

# 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 will soon also be available in all European Union languages.

SECTION 2 will only be available in English.

If you wish to respond in another language than English, please wait until then to provide your replies.

## 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 20 April 2020.**

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**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](mailto: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

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\* 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
- Slovenian
- Spanish
- Swedish

\* I am giving my contribution as

- |   |   |   |
|---|---|---|
| <input type="radio"/> Academic/research institution | <input type="radio"/> EU citizen                          | <input checked="" type="radio"/> Public authority |
| <input type="radio"/> Business association          | <input type="radio"/> Environmental organisation          | <input type="radio"/> Trade union                 |
| <input type="radio"/> Company/business organisation | <input type="radio"/> Non-EU citizen                      | <input type="radio"/> Other                       |
| <input type="radio"/> Consumer organisation         | <input type="radio"/> Non-governmental organisation (NGO) |   |

\* First name

\* Surname

\* Email (this won't be published)

\* Scope

- International
- Local
- National
- Regional

\* Organisation name

255 character(s) maximum

The Danish Financial Supervisory Authority (DFSA)

\* 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.

\* Country of origin

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

- |                                      |  |                                     |  |
|--------------------------------------|--|-------------------------------------|--|
| <input type="radio"/> Afghanistan    | <input type="radio"/> Djibouti           | <input type="radio"/> Libya         | <input type="radio"/> Saint Martin                     |
| <input type="radio"/> Åland Islands  | <input type="radio"/> Dominica           | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon        |
| <input type="radio"/> Albania        | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania     | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria        | <input type="radio"/> Ecuador            | <input type="radio"/> Luxembourg    | <input type="radio"/> Samoa                            |
| <input type="radio"/> American Samoa | <input type="radio"/> Egypt              | <input type="radio"/> Macau         | <input type="radio"/> San Marino                       |
| <input type="radio"/> Andorra        | <input type="radio"/> El Salvador        | <input type="radio"/> Madagascar    | <input type="radio"/> São Tomé and Príncipe            |
| <input type="radio"/> Angola         | <input type="radio"/> Equatorial Guinea  | <input type="radio"/> Malawi        | <input type="radio"/> Saudi Arabia                     |

- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- 
- Senegal
- Serbia
- Seychelles
- 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
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Islands

Niue

- Burkina Faso
- Burundi

Togo

- Honduras
- Hong Kong

- Norfolk Island
- Northern Mariana Islands

- Tokelau
- Tonga



- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

\* 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 depository, 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):

Financial supervisory authority

\* 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

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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 consists of many important measures to increase confidence in financial markets, including to improve investor protection, and to foster competition among market players to the benefit of investors and firms that need access to capital.

MiFID II/MiFIR introduced a large and complex set of rules. Hence, it is natural that the implementation of the rules has taken some time, both for authorities and market players. In light of this, the DFSA is overall satisfied with the implementation. From an investor protection perspective, in general, the intention of the MiFID-II investor protection regulation has been achieved in a partly satisfactory manner.

However, the experience with the implementation has also revealed that some parts of MiFID II/MiFIR remain unclear or there is some unintended interaction with other rules. Furthermore, the rules in MiFID II/MiFIR have also led to some unanticipated reactions from market players, which now have to be evaluated.

An example of an area where more has to be undertaken, as the objective in MiFID II/MiFIR is not fulfilled is trade transparency, cf. our answers below. A higher degree of transparency could improve price formation and ensure that e.g. retail investors have the right information improving their willingness to invest and thereby providing liquidity to the market and capital to firms. Trade transparency has also been hampered by data quality issues implying that e.g. the LIS-, SMS- and SSTI-thresholds are incorrectly set and instruments are classified with the wrong liquidity status. Furthermore, the low data quality, in particular for OTC-trades, also implies that confidence in the published transparency data is too low. Hence, it is not used as intended implying less pre- and post-trade transparency in the market.

Another example is the need for better horizontal alignment between different EU legislative acts in order to ensure similar definitions, adequate transparency and comparability between investment products and services. Today different products and types of financial firms are subject to different EU legislative acts combined with regulatory frameworks being increasingly complex. Therefore, attention should be on ensuring a better horizontal alignment between legislation regulating investment products (e.g. UCITS and AIFM and PRIIP) and the rules regulating the services (e.g. MiFID II).

As of 1 January 2022 the PRIIPs regulation will also apply for UCITS funds. This in particular calls for an up-coming alignment between MiFID II regulation on information on cost & charges and the cost and performance information requirements under the PRIIPs regulation. Consistency between cost measures in general is important since discrepancies can result in reduced transparency.

The definitions and rules in MiFID II/MiFIR interact with much other regulation where misalignment between them creates unintended consequences. An example of this is that an alternative investment fund manager (AIFM) is allowed to seek authorisation under AIFMD to perform services similar to that of an investment firm under MiFID II, without being subject to the requirement of transaction reporting. This in effect means that the RCAs will no longer receive the transaction reports on these activities that they have been receiving so far. Instead transaction reports will be filed by the counterparties or the trading venue with a reduced level of detail. This undermines the purpose of the MiFIR reporting requirements, which may have a negative impact on the confidence to capital markets across Europe. A possible solution would be to align AIFMD with MiFIR in order to ensure that the permission to an AIFM to perform the activities similar to those of an investment firm would lead to obligations to report according to the MiFIR regime.

**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 type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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.

Overall, MIFID II/MiFIR has added value to the EU. The objectives of increased investor protection, higher transparency and improvement of governance framework have contributed to more orderly functioning capital markets and financial stability. MIFID II/MiFIR implied significant changes to the financial markets and the objectives are not yet fully fulfilled, but the direction stated with MIFID II/MiFIR is good.

MIFID II/MiFIR introduced a large and complex set of rules, and parts of the regulation have to some degree been unclear and/or insufficient to handle specific detailed or technical aspects. However, this has partly been alleviated by ESMA's publication of Q&A's, guidelines, opinions etc. that have been successful in achieving or progressing towards the objectives of MiFID II/MiFIR.

The firms' costs to implement and be compliant with MiFID II/MiFIR have been very high. It includes e.g. changes and adjustments in the way firms operate as well as changes to the governance and compliance set-up. Furthermore, the heavy requirements for data reporting, including reports to regulators, have implied significant costs to build up systems to manage this.

It should be noted that the lion's share of these costs is up-front, i.e. before MiFID II/MiFIR entered into force or shortly thereafter. However, the benefits are still to come during the next several years, which should be recalled when evaluating costs compared to benefits. Moreover, it also underlines the importance of being cautious if considering changes in the current set-up.

Considering liquidity and capital are trans-boundary by nature and the distinct advantages of having large liquidity and capital pools as well as good cooperation across markets and jurisdictions, we believe there would be merit in revisiting processes in relation to third country regimes and equivalence assessment for a higher degree of effectiveness.

