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# 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 ([https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf)), “*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 ([https://ec.europa.eu/info/publications/2020-commission-work-programme-key-documents\\_en](https://ec.europa.eu/info/publications/2020-commission-work-programme-key-documents_en)) 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 ([https://ec.europa.eu/info/sites/info/files/com-2018-796-communication\\_en.pdf](https://ec.europa.eu/info/sites/info/files/com-2018-796-communication_en.pdf)), 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](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0065) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0065>) – and [MiFIR – Regulation \(EU\) No 600/2014](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0600) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0600>)) 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](https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en) ([https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how\\_en](https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en)), 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](https://www.esma.europa.eu/press-news/consultations) (<https://www.esma.europa.eu/press-news/consultations>) 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.**

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

More information:

- [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)
- [on the 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)
- [on the protection of personal data regime for this consultation \(https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement\\_en\)](https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en)

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## About you

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Language of my contribution

I am giving my contribution as

First name

Surname

Email (this won't be published)

Organisation name

*255 character(s) maximum*

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 (<http://ec.europa.eu/transparencyregister/public/homePage.do?redir=false&locale=en>). It's a voluntary database for organisations seeking to influence EU decision-making.

### Country of origin

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

### Field of activity or sector (if applicable):

#### *at least 1 choice(s)*

- Operator of a trading venue (regulated market, MTF, OTF)
- Systematic internaliser
- Data reporting service provider
- Data vendor
- Operator of market infrastructure other than trading venue (clearing house, central security depository, etc)
- Investment bank, broker, independent research provider, sell-side firm
- Fund manager (e.g. asset manager, hedge funds, private equity funds, venture capital funds, money market funds, institutional investors), buy-side entity
- Benchmark administrator
- Corporate, issuer
- Consumer association
- Accounting, auditing, credit rating agency
- Other
- Not applicable

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

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

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## Choose your questionnaire

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**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.

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

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

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The EU established a comprehensive set of rules on investment services and activities with the aim of promoting financial markets that are fair, transparent, efficient and integrated. The first comprehensive set of rules adopted by the EU (MiFID I - Directive 2004/39/EC (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32004L0039>)) 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:**

*5,000 character(s) maximum*

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

Deutsche Börse Group (DBG) appreciates the opportunity to give feedback to the European Commission's priorities for the review of MiFID II/MiFIR. DBG considers MiFID II/MiFIR as a key cornerstone of the implementation of the G20 reforms which has contributed to EU financial market stability and efficiency. We are thus a keen supporter of ensuring a safe and stable trading environment, price transparency and investor protection. However, after almost two and a half years of practical application, we share the European Commission's view that a targeted MiFID II/MiFIR review is urgently needed to improve the functioning and transparency of EU financial markets. We believe that it is crucial that the MiFID II/MiFIR review is done with a view to ensure that the framework becomes fit for purpose aiming at creating an efficient and high-quality ecosystem that fosters sustainable economic growth - notably in light of a new political and economic reality at the global level and the current, unprecedented crisis situation under the COVID-19 pandemic. Against this background, we would like to highlight the very essential contribution to the orderly functioning of markets by market operators as well as financial market infrastructures in times of market stress. Please see our response to Q2 and Q31.1. The EU27's current political reflections on key initiatives such as completing the Capital Markets Union (CMU) and supporting the international role of the Euro should be seen as an integral part of the EU's ambitions to support fully operational, well-functioning and stable financial markets. In this context, we would like to highlight some elements that we believe would have to be taken into account in the upcoming MiFID II/MiFIR review:

Contrary to expectations, since MiFID II/MiFIR has become effective there has not been a significant change in the share of trading volume executed on-venue in the attempt to improve overall transparency. Acknowledging the given structural features of European markets, DBG suggests a simplified market structure and changes to the transparency regimes for equity as well as non-equity instruments in line with many of ESMA's proposals in their parallel consultations: with regard to equity transparency, we recommend reducing the number of waivers and repealing the Double Volume Cap mechanism; allowing SIs to trade above LIS only; promoting on-venue trading of ETFs; and simplifying the EU share trading obligation regarding exemptions, application to further asset classes such as ETFs and the third country dimension. For increased transparency in the non-equity space we support the deletion of the SSTI concept and the review of the calculation methodology for LIS thresholds; the standardization of pre-trade information and enhanced disclosure of post-trade information in terms of a single deferral regime with disclosure of information at the end of the day for all asset classes. Please see our responses to Q4.1, Q27, Q49 and Section 3/Q94.

The recent crisis may shed a new light on the importance of high-quality market data produced by reference markets during the price formation and trading process. As the crisis has again shown that market participants are more than ready to flight to quality in times of market turmoil, and that reliable and accurate market data is essential for the efficient functioning of markets. Creating yet another costly data aggregation in terms of a consolidated tape (CT),

while others already exist, and without any clear regulatory use case and without a commercially sustainable basis, would not be efficient. Rather, improving off-venue data quality is a pre-requisite to bring EU's capital markets transparency forward. On this basis, DBG proposes a Tape of Record as a viable alternative, which would be significantly less complex and costly, providing a comprehensive overview of overall liquidity within the EU. Please see our responses to Q8 and Q15.1. Finally, we welcome the recognition of the position limits and pre-trade transparency regimes for commodity markets as priorities for the upcoming review. More proportionate and efficient regimes would contribute significantly to the objective to strengthen the competitiveness of European commodity derivatives markets in the context of the international role of the Euro. We agree with the problem identification for the position limits regime as for the development of new, illiquid or less liquid commodity derivatives markets. A more appropriate scope, focused on the most liquid, 'critical', benchmark contracts would solve these problems. Further, in order to promote liquidity of Euro-denominated commodity markets, the pre-trade transparency regime would benefit from a better tailored approach to commodities, including energy derivatives, and allow for a more natural move to central order book trading. Please see our responses to Q71.1 and Q76.

