

Public consultation on the review of the MiFID II/MiFIR regulatory framework

Fields marked with * are mandatory.

Introduction

SECTIONS 1 and 3 of this consultation are also available in other 22 European Union languages.

SECTION 2 will be available in English only.

If you wish to respond in another language than English, please **use the language selector above to choose your language.**

Background of this public consultation

As stated by [President von der Leyen in her political guidelines for the new Commission](#), “*our people and our business can only thrive if the economy works for them*”. To that effect, it is essential to complete the Capital Markets Union (‘CMU’), to deepen the Economic and Monetary Union (‘EMU’) and to offer an economic environment where small and medium-sized enterprises (‘SMEs’) can grow.

In the light of the mission letter to Executive Vice President Dombrovskis, the Commission services are speeding up the work towards a CMU to diversify sources of finance for companies and tackle the barriers to the flow of capital. The Action Plan on the **Capital Markets Union** as announced in [Commission Work Program for 2020](#) will aim at better integrating national capital markets and ensuring equal access to investments and funding opportunities for citizens and businesses across the EU.

In addition, the new **Digital Finance Strategy** for the EU aims to deepen the Single Market for digital financial services, promoting a data-driven financial sector in the EU while addressing its risks and ensuring a true level playing field via enhanced supervisory approaches. And the revamped Sustainable Finance Strategy will aim to redirect private capital flows to green investments.

Finally, in the context of the [Communication on the International role of the euro](#), the Commission has published a recommendations on how to increase the role of the euro in the field of energy. Furthermore, the Commission consulted market participants to understand better what makes the euro attractive in the global arena. Based on those consultations, the Commission has produced a Staff Working Document that provides an update on initiatives, and raises considerations for specific sectors such as commodity markets.

The Directive and Regulation on Markets in Financial Instruments (respectively [MiFID II – Directive 2014/65/EU](#) – and [MiFIR – Regulation \(EU\) No 600/2014](#)) are cornerstones of the EU regulation of financial markets. They promote financial markets that are fair, transparent, efficient and integrated, including through strong rules on investor protection. In doing so, MiFID II and MiFIR support the objectives of the CMU, the Digital Finance agenda, and the Sustainable Finance agenda.

Responding to this consultation and follow up to the consultation

In this context and in line with the [Better Regulation principles](#), the Commission has decided to launch an open public consultation to gather stakeholders' views.

The Commission's consultation and separate [ESMA consultations on the functioning of certain aspects of the MiFID II /MiFIR framework](#) are complementary and should by no means be considered mutually exclusive. The Commission and ESMA consult stakeholders with respect to their specific area of competence and responsibility and with the objective to gather important guidance for any future course of action on respective sides. Both the ESMA reports and this consultation will inform the review reports for the European Parliament and the Council (see Article 90 of MiFID II and Article 52 of MiFIR), including legislative proposals where considered necessary.

This consultation document contains three sections.

The first section aims to gather views from all stakeholders (including non-specialists) on the experience of two years of application of MiFID II/MiFIR. In particular, it will gather feedback from stakeholders on whether a targeted review of MiFID II/MiFIR with an ambitious timeline would be appropriate to address the most urgent shortcomings.

The second section will seek views of stakeholders on technical aspects of the current MiFID II/MiFIR regime. It will allow the Commission to assess the impact of possible changes to EU legislation on the basis of proposals already put forward by stakeholders in the context of previous public consultations and studies (e.g. study on the effects of the unbundling regime on the availability and quality of research reports on SMEs and study on the digitalisation of the marketing and distance selling of retail financial service) and in the context of exchanges with experts (e.g. in the European Securities Committee or in workshops, such as the workshop on the scope and functioning of the consolidated tape). This second section focuses on a number of well-defined issues.

The third section invites stakeholders to draw the attention of the Commission to any further regulatory aspects or identified issues not mentioned in the first and second sections.

This consultation is open until 18 May 2020.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-mifid-r-review@ec.europa.eu.

More information:

- [on this consultation](#)
- [on the consultation document](#)
- [on the protection of personal data regime for this consultation](#)

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- Gaelic
- German
- Greek
- Hungarian
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
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- Spanish
- Swedish

* I am giving my contribution as

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| <input type="radio"/> Consumer organisation | <input type="radio"/> Non-governmental organisation (NGO) | |

* First name

Elizabeth

* Surname

Callaghan

* Email (this won't be published)

elizabeth.callaghan@icmagroup.org

* Organisation name

255 character(s) maximum

International Capital Market Association (ICMA)

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

0223480577-59

* Country of origin

Please add your country of origin, or that of your organisation.

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- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
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- Germany
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- Gibraltar
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- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
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- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
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Nevis | <input type="radio"/> Zimbabwe |
| <input type="radio"/> Denmark | <input type="radio"/> Liberia | <input type="radio"/> Saint Lucia | |

* Field of activity or sector (if applicable):

at least 1 choice(s)

- Operator of a trading venue (regulated market, MTF, OTF)
- Systematic internaliser
- Data reporting service provider
- Data vendor
- Operator of market infrastructure other than trading venue (clearing house, central security depositary, etc)
- Investment bank, broker, independent research provider, sell-side firm

- Fund manager (e.g. asset manager, hedge funds, private equity funds, venture capital funds, money market funds, institutional investors), buy-side entity
- Benchmark administrator
- Corporate, issuer
- Consumer association
- Accounting, auditing, credit rating agency
- Other
- Not applicable

* Please specify your activity field(s) or sector(s):

Trade Association

* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- Anonymous**
Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.
- Public**
Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

I agree with the [personal data protection provisions](#)

Choose your questionnaire

* Please indicate whether you wish to respond to the **short version (7 questions)** or **full version (94 questions)** of the questionnaire.

The **short version** only covers the **general aspects of the MiFID II/MiFIR regime**

The **full version** comprises 87 additional questions addressing **more technical features**.

The full questionnaire is only available in English.

- I want to respond only to the **short version** of the questionnaire

- I want to respond to the **full version** of the questionnaire

Section 1. General questions on the overall functioning of the regulatory framework

The EU established a comprehensive set of rules on investment services and activities with the aim of promoting financial markets that are fair, transparent, efficient and integrated. The first comprehensive set of rules adopted by the EU ([MiFID I - Directive 2004/39/EC](#).) helped to increase the competitiveness of financial markets by creating a single market for investment services and activities. In the wake of the financial crisis, shortcomings were exposed. MiFID II and MiFIR, in application since 3 January 2018, reinforce the rules applicable to securities markets to increase transparency and foster competition. They also strengthen the protection of investors by introducing requirements on the organisation and conduct of actors in these markets.

After two years, the main goal of a MiFID II/MiFIR targeted review is to increase the transparency of European public markets and, linked thereto, their attractiveness for investors. The Commission aims to ensure that European Union's share and bond markets work for the people and businesses alike. All companies, both small and large, need access to the capital markets. The regulatory regime for financial markets and financial services needs to be fit for the new digital era and financial markets need to work to the benefit of everyone, especially retail clients.

Question 1. To what extent are you satisfied with your overall experience with the implementation of the MiFID II/MiFIR framework?

- 1 - Very unsatisfied
- 2 - Unsatisfied
- 3 - Neutral
- 4 - Satisfied
- 5 - Very satisfied
- Don't know / no opinion / not relevant

Question 1.1 Please explain your answer to question 1 and specify in which areas would you consider the opportunity (or need) for improvements:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

MiFID II/MiFIR should have been phased in. Commission/ESMA Transparency and level playing field objectives would have been better realised.

Question 2. Please specify to what extent you agree with the statements below regarding the overall experience with the implementation of the MiFID II /MiFIR framework?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention has been successful in achieving or progressing towards its MiFID II /MiFIR objectives (fair, transparent, efficient and integrated markets).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve the MiFID II/MiFIR objectives.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR objectives correspond with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR has provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 2.1 Please provide qualitative elements to explain your answers to question 2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Questions 2.1 – 2.5:

1. Yes, to a degree. From a bond perspective, MiFID II has been fairly successful but has introduced far too much complexity. Simplification would help to progress MiFID II objectives further.

2. Progressing towards efficient & transparent markets but not there yet. Costs are proving prohibitive for market participants to verify regulatory compliance. The member view is that costs in relation to benefits received, should have been taken into consideration before the “big bang” of MiFID II in January 2018. A phased-in approach would have delivered better value for all concerned, market participants as well as regulators.

Taskforce members have not observed a balanced outcome for the MiFID II research regime for bonds. A level playing field has not emerged through the introduction of bond research unbundling:

- Smaller providers cannot compete with larger providers, due to larger providers producing cost-effective economies of scale offerings.
- On the lower side of the issuer spectrum, the market has become less efficient, due to more limited research resources focused on the smaller issuers.
- In light of Covid-19, the whole bond research unbundling regime may need to be reassessed more broadly to stimulate business, finance the real economy, and assist the buy side. In particular, there appears to be no perceived benefits for fixed income investors. Furthermore, the perception of ‘research unbundling’ is that it is designed for equities, particularly commission-based execution and commission sharing agreements (CSAs). ICMA members believe that bond research (including SME) is a key component of the decision-making process for investors generally.

3. There are some conflicts with different parts of MiFID II. Pre-trade SSTI levels function. However, this is in contrast with public post-trade reporting. Deferrals are not harmonised and there is no centralised aggregation of post-trade data, accessible by all. The end result of MiFID II/R was expensive and excessively designed.

4. The attempt is commendable. There is a stable functioning bond market. However, there is a desire amongst market participants to be more competitive. The EU should not inhibit competitiveness with other markets across the globe, for example, US markets. Regulations can be an impediment for EU competitiveness.

5. No comment

Question 3. Do you see impediments to the effective implementation of MiFID II/MiFIR arising from national legislation or existing market practices?

- 1 - Not at all
- 2 - Not really
- 3 - Neutral
- 4 - Partially
- 5 - Totally
- Don't know / no opinion / not relevant

Question 3.1 Please explain your answer to question 3:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, there are some impediments such as:

- Post-trade transparency deferral regime.
- NCAs. Banking services can be split between different countries based on local NCA interpretation and approval.
- Client classification – determining whether sophisticated or not.
- Supervisory perimeter: a. What is a regulated entity? What entity is multilateral and what isn't changes depending on country. e.g. France & Germany: Agency brokers & OTFs, confusion as to what constitutes an OTF or an MTF.

Question 4. Do you believe that MiFID II/MiFIR has increased pre- and post-trade transparency for financial instruments in the EU?

- 1 - Not at all
- 2 - Not really
- 3 - Neutral
- 4 - Partially
- 5 - Totally
- Don't know / no opinion / not relevant

Question 4.1 Please explain your answer to question 4:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Access to APAs is easy for post-trade data but in reality, a firm needs to access multiple APAs in order to get an accurate overview of the market (and accept the challenge of data quality). Pre-trade data is fragmented across APAs and investment firms. So, for post-trade bond data there has been a partial increase in transparency, while in pre-trade transparency there has not really been increased transparency due to MiFIR. In pre-trade transparency and from a buy-side perspective, investors use market pre-trade transparency such as axes for price discovery and not SI MiFIR based quotes.

Question 5. Do you believe that MiFID II/MiFIR has levelled the playing field between different categories of execution venues such as, in particular, trading venues and investment firms operating as systematic internalisers?

- 1 - Not at all
- 2 - Not really
- 3 - Neutral
- 4 - Partially
- 5 - Totally
- Don't know / no opinion / not relevant

Question 5.1 Please explain your answer to question 5:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ICMA members believe that trading venues and SIs provide different functions, and both play an important roles in the bond market. Investors make use of different trading systems depending on the type of transactions they need to execute. As SIs and trading venues function differently (i.e. SIs take on capital risk), the MiFID II rules have been calibrated to take that into account. However, we note the below potential differences in the regime:

ICMA members believe the SI rules under Article 18 imposes additional obligations on SIs such as requiring SIs to make the firm quotes 'available to other clients' (Article (18(5))) and 'enter into transactions' under the published conditions with clients to whom the quotes are made available (Article (18(6))). We would suggest these obligations should be deleted.

As stated in ESMA's consultation response (<https://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/Secondary-Markets/secondary-market-practices-committee-smpc-and-related-working-groups/mifid-ii-r-working-group/>), there is a lack of anonymity for individual SI quotes compared with trading venues where published quotes are at the venue level rather than the individual risk-taker level. ICMA sell-side members believe that SIs should have the possibility to anonymise their quotes should they wish to. Also worth noting that the SI pre-trade reporting could only be anonymised if the additional obligations under Article 18 (5), Article 18 (6) and Article 18 (7) are deleted.

In addition, ICMA members believe in relation to MTFs, in order to not discourage trading on venues in the EU by third country participants, the transaction reporting obligations on trading venues should mirror more closely the scenario of a SI trading with a non-EU counterparty.

Question 6. Have you identified barriers that would prevent investors from accessing the widest possible range of financial instruments meeting their investment needs?

- 1 - Not at all
- 2 - Not really
- 3 - Neutral
- 4 - Partially
- 5 - Totally
- Don't know / no opinion / not relevant

Question 6.1 Please explain your answer to question 6:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

From an institutional investor perspective, no barriers have been identified and they are accessing the widest possible range of financial instruments, meeting their investment needs.

Section 2. Specific questions on the existing regulatory framework

The EU has a competitive trading environment but investors and their intermediaries often lack a consolidated view of where financial instruments are traded, how much is traded and at what price. Except for the largest or most sophisticated market players (who can purchase consolidated data pertaining to the different execution venues from data vendors or build their own aggregated view of the market), investors have no overall picture of a fragmented trading landscape: while the trading often used to be concentrated on one national exchange, notably in equities, investors can now choose between multiple competing trading venues, which results in a more fragmented and hence more complex trading landscape. At the same time, fragmentation per se should not be discarded as it is inherent to the introduction of alternative trading systems (MTFs, OTFs) which has led to a significant increase in competition between trading venues with positive effects on trading costs and increased execution quality. This section seeks stakeholders' feedback on how to improve investors' visibility in the current trading environment via the establishment of a consolidated tape.

In order to optimise the trading experience, a single price comparison tool consolidating trading data across the EU - referred to as the consolidated tape ('CT') - would help brokers to locate liquidity at the best price available in the European markets, and increase investors' capacity to evaluate the quality of their broker's performance in executing an order. A European CT could also be one major step towards "democratising" access to "market data" so that all investors can see what the best price is to buy or sell a particular share. A CT may not only prove useful for equities but also for exchange-traded funds (ETFs), bond or other non-equity instruments. Practical experience with a consolidated tape is already available in the United States, where a consolidated tape has been mandated for shares (consolidating pre- and post-trade data) and bonds (post-trade data).

A European CT could, for a reasonable fee, provide a real-time feed of information, not only for transactions that have taken place (post-trade information), but also for orders resting in the public markets (pre-trade information). MiFID II /MiFIR already provides for a consolidated tape framework for equity and non-equity instruments but no consolidated tape has yet emerged, for various reasons that are explored in this consultation. On 5 December 2019 [ESMA submitted to the Commission a report on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments](#). This report included recommendations relating to the provision of market data and the establishment of a post-trade consolidated tape for equities. In the following sections the Commission, taking into account the conclusions from ESMA, welcomes views on how a European CT should be designed: what information it should consolidate (e.g. pre- and/or post-trade transparency), what financial instruments should be included (e.g. shares, bonds, derivatives), what characteristics should be retained for its optimal functioning (e.g. funding, governance, technical specifications). Finally, the last subsection analyses possible amendments to certain MiFID II /MiFIR provisions (share trading obligation and transparency requirements) with a possible link to the CT.

