

CONSULTATION AFG'S RESPONSE

**Public consultation
on the review of the
MiFIDII/MiFIR
regulatory framework**



The Association Française de la Gestion financière (AFG) represents and promotes the interests of third-party portfolio management professionals. It brings together all asset management players from the discretionary and collective portfolio management segments. These companies manage at end 2019 more than €4,000 billions in assets, i.e. a quarter of continental Europe's assets under management.

The AFG's remit:

- Representing the business, financial and corporate interests of members, the entities that they manage (collective investment schemes) and their customers. As a talking partner of the public authorities of France and the European Union, the AFG makes an active contribution to new regulations,
- Informing and supporting its members; the AFG provides members with support on legal, tax, accounting and technical matters,
- Leading debate and discussion within the industry on rules of conduct, the protection and economic role of investment, corporate governance, investor representation, performance measurement, changes in management techniques, research, training, etc.
- Promoting the French asset management industry to investors, issuers, politicians and the media in France and abroad. The AFG represents the French industry – a world leader – in European and international bodies. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA), of PensionsEurope and of the International Investment Funds Association (IIFA).

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For AFG's response to the EC consultation only:
Interest representative register number: 5975679180-97

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

Fields marked with * are mandatory.

Introduction

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

SECTION 2 will be available in English only.

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

Background of this public consultation

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

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

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

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

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

Responding to this consultation and follow up to the consultation

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

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

This consultation document contains three sections.

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

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

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

This consultation is open until 18 May 2020.

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

More information:

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

About you

* Language of my contribution

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

* I am giving my contribution as

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* First name

Arabelle

* Surname

Conte

* Email (this won't be published)

a.conte@afg.asso.fr

* Organisation name

255 character(s) maximum

AFG
Association française de la gestion financière

* 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.

5975679180-97.

* Country of origin

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

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

* Field of activity or sector (if applicable):

at least 1 choice(s)

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

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

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

fund management and investment services

* Publication privacy settings

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

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

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

Choose your questionnaire

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

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

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

The full questionnaire is only available in English.

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

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

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

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

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

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

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

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

5000 character(s) maximum

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

The overall experience of the implementation of the MiFID/R framework is rather contrasted. While, on the one hand, AFG members are satisfied in certain areas, on the other hand, they are unsatisfied in number of aspects. The reason for satisfaction lies with the increased transparency in the relationships with clients. The unsatisfaction concerns mainly 3 points ; difficulties of implementation due to late or successive regulations (1), the fear resulting from certain requirements of MIFID II of mis-selling and litigation that direct sales toward low-risk/low return assets (2) and the increasing need for data providers coming from regulations (3).

(1)The publication of the MIFID Level 2 measures was delayed, resulting in less time for implementation, which increased complexity and cost significantly.

Furthermore, ESMA was continuously updating its Level 3 Q&As. Some Q&As (e.g. on investor protection issues) were published only in December 2017 and expected to be implemented a few days later.

In general, ESMA's current approach in the form of continuously updated Q&As is burdensome for the wider financial industry. Each new clarification can lead to necessary changes to the underlying systems and be time- and resource-intensive. We would therefore strongly suggest making thematic Q&A updates every year, with enough time for the industry to implement these changes. The timing of such impending updates could also be announced in advance and would allow the involved parties to plan for these changes, thus cost-effectively adapting their systems in time.

(2) The recurring experiences from our membership confirm that participation in capital markets has not increased. On the contrary, MiFID II has significantly increased the "red tape" for investors. Fearing potential litigations, investors are being directed into low-risk asset classes to ensure no mis-selling claims. Overall, these measures, therefore, act as a barrier rather than an enabler. As a result, more money is left in bank deposits rather than being invested prudently for the long-term. In Europe, 31% of the households' financial savings are invested in banking deposits, 19% in life insurance contracts and only 4% in listed shares.

Source: European Central Bank
node=10000040

[https://sdw.ecb.europa.eu/reports.do?](https://sdw.ecb.europa.eu/reports.do?node=10000040)

(3) Data Providers: their regulatory frame is not developed enough in MIFID. It should be enhanced in terms of Price Taking, Transparency, and Governance. We would suggest that above MiFID, which specifically tackles Market Data Providers, the overall world of Data Providers (including ESG Data Providers for example) should be submitted to a stand-alone Level 1 initiative, which would then be articulated with specific secondary legislation applicable to various fields (e.g. Market Data Providers, ESG Data Providers, index providers, etc.). The advantage is that a transversal/holistic approach of common principles for all Data Providers in a dedicated Level 1 legislation would be that all Data Providers would have to comply with the same common principles – which we are facing the same issues facing either Market Data Providers, ESG Data Providers, index providers or others.

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

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

We wish to comment on “The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).”

The regulatory burden of MIFID is too heavy versus the supposed benefit for the client ; except for the transparency on costs, clients don't benefit from the extra burden of MIFID such as the target market process, the reform of the research, the paper work ahead of any investment service, the 10% alert, the reporting on best execution.

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.

We see different national interpretations that impede harmonious implementation and effective use of passports, such as:

- Different national interpretations of 'complex' financial instruments including stricter interpretation of non-complex products than set out in Article 57 of the Delegated Regulation.
- Specific national rules on performance fees (about to be extended in Europe)
- The obligation to advise on the cheapest share class
- Extension of the MiFID II investment research regime to fund managers
- Extension of the MiFID II product governance requirements to fund managers

This results in an increased number of funds and share classes that are created to suit specific national requirements. In consequence, this decreases the number of products that are accessible to (in particular retail) investors.

Lastly, the future rules of equivalence with the UK is a matter of concern.

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.

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.

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.

The position of ESMA Q&A stating that all AIF being automatically considered complex is a problem. See question 33

The product governance requirements limits the range of products offered to investors as product governance is product based and doesn't integrate enough the diversification need of a client portfolio- see question 46 and following.

Some retail investors are not allowed to buy high return/ high risk products, see questions 40 and next. Professional investors are also submitted to new rules not adapted to them, see question 94.

Section 2. Specific questions on the existing regulatory framework

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

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

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

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

PART ONE: PRIORITY AREAS FOR REVIEW

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

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

I. The establishment of an EU consolidated tape¹

1. Current state of play

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

1.1. Reasons why a consolidated tape has not emerged

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

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

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

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

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

5000 character(s) maximum

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

The main issues are:

- Data cost;
- Brexit period;
- The lack of European regulation on data pre-trade transparency;
- the opposition of data vendors to the setting-up of a CT;
- regulation did not create actual incentives to set up a harmonised CT.

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.