**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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve the MiFID II/MiFIR objectives.	<input type="radio"/>	<input checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR has provided EU added value.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

*5,000 character(s) maximum*

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

MiFID II/MiFIR has delivered on its competition agenda providing investors with a plethora of choice to trade equity and non-equity instruments. However, this has led to a highly fragmented trading landscape with more than 600 registered execution venues. This is mainly a result of diverging regulatory requirements between trading venues and alternative execution venues, as it can be observed that a number of the latter does not provide sufficient transparency nor sufficiently contributes to the price formation process. Whereas the outbreak of COVID-19 has particularly shown again the need for fair and orderly transparent markets given the 'flight to quality' in times of market turmoil - illustrated by the increase in trading volumes on lit exchanges vs. the drop in off-exchange volumes and gains in market shares for lit continuous trading at the expense of auction trading, SIs as well as OTC trading. Against this background, it occurs necessary to reduce fragmentation and to increase overall transparency. In this context, please refer to our response to Q1 in relation to explanations with regard to i) the lack of transparency in both equity and non-equity instruments that calls for adjustments of the transparency regimes; ii) the costly pre-requisites and lack of regulatory use case for the creation of any CT; and iii) the impediments of the position limits and pre-trade transparency regimes for the development of EU commodity derivative markets.

DBG welcomes that the European Commission is additionally asking for feedback on the level playing field between multilateral venues and alternative execution venues such as SIs. DBG does not think that MiFID II/MiFIR has levelled the playing field, neither in the equities nor in the non-equity space, in particular regarding bonds. In addition to our suggestions to modify the SI regime in the equity space to trading above LIS only, we believe that how SIs operate should be reviewed by looking more deeply into the transactions SIs conclude and report, and that existing rules should be enforced when it comes to inconsistent flagging of trades or the question of riskless principal trading being based on a bilateral relationship. As regards non-equities, there was no significant increase in transparency triggered by MiFID II in particular for SI trading. Thus, we recommend deleting the SSTI concept for the SI-quoting obligation and moving to LIS thresholds; for bonds we recommend trading sizes at or below 100.000 Euro to be executed on a transparent trading venue. Requiring trading of sizes below LIS only on transparent RMs, MTFs and OTFs would significantly reduce market fragmentation, aggregate liquidity and increase pre- and post-trade transparency. Together with the requirement for SIs to publish their quotes free of charge after 15 minutes and to adhere to the disclosure of standardized post-trade information, this measure would be a significant step forward to increase pre-trade transparency and level the playing field. Please see our responses to Q5.1 and Q94.

Last but not least it should be taken into account that open access provisions for exchange-traded derivatives (ETD) constitute a key risk to EU27 financial stability and competitiveness by questioning the ability of market infrastructures to ensure orderly trading, clearing and risk management. While applying open access provisions to transferable securities does not create substantial risks, the application to ETDs would undermine the stability and liquidity of EU

derivatives markets, as these financial instruments are fundamentally different and inherently more complex, thus requiring a more stringent and long-term oversight and management of risks. At the time of the MiFID II/MiFIR negotiations, EU legislators clearly shared these concerns and introduced safeguards to prevent systemic risks from materializing. In light of this precautionary principle, National Competent Authorities (NCAs) across the EU decided on a temporary exemption until July 2020. In the current crisis, ETD markets have demonstrated again their resilience under extreme market stress. With the uncertainty around the crisis expected to last, we do not believe it would be wise to risk destabilizing key Euro-ETD markets at such a critical time by enforcing the open access provisions. It appears even more counterintuitive to risk breaking Europe's most liquid and successful markets at the very moment of EU ambitions to develop a thriving CMU and increase the international role of the Euro. Europe needs deep and liquid Euro-denominated ETD markets, ensuring the proper functioning of resilient private risk transfer mechanisms in the Union. Thus, we urge the European Commission to conduct a review of Art. 35 and 36 MiFIR taking into consideration the operational and technical issues as well as the risks and costs involved as outlined in our responses to Q83-85.

**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:**

*5,000 character(s) maximum*

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

Yes, DBG observed impediments to effective implementation of some MiFID II/MiFIR rules. We believe Frequent Batch Auctions (FBAs) should be defined separately from periodic auctions as currently described in RTS 1. FBA specificities compared to traditional auctions are listed by ESMA in the final report on their Call for Evidence on periodic auctions; which resulted in the Opinion on FBAs (ESMA70-156-1355). We believe that ESMA should establish a definition and pre-trade transparency requirements for FBAs mindful of the fact that FBAs can be regarded as a way to circumvent the DVC regime. This means a pertinent balance between a level of pre-trade transparency a) too high that it favors information leakage and b) too low that it favors significant shifts towards FBAs following possible future changes to the pre-trade transparency regime to SIs and equity waivers (NT, RP waivers and DVC mechanism).