The orderly functioning of financial markets requires a high level of investor protection and transparency, as these are core elements in ensuring confidence among market players. We find the MIFID II/MiFIR handles this in a satisfactory way. Today MiFID II/MiFIR includes measures to facilitate a firm's ability to raise capital through the capital markets. While this is expedient, it is likely that more can be done. Hence, it would be beneficial if the MIFID II/MiFIR-review could back up some of the initiatives in the CMU, without harming investor protection.

Furthermore, it would be beneficial if - as a part of the a review of the regulation – priority was given to ensuring further horizontal alignment between a) legislation regulating investment products (e.g. UCITS and AIFM and PRIIP) and b) the rules regulating the services (e.g. MiFID II).

**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.

Regarding pre- and post-transparency for non-equity financial instruments, most NCA's have extensively used the national discretions to give the market players all the possible waivers and deferrals. Hence, the intended improvement in transparency for non-equity instruments has not materialised.

Furthermore, it could be seen as an impediment to the effective implementation of an adequate MiFID II cost & charges methodology that there are currently different market practices with regards to calculation methods/estimations used when investment firms ex ante must provide clients with an illustration of the impact of costs on return. In particular, it seems to be important to further harmonize how expected returns are estimated in ex ante situations.

### 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.

Regarding equity instruments, the level of transparency appears slightly improved given that the scope of instruments has widened since MIFID I. For shares, however, the level of transparency seems unchanged. NCA's have extensively used the possibility of national discretion to give market players all possible waivers and deferrals. Apart from minor adjustments, the waivers are almost identical to the ones used under MIFID I. Coupled with the evolution of periodic auctions on trading venues and the increase of off-exchange trades (SI and OTC) this has more or less resulted in the same outcome as under MIFID I.

The DFSA notes that there may be good reasons for certain waivers and deferrals for equity instruments, e.g. to ensure that also large transactions can take place. A large portion of dark trading is however, carried out in systems benefitting from the reference price waiver (RPW). RPW systems have no limitations on order size, and evidence indicates that the average order size is decreasing and hitting levels close to that of the lit market, cf. ESMA's MiFID II/ MiFIR review report on the transparency regime for equity and equity-like instruments, the double volume cap mechanism and the trading obligations for shares.

It would be beneficial with an analysis of the use of the RPW in order to ascertain whether adjustment to or deletion of the reference price waiver is beneficial in order to achieve more transparent European stock markets. In addition, there is merit in considering whether the threshold values for standard market size are calibrated appropriately. Most of the trading executed on SI's is not subject to pre-trade transparency because of the low threshold values for standard market size.

Finally, it is noted that the double volume cap mechanism does not seem to have reduced dark trading as it was otherwise the intention, see also our answer to question 82. Hence, changes in pre-trade waivers should be seen together with possible adjustments or deletion of DVC. E.g., it should be considered whether the LIS-waiver should continue to exist as the only pre-trade waiver making the DVC unnecessary or alternatively delete DVC and the reference price waiver, but keep the negotiated trade waiver and LIS. The LIS-waiver should however, encompass both negotiated trades and reference price trades above the LIS threshold, i.e. no restriction on the type of trading system for orders executed above the LIS threshold.

Regarding non-equity financial instruments, most NCA's have extensively used the national discretion to give the market players all the possible waivers and deferrals. Combined with the fact that the thresholds for illiquidity are set in a way that includes most non-equity financial instruments, it implies that waivers and deferrals are applicable to the absolute majority of financial instruments traded in the European markets. In addition, most NCA's have chosen to allow for 4 weeks of deferral of the traded volumes, i.e. publication is so late that it has no or almost no consequence for transparency.

As a consequence of the different national rules for post-trade transparency, trades executed at the same time can be published at different points in time over a longer period depending on the jurisdiction in which the transaction was executed and by whom.

The DFSA notes that there may be good reasons for deferrals for non-equity instruments, e.g. to ensure that also large transactions can take place. However, it is important that the deferral period is not too long and that only the right instruments can get a deferral as postponement of trade information generally harms transparency in the market.

Denmark has good experience with no deferrals for post-trade data for covered and corporate bonds, although end of day publication is possible if the trade is above 13.4 million EUR for covered bonds and 2.7 million EUR for corporate bonds. This is the case regardless of whether the bonds are defined as illiquid or liquid according to MiFIR. The transparency regime is industry-driven, and the industry sees the advantages of high transparency as it is increasing liquidity.

With respect to derivatives, liquidity and trade sizes often differ significantly from bonds. Thus, there can be good reasons for relatively long deferral periods, but, still, publication of volume after 4 weeks is more or less useless from the point of view of transparency. It would be beneficial with more harmonisation of national deferral regimes. In addition, the different national rules give the investors an opportunity of moving trades towards the jurisdictions with the longest deferrals, and thus harming the overall transparency in the European markets and giving rise to regulatory arbitrage.

Regarding publication of transparency data (both pre- and post-trade) for equity and non-equity instruments there is a fragmentation of information as publication takes place several in places and a consolidated tape has not emerged. Furthermore, use of different formats across trading venues and APA's can make it very difficult to find or access the relevant data, in particular at the APA's. Private data vendors are consolidating the data but they do not offer the full overview of the pre- and post-trade data. Furthermore, they are expensive to access and are not relevant for the smaller investors.

**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.

The DFSA believes that the current regulation has contributed to levelling the playing field between Systemic Internalisers and trading venues (also taking into consideration the recent changes of the tick-size regime for SI's).

However, it is important to bear in mind that TV's and SI's are different types of execution venues. Hence, a full level playing field is hardly possible and is not necessarily a goal as TV's and SI's to some extent contribute to cover different needs in the market.

**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 If you have identified such barriers, please explain what they would be:**

5000 character(s) maximum

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

N/A

**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.

A market structure characterized by an open-architecture model, as is the case in Denmark, given a high level of competition and absence of conflict of interest, should provide investors with access to a wide range of financial instruments.

However, in practice conflicts of interests could, if not properly mitigated, cause difficulties with regard to ensuring an adequate access to competitive financial instruments from third party product providers having no close links with distributors. It is therefore very important to ensure that conflict of interests are mitigated e.g. by enhancing transparency of costs and regulating third party payments (inducements). There is still room for further improvements of the investor protection regulation by e.g. strengthening disclosure requirements as well as the requirements for inducements such as the quality enhancement regulation and the proportionality criteria.

## Section 2. Specific questions on the existing regulatory framework

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# PART ONE: PRIORITY AREAS FOR REVIEW

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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 tape<sup>1</sup>

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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.

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<sup>1</sup> 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.

## 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 type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Overly strict regulatory requirements for providing a CT	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Competition by non-regulated entities such as data vendors	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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.

N/A

## 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.

The buy side will benefit from a CT that provides post-trade transparency from all the TV's and APA's (SI and OTC trades) in the European market. Furthermore, a CT will be a regulatory reporting hub that has the responsibility to translate all the TV and APA post-trade data into a normalised format and also ensure that it provides high quality OTC data.