We see that the debate around the creation of a consolidated tape in Europe goes hand-in-hand with the question of regulating the costs and conditions attached to the provision of market data in Europe. Since the entry into application of MiFID 2, the cost of market data has dramatically increased, therefore annihilating all financial incentives for a commercial CT to be developed. Our support for the establishment of such a consolidated tape also goes together with a call to rethink the role of market data providers, their relative market power and pricing practices. The success of the CT will be highly dependent on the quality of its data and the costs associated with it, which will ultimately determine its usefulness for professional and individual end-investors.

So, in the interest of market transparency, AFG recommends strengthening the regulation of data providers by revising the European legislative texts concerned. This regulation should be transversal and not sectoral to be truly effective, as asset managers – as well as many other types of market participants – are facing the same issues in various contexts: Market Data Providers; ESG Data Providers; Index Providers; etc. In all these cases, we are facing the same issues: permanent inflation in access to data; lack of transparency on cost justification or setting; limitation of liability from the providers; lack of reliability on the data provided.

This situation is explained by the fact that we are facing the same oligopoly of data providers, which are in a very good position to impose their fees as well as legal responsibility limitations. Our request is part of a concern for mastering the information and their quality used by asset management companies and communicated to investors, and also a better control of the access costs to data which, in fine, affect the performance obtained for the investors' account. Indeed, it is essential that asset management companies can be as secure as possible in their management and their relations with their clients, as well as in controlling their access costs to external data. We are therefore proposing a holistic Level 1 stand-alone initiative on Data Providers, with common High Level Principles at Level 1, complemented by differentiated Technical Details regarding the various sectoral legislations (MiF, ESG Data, etc.). For setting the Level 1 High-Level Principles, starting from the transparency and liability requirements of the Credit Rating Agency Regulation (CRA Regulation), possibly to be enhanced, would be a good basis.

Finally, AFG wishes to strengthen the conditions for granting equivalence in order to ensure fair international competition. The current conditions for granting the equivalence provided for by the MIFIR regulation are too favourable for the institutions which would benefit from it. These conditions therefore had to be reviewed.

We agree the Commission's proposal to make the analysis of the granting of equivalence more "detailed and granular" for companies from third countries likely to be of systemic importance in the Union. It also plans to include in it an analysis of the convergence of supervisory practices between the third country and the EU. ESMA will be responsible for drawing up an annual report to ensure that the equivalence decision remains justified.

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.

YES: it should be tackled at Level 1 – either by amending the existing provisions or setting up a dedicated legal framework.

Compliance with the requirements laid down in MiFID Article 65 should be the exclusive responsibility of ESMA and not of the member states. This article should be written to that effect.

The MiFID level 1 should address the general issue of data access cost and data providers.

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.

We strongly agree to “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”.

In addition, we would like to emphasize the importance of level 4 measures to ensure the proper, effective and harmonised application of all legislative provisions related to the market data. To that effect, we urge the Commission and the ESAs to make use of their enforcement powers, to make sure that Member States and their relevant National Competent Authorities (NCAs) fully apply all the existing and future provisions of MiFID. On the basis of ESMA’s annual enforcement reports, the European Commission should act legally and politically vis-à-vis Member States to force the application of the MiFID rulebook consistently through the territory of the EU.

1.3. Use cases for a consolidated tape

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Transaction cost analysis (TCA)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input 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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Liquidity risk management	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Making market data accessible at a reasonable cost	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Identify available liquidity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Portfolio valuation	<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"/>

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.

All the use cases seem to be pertinent for an EU consolidated tape but we put in category 5 (fully agree) only the central use cases.

2. General features of the consolidated tape

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

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

- ensuring a **high level of data quality** (supervisory guidance complemented with amendments of the Level 1 and 2 texts);
- **mandatory contributions**: trading venues and APAs should provide trading data to the CT free of charge;
- CT to **share revenues with contributing entities** (on the basis of an allocation key that rewards price forming trades);
- contribution of users to funding of the CT, e.g. via **mandatory consumption** of the CT by users to ensure user contributions to the funding of the CT
- **full coverage**: The CT should consolidate 100% of the transactions across all asset classes (with possible targeted exceptions);
- **operation of the CT on an exclusive basis**: ESMA recommends that a CT is appointed for a period of 5-7 years after a competitive appointment process;
- **strong governance framework** to ensure the neutrality of the CT provider, a high level of transparency and accountability and include provisions ensuring the continuity of service.

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

- **Whether pre-trade data should be included in CT**: the argument has been made that the US model for a consolidated quotation tape comprises pre-trade quotes because of the **order protection rule** contained in Regulation National Market System (NMS). The order protection rule eliminated the possibility of orders being executed at a suboptimal price compared to orders advertised on exchanges and it established the National Best Bid and Offer (NBBO) requirement that mandates brokers to route orders to venues that offer the best displayed price. Although some stakeholders strongly support a quotation tape, others have expressed reservations, either because there is no order protection rule in the European Union or because they do not support the establishment of such a rule in the EU which could be encouraged by the establishment of a pre-trade tape. Stakeholders also argue that a quotation tape will be very expensive and that latency issues in collecting, consolidating and disseminating transaction data from multiple venues will always lead to a co-existence of the CT and proprietary exchange data feeds.

- **What should be the latency of the tape:** Many stakeholders argue that the tape should be “real-time”, implying minimum standards on latency such as a dissemination speed of between 200 and 250 milliseconds (“fast as the eye can see”). Other stakeholders support an end of day tape.
- **How to fund the tape and redistribute its revenues:** stakeholders have mixed views on the optimal funding model. They also caution against some aspects of the US model, where the practice of redistribution of CT revenues has, in their view, provided market participants with an incentive to provide quotes to certain venues that rebate more tape revenue, without necessarily contributing to better execution quality.

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
High level of data quality	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Mandatory contributions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mandatory consumption	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Full coverage	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Very high coverage (not lower than 90% of the market)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Real-time (minimum standards on latency)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The existence of an order protection rule	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Single provider per asset class	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Strong governance framework	<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"/>

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.

The coverage above 90% as well as real-time are two critical elements.
Regarding the financing of the CT, it should be mutualised.

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.

The mandatory consumption of the tape can only be acceptable if it provides high-quality real time data to replace certain commercial data feeds and goes hand-in-hand with a stricter regulation of market data costs, without which the mandatory consumption will only amount to a double-billing for market data for end-investors.
In any case, mandatory consumption of the tape should not prevent the possibility of using other sources of data which appear in some practical cases more appropriate. Those points should be analysed very carefully by ESMA when setting up the tape.

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

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

5000 character(s) maximum

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

What is crucial is that the CT should provide for appropriate information on volumes and data, in order to make sure that TCAs are meaningful.

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

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.

3. The scope of the consolidated tape

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

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

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

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

Other	<input type="radio"/>	<input checked="" type="radio"/>				
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³ Pre-trade would not be executable but delivered at the same latency as the post-trade data. Pre-trade market data is understood to be order book quote data for at least the five best bid and offer price levels. Post-trade market data is understood to be transaction data.

