GM. The current text states:

 *2. An issuer that has no equity instrument traded on any trading venue shall be deemed an SME for the purposes of Article 4(1)(13) of Directive 2014/65/EU if the nominal value of its debt issuances over the previous calendar year, on all trading venues across the Union, does not exceed EUR 50 million*.

This can give rise to different interpretations so we suggest it should be clarified in an ESMA Q&A that this includes issuers with bonds currently admitted to trading on the SME GM, but were admitted to trading before the previous calendar year, and did not issue and admit bonds over the previous calendar year (so the nominal value of their bond issue was 0).

In addition, the underlying definition of an SME within MiFID II should be unified and increased regarding the market capitalisation. We recommend raising the threshold for companies qualifying from an average market capitalization of EUR 200 million to EUR 1 billion. The current qualifying threshold for SMEs is too low as it only takes into consideration small enterprises and not mid-caps. The higher threshold would contribute to a strengthening of SME GM’s ability to attract more companies, with the potential to increase liquidity on these markets.

<ESMA\_QUESTION\_LATA\_16>

1. Do you agree that the requirements in Article 78(1) of CDR 2017/565 ensure that the refusal to be registered as an SME GM does not simply occur as a result of a temporary failure to comply with the requirements specified in Article 33(3) of MiFID II? Please explain.

<ESMA\_QUESTION\_LATA\_17>

Yes, Euronext agrees.

<ESMA\_QUESTION\_LATA\_17>

1. Do you agree with the proposal not to specify further the requirements in Articles 78(2)(a) and 78(2)(b) of CDR 2017/565? Please elaborate.

<ESMA\_QUESTION\_LATA\_18>

Yes, Euronext agrees there is no need to specify further these requirements.

<ESMA\_QUESTION\_LATA\_18>

1. Do you agree with the proposal not to modify the requirements currently included in Articles 78(2)(c), (d) and (f) of CDR 2017/565? Please elaborate.

<ESMA\_QUESTION\_LATA\_19>

Yes, Euronext agrees as we do not see the need to modify these requirements which currently work well and we believe it is important to retain flexibility for SME issuers and not increase their burden.

<ESMA\_QUESTION\_LATA\_19>

1. Do you agree with the proposal to align the requirement in Article 78(2)(e) of CDR 2017/565 with those of the Growth Issuance Prospectus by requiring a statement on the working capital only for share issuances? Please elaborate.

<ESMA\_QUESTION\_LATA\_20>

Yes, Euronext supports this approach. We had previously highlighted that this is a specific area that needed to be considered further. This requirement to provide a Working Capital statements is very onerous, and is particularly so for a Bond issuer. Therefore, given it may not be relevant for noteholders and also goes beyond the Prospectus Regulation which only looks for working capital for equity securities, we welcome this proposal.

<ESMA\_QUESTION\_LATA\_20>

1. Do you agree with the proposal to include in Article 78(2)(g) of CDR 2017/565 the requirement that the financial reports published by SME GM issuers should be subject to audits?

<ESMA\_QUESTION\_LATA\_21>

Yes Euronext agrees but would like clarity that this only refers to Full Year Financial Reports.

<ESMA\_QUESTION\_LATA\_21>

1. Do you agree with the proposal not to modify Articles 78(2)(h) and (i) of CDR 2017/565? Please elaborate.

<ESMA\_QUESTION\_LATA\_22>

Yes, we agree that this should not be modified.

<ESMA\_QUESTION\_LATA\_22>

1. Do you agree with the proposals to meet the first and the second requirements under Article 33(3a) (a) and (b)? Please explain.

<ESMA\_QUESTION\_LATA\_23>

Yes, Euronext agrees.

<ESMA\_QUESTION\_LATA\_23>

1. Do you agree with the proposals to meet the third requirement under Article 33(3a) (c)? Please explain.

<ESMA\_QUESTION\_LATA\_24>

Yes, Euronext agrees.

<ESMA\_QUESTION\_LATA\_24>

1. Do you agree that no specific amendments are required for Article 79? Please explain.

<ESMA\_QUESTION\_LATA\_25>

Yes, Euronext agrees.

<ESMA\_QUESTION\_LATA\_25>

1. Do you agree that the requirements in Article 79 of CDR 2017/565 ensure that an SME GM is not deregistered due to a temporary failure to comply with the criteria an Article 33 of MiFID II?

<ESMA\_QUESTION\_LATA\_26>

Yes, Euronext agrees.

<ESMA\_QUESTION\_LATA\_26>