Despite the benefits for the buy side, a European CT has not emerged. This is to be seen together with the fact that there are well-established data vendors providing a very large share of the relevant post-trade information. They provide information based on the data that is easiest accessible and with high data quality (i.e. the remaining part is mainly OTC trades), which also is the data that is cheapest to provide. On the contrary, a CT is to provide an almost full coverage of the European post-trade data with high quality (due to regulatory requirements). This is costly and apparently is not in demand by the buy side to an extent where they are willing to cover these costs. Hence, there is no commercial basis for running a CT.

## 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.

The DFSA has not analysed whether some of the current requirements can be relaxed or even deleted without harming the quality of the CT data provided or the confidence in the CTP.

The overall view of the DFSA is that the current MiFID II regulatory requirements for providing a CT are high, but in general reasonable as they are to be seen together with the importance to deliver the correct information to the market. If the market does not have confidence in the information provided by the CT, it will have almost no value added compared to unregulated data vendors. On the other hand, there should not be overly strict requirements as this can be costly and therefore can imply that no CT is to be established. How to balance these considerations will require a more thorough study.

## 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.

The rules on the price of market data, especially the term ‘reasonable commercial basis’, are unclear and may involve very different interpretations. This results in undesirable discussions among data providers, data buyers and NCA’s. Furthermore, potential different interpretations imply a risk of unlevel playing field among data providers and Member States.

Against this background, the DFSA supports the ESMA proposals above. We believe they would be an efficient, targeted way to reduce legal uncertainty. We also believe rules on the price of market data should be located in level 1 as it is a political matter with considerable implications for the distribution of earnings among market actors (especially market operators and investment firms) and hence may influence the functioning of the market and the market landscape.

ESMA proposes to delete the articles allowing trading venues, APAs, CTPs and SIs to charge for market data proportionate to the value which the data represents to users. It should be noted that it might imply that retail investors would no longer be able to acquire real time market data at a very low cost (e.g. 1€/month from a TV), thus impacting the information level among retail investors and ultimately work against democratising the capital markets.

**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.
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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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Documenting best execution						



	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Identify available liquidity	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input 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 checked="" type="radio"/>

**Please specify what are the other use cases for an EU consolidated tape that you identified?**

*5000 character(s) maximum*

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

N/A

**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 rankings above are based on a European CT with post-trade data. If the CT provides consolidated, high quality post-trade information in the same format on all (or almost all) traded financial instruments in the European markets, it seems to be an efficient way to access the information for several purposes, including best execution, post-trade controls, evaluations and reportings, research on e.g. liquidity, valuation etc.

Regarding the CT to be a use case for making market data accessible at a reasonable cost, it should be noted that the current rules state that data is free after 15 minutes. Hence, if the CT should make market data accessible at a reasonable cost, the market data should be available a very short time after the transaction. This would set higher requirements to the CT.

**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 recommendations<sup>2</sup> 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.

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<sup>2</sup> 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 type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Full coverage	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Very high coverage (not lower than 90% of the market)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Real-time (minimum standards on latency)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 checked="" type="radio"/>

**Please specify what other feature(s) you consider important for the creation of an EU consolidated tape?**

*5000 character(s) maximum*

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

N/A

**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.

A CT should provide value added compared to the existing data vendors. Hence, there must be a very high level of data quality and full coverage (making it necessary with mandatory contribution), but with the possibility of targeted exemptions if the costs are too high for providing this information compared with the benefits. In addition, to ensure confidence in the CTP it is important with a strong governance framework.

Currently, there are no CTPs indicating that the market is not attractive. Hence, it seems inexpedient if there is more than a single CTP per asset class as the CTPs should then share the market and revenue. This is especially important for market data as this is information demanded only once.

The DFSA assesses that the use cases for a CT are for post-trade data. The assessment reflects that even though the CT might only use 200 milliseconds to receive market data from the different TV's and APA's, consolidate the data and publish it, there will be HFT firms that are faster as they are co-located at the TV's. Hence, for many financial instruments, in particular shares, the 'real time' data from the CT is too old and the buyers would have to buy the data directly from the TV's. Thus, the CT does not seem to be able to play a useful role regarding pre-trade data. Following this, it is also noted that if there is to be mandatory CT data consumption, some buyers would have to pay twice for the data increasing their market data costs. In addition, it is likely to be more costly if the data is to be published 'real time' compared to e.g. end of day, and there would not be time to validate data and correct potential misreporting reducing the quality of data.

**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.

N/A

**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 EBO reference price benchmark):**

*5000 character(s) maximum*

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

N/A

**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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Revenue should be redistributed among contributing venues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The position of CTP should be put up for tender every 5-7 years	<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 checked="" type="radio"/>

**Please specify what other important feature(s) for the funding and governance of the CT you did identify?**

*5000 character(s) maximum*

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

N/A

**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.

It is important to have a comprehensive analysis of the costs of building and running a CT before the CT project is started. This will form the basis of a good estimate of the prices, which the users must pay. The users should then evaluate whether they would buy the CT data at this price (potentially in a binding agreement) or not, thereby ex ante showing whether the costs of the CT outweigh the benefits.

As the users of the CT data benefit from the CT, they should also be the ones to pay. Furthermore, it seems efficient that fees reflect the use of the CT data

Whether the position of a CTP should be put up for tender every 5-7 years depends on the costs of building a CT. If it is time-consuming and costly, then 5-7 years might be a too short a period with revenue to cover these costs.

### **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 <sup>3</sup>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shares post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
ETFs pre-trade	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
ETFs post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Corporate bonds pre-trade	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Government bonds pre-trade	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Interest rate swaps pre-trade	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Interest rate swaps post-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Credit default swaps pre-trade	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Credit default swaps post-trade	<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 checked="" type="radio"/>

<sup>3</sup> 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.

**Please specify for which other asset classes you consider that an EU consolidated tape should be created?**

*5000 character(s) maximum*

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

N/A

### 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 DFSA sees the potential of extensive use of CT post trade data, e.g. evaluation of transaction costs, best execution, portfolio valuation and liquidity analyses. This is the case for several asset classes. Setting up a CT is likely to be a very big task. Hence, it is worth considering starting with a smaller CT with only shares to ensure that it is running. Later on (e.g. at next submission of tender) the CT can be extended to include other asset classes.

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.

The current requirements for information all seem relevant.

## 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 checked="" 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 checked="" 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 other shares should in your view be included in the Official List of shares defining the scope of the EU consolidated tape?

5000 character(s) maximum

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

N/A

### 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.

The users' benefit of a CT depends on the CT having an (almost) full market data coverage of the trades of the financial instruments for which it publishes market data. Hence, if the majority of liquidity is in European markets, the CT would provide a high coverage of these instruments. On the other side, the CT will only be able to provide a smaller part of the full market data picture for financial instruments with the main liquidity outside European markets, implying that it will be of less benefit for users.

**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.

No, any CT should include (almost) all EU-listed instruments, independent of their liquidity. This ensures that data users only need to access the data from the CT and not from other data providers. The DFSA notes that if the CT excludes less liquid shares, it reduces the transparency for these shares, which is deemed inappropriate.

**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.

No flexibility seems appropriate. However, whether specific shares should be included in the CT should depend on a cost benefit analysis.