¹ The review clauses in Article 90 paragraphs (1)(g) and (2) of MiFID II and Article 52 paragraphs (1), (2), (3), (5) and (7) of MiFIR are covered by this section.

PART ONE: PRIORITY AREAS FOR REVIEW

The issues in PART ONE are identified by the Commission services as priority areas for the review based on the experience gathered in the two years of implementation of MiFID II/MiFIR. Many of them are listed in the review clauses of MiFID II and MiFIR which means that the Commission needs input to assess the merit of amending the provisions to make them more effective and operational. When applicable, references are made to the applicable review clause.

Other topics not listed in the review clauses stem from the many contributions received from stakeholders, including public authorities, on possible shortcomings of the existing framework. A number of questions in subsection II on investor protection in particular fall in the latter category

I. The establishment of an EU consolidated tape¹

1. Current state of play

This section discusses the absence of a CT under the current MiFID II/MiFIR framework, the issues of availability of market data for market participants and the use cases for setting up a CT.

1.1. Reasons why a consolidated tape has not emerged

Article 65 of MIFID II provides for a framework for a post-trade CT in equity and non-equity instruments further detailed in regulatory technical standards. The framework specifies key functioning features that a potential CT should adhere to, such as the content of the information that a CT should consolidate as well as its organisational and governance arrangements.

Since no CT provider has emerged so far, there is a lack of practical experience with the CT framework under MiFID II /MiFIR. Several reasons have been put forward to explain the absence of a CT.

Question 7. What are in your view the reasons why an EU consolidated tape has not yet emerged?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Lack of financial incentives for the running a CT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Overly strict regulatory requirements for providing a CT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Competition by non-regulated entities such as data vendors	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of sufficient data quality, in particular for OTC transactions and transactions on systematic internalisers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Please specify what are the other reasons why an EU consolidated tape has not yet emerged?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

For an in-depth ICMA member view on all issues relating to a bond consolidated tape, please see ICMA's final report for the European Commission on EU consolidated tape for bond markets (<https://www.icmagroup.org/assets/documents/Regulatory/MiFID-Review/EU-Consolidated-Tape-for-Bond-Markets-Final-report-for-the-European-Commission-290420v2.pdf>)

- Aggregating free data has not been technically or commercially practical.
- Data quality, standards and lack of 'golden source' for reference data (TOTV and SI industry register at ISIN level). However, this is improving and will have a step change in improvement with the emergence of a CT.
- The regulations have proved too strict in their requirements, such as requiring a CTP to cover 80% of bond market transactions. A phased-in approach would assist in a sensible implementation. The bond CT transaction coverage should be phased in, starting with 65% of bond transactions and then increasing to 70% and then to 80% and better as warranted.

Question 7.1 Please explain your answers to question 7:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see above.

Question 8. Should an EU consolidated tape be mandated under a new dedicated legal framework, what parts of the current consolidated tape framework (Article 65 of MiFID II and the relevant technical standards ([Regulation \(EU\) 2017/571](#))) would you consider appropriate to incorporate in the future consolidated tape framework?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No. Creating a new dedicated legal framework for an EU bond (and any other asset class) consolidated tape is not a rational way forward.

Greater transparency in bond markets is one of the key objectives of MiFID II/R. Including article 65 of MiFID which discusses making the information available to the public. However, MiFID II has yet fully to achieve its objective of creating greater transparency. A key reason for this is held to be the lack of a central database, which aggregates the various post-trade data sources into a single view, a "consolidated tape".

Therefore, instead of setting up a new legal framework for a consolidated tape, much more effective to retain the consolidated tape within MiFID II/MiFIR texts and make the necessary modifications. Article 65 should be amended addressing governance, mandatory contribution, reporting design, data ownership, revenue sharing and a tiered usage type fee structure to create a centralised consolidated tape providing bond market participants with an overview of raw bond market post-trade data.

1.2. Availability and price of market data

In its report submitted on 5 December 2019 to the Commission, ESMA considers that so far MiFID II/MiFIR has not delivered on its objective to reduce the price of market data and the Reasonable Commercial Basis ('RCB') provisions have not delivered on their objectives to enable users to understand market data policies and how the price for market data is set.

ESMA recommends, in addition to working on supervisory guidance on how the RCB requirements should be complied with, a number of targeted changes to either the Level 1 or Level 2 texts to strengthen the overall concept that market data should be charged based on the costs of producing and disseminating the information:

- add a mandate to the Level 1 text empowering ESMA to develop Level 2 measures specifying the content, format and terminology of the RCB information; and
- move the provision to provide market data on the basis of costs (Article 85 of CDR 2017/565 and Article 7 of CDR 2017/567) to the Level 1 text;
- add a requirement in the Level 1 text for trading venues, APAs, SIs and CTPs to share information on the actual costs of producing and disseminating market data as well as on the margins with CAs and ESMA together with an empowerment to develop Level 2 measures specifying the frequency, content and format of such information;
- delete Article 86(2) of CDR 2017/565 and Article 8(2) of CDR 2017/567 allowing trading venues, APAs, CTPs and SIs to charge for market data proportionate to the value the data represents to users.

Question 9. Do you agree with the above targeted amendments recommended by ESMA to address market data concerns?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

-Add a mandate to the Level 1 text empowering ESMA to develop Level 2 measures specifying the content, format and terminology of the RCB information:

ESMA should control the CTP contract and monitor for breach of contract. See ICMA's final report on EU consolidated Tape for Bond Markets (<https://www.icmagroup.org/assets/documents/Regulatory/MiFID-Review/EU-Consolidated-Tape-for-Bond-Markets-Final-report-for-the-European-Commission-290420v2.pdf>), for more detailed information.

-Move the provision to provide market data on the basis of costs (Article 85 of CDR 2017/565 and Article 7 of CDR 2017/567) to the Level 1 text:

It is essential that the responsibility for data feed provision should be changed from CTP's obligation to 'obtain' data, to stating that trading venues and APAs have an obligation to 'provide' data to the CTP, in level one of MiFID II/R language. This obligation should be extended to self-reporting firms as applicable (see

ICMA's final report on EU consolidated Tape for Bond Markets [<https://www.icmagroup.org/assets/documents/Regulatory/MiFID-Review/EU-Consolidated-Tape-for-Bond-Markets-Final-report-for-the-European-Commission-290420v2.pdf> for more detailed information).

-Add a requirement in the Level 1 text for trading venues, APAs, SIs and CTPs to share information on the actual costs of producing and disseminating market data as well as on the margins with CAs and ESMA together with an empowerment to develop Level 2 measures specifying the frequency, content and format of such information:

In regard to bond market consolidated tape, the best way to manage costs is a successful governance model which has some form of public/private partnership, involving ESMA and industry stewardship. In addition, a straightforward simple plan for revenue sharing and user fees (based on end user usage types and volumes) will create a better understanding of the costs involved in the operation of a CTP.

-Delete Article 86(2) of CDR 2017/565 and Article 8(2) of CDR 2017/567 allowing trading venues, APAs, CTPs and SIs to charge for market data proportionate to the value the data represents to users:

Trading venues, APAs and self-reporting firms should not retain any claim or ownership for the raw post-trade data and therefore should not be able to 'license' the reported post-trade raw data to the CTP (Note: trading venue and APA taskforce members do not support this approach, which is a significant change to existing business models [also a departure from existing MiFID II/R publication requirements]). Revenue in the form of revenue sharing will be determined by the quality of the aggregated data cleansed and the data quality scorecard 'score', which will be proportionate to the volume of data provided by the contributing firm. For more information see ICMA's final report on EU consolidated Tape for Bond Markets (<https://www.icmagroup.org/assets/documents/Regulatory/MiFID-Review/EU-Consolidated-Tape-for-Bond-Markets-Final-report-for-the-European-Commission-290420v2.pdf>) for more detailed information.

1.3. Use cases for a consolidated tape

Question 10. What do you consider to be the use cases for an EU consolidated tape?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Transaction cost analysis (TCA)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring best execution	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Documenting best execution	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Better control of order & execution management	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Regulatory reporting requirements	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Market surveillance	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Liquidity risk management	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Making market data accessible at a reasonable cost	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Identify available liquidity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Portfolio valuation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 10.1 Please explain your answers to question 10 and also indicate to what extent the use cases would benefit from a CT:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The goal of the bond consolidated tape (CT), as perceived by Taskforce members, is to improve transparency, assist decision making and provide market insights to end-investors, large or small. Adoption of the appropriate structure would benefit the whole market, by providing a centralised, high quality, affordable, trustworthy data source, offering a comprehensive market view. This would bring immediate benefits to professional bond markets and benefit the retail sector as well.

Additional useful tool in the toolbox for execution management. Important to note in relation to 'Better control of order & execution management', a post-trade consolidated tape is considered an additional useful tool in the 'toolbox'. Control of order & execution management is achieved by using appropriate internal execution management tools and bond trading protocols.

Levelling the playing field with respect to access to information. A post-trade CT removes existing information asymmetries, where certain market participants may have greater visibility regarding ongoing trading activity than other investors. This enables investors to assess more accurately current market dynamics, increasing overall investor confidence, particularly during times of market volatility.

Promoting market resilience. The removal of existing information asymmetries contributes to market resiliency by ensuring that changes in supply and demand are more efficiently reflected in current price levels. In addition, without a neutral and reliable source of current market trading activity, investors may be more likely to pull back during times of volatility.

Promoting competition. By enabling investors to compare the prices they receive from liquidity providers with concurrent (and anonymous) trading activity across the market, a post-trade CT promotes price competition as investors are able to demand more accountability from their liquidity providers. In addition, new liquidity providers are more likely to enter the market, as they are able to access information regarding current market dynamics, including trading volumes and pricing, on an equal basis as existing liquidity providers.

Improved fund valuations. The accuracy and immediacy of fund valuations is directly contingent on the ability to value accurately the underlying securities. Improved transparency in bond markets will help managers to maintain accurate valuations of their fixed income funds. This equally applies to fixed income exchange

traded funds (ETFs) and would help to maintain a closer relationship between the net asset value (NAV) of the underlying fund and the price of the related ETF through better facilitation of the creation and redemption process.

Facilitating more accurate assessments of execution quality. A post-trade CT can be used for transaction cost analysis and best execution assessments, as it provides a neutral and reliable source of current market trading activity against which to reference execution quality. Evidencing best execution is also generally a compliance requirement, where again the existence of a CT could support observance.

More accurate pricing of derivatives. Prices in derivatives, such as futures, options, and credit default swaps, should reflect the value of the underlying cash instruments. Where it is difficult to find accurate market valuations of the underlying security, derivatives pricing can diverge from fair value, creating additional risks and costs for investors looking to hedge their exposures. Improved transparency in bond markets will therefore help to facilitate more accurate pricing, and potentially greater liquidity, in related derivatives.

Improved fund valuations. The accuracy and immediacy of fund valuations is directly contingent on the ability to value accurately the underlying securities. Improved transparency in bond markets will help managers to maintain accurate valuations of their fixed income funds. This equally applies to fixed income ETFs and would help to maintain a closer relationship between the NAV of the underlying fund and the price of the related ETF through better facilitation of the creation and redemption process.

Informed decision making. The CT may allow regulators and NCAs to understand the evolution of liquidity in order to make informed decisions.

Facilitating automation. Greater efficiencies in bond markets can be achieved through the automation of many processes, including the pricing and execution of orders. The ability to automate such processes successfully is contingent on comprehensive, accurate, and timely market data, which a CT would go far in providing.

Supporting the CMU. A post-trade CT for bonds strengthens EU capital markets by linking together the disparate trading venues and APAs across the EU, enhancing investor confidence due to increased transparency in the market. Stronger and more liquid EU capital markets promote capital formation, job creation, and economic growth.

2. General features of the consolidated tape

This section discusses the general features of a future European CT. The specific scope of the CT in terms of financial instruments (shares, bonds, derivatives) and type of transparency (pre- and/or post-trade) are addressed in the following section.

During the EC workshop, the ESMA consultation, conferences and stakeholder meetings, it became clear that a majority of market participants believe that EU financial markets would benefit from the establishment of a CT. ESMA made the following recommendations² which appear very important for the success of an EU consolidated tape:

- ensuring a **high level of data quality** (supervisory guidance complemented with amendments of the Level 1 and 2 texts);
- **mandatory contributions**: trading venues and APAs should provide trading data to the CT free of charge;
- CT to **share revenues with contributing entities** (on the basis of an allocation key that rewards price forming trades);

- contribution of users to funding of the CT, e.g. via **mandatory consumption** of the CT by users to ensure user contributions to the funding of the CT
- **full coverage**: The CT should consolidate 100% of the transactions across all asset classes (with possible targeted exceptions);
- **operation of the CT on an exclusive basis**: ESMA recommends that a CT is appointed for a period of 5-7 years after a competitive appointment process;
- **strong governance framework** to ensure the neutrality of the CT provider, a high level of transparency and accountability and include provisions ensuring the continuity of service.

The EC workshop, conferences and stakeholder meetings revealed that opinions remained divergent on a variety of issues, notably:

- **Whether pre-trade data should be included in CT**: the argument has been made that the US model for a consolidated quotation tape comprises pre-trade quotes because of the **order protection rule** contained in Regulation National Market System (NMS). The order protection rule eliminated the possibility of orders being executed at a suboptimal price compared to orders advertised on exchanges and it established the National Best Bid and Offer (NBBO) requirement that mandates brokers to route orders to venues that offer the best displayed price. Although some stakeholders strongly support a quotation tape, others have expressed reservations, either because there is no order protection rule in the European Union or because they do not support the establishment of such a rule in the EU which could be encouraged by the establishment of a pre-trade tape. Stakeholders also argue that a quotation tape will be very expensive and that latency issues in collecting, consolidating and disseminating transaction data from multiple venues will always lead to a co-existence of the CT and proprietary exchange data feeds.
- **What should be the latency of the tape**: Many stakeholders argue that the tape should be “real-time”, implying minimum standards on latency such as a dissemination speed of between 200 and 250 milliseconds (“fast as the eye can see”). Other stakeholders support an end of day tape.
- **How to fund the tape and redistribute its revenues**: stakeholders have mixed views on the optimal funding model. They also caution against some aspects of the US model, where the practice of redistribution of CT revenues has, in their view, provided market participants with an incentive to provide quotes to certain venues that rebate more tape revenue, without necessarily contributing to better execution quality.

² ESMA recommendations are limited to an equity post-trade CT (as foreseen in their legal mandate). The current section however is not limited to pre-trade transparency and equity instruments and stakeholders should express their view on the appropriate scope of transparency (pre- and/or post-trade) and financial instruments covered.

Question 11. Which of the following features, as described above, do you consider important for the creation of an EU consolidated tape?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
High level of data quality	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Mandatory contributions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Mandatory consumption	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Full coverage	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Very high coverage (not lower than 90% of the market)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Real-time (minimum standards on latency)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The existence of an order protection rule	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Single provider per asset class	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Strong governance framework	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 11.1 Please explain your answers to question 11 and provide if possible detailed suggestions on how the above success factors should be implemented (e.g. how data quality should be improved; what should be the optimal latency and coverage; what should the governance framework include; the optimal number of providers):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Timeline: There is a view that an equity CT should be developed and delivered first, followed by a bond CT. This view is not shared by ICMA's Taskforce. The Taskforce believes IT development paths should have parallel equity and bond asset class commencement and not sequential. It is the industry's understanding that equity and bond consolidated tapes will both face technical implementation challenges, but it is the Taskforce's impression that bond markets have particularly challenging data quality issues to overcome. Time and investment will be required for data quality and complex deferral regime improvements, before a reliable CT for bonds can be realised. Therefore, there should be no delay, in relation to timeline of an equity consolidated tape, for commencement of IT development for a bond CT.