DBG also considers that pre-trade transparency is only one of the aspects of FBAs to be considered and would like to recall Q11 on the tick size regime (ESMA Q&A on MiFID II and MiFIR market structures topics). While some respondents to the ESMA consultation (ESMA 70-156-2188) are not in favor of a standalone definition of FBAs, they also argue that FBAs shall not be subject to the tick size regime. Let's recall that periodic auctions as currently defined in RTS 1 are subject to the tick size regime and execution prices cannot be at sub ticks. In practice, it is currently observed that the guidelines are applied differently across EU jurisdictions with for example some NCAs having forbidden midpoint order pegging as opposed to other jurisdictions where the guidelines do not apply. Although we understand that Level 3 regulation is not mandatory, we also notice distortion to the benefit of some players. We recommend moving the Level 3 measures to Level 2 to avoid competition distortions.

Moreover, we disagree with some respondents to the ESMA consultation (ESMA 70-156-2188) stating that the pegging of orders at midpoint is not price referencing. Firstly, pegging at midpoint refers to the midpoint of the bid-ask spread which is defined by the reference market (primary market) or results from an average between different bid-ask spreads - one of them being the one of the reference market. Price referencing occurs when most if not all orders participating to the auction enter the price determination phase and are pegged to the midpoint; as a result, the execution price is exactly the midpoint (referenced to the primary market). Our understanding is that most orders entering FBAs are currently pegged at midpoint.

Furthermore, MiFID II tick size regime applying to shares, DRs and certain ETFs (RTS 11) is not applied uniformly across trading venues. This situation results from technical issues as well as different understanding of the regulation across national jurisdictions. Because of the complexity of the regime and the fact that it is based on the FITRS database which still contains errors, we need to make daily adjustments to our systems, question regularly information published and spend a significant amount of resources ensuring that all trading venues do apply the same values for the Average Daily Number of Transactions for the determination of the tick sizes. It is necessary, especially now that in June 2020 at the latest, SIs are also subject to the tick size regime, that ESMA engages with trading venues to take

their input and clarifies some points in the interpretation of the regulation at Level 3 and that technical issues are solved as quickly as possible. We would like to underline as well that the non-respect of the tick size regime creates competitive distortion which, even if temporary, shall be avoided.

Moreover, flagging of SI trades at an EU level is not done in a consistent manner. Even more than two years after MiFID II got introduced the flagging is very unclear. Therefore, we would urge ESMA to address this issue. A broader implementation of the MMT which currently ensures consistency of exchange data maybe a solution. We think that the extension of the MMT would promote enhancing data consistency and contribute to the increase of regulatory oversight of SI activity. In addition, we believe that ESMA should review how SIs operate by looking more deeply into the transactions they conclude and report. One issue results from riskless trading. Hubs that have the potential to link up SIs and counterparties should be monitored to guarantee that they always work on a bilateral basis, and in case they do not but operate an internal matching system they must operate an MTF. Such activities must be monitored as there is the risk that trading takes place on a multilateral rather than bilateral basis and hence would be in violation with the legislation, resulting in an unlevel playing field. It seems that also other stakeholders than trading venues have similar concerns (see our response to Q24.1).

**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:**

*5,000 character(s) maximum*

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

DBG believes that the level of transparency and thus the current pre- and post-trade transparency requirements could still be improved. We would like to propose some measures largely following the proposals made by ESMA in its complementary consultations.

With regard to ETFs DBG supports ESMA's proposal as outlined in its consultation on transparency for equity instruments (ESMA 70-156-2188) to increase the pre-trade LIS threshold for ETFs to 5m EUR as the current level is too low. We would urge ESMA to complement this measure with additional steps to further promote transparency for on-venue trading of ETFs. Regarding post-trade transparency, DBG would generally agree with ESMA's proposal to increase the applicable deferred publication threshold to align the proportion of deferred transactions more closely with equities. We would also request real-time publication for transactions that are below 20m EUR.

With regard to shares and DRs DBG would generally agree with the principle of deferral of publication for large transactions and would also not see any reason for changes. The analysis conducted by ESMA (ESMA 70-156-2188) shows that only a very small portion of trades benefits from deferred publication, justified by their large size; thus, the current deferral regime has delivered on its objectives to protect large trades while maintaining a high level of transparency. With regard to OTC transactions for equities and equity-like instruments DBG agrees with ESMA's conclusion on the level of post-trade transparency and that there is no reason for different thresholds for OTC and on-venue transactions. In general, we believe that OTC transactions, hence in the case of shares, exemptions to the STO, shall reach the same level of quality in post-trade data than transactions executed on executions venues; this appears as well necessary to monitor the correct application of the STO and its exemptions.

With regard to publishing post-trade information in general, we believe that a 1-minute delay is not sensible for electronic order book systems and fully support the ESMA Q&As from October 2017 stating that transactions should be published "as close to real time as technically possible". Thus, we consider that the maximum timeframe to disclose post-trade data should be aligned between trading venues and other execution venues. We also believe that the maximum delay should be equal for all execution venues including SIs.

Furthermore, DBG believes that only large orders for equity and equity-like instruments may be exempt from pre-trade transparency requirements. Pre-trade transparency leads to a more efficient price formation process by distributing price signals more rapidly to the market. Hence, all standard orders that are below LIS compared to the normal market size, and for which the necessary liquidity is available on a trading venue, should be subject to full transparency requirements. Therefore, DBG is in favor of repealing the NT and RP waivers and consequently the DVC mechanism.