Question 15.1 Please explain your answers to question 15:

5000 character(s) maximum

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

The subject on what asset classes should be covered and what trade transparency data should be included in an EU consolidated tape is debated.

If the AFG's members are unanimous to consider that shares and ETFs should be covered in a first step by an EU consolidated tape for post-trade, it is not the same thing for the other asset classes and in general for pre-trade.

Indeed, a majority of AFG's members seem to consider that the other asset classes (bonds and swaps) could be covered by an EU consolidated tape in a second step and the pre-trade transparency data should be included in the scope of the consolidated tape provided the costs are not prohibitive and stay fair, reasonable, non-discriminatory and transparent.

For other AFG's members, on the one hand, the advisability of a CT is not obvious for bonds and derivatives because for them the cost would undoubtedly be disproportionate compared to the use which would be made of it and on the other hand, if theoretically the inclusion of pre-trade would be ideal, in practical terms, this option seems to them unattainable and unrealistic.

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.

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 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"/>

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.

Above all, there should be NO conflicting obligation between the EU CT rule and the UK FCA approach.

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: we don't see the need for adding any criterion.

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.

There should be NO conflicting obligation between the EU CT rule and the UK FCA approach. Non-EU trading venues should be allowed to voluntarily contribute to the EU CT.

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.

We agree that ETFs be under the same regime and timing of the shares like described in the question 17 of the questionnaire. ETFs are generally listed on several trading venues so it is important that they are covered by the EU consolidated tape in a timely manner

Regarding Bonds, we agree for inclusion in the CT, but we have to keep the possibility of deferrals for block trades. BUT we wish the periods and rules applicable to deferrals to be harmonised among Member States, which is not the case today;

Regarding Derivatives, a difference must be made between listed Derivatives (to be included in the CT), contrary to OTC Derivatives.

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.

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.

As expressed by the European commission in the point 1.6 above “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 current wording of the share trading obligation at level 1 (capturing all shares ‘admitted to trading” on an EU venue) does not take into account where the main pool of liquidity for that share is. It can also create conflict of rules (same share can be capture by different trading obligations in different jurisdictions). We recommend clarifying the level 1 wording to avoid such confusion and ensure that only EU shares which have their main pool of liquidity in the EU are subject to the STO.

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

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

Question 23.1 Please explain your answers to question 23:

5000 character(s) maximum

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
SIs should keep the same current status under the STO	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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"/>

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.

SIs play a critical positive role, from a buy-side perspective. Indeed, they make up for the lack of trading on MTFs.

It is imperative that SIs are maintained as eligible execution places, regardless of whether the STO is maintained or not:

- SIs provide critical liquidity to markets;
- Asset managers need to retain access to diversified venues with different levels of transparency, to guarantee the access to liquidity;
- The suggested proposal would be against competition as exchanges would have de facto monopolies.

Furthermore, we believe that SIs usefully contribute to the much-needed diversity of Europe's market structure, alongside primary exchanges and MTFs. Ensuring that multiple business models and trading protocols can coexist is key to ensure a high level of competition, efficiency and innovation in Europe's trading ecosystem.

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.

Regarding Derivatives, the buy-side considers that APAs should be removed, as SIs (which play a positive role, in terms of lower costs) tend to avoid APAs.

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.

We think that currently, there is already a level playing field between trading venues and SIs, and therefore there is no need for change.

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.

The promotion of the price discovery process needs to be applied smartly and taking account the orders size. It is important to ensure a spectrum of possibilities when it comes to trading: from multilateral venues (RM & MTFs) to bilateral trading (SIs), to reflect the inherent liquidity of instruments and the sizes of orders. Indeed, MiFID allowed for the development of alternative venues and SIs and for the buy-side, it was an excellent move, as it led to cheaper prices and lower costs, to the ultimate benefit of our end-investors. The current discovery process in equity trading is fine, and SIs can participate in the process. They would in addition contribute their data to the CT.

Fortrades, more transparency would create problems for liquidity sourcing and would generate higher costs. Consequently, more transparency would create a prejudice for end-investors, as each slice of a block trade is disclosed too early, it would raise attention from the market and create high difficulties for executing the rest of the block slices in the best execution conditions. For block trades, clearly best execution of the overall blocks – in the ultimate interest of the investor - must prevail over transparency.

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.

We agree that the scope of the STO should be aligned to the one of the CT, i.e. EU scope. BUT as already mentioned above, non-EU shares should be allowed to opt-in to be part of the CT.

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.

We agree but we consider that the priority should be first of all on the post-trade and not on the pre-trade.

4.3. Post-trade transparency regime for non-equities

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

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

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

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

Question 30.1 Please explain your answer to question 30:

5000 character(s) maximum

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

We think current deferrals should be kept as such as they work well. However, we would like deferral regimes to be harmonized, to facilitate our trading activity as compared to today where we must cope with various national deferral regimes.

II. Investor protection⁴

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

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

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

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

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

		2				
	1		3	4	5	

	(disagree)	(rather not agree)	(neutral)	(rather agree)	(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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more investor protection.	<input type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The investor protection rules in MiFID II/MiFIR have provided EU added value.	<input type="radio"/>	<input 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	NA
Costs	NA

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.

We wish to comment on “The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).”

The regulatory burden of MIFID is too heavy versus the supposed benefit for the client ; except for the transparency on costs, clients don't benefit from the extra burden of MIFID such as the target market process, the reform of the research, the paper work ahead of any investment service, the 10% alert, the reporting on best execution.

In addition, due to the regulatory burden, MIFID prevented the French banks from advising the last French IPO in November 2019 (“La Française des Jeux”) to their retail network, due to the risk of liability resulting precisely from this legislation. The stock was only available at client's request.

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 type="radio"/>	<input type="radio"/>	<input type="radio"/>

1. Easier access to simple and transparent products

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

Question 32.1 Please explain your answer to question 32:

5000 character(s) maximum

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

Yes for the product and governance requirements as we believe that simple investment products don't benefit and don't need the product governance arrangements. Product governance requirements should be focused on complex products where it can bring useful information to distributors. For simple products, the suitability process is sufficient to provide a good investment service to the final investor and a good

adequacy to its needs.

Yes for costs and charges requirements: MIFID rules should not be polluted with PRIIPS RIY and implicit costs rules which are misleading and unclear to retail clients. Client's rules should be centrally decided within MIFID and not within product regulations.

Yes for conduct requirements that could be alleviated in fields such as the 10% alert, the heavy burden of research agreement,...for retail clients as well as for professional clients, see our proposals in Q94 for professional clients.

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

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

Question 33.1 Please explain your answer to question 33:

5000 character(s) maximum

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

We agree that the MIFID II/MIFIR requirements provide adequate protection for retail investors regarding complex products but we do not agree on the MIFID II scope of complex products, particularly with the ESMA interpretation of complex products.