Balanced governance: Any governance model should have ESMA working closely with industry participants (buy-side, sell-side, trading venues, data providers and retail), who are best positioned to advise with collective market functioning expertise and stewardship, to enable the CTP to become a successful 'going concern'.

Mandatory contribution: It is essential that the responsibility for data feed provision should be changed from the CTP's obligation to 'obtain' data, to stating that trading venues and APAs have an obligation to 'provide' data to the CTP in MiFID II/R. This obligation would be extended to self-reporting firms if applicable. APAs, self-reporting firms (where applicable) and trading venues would be required to mandatorily provide the post-trade data to the CTP as soon as technically possible, taking into account deferrals.

There should be no mandatory 'consumption' of the tape. It has been suggested that the only way to operate the CTP as a 'going concern' is to mandate consumption of the CT by all market participant end users. ICMA buy-side and sell-side members do not agree. The expectation is that if the quality of the tape is high, affordable and accessible then this in itself will generate demand for the tape, without forcing users to

purchase it. Even at the start, if the CTP solely aggregates what is currently being published by APAs, the result will be a reduction in cost for end users as market participants will not have to purchase the traditionally more expensive and purely commercial aggregators on top of the already purchased APA data feeds. The consolidated tape with good quality post trade data providing an overview of the market, could be enough for firms who only want to view raw post-trade data. Furthermore, the data volumes the end users would be viewing at the start should be in the 60% – 70% range of total trading (maybe even more). Therefore, there is no reason to consider this centralised aggregated post-trade CT will not create high demand. However, providing flexibility and optionality is also important for the EU market participants. It is likely that some firms will not wish to consume the full raw post-trade consolidated tape and may instead prefer to purchase data directly from selected venues/APAs. Users may only be interested in trading in particular instruments or in particular geographic markets. Thus, providing further reason why the consolidated tape should not be mandatorily consumed through regulatory obligation.

For more ICMA Taskforce views on reporting design, including firms self-reporting, please see sections 8.3 and 8.3.1 of ICMA's final report for the European Commission on EU consolidated tape for bond markets (<https://www.icmagroup.org/assets/documents/Regulatory/MiFID-Review/EU-Consolidated-Tape-for-Bond-Markets-Final-report-for-the-European-Commission-290420v2.pdf>).

For more ICMA Taskforce views on scope of instruments to be reported, including phase-in, eligible instruments and level of raw data to be reported, please see section 9 of ICMA's final report for the European Commission on EU consolidated tape for bond markets (<https://www.icmagroup.org/assets/documents/Regulatory/MiFID-Review/EU-Consolidated-Tape-for-Bond-Markets-Final-report-for-the-European-Commission-290420v2.pdf>).

For more ICMA Taskforce views on data quality necessary improvements see section 10.1 of ICMA's final report for the European Commission on EU consolidated tape for bond markets (<https://www.icmagroup.org/assets/documents/Regulatory/MiFID-Review/EU-Consolidated-Tape-for-Bond-Markets-Final-report-for-the-European-Commission-290420v2.pdf>).

Question 12. If you support mandatory consumption of the tape, how would you recommend to structure such mandatory consumption?

Please explain your answer and provide if possible detailed suggestions on which users should be mandated to consume the tape and how this should be organised:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As mentioned in 11.1, the taskforce view is there should be no mandatory consumption of the CT. It has been suggested that the only way to operate the CTP as a 'going concern' is to mandate consumption of the CT by all market participant end users. ICMA buy-side and sell-side members do not agree. The expectation is that if the quality of the tape is high, affordable and accessible then this in itself will generate demand for the tape, without forcing users to purchase it. Even at the start, if the CTP solely aggregates what is currently being published by APAs, the result will be a reduction in cost for end users as market participants will not have to purchase the traditionally more expensive and purely commercial aggregators on top of the already purchased APA data feeds. The consolidated tape with good quality post trade data providing an overview of the market, could be enough for firms who only want to view raw post-trade data. Furthermore, the data volumes the end users would be viewing at the start should be in the 60% – 70% range of total trading (maybe even more). Therefore, there is no reason to consider this centralised aggregated post-trade CT will

not create high demand.

However, providing flexibility and optionality is also important for the EU market participants. It is likely that some firms will not wish to consume the full raw post-trade consolidated tape and may instead prefer to purchase data directly from selected venues/APAs. Users may only be interested in trading in particular instruments or in particular geographic markets. Thus, providing further reason why the consolidated tape should not be mandatorily consumed through regulatory obligation.

Question 13. In your view, what link should there be between the CT and best execution obligations?

Please explain your answer and provide if possible detailed suggestions (e.g. simplifying the best execution reporting through the use of an EBBO reference price benchmark):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

EBBO is pre-trade and therefore not applicable as the ICMA view is a bond consolidated tape should be post-trade only.

Regarding best execution obligations and the CT, the taskforce view is there is no regulatory best execution obligation link with CT. Indeed, mandatory consumption of post-trade execution data does not equal 'best execution'. Proving buy-side best execution (or 'achieving the best possible result for customers when executing their orders via execution venues or OTC') should not be overly simplified to observing just post-trade pricing. The best execution process is a complex matrix of pre-trade decision making and tools and much more than execution 'prices.'

One only has to look at the RTS 28 best execution reporting framework under MiFID II/MiFIR. RTS 28 which has so far proved unsuccessful, as firms cannot illustrate exactly what is the best 'price'. For example, when evidencing best execution for corporate bonds, pricing is not the determining factor, best execution is mostly analysed on a spread basis.

Moreover, it is unrealistic to expect a firm to provide a 'price' as evidence of best execution when that firm's trade may be the only trade for that bond in a week.

Lastly, when it comes to best execution, size does matter. A major buy-side participant can often be observed trading in large block sizes, that trade may involve a sell-side providing balance sheet and other sell-side risk taking assistance (execution immediacy, hedging w/ derivatives, repos etc). This sell-side risk assistance is reflected in a EU Consolidated Tape for Bond Markets Final report for the European Commission April 2020 35 higher executed price. If a smaller firm or retail market participant were to execute the same bond but in a smaller or retail size, that trade price would be lower, as sell-side balance sheet would not have been used. Therefore, obligating market participants to mandatorily consume the post-trade data for best execution purposes would likely be impractical at best, and misleading at worst.

Instead, the buy-side views a CT as a further valuable 'tool in the toolbox' for pre-trade price discovery. In addition to consumption of pre-trade axe and inventory data, the CT will also provide buy-side market participants with an overview of the market, resulting in informed investment decision making.

Question 14. Do you agree with the following features in relation to the provision, governance and funding of the consolidated tape?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The CT should be funded on the basis of user fees	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Fees should be differentiated according to type of use	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Revenue should be redistributed among contributing venues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
In redistributing revenue, price-forming trades should be compensated at a higher rate than other trades	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The position of CTP should be put up for tender every 5-7 years	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 14.1 Please explain your answers to question 14 and provide if possible detailed suggestions on how the above features should be implemented (e.g. according to which methodology the CT revenues should be redistributed; how price forming trades should be rewarded, alternative funding models):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see section 8 in ICMA's final report for the European Commission on EU consolidated tape for bond markets (<https://www.icmagroup.org/assets/documents/Regulatory/MiFID-Review/EU-Consolidated-Tape-for-Bond-Markets-Final-report-for-the-European-Commission-290420v2.pdf>) for information relating to contract term and management and section 8.1.1 for a summary table for potential governance options.

Governance model options: The ICMA CT Taskforce believes there are a few governance potential model options which could in all probability deliver a CT for EU bond markets. Any of the governance models outlined could be achieved with decisive strong EU leadership and the will to surmount any associated negative of relevant model options:

- A limited company working with ESMA in a close public- private partnership with outsourced IT operations, could take out a loan to be paid back on a cost recovery basis from user fees, to provide a CTP.
- ESMA could govern through an SRO data entity mechanism. Recovering costs through subscription /membership fees to provide a CTP.
- ESMA could work with the industry (stewarding day- to- day operations) but have overall governance, recovering costs through NCA increased contributions, to provide a CTP.

- APAs could converge on technical standards and a single business model, recovering costs through industry accepted user fees, in order to work together to provide a CTP. ICMA's Taskforce recommends for more information on governance, please see ICMA's final report on EU consolidated Tape for Bond Markets (<https://www.icmagroup.org/assets/documents/Regulatory/MiFID-Review/EU-Consolidated-Tape-for-Bond-Markets-Final-report-for-the-European-Commission-290420v2.pdf>).

Purchasing of raw data - Tiered fees. Firms and/or vendors (including the CTP) will be permitted to purchase the (intraday, one week or full historical) raw post-trade data at a reasonable price and for some, possibly a discounted price, in order to repackage/enrich the raw data for client use or to sell as a value added service. Tiered pricing based on usage (or proportion of usage) will apply. The enriched data sets for example could be broken out by tenor, credit rate etc. ESMA will monitor through oversight and supervision from January 2022.

Differentiated fees, based on various usage types will apply such as:

1. Ad hoc or retail use [TBD]
 2. Market participant use [TBD]
 3. Redistributor of raw post-trade data for reselling or client [significant proportion] servicing provision use [TBD]
 4. Distributor for derived data for reselling or client [significant proportion] servicing provision use [TBD]
- Data provided to professionals should be in a standardised machine-readable format. Non- professional end-users would require it in a variety of suitable formats including flat files to ensure that they will be able to access the data, even if their own systems are not sophisticated.

The Taskforce view is that ESMA should have oversight over the CTP contract and monitor for any breach of contract e.g. data quality, access, usage, pricing etc. Industry participants (buy-side, sell-side, trading venues, data providers and retail) should advise with market functioning expertise.

Revenue sharing and data ownership. The purpose of revenue sharing for APAs and trading venues is to create timely and reliable post-trade data and to share the costs of producing good quality post-trade data with the CTP. However, penalties may be considered, such as withholding the revenue 'share' or reduced 'share' due to low performing data cleansing determined by an industry accepted 'data quality score card'. 'Higher score equals greater share' (more details below and in Annex 12.1).

To qualify for a 'share', the data provider must be able to demonstrate the required data cleansing validation rules. Entities carrying out data cleansing exercises on aggregated post-trade data, should qualify to receive revenue sharing from the CTP (regardless of who governs and/or operates the CTP). The amount of the share will be determined by the 'data quality score card' and will be proportionate to the volume of data provided by the contributing firm. The exception would be self-reporting firms as the revenue sharing scheme is only considered for firms that cleanse 'aggregated' data i.e. have multiple data submissions from multiple entities or are a "trading venue" with multiple member firms.

Regarding data ownership, trading venues, APAs and self-reporting firms should not retain any claim or ownership for the raw post-trade data and therefore should not be able to 'license' the reported post-trade raw data to the CTP. However, it should be noted this is not a 'consensus' Taskforce view among APAs and trading venue members as they do not support this approach, which is a significant change to existing business models (also a departure from existing MiFID II/R publication requirements).

3. The scope of the consolidated tape

3.1. Pre- and post-trade transparency and asset class coverage

This section discusses the scope of the CT: what asset classes should be covered and what trade transparency data it should include. This section also discusses how to delineate, within an asset class, the exact scope of financial instruments that should be included in the CT.

Question 15. For which asset classes do you consider that an EU consolidated tape should be created?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Shares pre-trade ³	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Shares post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
ETFs pre-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
ETFs post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Corporate bonds pre-trade	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Corporate bonds post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Government bonds pre-trade	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Government bonds post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Interest rate swaps pre-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Interest rate swaps post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Credit default swaps pre-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Credit default swaps post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

³ Pre-trade would not be executable but delivered at the same latency as the post-trade data. Pre-trade market data is understood to be order book quote data for at least the five best bid and offer price levels. Post-trade market data is understood to be transaction data.

Question 15.1 Please explain your answers to question 15:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Taskforce view is that the CT should focus on what would benefit the market most, and that is raw post-trade data. Good quality post-trade data can be used in the pre-trade space.

Another important element in the design of the CT will be to determine the exact content of the information that a pre- and/or post-trade CT should consolidate in relation to the information already disseminated under the MiFIR pre- and post-trade transparency requirements. While Article 65 of MiFID II and the relevant regulatory technical standards specify the exact content of the post-trade information a CT should consolidate under the current framework, there is no such specification for pre-trade information.

Question 16. In your view, what information published under the MiFID II /MiFIR pre- and post-trade transparency should be consolidated in the tape (all information or a subset, any additional information)?

Please explain your answer, distinguishing if necessary by asset class and pre- and post-trade. Please also explain, if relevant, how you would identify the relevant types of transactions or trading interests to be consolidated by a CT:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Eligible instruments to be reported to the CT would be post-trade only and would be determined by ToTV (traded on a trading venue) under MiFID II/R guidelines, with the exception of instruments out of scope e.g. US treasury bill and other money market instruments.

Raw post trade data covers: ISIN, date, time of execution, reported date & time [taking into account current publication and deferral obligations under MiFID II], price, venue, cancel or correction. While the CT should have execution prices (taking into account MiFID II's deferrals) as a mandatory data item in the CT, additional data items such as yields, will in all likelihood be required by market participants. Therefore, once there is a consolidated view of prices in the CT, the CTP could then derive yields which are fundamental data points in the relative valuation of bonds and comparative analysis of best execution.

3.2. The Official List of financial instruments in scope of the CT

To provide market participants with legal clarity, a CT would benefit from a list setting out, within a given asset class, the exact scope of financial instruments that need to be reported to the CT. This section discusses, for each asset class, how to best create an “Official List” of financial instruments that would feature in the CT, having regard to the feasibility of producing such a list.

Shares

There are different categories of shares traded on EU trading venues, including: (i) shares admitted to trading on a Regulated Market (RM) - for which a prospectus is mandatory; (ii) shares admitted to trading on an Multilateral Trading Facility (MTF) (e.g. small cap company listed on the small cap MTF) with a prospectus approved in an EU Member State; (iii) shares traded on an EU MTF without a prospectus approved in a EU Member State (e.g. US blue chip company listed on a US exchange but also traded on a EU MTF). While the first two categories have a clear EU footprint and should be considered for inclusion in the CT, the inclusion of the latter category is more questionable because it consists of thousands of international shares for which the admission's venue or the main centre of liquidity is not in the EU.

Question 17. What shares should in your view be included in the Official List of shares defining the scope of the EU consolidated tape?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Shares admitted to trading on a RM	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shares admitted to trading on an MTF with a prospectus approved in an EU Member State	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 17.1 Please explain your answers to question 17:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 18. In your view, should the Official List take into account any additional criteria (e.g. liquidity filter to capture only sufficiently liquid shares) to capture the relevant subset of shares traded in the EU for inclusion in the consolidated tape?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 19. What flexibility should be provided to permit the inclusion in the EU consolidated tape of shares not (or not only) admitted to an EU regulated market or EU MTF?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ETFs, Bonds, Derivatives and other financial instruments

Question 20. What do you consider to be the most appropriate way of determining the Official List of ETFs, bonds and derivatives defining the scope of the EU consolidated tape?

Please explain your answer and provide details by asset class:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Eligible post-trade instruments to be reported to the CT, would be determined by ToTV (traded on a trading venue) under MiFID II/R guidelines, with the exception of instruments out of scope e.g. US treasury bill and other money market instruments.