**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.

If possible, it seems beneficial to apply the same approach as for shares. However, derivatives might be too complicated to include at this stage and it might be appropriate to let the CT focus on the other instruments. However, any legislation should be prepared to include derivatives in the future.

#### **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.

In general, the STO splits the liquidity pool which would otherwise be global. This leads to inefficient markets in terms of execution of client orders. There is also a risk that it makes the EU less attractive for new listings. This should be thoroughly analysed.

Especially, the scope of the STO should be narrowed and only apply to instruments listed in the EU. I.e. the STO has the worst implications for shares which have the main pool of liquidity outside the EU. Here EU brokers cannot obtain a good price for their clients.

The rules concerning the extraterritorial application of the STO should be rethought. Elements for consideration being inter alia: not cutting market participants off from the liquidity they need, they can actually comply with the rules (considering third countries might have an equivalent version of the STO and transactions can consist of a chain of transactions via branches operating in multiple jurisdictions) and making the setup simpler and more readily enforceable.

On the point of third countries, the process of equivalence is too long considering the large number of third countries. This process should also not, to the extent possible, favour particular countries.

We would propose to improve definitions of what qualifies as OTC as it is difficult to assess what constitutes non-systematic, ad hoc, irregular and infrequent. Particularly as figures indicate OTC trading having a high volume.

**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.

Definitions of the exceptions non-systematic, ad hoc, irregular and infrequent are not clear and they are interpreted differently across jurisdictions.

The magnitude of OTC trading is overwhelming, and it should be investigated how the application of the above-mentioned exceptions is actually used in practice.

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

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

Maintain the STO (status quo)	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Repeal the STO altogether	<input type="radio"/>	<input type="radio"/>	<input checked="" 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.

The scope of the STO should be reconsidered to ensure a more balanced approach. Clearly transparency is desired, but this should be balanced against competitive pricing, simplicity and how trading occurs in practice.

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 checked="" type="radio"/>	<input type="radio"/>
SIs should no longer be eligible execution venues under the STO	<input checked="" 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 checked="" type="radio"/>

**Please explain in what other way(s) the status of systematic internalisers, which are eligible venues for compliance with the STO, should be revisited:**

5000 character(s) maximum

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

N/A

## 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.

The DFSA does not believe that SI's should be excluded as a venue for execution of shares. The view reflects that SI's provide additional liquidity and convenience to investors warranting their presence as an execution venue for shares. Furthermore, SI's might provide further competition to the share trading landscape.

Furthermore, the rules for trade transparency for trades conducted with SI's are (almost) the same as for trading venues and contribute to the price discovery process. The current situation with low transparency for some SI trades does not reflect the rules or the SI's directly, but rather issues regarding the APA's publishing the transparency data. It should not affect the view on SI's being eligible for STO.

That being said, and in line with our answer to question 5.1, the thresholds for SI's pre-trade requirements might warrant a revision.

## 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.

The DFSA believes that the following aspects of the regulatory framework should be revisited:

- The SI thresholds for the mandatory SI regime: The thresholds can easily be breached for instruments with a very limited turnover. From a proportionality perspective, this is unfortunate, as it can result in small actors being subject to the SI-regime, and only for a very limited set of instruments.
- The calibration of pre-trade thresholds: The SI pre-trade thresholds are quite low. An analysis should be carried out as to whether these thresholds can be raised, taking into account the risk the SI's are exposed to due to their actual obligations to trade on the published prices.
- The accessibility of SI pre-trade data could be improved: Even though SI's are obligated to disclose the APA they use to publish data, it has proven difficult to find the actual data. Hence, it should be considered whether it is to be mandatory for SI's to include a link to their APA's web page of publication.

It should also be considered how the regulatory requirements for publication through proprietary arrangements can be more transparent to ensure a coherent quality across publication arrangements.

- Increased clarity on pre-trade requirements for non-equity instruments: Currently, there are no level-2 mandates to elaborate on the pre-trade requirements for non-equity instruments. ESMA has provided level-3 guidance on the subject, but legal basis and consistency in this area would be highly beneficial.

## 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.

The DFSA believes that the current regulatory framework provides for a high degree of level playing field between SI's and TV's. Still, we suggest revisiting the calibration of SI pre-trade thresholds (see our answer to question 5.1).

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.

A consolidated tape could increase the price discovery in equity trading. A CT providing consolidated, high quality, post-trade information in the same format on all (or almost all) traded financial instruments in the European markets would counteract the consequences of the fragmentation of trades and the associated information. Furthermore, a CT could also increase the data quality.

A higher level of transparency would also increase the price discovery process. It should be reconsidered whether the current thresholds for e.g. SMS and LIS are correctly calibrated. It is also worth considering whether the double volume cap mechanism fulfils its purpose of minimising dark trading, including that the market players have reacted by moving trades away from the lit market to e.g. period auctions, OTC trades and SI's.

#### **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.

A CT and the STO both have the purpose of increasing transparency thereby contributing to price discovery. Hence, there seems to be advantages of aligning the official list for a CT and the STO. However, the current situation with no CT – and hence no experience with a European CT - advocates for the setup around a CT being as flexible as possible. This might not be the case if there is to be full alignment between STO and the official list for a CT. Thus, the official list could take the STO for European listed instruments (see the answer to question 17) reflecting the need for investment firms to trade instruments having STO as a starting point, but commercial considerations for a CT should also be taken into account.

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.

The main priority for the CT should be to establish it. When it is established and there is more experience with a European CT, more sophisticated requirements, e.g. alignment of the scope of financial instrument subject to transparency requirements, may be considered. A requirement for alignment may decrease the flexibility in establishing and running a CT and thereby potentially increase the costs and operational risks of running the CT.

### 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 type="radio"/>	<input checked="" 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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shortening of the 4-week deferral period for the volume information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Harmonisation of national deferral regimes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Keeping the current regime	<input checked="" 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 checked="" type="radio"/>

**Please specify what other 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?**

*5000 character(s) maximum*

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

N/A

### 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.

The current rules for trade transparency for non-equity instruments should not be seen as a hurdle for running a CT. However, the information fragmentation and the different publication formats increase the complexity of running a CT and can make it costly. On the other hand, it advocates the need for a CT that can consolidate published market data.

## II. Investor protection<sup>4</sup>

**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.

<sup>4</sup> 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 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 type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input type="radio"/>	<input checked="" 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	N/A
Costs	N/A

## 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.

In general, the DFSA finds the current investor protection regulation to be rather successful with regard to achieving investor protection in the European markets. However, some clarification is desirable in order to obtain a more adequate investor protection set forth in the regulation.

### 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. 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conduct requirements	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Please specify which other MiFID II/MiFIR requirements should be amended:**

5000 character(s) maximum

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

It is important to have sufficient investor protection measures in order to ensure that simple investment products are more easily accessible to retail clients. Therefore, several MIFID-II requirements should preferably be amended in order to enhance transparency and ensure adequate investor protection.