MiFID II classifies products as complex, non-complex and complex on a case-by-case basis. UCITS are classified as non-complex while AIFs can be classified as complex or non-complex under certain conditions set out in article 57 of the MiFID II (2017/565) delegated regulation.

However, ESMA, in its Q&A of 8th June 2017, classifies all AIFs as complex products. This is the consequence of a lack of clarity in Article 25.4 of MiFID II.

Indeed, the problem is that complex products cannot be marketed via order execution services or reception /transmission of orders services. In France, a lot of products are similar to UCITS but are classified as AIF. For example, the French FIVG and the French employee saving funds (which are not a UCITS and is therefore an AIF by default) is automatically considered a complex product, even though it is subject to the same operating rules (investments, liquidity, reporting...) as a UCITS.

Consequently, for the sake of a clearer and more harmonized legislation which must not leave room for over-interpretation, we believe it is necessary to amend Article 25.4 of MiFID II as follows: "FIA units or shares should be eligible, on a case-by-case basis, pursuant to Article 57 of the MiFID II delegated regulation, to benefit from the status of "non-complex products".

Indeed, article 57 of the Delegated Regulation sets out conditions regarding liquidity, limits on potential losses and publicity in order to qualify a product as a non-complex product. These conditions are compatible with certain AIFs and must be respected to classify these AIFs as non-complex products.

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 type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Professional clients and ECPs should be able to opt-out if specific conditions are met.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
All client categories should be able to opt out if specific conditions are met.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

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

5000 character(s) maximum

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

Actually we would have chosen another answer if it would have been possible such as: "Only ECPs and professional clients should be able to opt-out unilaterally without specific conditions."
 In absence of it, we chose the third answer but we are not supporting the request of specific conditions. Professional clients usually have their own in-house format of disclosures and don't necessarily benefit from the MIFID format. They are experienced enough to decide on the format and content of the information they need. it would make sense to allow them to opt out if they wish , without any specific conditions.

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.

We are in favour of a phase-out of paper-based information. For the time being, this should mean that necessary documents can be e-mailed as pdfs to clients rather than creating the need for complex databases which can be accessed through companies' websites or apps.

That being said, we are acutely aware that not all investors are technology-savvy. This means that there must always be an option for investors (i.e. opt-in) to receive paper-based documents.

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

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

5000 character(s) maximum

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

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

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

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

Question 37.1 Please explain your answer to question 37:

5000 character(s) maximum

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

While AFG appreciates the proposal in which ESMA takes in charge a database of investment products, we are not sure yet of the purpose served; is it for distributors? For final clients? What kind of information on products? More details are necessary for answering properly.

AFG takes this opportunity to express other needs that could be served with a European ESMA database: disclosure of national rules on holding notifications / exceeding thresholds, public records of beneficial owners, and as suggested later on in Q.63-64, sponsored research on SMEs..

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

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

Question 38.1 Please explain your answer to question 38:

5000 character(s) maximum

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

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

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

Question 39.1 Please explain your answer to question 39:

5000 character(s) maximum

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

3. Client profiling and classification

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

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

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

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

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

Question 40.1 Please explain your answer to question 40:

5000 character(s) maximum

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

Although we find that MIFID generally offers a good protection, some retail clients with a certain level of experience and financial surface are regularly complaining about receiving too many information and not having access to innovative or professionals products such as private equity funds, absolute performance funds, cocos bonds, multi premia strategy, etc. ...; that is why we think that some retail clients should be allowed to be treated as professional with a more flexible approach. see next question.

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.

AFG supports the idea of easing the conditions for a non-professional client to be classified professional which we find more practical than creating a new category of client and lowering the threshold is not necessarily the first priority.

In addition to the condition that "an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making investment decisions and understanding the risks involved." (dir 2014/65 annex II.I), AFG suggests to ease all the criteria for allowing some retail clients to access professional status more easily. The threshold of the portfolio is one of them. Here are our proposals on all of them:

- I-the client has carried out <new> 10 transactions over the previous year on any financial market, or 2 transactions in illiquid financial instruments or funds,
explanation: the current criteria of 40 transactions a year is a lot for a retail person , especially when it comes to funds, and tends to target trading-like players rather than investors; besides it sends a wrong signal to the public that trading actively is a professional conduct. We should rather encourage long-term investment that doesn't need almost weekly transactions. Numerous transactions doesn't add up either with the control of costs.
- II- The size of the client's financial instrument portfolio, defined as including cash deposits , financial instruments, exceeds EUR 500 000 and <new> should encompass the employee saving schemes,
explanation: employee saving schemes (epargne salariale in France) is representing € 125BN out of which 50% is free of disposal.
- III-the client works or has worked in the financial sector or in fields that involve financial expertise for at least one year in a professional position, which requires knowledge of the transactions or services envisaged <new> or is holding a diploma in economics or finance at a minimum level of 7 (master),or has managed a portfolio of more than EUR 500,000 over the last five years,
explanation: we suggest to extend the field of qualified persons with either a high level of academic knowledge or a high level of experience on the ground.
- A fourth criteria would complete the regime of opting up:
IV- the client is carrying out a transaction of €100 000 on a financial instrument.
explanation: generalizing the possibility, granted by some Member States, for retail investors to access financial instruments dedicated to professional clients as soon as they invest at least 100,000 EUR would allow better harmonization and the deletion of current competitive distortions”.

in addition:

Investment firms should be allowed to propose an opting up to their client:

we suggests to add in Annex II a new case in the § II-2 : « they must state in writing to the investment firm that they wish or accept the investment firm's proposal to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product,»

Lastly, retail client that are under portfolio management by an investment firm should be able to access professional financial instruments and products as it is the case today in the French regulation. AMF Position 2019-12, point 6, in application of DR 2017-565 art. 58.

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.

While we understand the notion of 'semi-professional clients' (and its intention to provide much-needed

flexibility for these types of clients), we do not believe that the creation of new client category is the right way forward. In particular, the creation of a fourth client category would create a large number of changes (i.e. amendments) to the entire MiFID II framework, it would be difficult to define a specific regime for an in-between category and lastly it would lead to very high follow-up implementation costs for the financial industry.

We are certain that the same objectives can be achieved by allowing retail clients either to opt-out of certain requirements or to opt-up for the professional status, thus becoming de-facto 'semi-professional clients' with a lighter regulatory regime attached. see Q.41.1

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"/>

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.

AFG is against creating new category of clients. Easing the retail criteria for opting up would be sufficient. See our answer on question 41.1

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

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

5000 character(s) maximum

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

AFG is against creating new category of clients. Easing the retail criteria for opting up would be sufficient. See our answer on question 41.1

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"/>

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.