Raw post trade data covers: ISIN, date, time of execution, reported date & time [taking into account current publication and deferral obligations under MiFID II], price, venue, cancel or correction. While the CT should have execution prices (taking into account MiFID II's deferrals) as a mandatory data item in the CT, additional data items such as yields, will in all likelihood be required by market participants. Therefore, once there is a consolidated view of prices in the CT, the CTP could then derive yields which are fundamental data points in the relative valuation of bonds and comparative analysis of best execution.

4. Other MiFID II/MiFIR provisions with a link to the consolidated tape

4.1. Equity trading and price formation

The share trading obligation ('STO') requires that EU investment firms only trade shares on eligible execution venues, unless the trades are non-systematic, ad-hoc, irregular and infrequent ("*de minimis*" exception) or do not contribute to the price discovery process. The STO can pose an issue when EU investment firms wish to trade international shares admitted to a stock exchange outside the EU as not all stock exchanges outside the EU are recognised as equivalent. The European Commission recognised as equivalent certain stock exchanges located in the United States, Hong Kong and Australia, with the consequence that those stock exchanges are eligible execution venues for fulfilling the STO. In addition, ESMA provided, in coordination with the Commission, further guidance on the scope of the STO.

Question 21. What is your appraisal of the impact of the share trading obligation on the transparency of share trading and the competitiveness of EU exchanges and market participants?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 22. Do you believe there is sufficient clarity on the scope of the trades included or exempted from the STO, in particular having regards to shares not (or not only) admitted to an EU regulated market or EU MTF?

- 1 - Not at all
- 2 - Not really

- 3 - Neutral
- 4 - Partially
- 5 - Totally
- Don't know / no opinion / not relevant

Question 22.1 Please explain your answer to question 22:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 23. What is your evaluation of the general policy options listed below as regards the future of the STO?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Maintain the STO (status quo)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Maintain the STO with adjustments (please specify)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Repeal the STO altogether	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 23.1 Please explain your answers to question 23:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Price formation is an important aspect of equity trading which is recognised with the requirement under the STO to execute price-forming trades on eligible venues. At the same time, there is a debate about the status of systematic internalisers ('SIs') as eligible venues under the STO.

Question 24. Do you consider that the status of systematic internalisers, which are eligible venues for compliance with the STO, should be revisited and how?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
SIs should keep the same current status under the STO	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
SIs should no longer be eligible execution venues under the STO	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 24.1 Please explain your answers to question 24:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 25. Do you consider that other aspects of the regulatory framework applying to systematic internalisers should be revisited and how?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A to bonds

Question 26. What would you consider to be appropriate steps to ensure a level-playing field between trading venues and systematic internalisers?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In relation to bonds:

ICMA members believe the SI rules under Article 18 go above and beyond those required on multilateral venues as it also imposes additional obligations on SIs such as requiring SIs to make the firm quotes 'available to other clients' (Article (18(5)) and 'enter into transactions' under the published conditions with clients to whom the quotes are made available (Article (18(6))).

In addition, ICMA member firms agree, as stated in ICMA's response to ESMA's consultation (<https://www.icmagroup.org/assets/documents/Regulatory/MiFID-Review/ICMA-response-to-ESMA-on-MiFIR-report-on-SIs-in-non-equity-instruments6-March-2020110320.pdf>), there is a lack of anonymity for individual SI quotes compared with trading venues where published quotes are at the venue level rather than the individual risk-taker level. ICMA members believe that SIs should have the possibility to anonymise their quotes should they wish to. Also worth noting, the SI pre-trade reporting could only be anonymised if the additional obligations under Article 18 (5), Article 18 (6) and Article 18 (7) are deleted.

More generally, there are questions raised as to whether the current MiFID II/MiFIR framework is sufficiently conducive of the price discovery process in equity trading, in light of various elements of complexity (e.g. fragmentation of trading, multiplicity of order types, exceptions to transparency requirements, variety of trading protocols).

Question 27. In your view, what would merit attention to further promote the price discovery process in equity trading?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

4.2. Aligning the scope of the STO and of the transparency regime with the scope of the consolidated tape

For shares, in light of the strong parallel between the scope of the STO and the scope of the CT (see section “Official List”), there may be merit in aligning the two. At the same time, should the scope of the STO be the same as the scope of the CT, special consideration should be given to the treatment of international shares.

Question 28. Do you believe that the scope of the STO should be aligned with the scope of the consolidated tape?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 28.1 Please explain your answer to question 28:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Similarly, both for equity and non-equity instruments, there may also be merit in aligning, where possible, the scope of financial instruments covered by the CT with the scope of financial instruments subject to the transparency regime.

Question 29. Do you consider, for asset classes where a consolidated tape would be mandated, that the scope of financial instruments subject to pre- and post-trade requirements should be aligned with the list of instruments in scope of the consolidated tape?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 29.1 Please explain your answer to question 29:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

4.3. Post-trade transparency regime for non-equities

For non-equity instruments, MiFID II/MiFIR currently allows a deferred publication of up to 2 days for post-trade information (including information on the transaction price), with the possibility of an extended period of deferral of 4 weeks for the disclosure of the volume of the transaction. In addition, national competent authorities have exercised their discretion available under Article 11(3) of MiFIR. This resulted in a fragmented post-trade transparency regime within the Union. Stakeholders raised concerns that the length of deferrals and the complexity of the regime would hamper the success of a CT.

Question 30. Which of the following measures could in your view be appropriate to ensure the availability of data of sufficient value and quality to create a consolidated tape for bonds and derivatives?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Abolition of post-trade transparency deferrals	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shortening of the 2-day deferral period for the price information	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shortening of the 4-week deferral period for the volume information	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Harmonisation of national deferral regimes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Keeping the current regime	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 30.1 Please explain your answer to question 30:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

For more information on ICMA's Taskforce view on harmonisation of deferral regimes, see section 9.3 (Timing of Reporting) in ICMA's final report for the European Commission on EU consolidated tape for bond markets (<https://www.icmagroup.org/assets/documents/Regulatory/MiFID-Review/EU-Consolidated-Tape-for-Bond-Markets-Final-report-for-the-European-Commission-290420v2.pdf>). Also for reference, the table describing the supplementary deferral regime at the discretion of the Competent Authority.

Keeping the current [deferral] regime: Some ICMA members are in favour of shorter deferral periods than the regime we have today, while some are in favour of keeping the current deferral regime.

Harmonisation of MiFID II deferral regimes:

The timing of reporting should be in line with the existing MiFID II/R post-trade transparency regime.

However, harmonisation of MiFID II deferral regimes (including aggregation and omission) across the EU should be considered in order to avoid fragmentation (see diagram below) and ensure a level playing field for all EU market participants.

Please note, a consolidated tape cannot aggregate 'aggregated' data. Weekly aggregated data would need to be reviewed and reworked (potentially deleting) when considering harmonising the deferral regime.

A better understanding of the difference between transparency and consolidation:

- The subjects of the tape and the transparency regime rules are two distinct subjects.
 - Consolidated tape = aggregation of transparency from TV and from investment firms / APAs
 - Transparency regime = rules governing the transparency, mainly deferrals regimes, SSTI and LIS thresholds, list of liquid instruments
- A good quality consolidated bond tape will bring:
 - more industry / regulatory interactions, data reporting standardisation and data quality
 - and therefore, the expected outcome of visibility to additional and potential participants, liquidity and market resilience.

Transparency regime

- MiFID 2 / MiFIR already introduced the largest transparency regime in the world in term of scope of asset classes and products.

-The aim for transparency calibration should be:

- Allowing liquidity providers to play their role, providing liquidity and hedging their risk
- Providing protection for investment firms, acting on behalf of investors.

II. Investor protection⁴

Investor protection rules should strike the right balance between boosting participation in capital markets and ensuring that the interests of investors are safeguarded at all times during the investment process. Maintaining a high level of transparency is one important element to enhance the trust of investors into the financial market.

In December 2019, the [Council conclusions on the Deepening of the Capital Markets Union](#) invited the Commission to consider introducing new categories of clients and optimising requirements for simple financial instruments where this is proportionate and justified, as well as ensuring that the information available to investors is not excessive or overlapping in quantity and content.

Based on, but not limited to, the review requirements laid down in Article 90 of MiFID II, this consultation therefore aims at getting a more precise picture of the challenges that different categories of investors are confronted with when purchasing financial instruments in the EU, in order to evaluate where adjustments would be needed.

⁴ The review clause in Article 90 paragraph (1)(h) of MiFID II is covered by this section.

Question 31. Please specify to what extent you agree with the statements below regarding the experience with the implementation of the investor protection rules?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention has been successful in achieving or progressing towards more investor protection.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more investor protection.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More investor protection corresponds with the needs and problems in EU financial markets.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The investor protection rules in MiFID II/MiFIR have provided EU added value.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 31.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

Quantitative elements for question 31.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 31.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The responses in this investor protection section are from the perspective of issuing debt securities on a cross-border syndicated basis (Eurobonds, which are relatively 'vanilla' securities).

In this respect, three general points are to be noted.

1. MiFID's product governance regime:

(a) is conceptually flawed regarding commoditised funding products such as Eurobonds, which are not (unlike some structured products) 'designed' as a 'service' for investor clients (vanilla bonds have been in existence for decades as a 'product' for corporate and other borrowers to seek funding from the markets); and

(b) has, in practice (and in combination with PRIIPs as well as the Prospectus Regulation's retail requirements), further diminished borrowers' appetite to offer to retail investors (despite ICMA's proposed streamlining under the 'ICMA2' method of approaching target market definition¹).

On this basis, the regime's positive contribution is unclear when considering the statements set out in Question 31. See further pp.6-7 of ICMA's second year report on MiFID II in the bond markets².

(1: <https://www.icmagroup.org/assets/documents/Regulatory/Primary-Markets/PG-Gen-Retail-ICMA2-v8bis-CLEAN-230518.pdf>.)

(2: <https://www.icmagroup.org/assets/documents/Regulatory/MiFID-Review/MiFID-II-R-and-the-bond-markets-the-second-year-201219.pdf>.)

2. In terms of MiFID's inducements and costs & charges regimes, ICMA has sought to assist firms with the concepts involved – namely that (i) firms providing MiFID services (e.g. order reception/transmission to any investor 'client') must disclose to their client in advance any fee/commission or non-monetary benefit received from a 'third party' in relation to the client service and (ii) such firms must also inter alia disclose ex ante and annually ex post the costs and charges relating to the services and financial instruments concerned (also "encompassing any third-party payments"). The approach to the application of these rules has varied depending on guidance from some national regulatory sources, the type of fees involved and how individual underwriters and/or how individual transactions are organised. Moreover, the prevailing view is that investors have little or no interest in the level of bond underwriting and placing fees as these are very rarely a material factor in making an investment decision regarding bonds. In any case, European public policy interest must logically be that real economy borrowers be able to remunerate those they wish to retain to manage their bond offerings, since they typically don't have the necessary expertise and resources to effectively manage such offerings alone – but this seems to be at risk following a combination of (i) recent ESMA technical advice (ESMA35-43-2126, #20-24) that such remuneration be treated as an inducement and (ii) the suggested banning of inducements (see further response to Q.50.1).

3. In terms of practical experience of MiFID's allocation justification recording regime, the Eurobond underwriting community has reached broad consensus on allocation recording principles, with the underwriter responsible for billing and delivery generally expected to circulate an initial draft record that other syndicate members can then adopt (modifying it as relevant for their internal needs). The experience so far has mainly just resulted in added administration for underwriters, and it does not seem this measure has meaningful benefits for borrowers or investors.

Question 32. Which MiFID II/MiFIR requirements should be amended in order to ensure that simple investment products are more easily accessible to retail clients?

	Yes	No	N.A.
Product and governance requirements	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs and charges requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conduct requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

1. Easier access to simple and transparent products

The CMU is striving to improve the funding of the EU economy and to foster retail investments into capital markets. The Commission is therefore trying to improve the direct access to simple investment products (e.g. certain plain-vanilla bonds, index ETFs and UCITS funds). On the other hand, adequate protection has to be provided to retail investors as regards all products, but in particular complex products.

Question 32.1 Please explain your answer to question 32:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See #1 in response to Qualitative elements for Question 31.1.

Question 33. Do you agree that the MiFID II/MiFIR requirements provide adequate protection for retail investors regarding complex products?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 33.1 Please explain your answer to question 33:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comment is made regarding the structured products space.

Eurobonds historically offered to retail investors have tended not to “embed a derivative or incorporate a structure which makes it difficult [...]to understand the risk involved” and so not be ‘complex’ products in this sense.

However, certain technically ‘complex’ bonds (such as an unlisted issue or a bond with a call or a put at or above par) do not include terms that would affect the return expected from the product – that is:

- the contractual right to return of principal consistent with, or more than, the original amount invested; and if applicable
- a contractual right to regular payments of interest that are not deferrable.

So, whilst technically ‘complex’, there are no additional risks that are difficult to understand – and such bonds fit within the ‘ICMA2’ method of approaching target market definition that is referenced in the response to Question 31.1.

2. Relevance and accessibility of adequate information

Information should be short, simple, comparable, and thereby easy to understand for investors. One challenge that has been raised with the Commission are the diverging requirements on the information documents across sectors.

One aspect is the usefulness of information documents received by professional clients and eligible counterparties (‘ECPs’) before making a transaction (‘ex-ante cost disclosure’). Currently, the ex-ante cost information on execution services apply to retail, professional and eligible clients alike. With regard to wholesale transactions a wide range of stakeholders consider certain information requirements a mere administrative burden as they claim to be aware of the current market and pricing conditions.

Question 34. Should all clients, namely retail, professional clients per se and on request and ECPs be allowed to opt-out unilaterally from ex-ante cost information obligations, and if so, under which conditions?

	Yes	No	N. A.
Professional clients and ECPs should be exempted without specific conditions.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Only ECPs should be able to opt-out unilaterally.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Professional clients and ECPs should be able to opt-out if specific conditions are met.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
All client categories should be able to opt out if specific conditions are met.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 34.1 Please explain your answer to question 34 and in particular the conditions that should apply:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Another aspect is the need of paper-based information. This relates also to the Commission's **Green Deal**, the **Sustainable Finance Agenda** and the consideration that more and more people use online tools to access financial markets. Currently, MiFID II/MiFIR requires all information to be provided in a “durable medium”, which includes electronic formats (e.g. e-mail) but also paper-based information.

Question 35. Would you generally support a phase-out of paper based information?

- 1 - Do not support
- 2 - Rather not support
- 3 - Neutral
- 4 - Rather support
- 5 - Support completely
- Don't know / no opinion / not relevant

Question 35.1 Please explain your answer to question 35:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 36. How could a phase-out of paper-based information be implemented?

	Yes	No	N. A.
General phase-out within the next 5 years	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
General phase out within the next 10 years	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
For retail clients, an explicit opt-out of the client shall be required.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

For retail clients, a general phase out shall apply only if the retail client did not expressly require paper based information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 36.1 Please explain your answer to question 36 and indicate the timing for such phase-out, the cost savings potentially generated within your firm and whether operational conditions should be attached to it:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Some retail investors deplore the lack of comparability of the cost information and the absence of an EU-wide database to obtain information on existing investment products.

Question 37. Would you support the development of an EU-wide database (e.g. administered by ESMA) allowing for the comparison between different types of investment products accessible across the EU?

- 1 - Do not support
- 2 - Rather not support
- 3 - Neutral
- 4 - Rather support
- 5 - Support completely
- Don't know / no opinion / not relevant

Question 37.1 Please explain your answer to question 37:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

One should be cautious about the purpose of such a database. If it is merely to serve as a quick 'initial sorter' of products into specified classes ahead of further review (a bit like credit ratings for example helping investors to avoid reviewing 'investment grade' grade securities if their chosen focus is on 'high yield' securities), that is one thing. However, such a standardised comparator is unlikely to be able to serve as 'the' basis for 'informed' investment decisions – as public commentary on the implementation of the PRIIPs regime has illustrated.