Please also see our answer to question 32.2 and specific answers with regard to these topics:

Product governance requirements:

- See question 46-48

Cost & charges requirements:

- See question 1.1, question 3.1 and question 34 (cost & charges requirements)
- See question 49 (transparency of inducements)

### 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.

In general, it is important to ensure that retail clients in a transparent manner are provided with an adequate access to simple and non-complex investment products such as e.g. certain index ETFs. Furthermore, it is important to ensure transparency of costs & inducements for such products, as well as to ensure an adequate target segment for these products as required by the product governance regulation.

Product governance requirements:

- See question 46-48

Cost & charges requirements:

- See question 1.1, question 3.1 and question 34 (cost & charges requirements)
- See question 49 (transparency of inducements)

### 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 If your answer to question 33 is on the negative side, please indicate in the text box which amendments you would like to see introduced to ensure that retail investors receive adequate protection when purchasing products considered as complex under MiFID II/MiFIR:

*5000 character(s) maximum*

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



N/A

### **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.

At this point in time, the DFSA finds MiFID II provides an adequate level of investor protection for retail clients regarding complex products. Retail clients have access to an adequate range of products and the appropriateness test is sufficient.

Furthermore, the DFSA is of the view that the product intervention measures have strengthened the investor protection of retail investors by limiting distribution of speculative products such as binary options and CFDs to this category of investors.

## **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 checked="" type="radio"/>	<input type="radio"/>
Only ECPs should be able to opt-out unilaterally.	<input checked="" 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 checked="" type="radio"/>
All client categories should be able to opt out if specific conditions are met.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Please specify what is your other view on whether all clients, namely retail, professional clients per se and on request and ECPs should be allowed to opt-out unilaterally from ex-ante cost information obligations?**

*5000 character(s) maximum*

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

N/A

**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.

If professional clients do not want to receive the ex-ante information e.g. because he is capable of making the same calculations, a more flexible regime, where professional clients have the opportunity to "opt-out" might be beneficial. The same applies to ECP. However, they have to be properly informed of what information they will no longer receive, and should at any time be able to "opt-in" again. Retail clients already have the opportunity to choose to be treated as professional clients if certain conditions are met. Hence, if they meet these conditions they will also be able to opt-out. The DFSA is not in favor of further segmentation of investor protection of retail clients.

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.

Generally, the Danish government strongly supports a digital society. Nevertheless, there might be situations where retail clients should have the opportunity to expressly request paper based information.

**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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
General phase out within the next 10 years	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
For retail clients, an explicit opt-out of the client shall be required.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
For retail clients, a general phase out shall apply only if the retail client did not expressly require paper based information	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Please specify in which other way could a phase-out of paper-based information be implemented?**

5000 character(s) maximum

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

N/A

**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.

Please see our answer to question 35.1

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.

The DFSA does not support the development of an EU-wide database administered by ESMA. Enhanced transparency enabling investors to more easily compare different types of investment products accessible across EU is more adequately achieved by ensuring that National Competent Authorities are granted sufficient powers to take the needed supervisory measures to enhance said transparency.

**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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
All products that have a PRIIPs KID/ UICTS KIID	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Only PRIIPs	<input checked="" type="radio"/>	<input type="radio"/>	<input 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"/>

**Please specify what other products should be prioritised?**

*5000 character(s) maximum*

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

Since the DFSA does not support the development of an EU-wide database administered by ESMA none of the products mentioned in the table should be prioritized nor should other products. For further arguments please see our answer to question 37.1

**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.

Please see our answer to question 37.1.

**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.

Please see our answer to question 37.1.

### 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 investors<sup>5</sup>. The CMU-Next group suggested a new category of experienced High Net Worth (“HNW”) investors with tailor made investor protection rules<sup>6</sup>.

<sup>5</sup> 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.

<sup>6</sup> 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.

The DFSA supports the present solution in regards to the above.

**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.

The DFSA does not see any need for lowering the threshold for the client's portfolio of EUR 500.000.

**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.

Due to previous experience with creating a new category of semi-professional clients in the area of alternative investment funds, the DFSA does not see any benefit from creating the proposed new category in this area. Experience showed that many clients who subsequently met the threshold requirement of EUR 100,000 were actually not the right "targetgroup", as these investors had gathered all their savings for investment purposes but did not otherwise meet the requested qualitative requirements such as sufficient insight in the area, experience, risk adversity, etc... The clients were de facto not semi-professional but regular retail clients.

**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 type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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.

N/A

**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.

N/A

**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.

N/A

**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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Semi-professional clients should be identified by a stricter financial knowledge test.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 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 checked="" type="radio"/>

**Please specify what other criteria should be the one applicable to classify a client as a semi-professional client:**

*5000 character(s) maximum*

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

N/A

**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.

N/A

#### **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.

The product governance requirements cannot be seen to prevent retail clients from accessing products that would in principle be appropriate or suitable for them.

On the contrary, product governance requirements can and should be seen to lower the risk of misconduct and “misselling” of unsuitable products or inappropriate products to retail clients and to professional clients.

Misconduct of investment firms and “misselling” of unsuitable products can cause significant consumer detriment, undermine market confidence, threaten the integrity of the financial system, and incur large costs to wider society.

In order to address some of these conduct risks, product governance requirements are of utmost importance. These requirements provide a framework for robust and responsible product design and distribution by manufacturers and distributors.

These requirements are even more important at this time having in mind the current low interest environment. Low interests enhances the risks of “misselling” of investment funds in particularly when it comes to customers with a low risk preference and a short investment horizon. The low interest environment poses a risk of “misselling” of products characterized by expected returns after fees lower than the interest rate on deposit accounts.

Product governance requirements are therefore of the utmost importance to ensure adequate investor protection for retail clients as well as for professional clients.

**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 checked="" type="radio"/>	<input type="radio"/>
It should apply only to complex products.	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" type="radio"/>
Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The regime is adequately calibrated and overall, correctly applied.	<input type="radio"/>	<input type="radio"/>	<input checked="" 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.

Product governance requirements are of utmost importance to ensure adequate investor protection for retail clients as well as for professional clients.

If the current product governance requirements are to be revised this should be to order to strengthen the degree of investor protection inherent in the current regime.

Please also see our answer to question 46.1 and 48.1

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.

Product governance requirements and the definition of a negative target market are of utmost importance to ensure adequate investor protection for retail clients as well as for professional clients.

The negative target market should be seen as an explicit indication of those clients for whose needs, characteristics and objectives the product is not compatible and to whom the product must not be distributed. Therefore, investor protection could preferably be enhanced by explicitly stating that investment firms should not be allowed to sell an investment product to a client if a client is characterized as falling into the negative target market.

If a client is characterized as falling into the negative target market it is of importance to reduce the risk of “misselling” of unsuitable products. “Misselling” can cause significant consumer detriment, undermine market confidence, threaten the integrity of the financial system, and incur large costs to wider society.

For additional comments on the product governance requirements please see our answer to question 46.1 and 47.1.

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:**

MiFID II aimed to strengthen the MiFID requirements for third party payments (inducements) e.g. by strengthening the quality enhancement regulation, the proportionality criteria and the disclosure requirements. However, there is still space for further improvements on these matters.