Moreover, when it comes to pre-trade transparency requirements for SIs the current minimum quoting size of 10% of the SMS is too low instead, they should quote at a minimum 10,000 EUR on each side. Furthermore, DBG thinks an extension of the transparency obligation for SIs to illiquid instruments would be an effective way to improve market transparency (see also our response to Q26).

In addition, due to a significant shift of trading volumes in ETFs from lit order book trading systems to RFQ trading systems following the introduction of MiFID II/MiFIR, we suggest considering implementing a pre-trade transparency regime for RFQ trading systems similar to lit order book trading systems. This would require the publication and dissemination of each quote submitted in response to a sub-LIS RFQ immediately after the reception of the quote by the RFQ trading system.

Further, we see the need for adaptations to the transparency regime for non-equity instruments. For increased transparency we support the deletion of the SSTI concept and the review of the calculation methodology for LIS thresholds; the standardization of pre-trade information and enhanced disclosure of post-trade information in terms of a single deferral regime with disclosure of information at the end of the day for all asset classes. For details please refer to our response to Q94.

Finally, we see the need for a more tailored approach for commodity derivatives markets. Hence, we recommend a review of the current ill-calibrated waiver thresholds methodology and a widened hedging exemption for financial counterparties. In this way, the regime would allow for pre-negotiated trades of the most illiquid and new contracts to be brought to an exchange and subsequently familiarize commodity traders with the beneficial features of increased transparency and secure on-venue trading. Please see our response to Q76 for details.

**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:**

*5,000 character(s) maximum*

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

DBG does not think that MiFID II/MiFIR has levelled the playing field between trading venues and SIs in the equities and equity-like space. Although broker crossing networks got banned, the rules for the SI regime were only slightly modified (see our responses to Q3, Q25 and Q26). Indeed, when it comes to pre-trade transparency requirements the current minimum quoting size of 10% of the SMS is very low. The threshold only increased by €250 to €1,000 compared to MiFID I, which effectively is meaningless to increase transparency. Requiring SIs to quote € 10,000 on each side as suggested in the ESMA consultation (ESMA 70-156-2188) appears more appropriate. When it comes to the instruments in scope currently all illiquid instruments are excluded from any pre-trade transparency requirement for SIs. To the contrary, illiquid instruments are in scope for pre-trade transparency for all trading venues unless a waiver from pre-trade transparency is used. DBG believes that an extension of the transparency obligation for SIs to illiquid instruments would be an effective way to improve market transparency and level the playing field between on-venue and SI trading. We are not of the view that such new requirements would be overly burdensome for SIs rather they would effectively foster lit trading and overall transparency.

Furthermore, we believe that ESMA should review how SIs operate by looking more deeply into the transactions they conclude and report. One issue results from riskless trading. Hubs that have the potential to link up SIs and counterparties should be monitored to guarantee that they always work on a bilateral basis. In cases where they do not work on a bilateral basis but operate an internal matching system, they should operate an MTF. Such activities must be monitored as there is the risk that trading takes place on a multilateral rather than bilateral basis and hence would be in violation with the legislation, resulting in an unlevel playing field. Moreover, there does not seem to be any specific details of the operation of the business model required. This is in contrast with what MTFs and Regulated Markets need to fulfil. Hence, we suggest establishing a level-playing field as regards the description of the business model and how regulatory compliance is maintained.

In addition, we notice that there is no level-playing field with regard to flagging of SI trades at an EU level. Even more than two years after MiFID II was introduced, flagging remains very unclear and inconsistent. One way to address this would also be a broader implementation of the Market Model Typology (MMT) which currently ensures consistency of exchange data. We think that the extension of the MMT would enhance data consistency and contribute to the increase of regulatory oversight of SI activity. That being said, we believe that the most effective way to address the shortcomings of the SI regime (inconsistent flagging of trades, the question of riskless principal trading being based on a bilateral relationship) and create a level-playing field would be to restrict SI activity to trading above LIS only. DBG believes that such restrictions to the SI regime are necessary in order to increase transparency as well as price formation and promote a level playing field between trading venues and SIs. Above LIS trading would thereby constitute a legitimate dark space in which trades across bilateral execution venues and multilateral trading

venues are not subject to pre-trade transparency and would benefit from delayed post-trade transparency.

We also see an unlevel playing field between SIs and multilateral venues active in non-equity instruments. Bonds and securitized derivatives trading are still opaque and there was no increase in transparency triggered by MiFID II compared to MiFID I. This is in particular the case for SI trading where there is seemingly no pre- and post-trade transparency available. Transparency is established by SIs via proprietary means, via their websites, via ECN-like networks or has not to be established at all (for illiquid bonds). While we do not question the merit of SIs forming part of the EU financial market's landscape, to create a level playing field across all types of execution venues, we recommend closing the gap between SSTI thresholds and LIS thresholds. Turning these different types of thresholds into only one threshold applicable across all execution venues, permits quasi- or de-facto-bilateral trading only for trade sizes that cannot be absorbed by public orderbooks via SIs. Requiring trading of sizes below LIS only on transparent RMs, MTFs and OTFs would significantly reduce market fragmentation, aggregate liquidity and increase pre- and post-trade transparency. For bonds we recommend trading sizes at or below €100.000 to be executed on a transparent trading venue.

**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:**

*5,000 character(s) maximum*

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

DBG believes that point 1 of Article 4 of the PRIIPs regulation (Regulation 1286/2014), which defines the scope of the regulation, is not sufficiently precise in order to unambiguously assess whether a product qualifies as a packaged retail investment product ("PRIIP"). This has led to uncertainty regarding bonds and to potentially the false inclusion of classic corporate and bank bonds into the scope of the regulation.