Question 38. In your view, which products should be prioritised to be included in an EU-wide database?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
All transferable securities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
All products that have a PRIIPs KID/ UICIS KIID	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Only PRIIPs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 38.1 Please explain your answer to question 38:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 39. Do you agree that ESMA would be well placed to develop such a tool?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 39.1 Please explain your answer to question 39:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

3. Client profiling and classification

MiFID II/MiFIR currently differentiates between retail clients, professional clients and eligible counterparties. In line with the procedure and conditions laid down in the Annex of MiFID II, retail clients can already “opt-up” to be treated as professional clients. Some stakeholders indicated that the creation of an additional client category (‘semi-professional investors’) might be necessary in order to encourage the participations of wealthy or knowledgeable investors in the capital market. In addition, other concepts related to this classification of investors can be found in the draft Crowdfunding Regulation which further developed the concept of sophisticated investors⁵. The CMU-Next group suggested a new category of experienced High Net Worth (“HNW”) investors with tailor made investor protection rules⁶.

⁵ According to the draft of the Crowdfunding Regulation (to be finalised in technical trilogues) a sophisticated investor has either personal gross income of at least EUR 60 000 per fiscal year or a financial instrument portfolio, defined as including cash deposits and financial assets, that exceeds EUR 100 000.

⁶ According to the CMU-NEXT group “HNW investors” could be defined as those that have sufficient experience and financial means to understand the risk attached to a more proportionate investor protection regime.

Question 40. Do you consider that MiFID II/MiFIR can be overly protective for retail clients who have sufficient experience with financial markets and who could find themselves constrained by existing client classification rules?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 40.1 Please explain your answer to question 40:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

MiFID's product governance regime has further diminished appetite of borrowers issuing Eurobonds (in combination with PRIIPs as well as the Prospectus Regulation's retail requirements) to offer to retail investors (as outlined in #1(a) in the response to Question 31.1). If the legislator did not intend this outcome, then the regime could be construed as overly protective.

Question 41. With regards to professional clients on request, should the threshold for the client's instrument portfolio of EUR 500 000 (See Annex II of MiFID II) be lowered?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 41.1 Please explain your answer to question 41:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See second part of response to Question 42.1. However, the initial issues are:

- (a) whether the product governance regime should apply at all to vanilla bonds (or at least, if more convenient from a legislative drafting perspective, that it should exclude 'non-complex' bonds) that are not 'designed' as a 'service' for investors; and
- (b) confirming that vanilla bonds are not PRIIPs, with an option to achieve this (without having to rule on individual product features) being set out in an ICMA September 2018 consultation response*; and
- (c) simplifying some aspects of the Prospectus Regulation's retail disclosure requirements (the Prospectus Regulation has at least been able to preserve borrowers' ability to undertake wholesale funding in Europe).

(*: #7 in <https://www.icmagroup.org/assets/documents/Regulatory/Primary-Markets/FCA-CFI---ICMA-Resp-2018-09-v3-280918.pdf>.)

Implementing these changes (especially on product governance and PRIIPs), may help improve direct retail access over time (beginning with more knowledgeable and wealthier investors). However, many corporate borrowers have got used to seeking funding away from EEA retail and so administrative burden alleviation will not necessarily cause mass retail bond markets to return to Europe.

Question 42. Would you see benefits in the creation of a new category of semi-professionals clients that would be subject to lighter rules?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 42.1 Please explain your answer to question 42:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As noted in the response to Question 41.1, the initial issues are (i) whether the product governance regime should apply at all to vanilla bonds that are not 'designed' as a 'service' for investors, (ii) confirming that vanilla bonds are not PRIIPs and (iii) simplifying some aspects of the Prospectus Regulation's retail requirements.

That said, if the legislator would prefer to only increase direct access - whether to vanilla bonds (having decided not to alleviate the existing restrictions above) or to certain other products (having decided to alleviate the existing restrictions above for vanilla bonds) - for retail investors that have some distinct knowledge and means, then it may be simpler (to avoid a significant and potentially dis-incentivising re-papering consequence that might accompany the creation of an entirely new category) to adjust the existing threshold tests for professional status on request. In this respect, different thresholds in terms of financial means could be specific to certain products (though an investible portfolio measure seems more robust than an income-based test) and knowledge/experience could be based on recognised third party certification (as an alternative option to the existing intermediary trading history assessment mechanism). Whatever

approach is ultimately taken, an appropriate grandfathering period should be allowed for any pre-existing classifications.

Question 43. What investor protection rules should be mitigated or adjusted for semi-professionals clients?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Suitability or appropriateness test	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Information provided on costs and charges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Product governance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Please specify what other investor protection rules should be mitigated or adjusted for semi-professionals clients?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Also PRIIPs and the Prospectus Regulation, per responses to Questions 41.1/42.1. (And, if a new semi-professional investor category is ultimately implemented, it should need to also benefit from the extension of such regimes' existing exemptions for professional investors if wider bond market access was desired.)

Question 43.1 Please explain your answer to question 43:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See generally response to Question 42.1.

Question 44. How would your answer to question 43 change your current operations, both in terms of time and resources allocated to the distribution process?

Please specify which changes are one-off and which changes are recurrent:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See response to Question 42.1, notably in terms of re-papering consequence.

Question 45. What should be the applicable criteria to classify a client as a semi-professional client?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Semi-professional clients should possess a minimum investable portfolio of a certain amount (please specify and justify below).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Semi-professional clients should be identified by a stricter financial knowledge test.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Semi-professional clients should be subject to a one-off in-depth suitability test that would not need to be repeated at the time of the investment.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 45.1 Please explain your answer to question 45 and in particular the minimum amount that a retail client should hold and any other applicable criteria you would find relevant to delineate between retail and semi-professional investors:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See response to Question 42.1.

4. Product Oversight, Governance and Inducements

The product oversight and governance requirements shall ensure that products are manufactured and distributed to meet the clients' needs. Before any product is sold, the target market for that product needs to be identified. Product manufacturers and distributors should thus be well aware of all product features and the clients for which they are suited. To do so, distributors should use the information obtained from manufacturers as well as the information which they have on their own clients to identify the actual (positive and negative) target market and their distribution strategy.

There is a debate around the efficiency of these requirements. Some stakeholders criticise that the necessary information was not available for all products (e.g. funds). Others even argue that this approach adds little benefit to the suitability assessment undertaken at individual level. Similar doubts are mentioned with regards to the review of the target market, in particular for products that don't change their payment profile. Concerns are raised that the current application of the product governance rules might result in a further reduction of the products offered.

Question 46. Do you consider that the product governance requirements prevent retail clients from accessing products that would in principle be appropriate or suitable for them?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 46.1 Please explain your answer to question 46:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See responses to Questions 40.1 and 31.1 (notably since vanilla bonds are underwritten and distributed to meet the funding needs of underwriters' borrower clients). The apparent redundancy of product governance given the appropriateness and suitability regimes has been publicly questioned – and the application /enforcement of such regimes is within the remit of national competent authorities.

Question 47. Should the product governance rules under MiFID II/MiFIR be simplified?

	Yes	No	N. A.
It should only apply to products to which retail clients can have access (i.e. not for non-equities securities that are only eligible for qualified investors or that have a minimum denomination of EUR 100.000).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
It should apply only to complex products.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other changes should be envisaged – please specify below.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Simplification means that MiFID II/MiFIR product governance rules should be extended to other products.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The regime is adequately calibrated and overall, correctly applied.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Question 47.1 Please explain your answer to question 47:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As mentioned in the response to Question 31.1, the product governance regime is conceptually flawed regarding commoditised funding products such as Eurobonds, which are not (unlike some structured products) ‘designed’ as a ‘service’ for investor clients (vanilla bonds have been in existence for centuries as a ‘product’ for corporate and other borrowers to seek funding from the markets). It is a similarly flawed concept to imagine as a realistic prospect that an underwriting syndicate of several banks relating to a bond issue many years earlier should continue to periodically redefine the target market for the bonds concerned – from both a logistical perspective (underwriters being retained by borrowers for the initial issuance transaction only and then potentially significantly changing their corporate form and business models over time) and a financial stability perspective (the risk of fire sales flowing from changed target markets). In practice however, the disruptive effect of the product governance regime has not concerned so much the institutional investor space (perhaps partly thanks to ICMA’s proposed streamlining under the ‘ICMA1’ method of approaching target market definition further to the product governance regime’s formal emphasis on proportionality¹). Rather it is retail investors that borrowers have sought to avoid (despite ICMA’s proposed streamlining under the ‘ICMA2’ method of approaching target market definition²).

(1: <https://www.icmagroup.org/assets/documents/Regulatory/Primary-Markets/PG-PRIPs-2018---An-approach-for-the-Eurobond-markets-v13bis-CLEAN-230518.pdf>.)

(2: <https://www.icmagroup.org/assets/documents/Regulatory/Primary-Markets/PG-Gen-Retail-ICMA2-v8bis-CLEAN-230518.pdf>.)

Consequently from the conceptual perspective, the product governance regime should not apply at all to Eurobonds. At the very least, from a practical perspective, it would seem pointless for the regime to apply where professional investors are involved (whether acting on their own account, as discretionary managers

or as advisers) – so in any of the existing technical categories of (i) bonds with denominations of €100,000 or more, (ii) ‘qualified investor only’ offers and (iii) bonds admitted to ‘qualified investor only’ markets or market segments.

Regarding certain complex products, see response to Question 33.1.

Further, even though ESMA clarified in its guidelines that the sale of products outside the actual target market is possible in so far as this can “be justified by the individual facts of the case”, distributors seem reluctant to do so even if the client insists. This consultation is therefore assessing if and how the product governance regime could be improved.

Question 48. In your view, should an investment firm continue to be allowed to sell a product to a negative target market if the client insists?

- Yes
- Yes, but in that case the firm should provide a written explanation that the client was duly informed but wished to acquire the product nevertheless.
- No
- Don't know / no opinion / not relevant

Question 48.1 Please explain your answer to question 48:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In terms of ‘target market’, a manufacturer may intentionally ‘target’ only some investors for whom a product is theoretically ‘compatible’ (its defined/intended ‘positive’ target market), but not others (a ‘neutral’ target market, undefined) – both being distinct from investors, if any, for whom the product is theoretically incompatible (a ‘negative’ target market, defined if relevant). Furthermore, compatibility is intrinsic to the characteristics of both product and investor – and is distinct from any other regulatory limitations (such as selling restrictions that apply in the absence of certain formalities).

In the Eurobond context, those underwriters who are technically ‘manufacturers’ and the borrower (as the client and also potentially a ‘manufacturer’ depending on its own MiFID authorisation status) will have expended significant effort to agree a ‘manufacturer’ ‘positive’ target market that is perceived to be robust and enduring over time. Consequently, such vanilla bond ‘manufacturers’ do not want to have to deal with any wider individual ‘distributor’ target markets that don’t concern them (the definition of ‘distributor’ technically capturing a secondary markets trader many years later who has no connection with the borrower or the original underwriters). However, it appears MiFID entity secondary market sellers typically do not define their target markets wider than manufacturer ‘positive’ target markets, partly due to the operational burdens involved.

It is conceivable there could be rare circumstances in which it is in the best interests of an investor to receive a product (but not merely investor insistence), notwithstanding that it falls within a manufacturer’s negative target market (e.g. for hedging purposes). In this respect, the product governance regime’s current permission of sales in a negative target market is associated with regulatory guidance making clear that this should be a rare occurrence in need of significant justification. It thus seems that the regime already provides an appropriate degree of protection and that further restrictions on sale within any negative target market would be unnecessary.

That said, in the context of syndicated Eurobond issuance, the ICMA1 and ICMA2 approaches to target market definition note that a negative target market is unlikely for most bonds given diversification/portfolio considerations and absent the exercise of regulatory intervention powers but that any such negative target market would be subject to consideration in the specific circumstances.

MiFID II/MiFIR establishes strict rules for investment firms to accept inducements, in particular as regards the conditions to fulfil the quality enhancement test and as regards disclosures of fees, commissions and non-monetary benefits.

Question 49. Do you believe that the current rules on inducements are adequately calibrated to ensure that investment firms act in the best interest of their clients?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 49.1 Please explain your answer to question 49:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As mentioned in the response to Question 31.1, ICMA has sought to assist firms with the concepts involved – namely that firms providing MiFID services (e.g. order reception/transmission to any investor 'client') must disclose to their client in advance any fee/commission or non-monetary benefit received from a 'third party' in relation to the client service.

The approach to the practical application of these rules has varied depending on guidance from some national regulatory sources, the type of fees involved and how individual underwriters and/or how individual transactions are organised. Moreover, the prevailing view is that investors have little or no interest in the level of bond underwriting and placing fees as these are very rarely a material factor in making an investment decision regarding bonds.

In any case, European public policy interest must logically be that real economy borrowers be able to remunerate those they wish to retain to manage their bond offerings, since they typically don't have the necessary expertise and resources internally to effectively manage such offerings alone - but this seems to be at risk following a combination of (i) recent ESMA technical advice (ESMA35-43-2126, #20-24) that such remuneration be treated as an inducement* and (ii) the suggested banning of inducements (see further response to Q.50.1).

(*: Whilst 'pure underwriting' fees – remuneration purely for buying bonds if no one else does and with no placing/selling involvement – is not characterised by ESMA as an inducement, such a scenario is of limited use to borrowers and accordingly rare; underwriters generally being paid combined fees for combined services to their borrower clients.)

Some consumer associations have stated that inducement rules inducements under MiFID II/MiFIR are not sufficiently dissuasive to prevent conflicts of interest in the distribution process. They consider that financial advisers are

incentivised to sell products for which they receive commissions instead of recommending the most suitable products for their clients. Therefore, some are calling for a ban on inducements.

Question 50. Would you see merits in establishing an outright ban on inducements to improve access to independent investment advice?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 50.1 Please explain your answer to question 50:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Though, as noted under Q.49.1, views have varied on inducement rule application to the remuneration of Eurobond underwriters (whose borrower client mandates generally include placing/selling), such remuneration has at least remained possible.

However, characterising such remuneration as an inducement (ESMA technical advice ESMA35-43-2126, #20-24 cited under Q.49.1) that are then banned (whether directly/explicitly further to this Q.50.1 or indirectly /implicitly as a result of any restrictive interpretations/implementations of ancillary criteria) would prohibit real economy borrowers from being able to remunerate, and so presumably retain, anyone to manage their bond offerings. Aside being unclear how this promotes investor access to independent advice, losing such external support could jeopardise the success of borrowers' bond fundraising exercises – individually and then consequently on an aggregated 'systemic' level for the European economy. This is because borrowers typically do not have the necessary expertise and resources internally to effectively manage such offerings alone. Even for some public sector borrowers (who tend to be the most sophisticated), direct investor dealing is challenging (notably regarding fulfilling KYC / counterparty onboarding responsibilities).