When receiving inducements from third parties investment firms must act honestly, fairly and professionally in accordance with the best interests of the clients, and they are obliged to be transparent about the inducements received and to the quality enhancements provided to clients.

These obligations for the investments firms could however benefit from further elaboration and specified in order to enhance transparency and investor protection.

Inducements should be disclosed in a manner that is more comprehensive, accurate and understandable e.g. by an explicit requirement to explain inducements in non-technical language.

Furthermore, investment firms could be subject to a more explicit obligation to disclose quality enhancing services to the clients in a more transparent manner - in order for clients to know which services they are benefiting from or could benefit from if they request or use the service. A list of quality enhancing services should preferably be disclosed and be easily accessible.

Furthermore, the regulation could be more detailed with regard to the current proportionality criteria.

Firstly, it should be clarified that the proportionality criteria implies that inducements can only be justified by the provision of an additional or higher level service *of relevance* to the client or of added value to the client.

Secondly, clarification that services investment firms are required to provide by law, e.g. the suitability test, cannot be included in additional or higher level services.

Thirdly, clarification that it would contradict with the firm's duty to act honestly, fairly and professionally in accordance with the best interests of the client if the investment firm seeks to fulfill the proportionality criteria by providing additional services *with no relevance* to the client or with no added value for the client.

In situations where additional services cannot be documented as being of relevance to a particular segment of clients, the investment firms must set *a maximum amount of inducements* to be received from each individual client in order for the proportionality criteria to be fulfilled at a client level.



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.

Different distribution models exist throughout in the Union and the current MIFID-II-regulation on inducements has been in force only since January 2018.

Against this background, it seems to be too premature in 2020 to turn directly to banning inducements completely for all retail products across the Union without further analysis and consideration.

It might be advisable firstly to assess the impact the current MiFID II inducements regime on distribution of investment product followed by thoroughly considering the pros and cons of an outright ban on inducements. Furthermore, it would be advisable to assess the expected impact of an outright ban depending on the different distribution models existing in the Union.

The market structure in Denmark is characterized by an open-architecture model with distribution channels to retail investors primarily through banks who also have in-house manufacturing.

Taking this into consideration the effects of an outright ban on inducements should be carefully considered before such a solution can be presented. For instance, an outright ban on inducements could imply a risk that banks will have an incentive to turn to closed-architecture models because of the loss of incentives to sell third party products

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.

In Denmark staff must be certified if they are providing investment advices regarding complex products. There are no certification requirements as to non-complex products.

**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.

The DFSA supports a certification requirement for staff providing investment advice and other relevant information to investors. However, it must be emphasized that the DFSA only supports the proposal if the Member States set the requirements for the competences. This is to adequately be able to cater to market specificities across the EU and large product differentiation from one Member State to another Member State.

**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.

N/A

**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.

N/A

## **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.

N/A

**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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Format of the data	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Quality of data	<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 checked="" 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.

N/A

**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.

N/A

**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.

N/A

**III. Research unbundling rules and SME research coverage<sup>7</sup>**

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.

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<sup>7</sup> 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.

The DFSA has not analysed how the quantity, quality and pricing of research are affected by the unbundling rules.

However, it is the DFSA's overall impression that the rules have affected the industry, as before MiFID II it was an established practice to bundle research and execution services. It will take some time for the industry to adapt to the new rules, including how to react on the higher transparency in the market with respect to the price of research and execution services, e.g. through a more competitive market.

Some banks have mentioned that they have cut their research due to the unbundling rules. The quality of this research has not been evaluated. However, it is possible that a bank's decision to cease certain research activity is a reflection of reduced sales potentially due to research buyers' assessments of insufficiently high quality of said research..

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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Authorise bundling for SME research exclusively	<input checked="" type="radio"/>	<input 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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prevent underpricing in research	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>

**Please specify what other proposals you would have in order to increase the production of SME research:**

*5000 character(s) maximum*

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

N/A

**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*

A specific definition of "research" in MiFID II itself seems rather relevant in order to avoid legal uncertainty among research providers, including in order to smooth the communication between the buy-side and sell-side as well as to support alignment among market players and among regulators.

The reason for research unbundling also applies to SME's, i.e. an investment manager should direct the client orders towards the firms being best at this and not to where he can access free research. Furthermore, it we query whether authorising bundling for SME research would help to increase the SME research production, cf. our answer to question 58.

We note that independent research providers do not provide execution services to clients. Hence, there does not seem to be a risk of wrong incentives for investment managers regarding their allocation of client orders. Thus, excluding independent research providers from Art. 13 can be seen as a possible way to increase the production of SME research without harming the benefits behind research unbundling.

Regarding the pricing of research, it should be thoroughly considered whether this is a relevant topic in financial regulation and why rules should differ within financial services compared to regular competition rules. Furthermore, it can be an extensive administrative burden for research providers to assess all the elements of costs (and associated documentation) necessary to set a price at a reasonable commercial basis, particularly as market data has shown that the term "reasonable commercial basis" is difficult to define and would require extensive and clear guidelines.

Free trial periods of research can be relevant for SME's, especially following an IPO or issue of shares to increase capital. In order to avoid disincentives regarding where to allocate clients' order, the distribution of the free research should be considered, e.g. making it available to everyone, e.g. by publishing on the research provider's web page.

## 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 If you do consider that a program set up by a market operator to finance SME research would improve research coverage, please specify under which conditions such a program could be implemented:

5000 character(s) maximum

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

This should be investigated in close cooperation between the potential stakeholders, i.e. market operators, SME's, research providers and research buyers.

**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.

A market operator has a financial incentive to boost SME research as this is likely to increase liquidity, including the number of executions, and the number of SME listings, thereby increasing the market operator's revenue.

A market operator (normally) has several SME's listed, which gives the potential to reduce the costs for the individual analysis, e.g. if the research provider allows a discount in order to get several customers, follows the same pre-defined approach or template or if the market operator can provide some technical assistance to the research provider.

**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.

The DFSA does not support that SME research should be (partially) publicly funded.

However, if there is to be (partially) public funding, it is important that it be directed towards research giving the highest value to research users. If research providers can apply for public funding, it should e.g. be evaluated whether they know something about the market the SME is participating in, the SME's products etc. If the SME can benefit from public funding, e.g. by public funding partially covering the costs of a marketing analysis, it should be considered whether the research users would use it, e.g. due to conflict of interest.

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 If you agree, which recommendations would you make on the form that such use of artificial intelligence could take and do you see risks associated to the development of AI-generated research?**

*5000 character(s) maximum*

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

N/A

**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.

Collection of publicly available data and presentation of different key figures in a (standard) table is beneficial for potential investors. AI is likely to be efficient for this purpose.

However, if the research is really to add value to the investors, it should include more than key figures, i.e. an actual assessment of the firm's operations, market environment, role in the market, products, management etc. This is especially relevant for SME's as their share price highly reflects the expected future growth and earnings and to a much smaller extent, the most recently updated key figures. Hence, the role of AI for good SME research seems insufficient and should be supplemented by analyst work.