AFG is against creating new category of clients. Easing the retail criteria for opting up would be sufficient. See our answer on question 41.1

4. Product Oversight, Governance and Inducements

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

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

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

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

Question 46.1 Please explain your answer to question 46:

5000 character(s) maximum

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

The current MiFID rules regarding the sales into the negative target market have pushed many distributors into giving too conservative investment advice in order to avoid potential mis-selling accusations. This is especially true for 'negative target market' products which are intended for diversification purposes. We understand that the ESMA guidelines make an exception for such cases. However, this does not give enough comfort to distributors who are understandably concerned that they may be accused of misselling. In many cases, this leads to overly cautious investment recommendations that, in many cases, completely

disregard any 'negative target market' recommendations. This can lead to lost returns for investors over the long-run. It is important to remedy this situation by incentivizing distributors to consider a well-diversified portfolio first and before the individual target market of its individual underlyings. This principle should be enshrined in the Level 2 Regulation.

Lastly, the fact that distributors should indicate to the client in the suitability report that they may be the negative target market is another obstacle for diversification as it discourages the investor; this requirement has no added value for the advised client and should be deleted.

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

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

Question 47.1 Please explain your answer to question 47:

5000 character(s) maximum

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

According to the principle of proportionality linked to the product governance rules (cf. article 10.1 delegated directive 2017/593), AFG recommends that the product governance process focuses on complex products. Investment firms should also be given the choice to include other products where they or their distributors feel it necessary (e.g. innovative products, illiquid products, coco bonds, long/short ucits funds, ...). It is therefore of the utmost importance that the future KID PRIIPS deliver clear, exact and non-misleading information on simple products so distributors can fully rely upon; it is not the case currently.

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.

That issue is already clarified in ESMA Product Governance Guidelines in § 71 and 72.

Investment firm should be allowed to sell a product to a negative target market if the client insists, but in that case the firm should provide a written explanation that the client was duly informed but wished to acquire the product nevertheless.

It is important to note that in France "without legitimate reasons" (Consumer Code, art. L. 121-11), the Distributor may not refuse an express request from a client to invest in a Product. In AFG's view, the mere fact that the client is outside the target market would not appear to constitute a "legitimate reason".

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

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

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

Question 49.1 Please explain your answer to question 49:

5000 character(s) maximum

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

AFG does believe that the new regime for non-independent advisors put in place pursuant to MiFID 2 has provided well calibrated measures and reach the right balance between the necessary remuneration of distributors, on the one hand, and the best interest of their clients on the other hand.
Trailer fees (also called retrocessions but also wrongly called "inducements") paid to distributors

encourage fund distributors to search and look as many products as possible and help them finance their database and selection tool. On the client's side, MIFID 2 rightly introduced measures that protect better the client such as increased transparency on inducements received, the providing of an enhanced service for the client and the need for distributors to check whether there is another product less complex and less costly.

In addition, these measures have been in place for two years only and we should take time to properly measure the impact of these new rules.

Ahead of any new decision regarding MIFID II, we recommend continuing to monitor and evaluate:

-The evolution of the open architecture on a full scope of countries, including the

Netherlands which was left out in the 2018 study of the European Commission, and whether retrocessions have been really restraining open architecture. In France, retrocessions rather encourage open architecture as they contribute to the financing of the monitoring and selection of third party products.

-The total cost of ownership: before banning inducements, we need to evaluate the alternative model based on advice fees that goes with the ban. The cost of advice is not necessarily cheaper, last studies in UK show usually 4% in the first year and 0.90% on average the following years in the UK (source: financialadvice.net; moneyadvice.service.org.uk ; <https://citywire.co.uk/new-model-adviser/news/advice-fees-are-going-up-and-there-is-no-evidence-they-will-come-down/a1114066>) Besides, the advice fees is not linked to the complexity of the product and the effort and time necessary to explain it to the client while retrocessions are proportionated to the complexity of the product; e.g. a retrocession on a simple bond product is lower than the one for an equity fund or a structured product;

-The access to advice for the retail and whether the on-line platforms are fully adequate. The latest info show that consumers have not adopted yet the robo-advisor's channels and some large actors closed down their on-line platform. It would also be worthy to evaluate the range of products offered on line and the access to innovative products, the clearness of the services offered between advice and execution only, the cost transparency, the robustness of the suitability test and the black-box algorithms. Lastly, there is such an increasing number of on-line offers that turned out to be scams and frauds that the French regulator needs to monitor them and alert the public on a regular basis. <https://www.amf-france.org/fr/actualites-publications/communiqués/communiqués-de-lamf/lamf-et-lacpr-mettent-en-garde-le-public-contre-les-activités-de-plusieurs-sites-internet-et-entités>. We are not against the development of digital solutions but wish to warn against any hasty decision to dismantle a distribution model before an alternative one is ready, tested and robust.

-The crucial role of the advice for investing, in particular for choosing an ESG investment, for choosing the right allocation for a long term investment, for making the right decision in volatile /unsettled markets (as currently with the Covid19 context), for defining the right investment product for specific needs, for investing in innovative products. Financial education is low in France and moreover, national tax policy is a major driver in investment decision. In Europe, 31% of the households' financial savings are invested in banking deposits, 19% in life insurance contracts and only 4% in listed shares. Source: European Central Bank <https://sdw.ecb.europa.eu/reports.do?node=10000040>

-The recording and analysis of the mis-selling cases, the number of cases and the role of retrocessions. For example, the BEUC web-map (<https://www.thepriceofbadadvice.eu/static-map/>) records 39 cases in 15 countries (3 cases in average per countries) over a period of 20 years, a score that is not that alarming. In France, among the 4 cases recorded, we haven't found any that relates to the existence of retrocessions and only one involves asset management: this last one concerns a fund that didn't keep its promise of returns and had not sufficiently explained the risk to the clients; that was in 2011.

We should be careful before changing one more time the distribution models in Europe. The unbundling of the cost of advice from the cost of product is to be assessed cautiously. The unbundling in Research have caused serious problems not enough anticipated.

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.

We don't think that banning inducements would improve access to independent advice especially for the mass retail that need it the most. Besides, banning inducements would:

- Not prevent or solve any mis-selling cases as those rather result from improper or lack of information on the financial instrument, its risks or its fees, misconducts that relate to other parts of the regulation, cf. <https://www.thepriceofbadadvice.eu/static-map/>
- Not improve long-term investments nor equity and corporate debt investments; indeed, if sales were linked to the level of retrocessions, more equity and corporate debt products would be sold to retail clients, as these products usually have higher management fees, hence higher retrocessions; this is by far not the case in France
- Not develop the open architecture as it would rather encourage in house product sales especially in France where there is a high number of asset managers compare to other countries (630 asset managements in France) while retrocessions contribute to the financing of data base and selection tools of third party products.

As stated above in Q. 49, we warns against any hasty decision to dismantle the European distribution model shortly after introducing new rules in 2018 without conducting any proper impact assessment of these new rules and without any robust and satisfying alternative models.