Current interpretation of the PRIIPs regulation by regulators and the market results in the inclusion of

- corporate and bank bonds with a call option for the issuer where the amount to be paid back is not fixed but is depending on parameters defined in the prospectus; and

- corporate and bank bonds with a floor or a cap for the variable coupon

into the PRIIPS regulation. Consequently, these bonds cannot be accessed by retail investors unless the issuer of the bond publishes a KID. However, this is not realistic as the issuers of these corporate bonds;

- are non-European firms like Apple or Amazon which do not explicitly market their bonds to European retailers and therefore do not publish a KID in Europe; or

- are European firms like Daimler or Bayer which do not want to take the risk associated with the publication of a KID. The industry standard is that issuers sell their bonds to their bank consortium and have no further interest in the reselling of these bonds by the banks in particular to retailers.

As a result, European retailers are not able to invest in about 50% of the corporate bonds market. For figures please see the updated report of Börse Stuttgart ([https://www.boerse-stuttgart.de/-/media/files/gruppe-boerse-stuttgart/pressemitteilungen/de/2020/boerse-stuttgart\\_white-paper-brse-stuttgart\\_tradability-of-corporate-bonds.ashx](https://www.boerse-stuttgart.de/-/media/files/gruppe-boerse-stuttgart/pressemitteilungen/de/2020/boerse-stuttgart_white-paper-brse-stuttgart_tradability-of-corporate-bonds.ashx)).

Further clarification on the scope of the PRIIPs Regulation and the close link to MIFID is also required for exchange traded derivatives (ETDs). Systematically, ETDs do not meet criteria of a PRIIP as defined by the regulation and hence should not be included into the scope of PRIIPs, as they are, first of all, financial instruments, designed for risk management purposes and hedging, and not investments mentioned in Art. 4(1) PRIIPs. Therefore, they are mainly relevant for professional clients and are not 'sold' by exchanges to retail investors directly, which means that a KID should not be necessary, according to recital 12 of the PRIIPS regulation. In ETDs, there are no additional layers of complexity, or packaging which would make the investment less transparent. Options and futures do not promise any return on investment but are simply designed to manage the price risk of the underlying and traders can use them, for instance, as a hedge to their equity investments. As ETDs are not designed for any specific audience, such as retail investors, exchanges have no control over who ends up buying or selling the product. Due to the highly standardized design of options and futures, if included in the PRIIPs regulation, retail investors could be faced with a wide range of KIDs, which are

overwhelmingly identical and might hence create additional, unnecessary operational efforts for retail investors, without providing an added value. In the worst case, these numerous almost identical documents could even confuse retail investors, if they assume, they missed important differences. Finally, we want to emphasize the neutral role of exchanges, which is also a principle upheld in MiFID II/MiFIR. An exclusion of ETDs from the scope of the PRIIPs regulation would ensure that it cannot be misconstrued that exchanges provide any form of intermediary services and in particular provide investment advice. That way, they will also not be confused with 'manufacturers' or 'issuers' of retail products. To our view the inclusion into the scope of the PRIIPs regulation and the resulting administrative effort to continuously provide KIDs is inappropriate.

As a consequence, we believe that clear criteria with regard to the scope of the regulation would prevent further uncertainty and would help to meet the initial goals of the PRIIPs regulation with regard to transparency for retail investors and investor protection overall.

Please see Annex II provided for further details explaining our answer to Q6.1.

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

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

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

A European CT could, for a reasonable fee, provide a real-time feed of information, not only for transactions that have taken place (post-trade information), but also for orders resting in the public markets (pre-trade

information). MiFID II/MiFIR already provides for a consolidated tape framework for equity and non-equity instruments but no consolidated tape has yet emerged, for various reasons that are explored in this consultation. On 5 December 2019 [ESMA submitted to the Commission a report on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments \(https://www.esma.europa.eu/sites/default/files/library/mifid\\_ii\\_mifir\\_review\\_report\\_no\\_1\\_on\\_prices\\_for\\_market\\_data\\_and\\_the\\_equity\\_ct.pdf\)](https://www.esma.europa.eu/sites/default/files/library/mifid_ii_mifir_review_report_no_1_on_prices_for_market_data_and_the_equity_ct.pdf). This report included recommendations relating to the provision of market data and the establishment of a post-trade consolidated tape for equities. In the following sections the Commission, taking into account the conclusions from ESMA, welcomes views on how a European CT should be designed: what information it should consolidate (e.g. pre- and/or post-trade transparency), what financial instruments should be included (e.g. shares, bonds, derivatives), what characteristics should be retained for its optimal functioning (e.g. funding, governance, technical specifications). Finally, the last subsection analyses possible amendments to certain MiFID II/MiFIR provisions (share trading obligation and transparency requirements) with a possible link to the CT.

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

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## PART ONE: PRIORITY AREAS FOR REVIEW

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

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

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## I. The establishment of an EU consolidated tape<sup>1</sup>

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### 1. Current state of play

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

#### 1.1. Reasons why a consolidated tape has not emerged

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

as its organisational and governance arrangements.