### 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 If you do agree that the creation of a public EU-wide SME research database would facilitate access to research material on SMEs, please specify under which conditions this database should operate:

5000 character(s) maximum

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

The database must be intuitive and easy to use in order to be relevant for both retail investors and investment firms. It includes the option to filter on e.g. country, sector, market operator etc. Furthermore, also historic research should continue to be available as it provides information about the previous expectations to the firm's performance.

### 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.

A single point to enter SME research will make it easy for investors to access the research material, both for the individual SME and across SME's.

Furthermore, it should be considered how to boost the visibility of the database to ensure that persons interested in the information also know it is there and use it.

### 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.

ESMA's capacity is in the regulatory field, not in providing a research 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.

To ensure confidence among investors to equity analyses it is important that they know that the research is issuer-sponsored and hence there might be a conflict of interest. Art .12 (3) b seems to ensure that.

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 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.

Issuer sponsored research implies a significant risk that it is positively biased towards the issuer. This might not be (implicitly or explicitly) demanded by the issuer, but the research provider has an incentive to be positive as it may increase the likelihood that the provider will later on be hired to conduct another analysis for the issuer. A research provider might also in general have an incentive to write positive analyses as issuers are likely to prefer having "positive" researchers analyse their firm.

## 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 If you do consider that rules applicable to issuer-sponsored research should be amended, please specify how:

*5000 character(s) maximum*

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

N/A

**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.

The current rules seem to provide a good balance between making it possible with issuer sponsored research and informing the investors about potential conflicts of interest. However, there seems to be merit to further address the issue of possible conflict of interest (or make the rules clearer), e.g. that the relationship between the research provider and the issuer should be clearly stated, that the research is issuer sponsored and that there should be no target price, recommendations etc. in the issuer sponsored analysis.



**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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Authorise bundling for SME research exclusively	<input checked="" type="radio"/>	<input type="radio"/>	<input 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 checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Create a program to finance SME research set up by market operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Fund SME research partially with public money	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Create an EU-wide database on SME research	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Amend rules on issuer-sponsored research	<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 checked="" type="radio"/>

## Please specify which other policy option would be most needed and have most impact to foster SME research:

5000 character(s) maximum

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

N/A

## 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.

The quality of SME research has to be of a certain level if it is to provide value to the investors, i.e. in addition to key figures, it must also include an assessment by analysts looking into the future prospects for the SME. Such research must of course be financed. The market operator and the issuer have a financial interest in SME research making it most efficient that they (partly or fully) cover the costs of this research.

It does not seem to be a way forward to authorise bundling for SME research. It is important for the execution of orders in SME shares that they are allocated to the firms being best at this. Furthermore, the turnover in SME shares is low implying that a firm bundling execution and research would not make enough money to finance a good SME analysis. Therefore, it is likely that they would only provide some key figures and perhaps some superficial analysis. This will be of little or no value to investors.

We also refer to our answer to question 59.1.

## IV. Commodity markets<sup>8</sup>

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.

<sup>8</sup> 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 (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 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 checked="" 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 checked="" 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 checked="" 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 checked="" 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 checked="" 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:**

	<b>Estimate (in €)</b>
Benefits	The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer.
Costs	The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer.

## 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.

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

### 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

Please provide example(s) of (nascent) contracts where the position limit regime has constrained the growth of the contract:

### Underlying cause of the constraint (A/B/C)\*:

\*Note: 1 The underlying cause of the constraint is due to (A) the position limit becoming too restrictive as open interest increases, (B) an incorrect categorisation under the position limits framework or (C) the underlying physical markets are not efficiently reflected.

5000 character(s) maximum

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

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

Size of the OTC space the contract(s) is/are trying to enter (in €):



5000 character(s) maximum

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

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

**Market share the nascent contract(s) is/are expected to gain (in %):**

5000 character(s) maximum

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

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

**Contract(s) is/are euro denominated?**

5000 character(s) maximum

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

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

**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 checked="" type="radio"/>
A designated list of 'critical' contracts similar to the US regime	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Please specify what other scope you consider most appropriate for the position limit regime:**

*5000 character(s) maximum*

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

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

**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.

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

**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

**Open interest:**

**Threshold for open interest:**

**Number of affected contracts in the EU for open interest:**

**Please explain why you consider that the open interest is a criterion that could be used:**

*5000 character(s) maximum*

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

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

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**Type and variety of participants:**

**Threshold for the type and variety of participants:**

**Number of affected contracts in the EU for the type and variety of participants:**

**Please explain why you consider that the type and variety of participants is a criterion that could be used:**

*5000 character(s) maximum*

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

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

**Other criterion:**

**Please specify what other criterion could be used and explain your answer:**

*5000 character(s) maximum*

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

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

**Threshold for this other criterion:**

**Number of affected contracts in the EU for this other criterion:**

**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.

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

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.

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

**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 checked="" type="radio"/> X
Illiquid	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> X
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> X

**Please specify for which other contracts you would consider a position limit exemption for a financial counterparty under mandatory liquidity provision obligations:**

*5000 character(s) maximum*

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

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

**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.

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

**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 checked="" type="radio"/>
A financial counterparty	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Please specify for other which counterparties you consider a hedging exemption appropriate:**

*5000 character(s) maximum*

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

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

**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.

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

## 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

**If you do not consider that pre-trade transparency for commodity derivatives functions well, please (1) provide examples of markets where the pre-trade transparency regime has constrained the offering of niche instruments or the development of new and/or fast moving markets, and (2) present possible solutions including, where possible, quantitative elements:**

*5000 character(s) maximum*

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

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

### Question 76.1 Please explain your answer to question 76:

*5000 character(s) maximum*

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

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

## 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 Obligation<sup>9</sup>

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.

<sup>9</sup> 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 checked="" 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 checked="" 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 checked="" 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 checked="" 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 checked="" 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:**

	<b>Estimate (in €)</b>
Benefits	The DFSA does not have figures on this. A calculation would in any case rely on a long array of assumptions.
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.

N/A

## 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

## If you do believe that some adjustments to the DTO regime should be introduced, please explain which adjustments would be needed and with which degree of urgency:

5000 character(s) maximum

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

There is a risk that the DTO and equivalent regulations in third countries conflict. An implication of this is that EU investment firms cannot access the liquidity they need. This is to some extent handled by the process by which derivatives are declared subject to the DTO.

Today a suspension possibility for the DTO exists. The objective is to enable EU market participants to access liquidity should it dry up in the EU. However, the process surrounding the suspension is in practice so long that it does not mitigate the risk.

## Question 78.1 Please explain your answer to question 78:

5000 character(s) maximum

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

The DTO should be designed in such a way that market participants can access the liquidity they need and also take into account other jurisdictions' equivalent regulations.

## 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 Danish FSA agrees. The scope of the instruments subject to the DTO consists of a combination of the clearing obligation and additional liquidity tests. This seems appropriate as market participants can execute orders at fair prices; meanwhile it is increasing transparency. It should be considered whether the process can be further enhanced as liquidity may deteriorate.