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 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.

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.

We do believe that investors could benefit from an European certification that would offer them, throughout Europe, the same level of expertise from their advisors and enable in the same time these investment advisors to transport their certification from a country to another in case they have to move .ESMA guidelines (ESMA/2015/1886 FR) offers yet a good framework for the topics that advisors could be tested on. The detailed set of questions should be left to national authorities and investment professionals to ensure that questions are operational and practical as well as regulatory. (e.g. advisors should be knowledgeable about risk, volatility, portfolio management techniques, diversification, etc.... although they are not defined in the regulation).

National authorities and investment professional should also be in charge of the modalities of the certification exam (MCQ, case study ...). The test shall be carried out either in English or in the local language.

A harmonized European grandfathering clause should be provided for those already holding a national certification.

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.

Given that in many instances it is impossible or unpractical to provide the client with the ex-ante cost information before a transaction is executed, it should be possible to provide this information after the transaction's execution. As such, the ESMA Q&A (section 9, question 28) should be clarified. Furthermore, certain waivers should also exist for professional investors who transact regularly.

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.

Record-keeping systems have already been put in place and it would be uneconomical to scrap these systems now that they are up and running. In particular, since they allow for a review of conversations in the case of customer complaints. We, therefore, would ask for no changes with regards to taping and record-keeping requirements.

That being said, it may prove valuable to also include an opt-out for investors who do not wish to be recorded.

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.

We fully agree about the good quality and comprehensiveness of such reports. As asset managers, we are client of brokers/dealers and we noticed a great improvement of data quality. Therefore, we have upgraded our controls and best selection reports based on these data.

However, apparently clients do not make use of them. Best execution/selection reports are required to enable the public and investors to evaluate the quality of an investment firm's execution or selection.

Considering practical and operational feedbacks, we observe that these best execution/selection reports are not really taken into account by our clients, the tracking of our websites show that best execution reports are not consulted by any clients. We do not believe that best execution reports are "useful information" for final investors, as they would not even consider them.

Moreover, we provide all relevant information on the real transaction costs through the costs & charges reporting.

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"/>

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.

We fully agree about the good quality of such reports. However, apparently our clients (which are final investors) do not make use of them (see question 55.1).

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.

Although the quality is good, clients do not make use of them. Therefore, we assess that the benefits for final investors are very low and, so, the cost of generating unnecessary.

III. Research unbundling rules and SME research coverage⁷

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

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

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

Effect of unbundling on the quantity

One effect of unbundling on research quantity is that there is not enough investors to pay for the research on small and mid caps. As a consequence, analysts are producing less research on these securities and small /mid companies are losing financing and liquidity. For example, according to the Giami / Eli-Namer report on research presented to the French Market Authority (AMF) in January 2020, in mid 2019 the cover of the Euronext B compartment (companies valued between 150 million and 1 billion euros) decreased 26 %.

Effect of unbundling on the quality

According to the Giami / Eli-Namer report on research presented to the French market authority in January 2020, the unbundling leads to a decline in the quality of financial analysis. In France, for example, the decline in the quality of financial analysis is reflected in shorter analyses provided by more junior analysts. Moreover, the emergence of "read only" research offers proposed by major American players is tending to become a standard. These analyses obviously do not provide the same quality of information as the more expensive, better quality analyses that have been exploited until now.

Effect of unbundling on the price of research

The unbundling cause a problem of level playing field between EU27 and non EU27 players, particularly with regard to US players.

Firstly, there is a problem between European and American research providers. Indeed, American research providers amortize their costs with American and international customers. This allows them to dump prices for the benefit of their European customers. For example, a large US bank sells a research service "read only" to European investors at €10.000 per year whereas French brokers sell this service from € 30.000 to 50.000.

There is also a level playing field problem between European and US asset managers. Indeed, when European asset managers make offers to both European and non-European clients, they have to price them the cost of research. The consequence is that the costs of European asset managers appear higher to clients compared to the costs of an American asset manager.

European asset managers must also ask their European and non-European clients for an explicit agreement on the research budget. Many French clients refuse to pay the research fee. In France, for example, several asset managers have not been able to re-invoice their private wealth clients. As for institutional clients, they have all refused to pay for the research. One asset management company even had to give up two institutional mandates. To sum up, either the asset manager bears the cost of the research or he loses its clients. Some medium-and small sized asset managers do not have the money to cover for the costs of research and are therefore the first to be penalized.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Authorise bundling for SME research exclusively	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exclude independent research providers' research from Article 13 of delegated Directive 2017 /593	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prevent underpricing in research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Amend rules on free trial periods of research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

5000 character(s) maximum

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

As stated above, non EU 27 actors, mostly US actors, exempted from unbundling at home and benefiting from a large domestic market that insure them revenues, take the MIFID 2 new research regime as an opportunity to penetrate more aggressively the European market ; dumping have been observed in many occasions. (e.g. an offer for €10 000 on a large cap universe where the average price by European providers is € 40 000)

Amending rules on free trial periods of research is fully relevant because under current rules firms are subject to a 12 months freezing period between two trial periods. We suggest reducing this freezing period to 6 months with the aim of facilitating competition between providers and thus increasing the quality of research. There would be some merit also in extending the trial period from 3 to 6 months or putting a cap on the number of free trials without any time limit.

the unbundling of SME research could be an interesting solution but would need a prior assessment of impact.

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.

We believe that a program set up by one or several market operator(s) displaying research coverage is a good idea. Investors would be able to buy the specific research they need with more transparency on the prices.

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.

Our members are reluctant to finance a public program through new taxes.

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

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

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

Question 62.1 Please explain your answer to question 62:

5000 character(s) maximum

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

We are neutral on this proposal. If research generated by artificial intelligence is to be developed, the quality of this research must be at least equal to the research currently provided by our physical financial analysts, at least on the technical information and data;
we doubt that IA can replace the human analysis that encompass intuition, cross-analysis with others corporates f the quality of the management, the governance, and as of today, the path towards ESG goals.

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

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

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

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

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

Question 63.1 Please explain your answer to question 63:

5000 character(s) maximum

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

Two conditions must be fulfilled for the setting up of this database:

- Access to the database must be free of charge or at a very limited fee; and
- The content of this database should be limited to issuer-sponsored research only.

We think that the creation of a public UE-wide SME research database would facilitate access to research material on SME. It is particularly important for fund managers to find research on securities more easily. Nevertheless, the costs of creating and operating this database should not be supported by investors, whether in the form of contributions nor taxes.

Furthermore, is it imperative to limit this database to issuer-sponsored research only. Financial analysts must be able to sell independent research to their clients.

Lastly, a more in-depth consultation on this project should be conducted.

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.

We agree that ESMA is well placed to develop such database. However, we have questions about the funding of this database. As mentioned above, we are against financing this database through taxes or contributions paid by fund management companies.