As well as being damaging to Europe's real economy, characterising underwriter remuneration as banned inducements would be unnecessary from an investor protection perspective (at least to the extent the MiFID entity retained and remunerated by a borrower is not also providing, on an unsegregated basis, 'investment advice' or 'portfolio management' services to investor 'clients' regarding the bonds concerned). This is, in the context of syndicated public offerings, because:

(1) unclear what investor-facing 'client' service involved (absent unsegregated 'investment advice' or 'portfolio management') – it is (a) not 'execution of orders' since investor bids for new bond offers do not involve underwriters "acting to conclude" (i.e. satisfy) such bids on investors' "behalf" (allocation is within the borrower's gift and managed by its underwriters on its exclusive behalf under MiFID's specific underwriting and placing provisions - MiFID II DR EU/2017/565, Arts.38-43) and (b) not 'reception and transmission of orders' as there is no transmission to another entity/platform for such execution; Also, to the extent any 'investment advice' or 'portfolio management' is being provided on a segregated basis within the same MiFID entity, it would seem unfair that those investor clients be effectively prevented from participating in the corporate bond issues concerned;

(2) apparent ESMA acknowledgement of no investor-facing 'client' service / need for further analysis – ESMA's technical advice is (a) partly conditional (noting disclosure of placing fees "where [...] also [...] service to the investor") though strangely also partly unconditional ("underwriting fees should be disclosed where [...] also sells [...] to investors" but without citing any supporting MiFID provisions) and (b) open to

“further analysis” for share IPOs indicating the advice is not definitive (presumably also for new bond offerings as unclear IPOs would merit preferential treatment);

(3) underwriter remuneration unrelated to investor outcomes – underwriters act on their borrower client’s behalf to the best of their ability to execute a new issue further to conduct requirements, irrespective of remuneration from the borrower (‘incentive’/‘success’ fees mechanically linked to outcomes not in use anyway) and, in any case, syndicated issuances are iteratively tailored/priced to market reception (with indicative terms revised in line with investor bids) – literal price ‘discovery’; and

(4) investors don’t care – Eurobond investors have never really shown interest in underwriter remuneration (with non-inducement context reports of investor reminders on how to request fee information resulting in no substantive uptake), unsurprisingly given (3) above / pricing (spread to benchmark) and other material information being public on screens and pursuant to prospectus rules.

However, borrowers do care about their right to commercial privacy. There have been reports of borrower concerns regarding their rights to commercial privacy being sacrificed unjustifiably (in the absence of any actual countervailing investor protection concern): why should they advertise to the world how high they might be willing to pay to hire their service providers? It seems entirely rational for borrowers to wish to preserve their ability to negotiate the lowest possible remuneration commensurate with their specific servicing requirements.

Incidentally, there are distinct net proceeds disclosure requirements under the Prospectus Regulation for both retail offerings (DR EU/2019/980, Anx.14, #3.2) and now, albeit strangely, institutional listings (DR EU /2019/980, Anx.15, #3.2).

As regards the criteria for the assessment of knowledge and competence required under Article 25(1) of MiFID II, [ESMA's guidelines](#) established minimum standards promoting greater convergence in the knowledge and competence of staff providing investment advice or information about financial instruments and services. Nonetheless, due to the diversified national educational and professional systems, there are still various options on how to test the relevant knowledge and competences across Member States.

Question 51. Would you see merit in setting-up a certification requirement for staff providing investment advice and other relevant information?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 51.1 Please explain your answer to question 51:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Such aspects are generic beyond the scope of this response. However, any education requirements should be appropriately calibrated to the areas of advice/information being given (e.g. advisers in the fixed income space should not need granular certification relating to commodity investments).

Question 52. Would you see merit in setting out an EU-wide framework for such a certification based on an exam?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 52.1 Please explain your answer to question 52:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

5. Distance communication

Provision of investment services via telephone requires ex-ante information on costs and charges (please consider also ESMA's guidance on this matter). When a client wants to place an order on the phone, the service provider is obliged to send the cost details before the transaction is executed, a requirement which may delay the immediate execution of the order. Further, MiFID II/MiFIR requires all telephone communications between the investment firm and its clients that may result in transactions to be recorded. Due to this requirement, several banks argue to have ceased to provide telephone banking services altogether.

Question 53. To reduce execution delays, should it be stipulated that in case of distant communication (phone in particular) the cost information can also be provided after the transaction is executed?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 53.1 Please explain your answer to question 53:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 54. Are taping and record-keeping requirements necessary tools to reduce the risk of products mis-selling over the phone?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 54.1 Please explain your answer to question 54:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

6. Reporting on best execution

Investment firms shall execute orders on terms most favourable to the client. The framework includes reporting obligations on data relating to the quality of execution of transactions whose content, format and periodicity are detailed in Delegated Regulation 2017/575 (also known as 'RTS 27'). The best execution framework also includes reporting obligations for investment firms on the top five execution venues in terms of trading volumes where they executed client orders and information on the quality of information. Delegated regulation 2017/576 (also known as 'RTS 28') specifies the content and format of that information.

Question 55. Do you believe that the best execution reports are of sufficiently good quality to provide investors with useful information on the quality of execution of their transactions?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 55.1 Please explain your answer to question 55:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No, the RTS rigid framework does not allow the necessary flexibility and complexity to analyse quantitative and qualitative judgment for best execution of bonds or indeed swaps. Furthermore, hard to come up with a number when you are only trade in a week.

Because of the lack of flexibility in a complex analysis process, the concept of best execution as set out in the RTS, breaks down.

A simple best execution matrix does not work. For example, credit is usually analysed on a spread basis. Therefore, too complex to determine what exactly is the best 'price' and then illustrate simply for the best execution RTS in a report.

To mitigate the quality of the sub-standard reports, some firms are providing additional information to what is asked. These firms are providing in addition to the top 5 venues, additional tables covering which MTFs are used and in which proportion. It is the view of these buy-side firms that without additional explanations, the reports are confusing.

If accurate, the transparency provided by the top 5 venues report would be considered useful as it can reveal where weighting towards one counterparty is particularly high (e.g. more than 50% of trading volume with the number one counterparty).

Question 56. What could be done to improve the quality of the best execution reports issued by investment firms?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Comprehensiveness	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Format of the data	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Quality of data	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please specify what else could be done to improve the quality of the best execution reports issued by investment firms:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Commission could carry out a cost/benefit exercise with industry participation on best execution reporting. A more practical and informative way to prove best execution may emerge.

Question 56.1 Please explain your answer to question 56:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see above.

Question 57. Do you believe there is the right balance in terms of costs between generating these best execution reports and the benefits for investors?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 57.1 Please explain your answer to question 57:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Buy-sides and sell-sides agree market participants are not benefitting from these best execution reports. Therefore, in relation to benefits, the time, money and effort that has gone into the producing these reports is not balanced.

From a buy-side perspective, the aim of the data generated from the RTS 28 report was to provide market participants, regulators and the public useful information to analyse in order to create value and assist market functioning. However, ICMA buy-side members agree there has been almost no interest in the data generated by the report by any of these parties. The reasoning for the lack of interest is the poor quality of the data generated due to the format structure of RTS 28. To illustrate, many large global firms route certain trades via a centralised hub, a US affiliate for example. The US hub appearing as a counterparty. Due to this

type of organisational structure, several firms are producing RTS 28 reports where their centralised hubs (US affiliates) are their top execution venues. As a result, there is no look-through to the counterparty which is mandated in the RTS 28 report.

Best Execution estimated reporting costs for per average firm:

- RTS 28 buy-side build costs: EUR 100k - 300k
- RTS 28 running costs per annum: EUR 20k – 50k

From a sell-side perspective, the format structure of RTS 27 relates more to equities asset class than bonds. Only 5 out of the 9 fields were identified as partially useful. As a result, the data from the RTS 27 report is not widely used.

Best Execution estimated reporting costs for per average firm:

- RTS 27 sell-side build costs: EUR 800k - 1.2 mln
- RTS 27 sell-side running costs per annum: EUR 5k to 10K

III. Research unbundling rules and SME research coverage⁷

New rules on unbundling of research and execution services have been introduced in MiFID II/MiFIR, principally to increase the transparency of research prices, prevent conflict of interests and ensure that research costs are incurred in the best interests of the client. In particular, unbundling of research rules were put in place to ensure that the cost of research funded by client is not linked to the volume or value of other services or benefits or used to cover any other purposes, such as execution services.

⁷ The review clause in Article 90 paragraph (1)(h) of MiFID II is covered by this section.

Question 58. What is your overall assessment of the effect of unbundling on the quantity, quality and pricing of research?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please note. The following answers apply to bond markets only and do not relate to research in other asset classes, such as equities.

Question 58:

Bond research unbundling has not created a level playing field. Larger research providers can cover more bonds and distribute to more research recipients than smaller research providers. Smaller providers cannot compete with larger providers, due to the larger providers having the benefit of operating a cost-effective economies of scale offering. Smaller providers are more constrained in pricing options, so the research distribution is limited.

However, important to note. There is a belief these smaller providers offer a more niche service. Research

recipients consider while smaller providers may not have the breadth of distribution and coverage of the larger research providers, their niche service has more specialised in-depth coverage.

In addition, on the lower side of the issuer spectrum, the market has become less efficient due to more limited research resources focused on the smaller issuers. This loss of narrower wedge of issuer capacity has led to lower availability for trading in the less liquid smaller issuer bonds.

In looking at SME research in more detail, ICMA members in 2018 voiced concerns at the negative impact of the rules on research coverage of SMEs and how this unintended consequence goes against the European Commission's CMU plan, to improve access to market-based finance for SMEs.

This led to ICMA conducting a survey (<https://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/Asset-Management/Specific-regulatory-issues/mifid-ii-r-research-unbundling/>) after less than one year of implementation (November 2018) which among other things showed that 43% of the buy-side firms who responded noticed a decrease in the availability and breadth of SME research.

Later in 2019, further surveys were conducted on the impact on SME research by other institutions:

- Citigate Dewe Rogerson's 11th Annual IR survey (<https://citigatedewerogerson.com/citigate-dewe-rogersons-11th-annual-ir-survey-full-findings/>) has found that 52% of UK companies reported a year-on-year decline in the number of sell-side analysts covering them and 38% reported a fall in the quality of that research. For European companies excluding the UK, the figures were 39% and 20%, respectively.

- A CFA institute survey (<https://www.cfainstitute.org/-/media/documents/survey/cfa-mifid-ii-survey-report.ashx>) found that since the introduction of MiFID II/R, research quality in respect of SMEs has decreased by 26%, according to the buy-side, and 44% according to the sell-side. Similarly, research coverage seems to have dropped by 47% and 53%, respectively. While 39% of market participants agreed that the industry has become more competitive, 25% believe it is now less competitive. Finally, asked whether they believe the MiFID II/R reforms have delivered better outcomes for end investors, 59% of participants said no.

In light of Covid-19, the whole bond research unbundling regime may need to be reassessed more broadly to stimulate business, finance the real economy, and assist the buy side. ICMA members believe that bond research is an important component of the decision-making process for investors generally.

ICMA also considers there should be further discussion on research unbundling more generally, as per the above, particularly in light of the impact of Covid-19 and the fact there appears to be no perceived benefits for fixed income investors. Lastly, the perception of 'research unbundling' is that it is designed for equities, in particular, commission-based execution and commission sharing agreements (CSAs).

Over the last years, research coverage relating to Small and Medium-size Enterprises ('SMEs') seems to suffer an overall decline. One alleged reason for this decline is the introduction of the unbundling rules. Less coverage of SMEs may lead to less SME investments, less secondary trading liquidity and less IPOs on Union's financial markets. This sub-section places a strong focus on how to foster research coverage on SMEs. There is a need to consider what can be done to increase its production, facilitate its dissemination and improve its quality.

1. Increase the production of research on SMEs

1.1. EU Rules on research

The absence of a harmonised definition of the notion of “research” has led to confusion amongst market participants. In addition, Article 13 of delegated Directive 2017/593 introduced rules on inducement in relation to research. Market participants argue that this has led to an overall decline of research coverage, in particular on SMEs. Several options could be tested: one option would be to revise the scope of Article 13 by authorising bundling exclusively for providers of SME research. Alternatively, independent research providers (not providing any execution services to clients) could be allowed to provide research to investment firms without these firms being subject to the rules of Article 13 for this research.

Furthermore, several market participants argue that providers price research below costs. If the actual costs incurred to produce research do not match the price at which the research is sold, it may have a negative impact on the research ecosystem. Some argue that pricing of research should be subject to the rules on reasonable commercial basis.

Finally, several market participants also pointed out that rules on free trial periods of research services are not sufficiently clear ([ESMA also drafted a Q&A on trial periods](#)).

Question 59. How would you value the proposals listed below in order to increase the production of SME research?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Introduce a specific definition of research in MiFID II level 1	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Authorise bundling for SME research exclusively	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exclude independent research providers’ research from Article 13 of delegated Directive 2017 /593	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prevent underpricing in research	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Amend rules on free trial periods of research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 59.1 Please explain your answer to question 59 and in particular if you believe preventing underpricing in research and amending rules on free trial periods of research are relevant:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In order to increase production of SME bond research, ESMA should amend rules on free trial periods for research. Buy-side firms would welcome an amendment in support of extending the trial period to 6 months to match the bond research cycle.

Currently, ESMA has limited trial periods to three months. This approach clashes with the bi-annual research cycle and is not helping independent research firms, whose visibility with investors is ensured by sending research.

In addition, several trial periods with a given sell-side research firm could also be allowed, but on different classes of financial instruments (e.g. equities/bonds/derivatives).

1.2. Alternative ways of financing SMEs research

Alternative ways of financing research could help foster more SME research coverage. Operators of regulated markets and SME growth markets could be encouraged to set up programs to finance research on SMEs whose financial instruments are admitted on their markets. Another option would be to fund, at least partially, SME research with public money.

Question 60. Do you consider that a program set up by a market operator to finance SME research would improve research coverage?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 60.1 Please explain your answer to question 60:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 61. If SME research were to be subsidised through a partially public funding program, can you please specify which market players (providers, SMEs, etc.) should benefit from such funding, under which form, and which criteria and conditions should apply to this program:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ICMA considers use of public funding to help private companies fund themselves is inappropriate.

The growing use of artificial intelligence and machine learning in financial services can help to foster the production of research on SMEs. In particular, algorithms can automate collection of publically available data and deliver it in a format that meets the analysts' needs. This can make equity research, including on SMEs, less costly and more relevant.

Question 62. Do you agree that the use of artificial intelligence could help to foster the production of SME research?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 62.1 Please explain your answer to question 62:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While there is not enough information to fully answer this question in relation to bond markets, there is a belief that the liability risk for 'machine generated' research would be too high for buy-side firms.

1.3. Promote access to research on SMEs and increase quality of research

The lack of access to SME research deprives issuers from visibility and financing opportunities. However, access to SME research can be improved by creating a EU-wide SME research database.

The creation of an EU database compiling research on SMEs would ensure the widest possible access to research material. Via this public EU-wide database, anyone could access and download research on SMEs for free. Such a tool would allow investors to access research in a more efficient manner and at a lower cost, while improving SMEs visibility.

Question 63. Do you agree that the creation of a public EU-wide SME research database would facilitate access to research material on SMEs?

- 1 - Disagree
- 2 - Rather not agree
-

- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 63.1 Please explain your answer to question 63:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Any SME bond research database would require standardisation and content structuring. This would be a major undertaking and possibly an undertaking the Commission may have underestimated.

The ICMA Taskforce believes that while aggregation is supported for a post-trade bond consolidated tape, it is not supported (too heavy a lift, compared with the end result) for SME bond research.

Question 64. Do you agree that ESMA would be well placed to develop such a database?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 64.1 Please explain your answer to question 64:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Any SME bond research database would require standardisation and content structuring. This would be a major undertaking and possibly an undertaking the Commission may have underestimated.

Therefore, ESMA is not well placed to standardise the bond data and structure the content in order to develop a bond research SME database.