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N.A.
Lack of financial incentives for the running a CT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Overly strict regulatory requirements for providing a CT	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

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

*5,000 character(s) maximum*

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

DBG is of the view that the non-emergence of a CTP may be explained by the interplay of three aspects which we will further elaborate on here and in subsequent parts of our response: first and foremost, we consider the lack of a regulatory use case to be the main reason why a CTP has not emerged. While we do not call for any precipitous transposition of structural elements of one market or jurisdiction to another, we see value in pointing to the striking differences between the EU and the US in this matter. In the US, through Reg NMS, best execution with focus on "price" has been closely tied to the use of CTPs, ensuring the continuous funding of CTPs until today. Trade executions under RegNMS have to take place at the venue with the best price displayed at the time, which at the same time ensures fair competition across all markets on display. This setting, however, requires that orders can be routed to any of the 17 displayed venues in the US. In the EU, orders would have to be routed to 170+ venues (in the equity space), which does not only create high costs. Indeed, it remains unclear whether end-users could digest real-time pre-and post-trade data from the vast amount of EU venues. This is an important point to consider for a CTP (as well as the regulator under cost/benefit review) in order to not design and produce a costly data feed, which may not be used, or which requires additional significant investments on user side.

In the absence of a regulatory use case, we may further recall that consolidation of 170+ venues' data requires significant investments/funding while aggregated data is already available. There are many aggregators providing quasi-consolidated tapes for all use cases, including those proposed in this consultation.

As a second aspect we consider the differences as regards availability and quality of data (reliability, speed, comprehensiveness) across different data sources to be a main factor explaining the lack of a CT. All these criteria which are relevant for the coverage of a CT in terms of data sources and instruments in scope are met by exchange data, and as such their data is already part of the aggregation. What is lacking is availability of off-venue data which is of sufficient quality and data of certain instruments. According to ESMA's recent report on market data and the CTP (ESMA70-156-1606), data quality appears to be a major issue for the establishment of a consolidated tape while the time required for any improvement of data quality remains unclear.

As a third and final point (and linked to the previous aspect of data quality and availability) the considerable operational and technical challenges should be taken into account as an explaining factor. We assume that the creation of a CTP would take several years of testing before it could be used. The future relationship between the EU27's and UK's financial markets remains still unsettled; combined with the negative outlook in terms of growth prospects, financial stability implications and funding constraints in the aftermath of the COVID-19 situation, we recommend to thoroughly reconsider whether the anticipated benefit would outweigh the additional costs. We consider it worthwhile in times of shifting priorities on the political and regulatory agenda to re-examine potential alternatives which may help to provide benefits to the EU27 financial markets in a less costly manner, e.g. through a tape of record (TOR), which in our view would

represent a more cost-efficient solution, avoid latency issues, while delivering clear value to the industry and investors, such as analyzing execution quality, portfolio evaluations, position valuations, liquidity analysis on instrument level and so on.

**Question 7.1 Please explain your answers to question 7:**

*5,000 character(s) maximum*

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

We are of the view that the lack of a regulatory use case corresponds with a lack of financial incentives of running a CT: The CTPs in the US are historically grown, while having been a first mover at their time in the 1970ies when new technology was evolving in the US. All US share trades regardless of the venues were reported on the ticker shortly after they were executed. For the first time this provided for transparency across venues. In the following years, technology was further developed by new service providers, such as Reuters and Bloomberg, in order to provide aggregated transparency in parallel to the CTPs (terminal business) adding news and analysis on user's fingertips. Today the US CTPs are facing own challenges and it seems questionable if CTPs continue to be suitable in an environment where transmission of data already touches the boundaries of physics (speed of light), with undeniable consequences to data consolidation and use (e.g. potential systematic arbitrage vs. retail customers). Under RegNMS they became the reference tool for best execution - trade by trade - and thus achieved funding by the industry. The CTP under MiFID II has no regulatory use case. On top, in order to start a real-time CT from scratch across 170+ venues (in the equity space) high investments on an ongoing basis are required, while overall data quality, demand, use case and funding are fully unclear.

Overly strict regulatory requirements and competition by non-regulated entities:

While multiple aggregators already provide consolidated data to the industry, and as such act as quasi CTPs for those data sources which provide highly reliable and thus highly valuable data, there has been no reason for them to apply for a CTP authorisation, due to the same reasons lined out above: the lack of a clear regulatory use case, the lack of clear and serious demand for the CTP across 170+ venues while at the same time incurring high cost of regulatory compliance as well as a potential risk for high sanctions under MiFID II/MiFIR.

Lack of sufficient data quality:

As highlighted in our responses to Q4, 11.1, 25 and 94 in relation to the quality of off-venue transparency, a significant part of the data to be included in the tape is still of inferior quality and as such rather a burden than a benefit and would flaw the overall consolidated data. The cost/benefit profile apparently did not incentivize existing aggregators to acquire the regulatory status of a CTP. For example: while 86 market data vendors display Xetra cash equity data, only 10 market data vendors show an interest in off-exchange APA data (<https://www.mds.deutsche-boerse.com/mds-de/data-services/marktdaten-in-echtzeit/vendorenliste>). Please note as well, that unless off-venue data becomes more reliable, a CT would always be an incomplete and unreliable source of data itself. Mixing high quality data with low quality data overall results in unreliable data. Consequences finally could include ill-informed investment decisions, inaccurate disclosures to regulators and investors, disingenuous marketing materials, and mis-selling claims. Any official CT therefore must display 100% reliable data, which requires data quality improvement at the source first. Furthermore, we would like to recall that a CTP may not enhance data

quality provided by the data sources, as data quality starts at the source.