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.

We believe that issuer-sponsored research falls squarely within the definition of an acceptable minor non-monetary benefit as defined by Article 12 of the Delegated Directive (EU) 2017-593:

“ (...)3. The following benefits shall qualify as acceptable minor non-monetary benefits only if they are: (...) (b) written material from a third party (...) where the third party firm is contractually engaged and paid by the issuer to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any investment firms wishing to receive it or to the general public;

This article ensures investors the accessibility of the research as well as the transparency on the "sponsored" character of this research.

We note, however, that the rules relating to issuer-sponsored research could be read as not covering pre-IPO (or other transactional) research, where such research is not sponsored by the issuer, but is produced by the research department of an investment firm to educate potential investors in the new issue. It should be made clear that pre-IPO research of this type, although not paid for by the issuer, can still be distributed and received free of charge to potential investors, as an acceptable minor non-monetary benefit. This is currently the position in some, but not all, EU markets. We believe the rationale for this assessment is strong – where research is produced in advance of an IPO (or other capital markets transaction), it is produced in order that a potential investor base can better understand the investment proposition, and is made available to numerous potential investors. The correct policy (and existing legislative) outcome is, in our view, that this should be treated as an acceptable minor non-monetary benefit.

In addition, qualifying issuer-sponsored research as a minor non-monetary benefit, such as defined by Article 12 of the Delegated Directive (EU) 2017-593, is the only way to make issuer-sponsored research a useful tool for the SMEs market. Sponsored research needs to provide for:

- Wide accessibility of research: to ensure the effectiveness of sponsored research, it must be disseminated and accessible to all under the best conditions. Indeed, it is in the best interest of the issuer who pays for a

research service to reach as much as possible potential investors and issuers should be able to contribute to the dissemination of their research. Symmetrically, the investor will be more inclined to invest in a SME even more so many other investors will access the information and be active on this security, contributing to the liquidity of the security, also a critical point for SMES.

- Research accessible to all over Europe: the principle of wide dissemination is consistent with the fact that issuers sponsoring research see their research widely disseminated to investors of all countries including their own and not reserved only for the clients of the analyst in a particular country.
- Research freed from the heavy burden of MIF: investors no longer wish to multiply agreements and the number of their counterparties has decreased; if sponsored research is only for a restricted number of investors that have entered into an agreement with the sponsored analyst, it would force other investors to enter into an agreement with the analyst, which is costly and operationally heavy. Besides, it is not possible to our knowledge to receive analysis on a single stock, agreements usually are based on a universe of stock. That is why sponsored research should be accessible on a the widest basis possible.

This is why it is essential, to be consistency with the EU strategy for SMEs that the dissemination be as large and accessible as possible, as is the case today with many research providers,(but not all of them) as recommended in both article 12 of the 2017 Delegated Directive / 593 and the report given to the AMF in January 2020.

- Transparent sponsorship: In accordance with article 12 of the aforementioned delegated directive, transparency of the “sponsored” nature must be provided; this last indication should appear clearly on the research cover page.
- Extra-financial criteria provided: Finally, we recommend that a code of conduct provides that extra-financial criteria can be provided to the extent that investors are required to take these criteria into account at some point in their management process (risk control, security selection, client reporting). Failure to do so would also penalize issuers by reducing their chances of attracting investors.

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.

We do not believe that issuer-sponsored research could be qualified as investment research as defined in Article 36 of Delegated Regulation (UE) 2017/565.

When the legislators wrote this article, we can assume that their intention was to apprehend independent research, as shown by the "a" in the article in which the independent nature of investment research is

emphasized: "the research or information is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation".

We think it cannot comply also with article 37, especially the § d) as rightly mentioned by the Commission below. But we believe it could benefit from a code of conduct (in respect of art 20. of Regulation 596/2014) that would help it becoming a useful tool for investors and issuers. (local initiative in progress in France).

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

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

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

Question 67.1 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.

article 36 and 37 should be amended in order to better regulate sponsored research with rules of conflicts of interest:

art.36.2 §2:...Additionally, firms shall ensure that any such recommendation contains a clear and prominent statement that (or, in the case of an oral recommendation, to the effect that) it has not been prepared in accordance with legal requirements designed to promote the independence of investment research, --> and deletion of ["and that it is not subject to any prohibition on dealing ahead of the dissemination of investment research"]

art.37.2: investment firms referred to in the [deletion of "first subparagraph of"] paragraph 1 shall have in place arrangements designed to ensure that the following conditions are satisfied:

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

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

Question 68.1 Please explain your answer to question 68:

5000 character(s) maximum

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

IV. Commodity markets⁸

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

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

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

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

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

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

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

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

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

Quantitative elements for question 69.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 69.1:

5000 character(s) maximum

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

1. Position limits for illiquid and nascent commodity markets

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

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

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

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

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

Question 71.1 Please explain your answer to question 71:

5000 character(s) maximum

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

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

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

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

Question 72.1 Please explain your answer to question 72:

5000 character(s) maximum

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

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

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

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

Question 73.1 Please explain your answer to question 73:

5000 character(s) maximum

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

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

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

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

Question 74.1 Please explain your answer to question 74:

5000 character(s) maximum

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

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

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

Question 75.1 Please explain your answer to question 75:

5000 character(s) maximum

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

2. Pre-trade transparency

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

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

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

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

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

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

V. Derivatives Trading Obligation⁹

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

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

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

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

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

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

Quantitative elements for question 77.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 77.1:

5000 character(s) maximum

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

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

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

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

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

Question 79.1 Please explain your answer to question 79:

5000 character(s) maximum

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

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

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

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

Question 80.1 Please explain your answer to question 80:

5000 character(s) maximum

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

VI. Multilateral systems

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

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

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

- 1 - Disagree
- 2 - Rather not agree
-

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

VII. Double Volume Cap¹⁰

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards the objective of more transparency in share trading.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more transparency in share trading.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

More transparency in share trading correspond with the needs and problems in EU financial markets.	<input type="radio"/>					
The DVC has provided EU added value	<input type="radio"/>					

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

Quantitative elements for question 82.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 82.1:

5000 character(s) maximum

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

VIII. Non-discriminatory access¹¹

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

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

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

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

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

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

Question 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 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.

IX. Digitalisation and new technologies

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

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

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

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

Please explain your answer:

With regards to investor protection, we support rules that enable digital solutions, in keeping with one of the Commission's top priorities: to encompass the digital age. However, presenting information digitally will require profound changes to the MiFID II, IDD and subsequently the PRIIPs frameworks, as many of the current solutions and compromises will need to be reassessed.

In particular, the current frameworks are centred around the concept of a printed (or at least static) document. The PRIIPs framework even contains the word "document" in its title, which highlights the intention of a hard copy document being handed over to investors. Providing digital solutions, however, must mean more than simply presenting an investor with a pdf on a website, instead of a printed document.