Where issuer-sponsored research meets the conditions of Article 12 of Delegated Directive (EU) 2017/593, it can qualify as an acceptable minor non-monetary benefit. One condition is that the relationship between the third party firm and the issuer is clearly disclosed and that the information is made available at the same time to any investment firm wishing to receive it or to the general public. However, issuers and providers of investment research consider that the conditions listed under Article 12 would in most cases not apply to issuer-sponsored research. As a result, issuer-sponsored research would not qualify as acceptable minor non-monetary benefit.

Question 65. In your opinion, does issuer-sponsored research qualify as acceptable minor non-monetary benefit as defined by Article 12 of Delegated Directive (EU) 2017/593?

-

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 65.1 Please explain your answer to question 65:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, issuer-sponsored bond research does qualify as 'minor non-monetary benefit' (MNMB) and is information widely available. As such, this MNMB classification is the key component that removes the "research" label. This sponsored bond research is in fact a bought and paid for marketing tool for the issuer.

Question 66. In your opinion, does issuer-sponsored research qualify as investment research as defined in Article 36 of Delegated Regulation (EU) 2017/565?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 66.1 Please explain your answer to question 66:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No, issuer-sponsored bond research falls within the definition of a marketing communication per Article 36 (2) of Commission Delegated Regulation 2017/565.

In relation to bond research, ICMA members believe there are two distinct categories of independent and non-independent content per each sub-section of Art 36: Art 36 (1) (= investment research) and Art 36 (2) (= a marketing communication), regardless of the value that is placed on it.

In reference to Article 36 of Commission Delegated Regulation 2017/565, ICMA considers issuer-sponsored bond research to be a "marketing communication" as it is not typically "labelled or described" as investment research, or "otherwise presented as objective or independent".

Specifically, issuer sponsored bond research (i.e. research content which is paid for or commissioned by a client) is not "presented as objective or independent", and so cannot fall within the definition of 'investment research' as set out in Article 36(1)(a) of Commission Delegated Regulation 2017/565; and does fall within the definition of a 'marketing communication' which is set out in Article 36(2) of Commission Delegated

Regulation 2017/565 (being a recommendation which does not meet the conditions set out in Article 36(1)).

Furthermore, according to Recital 29 of Commission Delegated Directive 2017/593, issuer sponsored bond research is also classified as a minor non-monetary benefit provided that the relationship (between the entity commissioning, and the third party entity producing the research materials) is disclosed and the material is made openly available; which distinguishes it again from MiFID Research (per Recital 28 of Commission Delegated Directive 2017/593) and 'independent' investment research (per Article 36(1)(a) of Commission Delegated Regulation 2017/565).

In addition, Article 37 of Delegated Regulation (EU) 2017/565 provides rules on conflict of interests for investment research and marketing communication. Investment research is defined in Article 36 of delegated regulation 2017/565. However, issuers and providers of investment research consider that the definition of Article 36 would in most cases not apply to issuer-sponsored research which as a result, would not qualify as investment research. As a consequence, the rules on conflict of interests applicable to marketing documentation would apply to issuer-sponsored research.

Question 67. Do you consider that rules applicable to issuer-sponsored research should be amended?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 67.1 Please explain your answer to question 67:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While issuer-sponsored bond research is not as valued as other bond research, it is still a useful 'tool in the toolbox' for bond investors, which can also include sell-side analyst research and/or independent boutique bond research.

Question 68. Considering the various policy options tested in questions 59 to 67, which would be most effective and have most impact to foster SME research?

	1 (least effective)	2 (rather not effective)	3 (neutral)	4 (rather effective)	5 (most effective)	N. A.
Introduce a specific definition of research in MiFID level 1	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Authorise bundling for SME research exclusively	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Amend Article 13 of delegated Directive 2017/593 to exclude independent research providers' research from Article 13 of delegated Directive 2017/593	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prevent underpricing of research	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Amend rules on free trial periods of research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Create a program to finance SME research set up by market operators	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Fund SME research partially with public money	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Promote research on SME produced by artificial intelligence	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Create an EU-wide database on SME research	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Amend rules on issuer-sponsored research	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 68.1 Please explain your answer to question 68:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

IV. Commodity markets⁸

As part of the effort to foster more **commodity derivatives trading denominated in euros**, rules on pre-trade transparency and on position limits could be recalibrated (to establish for instance higher levels of open interest before the limit is triggered) to facilitate nascent euro-denominated commodity derivatives contracts. For example, Level 1 could contain a specific requirement that a nascent market must benefit from more relaxed (higher) limits before a position has to be closed. Another option would be to allow for trades negotiated over the counter (i.e. not on a trading venue) to be brought to an electronic exchange in order to gradually familiarise commodity traders with the beneficial features of “on venue” electronic trading.

ESMA has already conducted a consultation on position limits and position management. The report will be presented to the Commission at the end of Q1 2020. From a previous ESMA call for evidence, the commodity markets regime seems to have not had an impact on market abuse regulation, orderly pricing or settlement conditions. ESMA stresses that the associated position reporting data, combined with other data sources such as transaction reporting allows competent authorities to better identify, and sanction, market manipulation. Furthermore, the Commission has identified in its [Staff Working Document on strengthening the International Role of the Euro](#) that “There is potential to further increase the share of euro-denominated transactions in energy commodities, in particular in the sector of natural gas”.

The most significant topic seems the current position limit regime for illiquid and nascent commodity markets. The position limit regime is thought to work well for liquid markets. However, illiquid and nascent markets are not sufficiently accommodated. ESMA also questioned whether there should be a position limit exemption for financial counterparties under mandatory liquidity provision obligations. ESMA would also like to foster convergence in the implementation of position management controls.

Another aspect mentioned in the Commission consultation on the international role of the euro is a more finely calibrated system of pre-trade transparency applicable to commodity derivatives. Such a system would lead to a swifter transition of these markets from the currently prevalent OTC trading to electronic platforms.

⁸ The review clause in Article 90 paragraph (1)(f) of MiFID II is covered by this section.

Question 69. Please specify to what extent you agree with the statements below regarding the experience with the implementation of the position limit framework and pre-trade transparency?

	1	2	3	4	5	
--	---	---	---	---	---	--

	(disagree)	(rather not agree)	(neutral)	(rather agree)	(fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards improving the functioning and transparency of commodity markets and address excessive commodity price volatility.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits with regard to commodity markets are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve the improvement of the functioning and transparency of commodity markets and address excessive commodity price volatility.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The improvement of the functioning and transparency of commodity markets and address excessive commodity price volatility correspond with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The position limit framework and pre-trade transparency regime for commodity markets has provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 69.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

Quantitative elements for question 69.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 69.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

1. Position limits for illiquid and nascent commodity markets

The lack of flexibility of the **position limit** framework for commodity hedging contracts (notably for new contracts covering natural gas and oil) is a constraint on the emergence euro-denominated commodity markets that allow hedging the increasing risk resulting from climate change. The current de minimis threshold of 2,500 lots for those contracts with a total combined open interest not exceeding 10,000 lots, is seen as too restrictive especially when the open interest in such contracts approaches the threshold of 10,000 lots.

Question 70. Can you provide examples of the materiality of the above mentioned problem?

- Yes, I can provide 1 or more example(s)
- No, I cannot provide any example

Question 71. Please indicate the scope you consider most appropriate for the position limit regime:

	1 (most appropriate)	2 (neutral)	3 (least appropriate)	N. A.
Current scope	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A designated list of 'critical' contracts similar to the US regime	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 71.1 Please explain your answer to question 71:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 72. If you believe there is a need to change the scope along a designated list of 'critical' contracts similar to the US regime, please specify which of the following criteria could be used.

For each of these criteria, please specify the appropriate threshold and how many contracts would be designated 'critical'.

- Open interest
- Type and variety of participants
- Other criterion:
- There is no need to change the scope

Question 72.1 Please explain your answer to question 72:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA has questioned stakeholders on the actual impact of position management controls. Stakeholder views expressed to the ESMA consultation appear diverse, if not diverging. This may reflect significant dissimilarities in the way position management systems are understood and executed by trading venues. This suggests that further clarification on the roles and responsibilities by trading venues is needed.

Question 73. Do you agree that there is a need to foster convergence in how position management controls are implemented?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 73.1 Please explain your answer to question 73:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 74. For which contracts would you consider a position limit exemption for a financial counterparty under mandatory liquidity provision obligations ?

This exemption would mirror the exclusion of the related transactions from the ancillary activity test.

	Yes	No	N.A.
Nascent	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Illiquid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 74.1 Please explain your answer to question 74:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 75. For which counterparty do you consider a hedging exemption appropriate in relation to positions which are objectively measurable as reducing risks?

	Yes	No	N. A.
A financial counterparty belonging to a predominantly commercial group that hedges positions held by a non-financial entity belonging to the same group	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A financial counterparty	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 75.1 Please explain your answer to question 75:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2. Pre-trade transparency

MiFIR RTS 2 ([Commission Delegated Regulation \(EU\) No 2017/583](#)) sets out the large-in-scale (LIS) levels are based on notional values. In order to translate the notional value into a block threshold, exchanges have to convert the notional value to lots by dividing it by the price of a futures or options contract in a certain historical period.

Some stakeholders argue that the current provisions of RTS2 lead to low LIS thresholds for highly liquid instruments and high LIS thresholds for illiquid contracts. This situation makes it allegedly hard for trading venues to accommodate markets with significant price volatility. This hinders their potential to offer niche instruments or develop new and/or fast moving markets.

Question 76. Do you consider that pre-trade transparency for commodity derivatives functions well?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

PART TWO: AREAS IDENTIFIED AS NON-PRIORITY FOR THE REVIEW

This section seeks to gather evidence from market participants on areas for which the Commission does not identify at this stage any need to review the legislation currently in place. Therefore, PART TWO does not contain policy options. However, should sufficient evidence demonstrate the need to introduce certain adjustments, the Commission may decide to put forward proposals also on the topics listed below. As in the first section, certain questions are directly linked to the review clauses in MiFID II/MiFIR while others are questions raised independently of the mandatory review clause.

V. Derivatives Trading Obligation⁹

Based on the G20 commitment, MiFIR article 28 introduced the move of trading in standardised OTC derivative contracts to be traded on exchanges or electronic trading platforms. The trading obligation established for those derivatives (DTO) should allow for efficient competition between eligible trading venues. ESMA has determined two classes of derivatives (IRS and CDS) subject to the DTO. These classes are a subset of the EMIR clearing obligation.

The Commission invites market participants to share any issues relevant with regard to the functioning of the DTO regime, the scope of the obligation and the access to the relevant trading venues for DTO products.

⁹ The review clause in Article 52 paragraph (6) of MiFIR is covered by this section.

Question 77. To what extent do you agree with the statements below regarding the experience with the implementation of the derivatives trading obligation?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards more transparency and competition in trading of instruments subject to the DTO.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits with regard to the DTO are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more transparency and competition in trading of instruments subject to the DTO.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More transparency and competition in trading of instruments subject to the DTO corresponds with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The DTO has provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 77.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

Quantitative elements for question 77.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 77.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 78. Do you believe that some adjustments to the DTO regime should be introduced, in particular having regards to EU and non-EU market making activities of investment firms?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 79. Do you agree that the current scope of the DTO is appropriate?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 79.1 Please explain your answer to question 79:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The introduction of EMIR Refit has not been accompanied by direct amendments to MiFIR, which leads to a misalignment between the scope of counterparties subject to the clearing obligation (CO) under EMIR and the derivatives trading obligation (DTO) under MiFIR. ESMA consulted in Q4 2019 on the need for an adjustment of MiFIR, receiving broad support for such an amendment and [ESMA published their report on 7 February 2020](#).

Question 80. Do you agree that there is a need to adjust the DTO regime to align it with the EMIR Refit changes with regard to the clearing obligation for small financial counterparties and non-financial counterparties?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 80.1 Please explain your answer to question 80:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

VI. Multilateral systems

According to MiFID II/MiFIR, a 'multilateral system' means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system. MiFID II/MiFIR also requires all multilateral systems in financial instruments to operate as a regulated trading venue - being either a regulated market or a multilateral trading facility (MTF) or an organised trading facility (OTF) - bringing together multiple third-party buying and selling interests in a way that results in a contract.

Some trading venues express concerns due to emerging trends which allow alternative type of electronic platforms to offer very similar functionality to a multilateral system for the matching of multiple buying and selling interests. These electronic platforms are not authorised as regulated trading venues, hence they do not have to comply with the associated regulatory requirements, notably in terms of reporting obligations or business rules to manage clients' relationships. The main argument advanced against regulation of these electronic systems is that they match trading interests on a bilateral basis and not via a multilateral system. However, according to traditional trading venues, this alternative electronic protocol may cause competitive distortions, effectively creating a level playing field distortion against the regulated trading venues which are bound by MiFID II/MiFIR provisions. There is a debate whether MiFID II/MiFIR should therefore take a more functional approach and define the operation of a trading facility in broader terms than the current definition of trading venues or multilateral system as to encompass these systems and ensure fair treatment for market players.

Question 81. Do you consider that the concept of multilateral system under MiFID II/MiFIR is uniformly understood (at EU or at national level) and ensures a level playing field between the different categories of market players?

- 1 - Disagree
- 2 - Rather not agree
-

- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 81.1 If your response to question 81 is rather positive, please also indicate if, in your opinion, the current definition of multilateral system is adequately reflecting the actual functioning of the market:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Bond buy-sides and sell-sides agree the concept of multilateral system under MiFID II/MiFIR is uniformly understood.

VII. Double Volume Cap¹⁰

MiFID II/MiFIR introduced a Double Volume Cap ('DVC') to curb "dark" trading by limiting, per platform and at EU level, the use of certain waivers from pre-trade transparency. Some stakeholders have criticized the DVC as a too complex process failing to reduce off-exchange trading in the EU. For instance, according to a 2019 Oxera study, the equity market share of systematic internalisers has risen to 25% since application of the DVC while the share of on venue trading is declining. For example, the market share of CAC40 shares trading on the primary stock exchange (Euronext) fell from 75% in 2009 to 62% in 2018 and Oslo Børs's market share of trading on OBX-listed shares dropped from 95% in 2009 to 62% in 2018. The proportion of public order book trading on the primary exchange in major equity indices has declined to between 30% and 45% of overall on-venue trading. The Commission services are seeking stakeholder's views on their experience with the DVC and its impact on the transparency in share trading.

¹⁰ The review clauses in Article 52 paragraphs (1), (2) and (3) of MiFIR are covered by this section.

Question 82. Please specify to what extent you agree with the statements below regarding the experience with the implementation of the Double Volume Cap?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.

The EU intervention been successful in achieving or progressing towards the objective of more transparency in share trading.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more transparency in share trading.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More transparency in share trading correspond with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The DVC has provided EU added value	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 82.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

Quantitative elements for question 82.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 82.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

VIII. Non-discriminatory access¹¹

MiFIR introduces an open access regime to trade and clear financial instruments on a non-discriminatory and transparent basis. The key purpose of MiFIR open access provisions is to facilitate competition among trading venues and central counterparties and prevent any discriminatory treatments. It aims at creating more choice for investors, lowering costs for trade execution, clearing margins and data fees. Open access might therefore bring opportunities for new entrants in the market to compete with traditional providers. Furthermore, it could potentially help fostering financial innovation, developing alternative business models which could allow cost efficiency gains in trading and clearing operational processes compared to the current situation.

MiFIR open access provisions provide safeguards to preserve financial stability without adversely affecting systemic risk. The relevant competent authority of a trading venue or a central counterparty shall grant open access requests only under specific conditions, notably that open access would not threaten the smooth and orderly functioning of the markets. MiFIR open access rules also added multiple temporary transitions periods and opt-outs (Article 35 and 36 of MiFIR) for an exemption from the application of access rights, with the majority of opt-outs ending on 3 July 2020.