**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 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R0571>))) would you consider appropriate to incorporate in the future consolidated tape framework?**

**Please explain your answer:**

*5,000 character(s) maximum*

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

DBG considers that in case of a real-time CT the following parts of the current consolidated tape framework should be maintained: Art. 65 (1)-(5) MiFID II, and Art. 8 a), b) and e) MiFIR. We do not consider Art. 65 (8) (c) MiFID II to be important as there is agreement that a CT should include all instruments from all sources and as such provide a 100% view of the market including off-venue information. Any CTP must reflect 100% of activity per asset class. However, the largest part of EU capital markets is still traded outside of transparent exchanges as highlighted in our response to Q4. E.g. asset classes such fixed income are predominantly traded off-venue. In order to get a full picture on the market and the liquidity of such instruments, there is a need to include all data sources active in that asset class into a CTP. We do not consider Art. 65 (8) (d) MiFID II to be required, as the model of competing tapes would increase the cost for the industry in case each of them would need to be set-up newly and operated, which requires additional funding by the industry. As regards Art. 65 (1) MiFID II we would like to point out that utilization of the CT by market participants is of essence, when asking for such a major investment. We therefore recommend this part to be pertained and above all, up-front analysis (cost/benefit) to be conducted to verify if and how users could technically access the data of 170+ venues offering equity instruments at low latency. As argued above, DBG sees multiple risks in the creation of a real-time CT across 170+ venues for equity instruments, especially in case of pre-trade data (which usually makes up for over 90% of all data). Those risks would be additional cost for the industry when trying to consume and use the data - technical ability to consume such an amount of data is not widely available as of today; establishment of a pseudo-benchmark for investors with the clear risk of front-running opportunities, unfair competition for those who provide their transparency data, but do not participate in the competition for order-flow; and finally a less transparent EU market as before. As significant cost for the industry are anticipated, we deem it even more important in the light of COVID19, that a thorough cost/benefit analysis is being conducted before any tendering is executed. As an alternative, DBG promotes the TOR as a pragmatic and effective solution, which would provide for a 100% comprehensive database of all transactions over a trading day. We do consider this to be a sensible solution which could benefit investors to check for compliance with best execution in a cost-friendly and sensible way, or for portfolio managers to have access to very cost-efficient valuation data, while data may be used for many more purposes including liquidity analytics, etc. The same regulatory requirements of Art. 65 MiFID II as outlined above should apply; however, any reference to time (real-time, 15 minutes delayed) would need to be deleted.

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## 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:**

*5,000 character(s) maximum*

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

DBG recalls that business models and adjacent pricing policies across different segments of a market economy are within the legal perimeter of competition laws. Against this background, we see value in a general reflection if addressing any concerns about the reasonability of prices for market data by regulatory means is the most favorable and less intrusive approach. DBG therefore welcomes the German Finance Ministry's proposal (<https://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Position-paper-MiFID-and-MiFIR.pdf>) promoting the assessment of whether competition authorities, rather than financial market supervisors are better suited for ensuring pricing policies are set on a reasonable commercial basis (RCB). We believe the current debate as regards market data is not taking into account the complexities of today's financial markets. Through cheaper technology quasi-exchanges can be established easily today by entities controlling the order flow. It has thus become easy to disintermediate exchanges on the basis of their data which is publicly available to any interested party. Competitors can operate at a lower cost base compared to regulated markets. Hence, DBG does not support ESMA's proposals to move the provision to provide market data on the basis of cost (Art. 85 CRD 2017/565 and Art. 7 CRD 2017/567) to Level 1, nor to delete Art. 86(2) CDR 2017/565 and Art. 8(2) CDR 2017/567. While we appreciate ESMA's final report on cost of market data and the CTP (ESMA70-156-1606), we suggest taking further aspects into account in order to come to a more comprehensive and conclusive assessment and stand of course ready to support in this regard. Single fee types or single trading venues being suggested to be representative of the entire industry is cause for concern as it can lead to false conclusions. Furthermore, in several cases, fluctuations presented do not exclusively reflect changes in data pricing but significant changes in data usage and consumption by the "hypothetical stakeholder" promoted by some respondents to the ESMA consultation on this matter (ESMA70-156-1065). Further, we recommend to take into account structural changes in the industry more systematically which require changes to data fee license structures. DBG generally appreciates ESMA's conclusion of continuing the transparency plus model with some clarifications and harmonisations. While ESMA proposes to specify content, format and terminology of RCB information, DBG is proactively looking into these topics and reaching out to clients. We do not support ESMA's proposal to delete Art. 86(2) CDR 2017/565 and Art. 8(2) CDR 2017/567 allowing trading venues, APAs, CTPs and SIs to charge for market data proportionate to the value the data represents to users. Art. 8(2) CDR 2017/567 currently allows for differentials in prices charged to different pre-defined categories of customers (e.g. retail vs professional) taking into account the value which the market data represents to them. Not allowing a differentiation between customer groups would make the suggested regulatory intervention disproportionate, discriminatory and would in fact distort competition further between transparent and non-transparent venues. If private investors are required to pay the same fees as a legal entity/professional investor, the price would duly be considered too high for private investors. If professional investors/legal entity -for NDIU- only pay the fee applicable to private investors, exchanges risk being severely undermined and would

not be able to cover the costs of producing and disseminating market data. Further, any impact of fee structures on potentially redistribution of costs and profits between retail investors and large professional market participants should be thoroughly examined. Furthermore, competition law precedents recognize that product differentiation is reflective of competition on the market and that even dominant undertakings (which exchanges are not) can apply different commercial conditions to their customers. While considering competition authorities to be the right address for RCB, DBG considers transparency towards their national supervisor as a sensible means for ensuring compliance with the current regulation. Transparency, however, should not be expanded towards any other entity. Details shared are competitively sensitive information, and access should be restricted to the minimum. Any Level 2 measures specifying the frequency, content and format of information provided should respect the heterogeneity of exchange business models and take account of the diversity of commercial models. We regret that while a majority of stakeholders agree price regulation is not the right way forward, some of the proposals put forward by ESMA (e.g. defining a typology of eligible costs when setting market data fees) come very close to price regulation, which we strongly oppose.