This brings forward a large number of questions that need to be answered. For example, how could data be made available to investors, aggregated and stored? How can further details be shown if of particular interest to the investor? How interactive can be the information presented (e.g. should investors be allowed to vary the performance and cost assumptions and immediately see the results)? Would this assume that all underlying disclosure information is available for free online for these digital solutions to function properly?

That being said, the creation of (digital) data standards – on top of the regulatory standards – is no trivial task and should be fully thought through. EFAMA is well aware how labour-intensive such a process is, as data standards for MiFID II and PRIIP KIDs had to be developed to ensure that information can be transmitted from product manufacturers to distributors and insurance companies. Discussions on these standards took many months and the standards require regular updates to accommodate changes to the Level 2 framework or newly published guidelines and Q&As. To ensure the long-term viability of these particular digital standards (and many others), a dedicated body called "FinDatEx" was created at the start of the year by a number of European financial associations (for more information see <https://findatex.eu/>).

Furthermore, and unfortunately, digitalisation has its limits, especially in view of the record-keeping constraints on investment firms. Indeed, the record-keeping constraints imposed on digitalised client relations by the ESMA guidelines on certain aspects of the MiFID II suitability requirements of 6 November 2018 lead to such difficulties in IT developments. These regulatory obligations make the process of digitalising client relations more difficult. We have several examples.

First example, the recommendation (number 56 page 16) that investment firms "could adopt procedures to verify, before or after transactions are made, whether a client's profile has been updated too frequently or only after a short period from last modification (especially if this change has occurred in the immediate days preceding a recommended investment)"

Second example, the obligation (number 102 page 108) on investment firms "that record-keeping arrangements adopted must be designed to enable firms to track ex-post why an (dis)investment was made and why an investment advice was given even when the advice didn't result in an actual (dis)investment".

Third example, the obligation (number 103 page 108) "to record all relevant information about the suitability assessment, such as information about the client (including how that information is used and interpreted to define the client's risk profile), and information about financial instruments recommended to the client or purchased on the client's behalf, as well as the suitability report provided to clients. Those records should include:

- any changes made by the firm regarding the suitability assessment, in particular any change to the client's investment risk profile;
- the types of financial instruments that fit that profile and the rationale for such an

assessment, as well as any changes and the reasons for them.”

These record-keeping obligations lead to obstacles and practical difficulties in digitalising the client relationship. Indeed, in these 3 examples, it is required to trace the client's actions. However, if the client has used several web browsers to go to the investment firm's website, this creates confusion between information and it becomes very difficult to trace the client's actions. Furthermore, further increasing the record-keeping volume slows down the reactivity of the site (essential for the client experience). Once again, we are in favour of digitisation, but it is necessary to lighten the record-keeping obligations of investment firms.

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.

See our answer to Q.86

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.

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.

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.

We agree that more can be done to adapt the MiFID II framework to digital distribution and online offers of investment services and products. Last year, EFAMA and other EU financial associations founded 'Financial

Data Exchange' (or 'FinDatEx' for short) to ensure that – among other things – standards for the exchange of cost and target market information existed to allow for the important flow of information between product manufacturers and distributors. This information is now codified in the 'European MiFID Template' that is available for free to all market participants. FinDatEx is currently working on standardizing the target market feedback from distributors to manufacturers.

Given the huge amount of work such projects entail, we would certainly value more proactive input on this from the European Commission and the ESAs to ensure that the work being carried out is reflective of the MiFID II framework.

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.

it is certainly worth looking at it but a good balance must be found between client protection and digitalization service.

X. Foreign exchange (FX)

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

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

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
-

Don't know / no opinion / not relevant

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

Please explain your answer:

5000 character(s) maximum

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

Section 3. Additional comments

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

Please, where possible, include examples and evidence.

5000 character(s) maximum

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

We think that other amendments in the level 2 regulation (DR 2017/65) could provide some benefits, especially for professional clients. MIFID 2 has narrowed down the difference of treatment between professional and non-professional clients; we think that professional clients should be given back a more appropriate regime for their needs; we suggest also below some adjustments for non-professional clients. See below:

- Periodic reporting on portfolio management (art.60 DR 2017/565)--> opt out for professional: most of the professional clients have their own and very demanding format of periodic reporting and impose it to their portfolio managers; they don't use the art.60 reporting format and portfolio managers produce them in vain. We ask that professional clients can opt out this art.60 periodic reporting. Of course, professional clients have the choice to keep receiving it. We ask that professional could be offered the choice of opting out.
- 10% alert (art. 62.1 DR 2017/565) for the portfolio management--> deletion fo all type of clients: professional clients are fully aware of any market drawdowns while retail clients under portfolio management don't understand this alert and take it as an indication to sell or withdraw money from their portfolio under management. It contradicts the principle of long-term investing as well the delegation given to their portfolio manager . Besides, the drawdown can be immediately followed by a sharp rebound by the time the client receives the alert and followed again by another decrease and another rebound which make the alerts very

difficult to follow and understand. The alert is causing more stress than reassurance. We ask for a complete deletion of article 62. §1 or, at a very minimum, a longer time delay such as D+ 72 H.

- Written agreement on any investment service i.e. including investment advice (art.58 DR 2017/565)--> exemption for investment advice service delivered to professional client

Contrary to MIFID I, MIFID II embarked the investment advice service in the list of services that need to be put into written agreements with the client. This not suitable for professional clients that receive advices on a free basis from many investment firms (it is part of the commercial relationship) and are very reluctant to sign new contracts; they have heavy in-house procedures for new contracts, they would need to sign too many of them and the time spent for internal approval doesn't answer their needs. We ask for the exemption for professional per se.

- Presumption of ability to bear financially any related investment risks (article 54.3 of the MIFID II delegated regulation)-->extension to portfolio management service delivered to professional

Art.54-3 of DR allows the investment firm to presume that a professional client is able financially to bear any related investment risks when providing investment advice. Nevertheless, this article does not allow the investment firm to presume that a professional client is able financially to bear any related investment risks when giving other investment services, such as portfolio management service. Professional clients indicate very clearly the level of risk they want in the written agreement, it is part of the compulsory requests of a mandate.

As a conclusion, we suggest rewriting the article as follows "Where that investment service consists in the provision of investment advice or portfolio management to a professional client covered by Section 1 of Annex II to Directive 2014/65/EU, the investment firm shall be entitled to assume for the purposes of point (b) of paragraph 2 that the client is able financially to bear any related investment risks consistent with the investment objectives of that client."

- Non EU based clients : it should be clarified that investor protection MIFID rules should not apply on to non-EU clients as they may not be in line with their national regulatory regimes or their needs.

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

Please explain your answer:

5000 character(s) maximum

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

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

The maximum file size is 1 MB.

You can upload several files.

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

Useful links

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

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

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

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

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