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.

The DFSA agrees that the DTO should be adjusted to reflect the changes introduced by EMIR REFIT; not doing so would erode the policy objectives of EMIR REFIT, i.e. relieving burdens for small FC's and NFC's.

The DFSA thus fully supports that "small FC's" are excluded from the scope of the DTO, and furthermore, that the DTO for NFC+'s is made asset class specific.

## VI. Multilateral systems

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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.

N/A

**Question 81.1 If your response to question 81 is rather negative, please indicate which amendments you would suggest and why:**

*5000 character(s) maximum*

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

N/A

**Question 81.1 Please explain your answer to question 81:**

*5000 character(s) maximum*

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

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer

## VII. Double Volume Cap<sup>10</sup>

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.

<sup>10</sup> 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 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 checked="" 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 checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The DVC has provided EU added value	<input type="radio"/>	<input checked="" 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:**

	<b>Estimate (in €)</b>
Benefits	N/A
Costs	N/A



## 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.

The double volume cap mechanism does not seem to have fulfilled its objective of more trade transparency in equity trading. The view is based on the fact that the share of equity trades in the lit market has not increased following the DVC suspensions. In general, there seems to have been a substitution towards off-exchange trades (SI and OTC) combined with the evolution of period auctions at trading venues. Furthermore, more trades above the large in scale (LIS) threshold have emerged, benefitting from the LIS waivers.

Thus, the DVCM does not seem to have added much value to the European stock markets as transparency is almost unaffected. It is inexpedient as trade transparency is important for the price discovery process. In addition, transparency increases confidence in the market across investors, including retail investors, which in general have inferior access to market information than the professional players and hence have increased difficulties assessing whether they trade at the right prices.

The DVCM requires on an ongoing basis extensive high quality data reports from all the trading venues. It has been costly to establish and operate the associated systems to report and handle this data. In particular in the beginning of MiFID II, there were problems associated with the data, indicating that the DVCM set high requirements to trading venues and the ESMA.

## VIII. Non-discriminatory access<sup>11</sup>

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.

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<sup>11</sup> 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** If you do see any particular operational or technical issues in applying open access requirements which should be addressed, please specify for which financial instrument(s) this would apply and explain your reasoning:

*5000 character(s) maximum*

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

The DFSA does not have sufficient experience with this part of MIFID II/R to provide an answer.

**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.

Regarding this specific question, the DFSA does not have sufficient experience to provide an answer. However, it should be noted that the DFSA has the general view that legislation should support open access in order to foster innovation and increased competition.

**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.

N/A

### Question 84.1 Please explain your answer to question 84:

*5000 character(s) maximum*

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

The good experience with introducing competition to equity trading in MiFID I has overall been a success with lower trading prices, reduced spreads, faster and more resilient technology, and a fundamental rebalancing of the relationship between the providers of infrastructure and the investors and issuers.

It seems likely that there is a potential for non-equity instruments to go through the same transformation, especially as the technology has developed in recent years making the changes cheaper and/or possible.

### 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.

One could think of MiFID I's lift of the exchange monopoly and the consequently positive development, please see our answer to question 84.1.

CSDR does also have potential to increase competition in the European financial markets, but as the CSDR is new, the results still have to appear.

## IX. Digitalisation and new technologies

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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.

There seems to be a general movement towards more use of technology, both in using technology as part of providing services to customers and companies. For example, we have seen firms offering technologically based solutions addressing the suitability and appropriateness tests required under MiFID II. The DFSA is in dialogue with companies looking into more technology-driven solutions for operating MTFs and companies wanting to offer shares and equity-like instruments to the public in a decentralised manner through the use of blockchain

Additionally, we also see the same development as in other countries and as discussed within the ESMA and with the European Commission. It includes e.g. crowdfunding to raise capital and new ways to trade financial instruments, e.g. execution only-trades using apps instead of trading through a bank's systems, and an increase in algorithmic trading, including high frequency trading.

**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.

In general, the current regulation is aimed at identifiable legal or physical entities performing a regulated activity. This is particularly troublesome for services built on decentralised networks, e.g. block chain. For example it can be difficult to identify an entity for investment services provided through 'smart contracts' on a fully decentral blockchain. Even when it were possible, it would give rise to questions regarding proportional enforcement of the infringements.

With regard to the use of artificial intelligence (AI), the DFSA has already seen investment firms using AI for various purposes without the regulation setting prohibitive barriers.

**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.

In general, our view is that the use of technology will no doubt have the potential to bring benefits for the sector. Thus, the focus should be on how new risks can be mitigated by amending or developing new regulation, thereby assuring that benefits come with an acceptable level of assurance.

**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.

In general, it is the view of the DFSA that technology has the potential to disrupt the infrastructure and processes underlying trading venues, which could result in lower entry barriers.

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.

N/A

**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)

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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 92.1 If you do not believe that the current regulatory framework is adequately calibrated to prevent misbehaviours in the area of spot foreign exchange (FX) transactions, which recommendations would you make to improve the robustness of the regulatory framework?**

5000 character(s) maximum

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

The Danish FSA believes that there is a regulatory gap as the spot FX transactions currently do not fall under the scope of the EU regulation, which could otherwise be relevant in the context of potential misbehaviours, i.e. MiFID II/ MiFIR or MAR.

Since spot FX transactions are prone to market manipulation, we would recommend improving the legal mandate for National Competent Authorities to investigate misbehavior in spot FX markets, including, amongst other things, the ability to question and retrieve information from financial counterparties and trading venues or platforms trading in the relevant spot FX contracts.

Furthermore, the ability for Member States to sanction market abuse cases in FX spot markets, e.g. by imposing fines, would also serve to improve the status quo.

The above could be achieved through e.g. the introduction of market regulation targeting spot FX markets directly, or the introduction of entity based regulation targeting the conduct of senior managers in financial firms. Such regulation could either take a form of an add-on to the already existing EU regulation – e.g. MiFID II/MiFIR or MAR – or be introduced through an entirely new regime applicable only to spot FX, i.e. a tailor-made spot FX regime.

It must be emphasized, however, that the adoption of the Global FX Code of Conduct (the “Code”) is still ongoing and a review of the code is planned for the near future. As such, any amendments to existing regulation or introduction of new regulation should be measured and appropriately take into account the developments in the adoption and review of the Code.

### **Question 92.1 Please explain your answer to question 92:**

*5000 character(s) maximum*

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

It is our view that the introduction of any new regulation for spot FX may be premature at this point in time. Thus, the development of an FX regime should wait until further experience is gathered from the application of the Code including after its planned review. Such a way forward would allow for a proper assessment of the existing regime, which a new FX framework could build on.

### **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.

Please see our answer to question 92.1. In addition thereto, it could be considered whether cases of recidivism should entitle the national competent authorities to impose trading bans on specific market participants.



## Section 3. Additional comments

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**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.

The DFSA has no comments.

**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.

The DFSA has not detected any other issues that would merit further consideration in this context.

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