The Commission will have to submit to the European Parliament and to the Council reports on the application and impact of certain open access provisions. With this in mind, the Commission would like to gather feedback from market stakeholders which could be useful for the preparation of the reports.

¹¹ The review clauses Article 52 paragraphs (9), (10) and (11) of MiFIR are covered by this section.

Question 83. Do you see any particular operational or technical issues in applying open access requirements which should be addressed?

- Yes
- No
- Don't know / no opinion / not relevant

Question 83.1 Please explain your answer to question 83:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ICMA members consider bonds are often traded in a 'package' with a closely related derivative. This is to immediately hedge the risk exposure to the buyer and to allow counterparties to 'lock' in their expected gains. In bond markets with a particularly liquid underlying derivative (such as certain government bonds and

their futures contracts) up to almost half of transactions is typically traded in such fashion. The ubiquitous nature of such transactions (also called 'basis trades') in these markets, mean that bond and related derivative have a symbiotic relationship. As such, Open Access for exchange traded derivatives is of direct relevance to the bond markets.

MIFIR already has a comprehensive, carefully crafted regime of checks and balances to safeguard against undue risks. Art. 35/36 6(a) includes a balanced set of grounds for a CCP to refuse Open Access, which is further calibrated in Delegated Regulation 2016/3807. Also, this Delegated Regulation, along with art. 35/36 6 (c), grants broadly defined powers to National Competent Authorities to refuse Open Access where this would lead to 'market fragmentation', is 'deemed a threat to smooth and orderly market functioning', or would 'adversely affect systemic risk'.

For example, one of the perceived risks, related to interoperability, has been addressed by a combination of both such regulatory checks. First, according to Article 36(4)(a), the competent authorities shall deny access to the CCP where the access would require an interoperability arrangement, unless the CCPs and venue involved have all consented to the interoperability plans. Secondly, even if there was full consent, should the interoperability arrangement threaten the 'smooth and orderly functioning of the market', the competent authorities shall still deny access to the trading venue.

Apart from this criterion, as mandated by MIFIR, there have been numerous reviews aiming to identify any risks that could have been overlooked or have otherwise emerged since MIFIR was agreed and which could warrant a special exemption for Exchange Traded Derivatives. From 2016 onwards, this has led to further industry consultations, an ESRB advice, an ESMA advice and finally an EC decision on the topic. All these institutions agreed that there were no risk-based grounds to exclude ETDs from Open Access.

Finally, there is an ESMA recommendation to the EC on the functioning of the Open Access regime; currently planned by January 2022 (only 1.5 years after Open Access would have actually entered into force). This should act as an ultimate legislative safeguard in case of unforeseen circumstances.

Question 84. Do you think that the open access regime will effectively introduce cost efficiencies or other benefits in the trading and clearing areas?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 84.1 If you do think that the open access regime will effectively introduce cost efficiencies or other benefits in the trading and clearing areas, please indicate the specific areas (such as type of specific financial instruments) where, in your opinion, open access could afford most cost efficiencies or other benefits when compared to the current situation:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ICMA members agree with the European Commission's earlier assessment that Open Access will contribute to the integration of EU markets and could lead to lower costs, better service levels, greater collateral efficiency and more innovation. It could also contribute to financial stability.

Bonds are often traded in a 'package' with a closely related derivative. This is to immediately hedge the risk exposure to the buyer and to allow counterparties to 'lock' in their expected gains. In bond markets with a

particularly liquid underlying derivative (such as certain government bonds and their futures contracts) up to almost half of transactions is typically traded in such fashion. The ubiquitous nature of such transactions (also called 'basis trades') in these markets, mean that bond and related derivative have a symbiotic relationship. As such, benefits associated with Open Access for exchange traded derivatives spill over to the bond markets.

We note that IOSCO identified fair and open access to trading venues and CCPs, based on transparent and objective criteria, as important for ensuring safe, efficient and continuous markets. We also note that a recent FIA/Greenwich survey among 190 market participants lists 'more competition among clearinghouses' as the second most cited change request by respondents .

While good progress has been made in integrating Europe's financial markets, the UK's departure from the EU has made it even more important to further harmonize the internal market for financial services. Integration of post trade infrastructures is of particular importance in this regard, as stressed by the EC's European Post Trade Forum (which advised the EC on the removal of the last remaining 'Giovannini barriers'). Open Access to market structures was first identified by the Giovannini Group in 2001 as a key element of an integrated EU post trading landscape. As such, it should be an important element of the Capital Markets Union.

Integration of Europe's market infrastructures has important practical benefits. For example, clearing instruments from multiple venues at a single CCP of choice could lead to substantial netting efficiencies, compared to clearing these at two different CCPs. This leads to capital efficiencies and cost reductions. It also has the effect of freeing up collateral, which is an increasingly scarce commodity in today's financial markets. The extra availability of collateral could in turn contribute to more liquid capital markets.

Open Access could also lead to lower execution costs and more innovation. Trading and clearing costs are closely interlinked. The cost of trading on a trading venue is assessed by market participants together with the associated clearing costs. A trading venue cannot be competitive if it cannot give access to attractive clearing costs. Without these provisions, new and non-vertically integrated trading venues would be prevented from entering the market and thus unable to contribute to a more competitive and a less concentrated market. The emergence of competing venues to challenge the incumbent will put pressure on all service providers to improve service levels and to innovate, which would be to the benefit of all market participants.

Open Access also contributes to financial stability. An environment with multiple competing CCPs contributes to reducing systemic risk by strengthening CCP substitutability in case of failure. If one CCP connected to a trading venue faces distress, the other CCPs connected to that same trading venue would be able to continue clearing its transactions, providing the market with redundancy back-up. Furthermore, market participants will be able to steer their business to the CCP with the best risk management requirements. This allows them to clear where their margins are the safest. Finally, the ability to improve netting efficiencies in the system will decrease the size of the accumulated risk across CCPs.

Question 85. Are you aware of any market trends or developments (at EU level or at national level) which are a good or bad example of open access among financial market infrastructures?

Please explain your reasoning and specify which countries:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

IX. Digitalisation and new technologies

Technology neutrality is one of the guiding principles of the Commission's policies and one of the key objectives of the [Commission's Fintech Action Plan](#). A technology-neutral approach means that legislation should not mandate market participants to use a particular type of technology. It is therefore crucial to address obstacles or identify gaps in existing EU laws which could prevent the take-up of financial innovation or leave certain of the risks brought by these innovations unaddressed.

Furthermore, it is evident that digitalisation and new technologies are transforming the financial industry across sectors, impacting the way financial services are produced and delivered, with possible emergence of new business models. The digital transformation can bring huge benefits for the investors as well as efficiencies for industry. To promote digital finance in the EU while properly addressing the new risks it may bring, the Commission is considering proposing a new Digital Finance strategy building on the work done in the context of the FinTech action plan and on horizontal public consultations. The Commission recently published [two public consultations focusing on crypto assets and operational resilience in the financial sector](#), and may consult later this year on further topics in the context of the future Digital Finance strategy.

In that context, and to avoid overlapping, this consultation will only focus on targeted aspects, which are not covered by these horizontal consultations. The Commission will of course take into consideration any relevant input received in the horizontal consultations in its future policy work on the MiFID II/MiFIR framework.

Question 86. Where do you see the main developments in your sector: use of new technologies to provide or deliver services, emergence of new business models, more decentralised value chain services delivery involving more cooperation between traditional regulated entities and new entrants or other?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ICMA member believe generally, the uptake of technology in bond markets varies between issuance, secondary markets trading, repo and collateral operations, and post-trade processing. Key drivers of technological developments within debt capital markets (CDM) originate from demand for straight-through-processing (STP) to achieve greater efficiencies, liquidity sourcing (in secondary markets), regulatory compliance (such as reporting obligations under MiFID II/R and the forthcoming SFT Regulation), and data management (see further background in ICMA's paper on Market electronification and FinTech (2017).

Electronification in secondary bond markets is further advanced {reference ICMA's recent 3rd study into the state of the European IG secondary corporate bond market, which is furthermore evidenced by an established ecosystem of electronic trading platforms for bonds, as well as order and execution management systems and information networks {reference ETP mapping}. While the use of technology in

both primary bond markets as well as repo markets is less widespread than in secondary markets, it is rapidly increasing which is evidenced by the growing number of technology solutions within the issuance process or electronic repo trading venues {reference ICMA mapping directories}.

Applications of DLT, AI/ML, big data analytics or cloud computing have significant potential to alter the lifecycle of bonds, from issuance, trading to settlement, and impact the functioning of financial markets. While adoption of new technologies such as DLT are still nascent in DCMs, multiple firms are increasingly engaging in testing, proofs of concept, and live transactions, notably in primary markets. ICMA is monitoring this space and provides an overview of new fintech applications within primary, secondary and repo and collateral markets on its website.

In capital markets, the use of large volumes of data and advanced analytics in capital markets is not new per se. In fixed income markets, electronification has created increasingly large volumes of data. Accessibility has improved significantly through the use of cloud networks, which has enabled firms that do not have the required capacity to access and make use of data. However, concentration of global (and potentially monopolistic) cloud-based service providers is considered to be a potential risk. While data is used for a range of key functions, cost is a limiting factor in fixed income markets. Challenges relate in particular to data normalisation and quality. Predictive analytics based on machine-learning algorithms seem promising, but such applications are still in early stages. That said, Big Data analytics and data-driven trading strategies will certainly become more and more widespread in fixed income markets and ICMA will continue to monitor these developments closely.

Technological innovation is also evident in the development of common digital standards for trade processing such as the ISDA Common Domain Model (CDM). The CDM creates common building blocks in machine readable format that can be used by all businesses and processes within a firm, or across the entire industry. The benefit is to recreate and represent any individual securities transaction or lifecycle event in an entirely consistent and replicable way, deriving exactly the same cashflow outputs. This immediately facilitates the potential for interoperability not only between firms' various internal systems (quoting, transaction execution, reconciliations, settlement, risk management, regulatory reporting, data analysis), but also between different firms and market infrastructures (trading venues, OMS/EMS, CSDs, CCPs, Trade Repositories). ICMA is collaborating with ISDA to extend the CDM to repos, and by extension bonds.

Question 87. Do you think there are particular elements in the existing framework which are not in accordance with the principle of technology neutrality and which should be addressed?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ICMA responded to certain aspects of the European Commission Consultation on an EU framework for markets in crypto-assets (March 2020), solely in relation to selected aspects of EU legislation applying to "security tokens". In brief, Eurobonds represented in physical, book-entry or other digital form in a conventional or DLT-based system are expected to be covered equally by, and comply with, requirements in existing regulations irrespective of the underlying technology. Potential exceptions might arise under regulations that explicitly only allow for legacy formats such as physical certificates or that do not have general conceptual tests [1].

ICMA's DLT Regulatory Directory, first published in December 2019, shows that from a broader perspective,

various jurisdictions are taking initiative in providing clarity to the market with legal definitions of DLT and smart contracts, and outlining specific requirements for DLT operations (such as France's Decree No. 2018-1226 (<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000037852460>), Luxembourg's Bill of Law 7363 (<https://www.chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&backto=/wps/portal/public/Accueil/Actualite&id=7363>), Italy' Law No. 12/2019 (<https://www.gazzettaufficiale.it/eli/id/2019/02/12/19G00017/sg>), Malta's various Digital Innovation Acts and guidelines (<https://mdia.gov.mt/legislation/>) . However, regulatory certainty in the form of guidance at an EU level could deliver further adoption of these technologies. We welcome the expected publication of the European Commission's Blockchain Strategy to provide greater clarity for DLT in financial services.

[1] An example of a general conceptual test would be the requirement under Article 6 of the Prospectus Regulation, which (broadly) requires disclosure of all 'material' information.

Question 88. Where do you think digitalisation and new technologies would bring most benefits in the trading lifecycle (ranging from the issuance to secondary trading) ?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ICMA members see digitalisation and new technologies would provide synergies across all components of the trading lifecycle. Test cases for DLT and AI for example have focused on problems from issuance and settlement in primary markets, to pre-trade analytics and post-trade processing in secondary markets. ICMA is constantly monitoring this space and provides an overview of new fintech applications within primary, secondary and repo and collateral markets on our website (<https://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/fintech/new-fintech-applications-in-bond-markets/>).

Question 89. Do you consider that digitalisation and new technologies will significantly impact the role of EU trading venues in the future (5/10 years time)?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 89.1 Please explain your answer to question 89:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See previous responses to Q 86-88.

Generally, a trend towards further automation and digitisation can be observed across primary and secondary bond markets, as well as repo and collateral markets. ICMA members expect that new technologies such as DLT, AI/ML or cloud computing, and digitisation more broadly will benefit EU trading venues in terms of streamlining and automating processes, and potentially also increase operational resilience.

The online environment puts a strong focus on providing products to customers as fast as possible, with as few barriers as possible. As far as financial services are concerned, this might endanger retail clients if they do not take enough time to reflect on purchasing complex financial products. On the other hand, making the product quick and easy to purchase (e.g. speedy or 'one-click' products) makes it easier for clients to buy and sell at least simple investment products online. Taking all of the above into consideration, the Commission would like to gather feedback on whether certain rules in the MiFID II/MiFIR framework on marketing and provision of information to clients should be adjusted to better suit the provision of services online.

Question 90. Do you believe that certain product governance and distribution provisions of the MiFID II/MiFIR framework should be adapted to better suit digital and online offers of investment services and products?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 90.1 Please explain your answer to question 90:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As far as wholesale context is concerned, markets have for a long time been working remotely at speed (on the telephone). This underlying dynamic remains generally unchanged in the digitised/online context. So the extent MiFID's principles were already suited to remote working at speed, then this would seemingly continue to be the case

Question 91. Do you believe that certain provisions on investment services (such as investment advice) should be adapted to better suit delivering of services through robo-advice or other digital technologies?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 91.1 Please explain your answer to question 91:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

X. Foreign exchange (FX)

Spot FX contract are not financial instruments under MiFID II/MiFIR. Some stakeholders and competent authorities raised concerns as regards the regulatory gap and requested the Commission to analyse if policy action would be needed.

Question 92. Do you believe that the current regulatory framework is adequately calibrated to prevent misbehaviours in the area of spot foreign exchange (FX) transactions?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 93. Which supervisory powers do you think national competent authorities should be granted in the area of spot FX trading to address improper business and trading conduct on that market?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Section 3. Additional comments

You are kindly invited to make additional comments on this consultation if you consider that some areas have not been covered above.

Please, where possible, include examples and evidence.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 94. Have you detected any issues beyond those raised in previous sections that would merit further consideration in the context of the review of MiFID II/MiFIR framework, in particular as regards to the objective of investor protection, financial stability and market integrity?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

0e671500-7945-412f-a67a-86ab09155e3a/EU-Consolidated-Tape-for-Bond-Markets-Final-report-for-the-European-Commission-290420v2.pdf

a78801bc-01e9-4f78-850b-defbf2593919/ICMA-response-to-ESMA-on-MiFIR-report-on-SIs-in-non-equity-instruments6-March-2020110320.pdf

Useful links

[More on the Transparency register \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

[More on this consultation \(https://ec.europa.eu/info/publications/finance-consultations-2020-mifid-2-mifir-review_en\)](https://ec.europa.eu/info/publications/finance-consultations-2020-mifid-2-mifir-review_en)

[Specific privacy statement \(https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en\)](https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en)

[Consultation document \(https://ec.europa.eu/info/files/2020-mifid-2-mifir-review-consultation-document_en\)](https://ec.europa.eu/info/files/2020-mifid-2-mifir-review-consultation-document_en)

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