### 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring best execution	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Documenting best execution	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Better control of order & execution management	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Regulatory reporting requirements	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Market surveillance	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

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

*5,000 character(s) maximum*

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

DBG assumes that the European Commission refers to a real-time CT above. In our view, however, none of the potential use cases above is representing a regulatory use case. Any of the above use cases could be satisfied as of today a) by using the real/time data provided by those venues, to which the IF has commercial ties to (e.g. is a member, customer, etc.) and/or b) by using the real-time aggregated data by data vendors/third parties. Most of the above use cases do not necessarily need real-time data, while most of them could be based on 15 minutes delayed data, or even end of day data.

While liquidity traverses out of lit markets, off-venue is of less quality, while making up for an ever growing market share. What is currently missing for a fully and comprehensive aggregation is off-venue data in sufficient quality. Quality of off-venue data needs to be improved first in order to allow for any reliable full data consolidation. Any data consolidation across reliable and unreliable data will in sum result in unreliable aggregated data, regardless if provided by a CTP or by a commercial service provider. A CT on unreliable data could result in unintended consequences, such as ill-informed investment decisions, inaccurate disclosures to regulators and investors, disingenuous marketing materials, and mis-selling claims. Furthermore, not all of the above listed "use cases" are sensible as we line out further below in our response to this consultation.

Additionally, DBG would like to encourage the European Commission to first foster transparency where transparency is lacking most, as any of the above "use cases" would apply to any asset class more or less in the same way. However, considering that transparency for IF has even led to less transparency in some markets after MiFID II, we wonder how these use cases can be satisfied by non-equity data as well. Democratization of data, especially of highly valuable real-time data, which can be used by any interested party, large or small and including competitors, is fully implemented within equity markets fostered by exchanges. The European Commission will not find a more transparent market than this. However, for the avoidance of doubt, data quality comes at a cost which needs to be acknowledged by regulators as well. The recent crisis may shed a new light on the importance of high-quality market data produced by reference markets during the price formation and trading process. Any investments in the trading process (as regards rulebooks, IT, market surveillance, etc.) impact prices of market data, as those are investments in data quality and vice versa. As the crisis has again shown that market participants are more than ready to flight to quality in times of market turmoil. Reliable and accurate market data is essential for the efficient functioning of markets and contributes to the overarching objectives of the regulatory agenda to strengthen stability, transparency and investor protection. As outlined in our answers to the previous and following questions, creating yet another costly aggregation in terms of the CT, while others already exist, and without any clear regulatory use case and without a commercially sustainable basis, would not be efficient. Rather, improving non-venue data quality in the dark parts of the markets is a pre-requisite to bring EU's capital markets

transparency forward. Based on improved, off-venue data quality, DBG proposes a Tape of Record as a viable alternative which would be a significantly less complex and costly technical set-up, providing a comprehensive overview of overall liquidity within the EU on an instrument level.

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

*5,000 character(s) maximum*

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

Transaction Cost Analysis should include all venues on which transactions will be executed. We doubt that IFs would execute on 170+ venues offering equity instruments on a CT.

EU best execution requirements include explicit transaction cost for all transactions, which are not part of any CT and as such not visible to investors on a CTP. Furthermore, a CT creates a (false) benchmark for best execution to investors as any CT introduces latency through aggregation. A CT of 170+ venues would therefore be slower than any direct link to the execution venues, potentially allowing for front-running of brokers at the expense of investors. Unless interconnectivity between all venues becomes a regulatory requirement, a CT would create a false picture of assurance to investors and foster unfair competition to venues displaying their data on the CT, while not being in the position to compete for business. Artificially slowing down execution venues would only result in additional fine-tuning costs for the industry. In case of competing tapes for best execution, due to latency CTPs may display different sequencings. In other words: multiple CTPs would never display the same picture at one point in time. It needs to be mentioned as well, that the time stamp data fields in RTS 1 and RTS 2 differ significantly, depending on the venue in question: e.g. microseconds for TVs, and milliseconds for SIs. This difference alone is currently prohibiting proper sequencing of a CT, which would not even allow for a proof of best execution ex post.

In case a real-time pre-trade CT is promoted, the content of the data fields must be aligned while the above scenarios need to be part of a thorough fact based cost/benefit analysis as a basis for the promotion of investor protection which is one of the main focus areas of MiFID II. Furthermore, it should be taken into account that gaining access to and consuming such an amount of data require additional investments on IFs and investors' end.

Documentation of best execution is already possible based on those data venues, which are being used for (best) execution. A costly real-time CT for such a use case would be redundant and bear the risk of putting additional financial and operational burdens on at least some parts of the financial markets' participants. It is our understanding that there is no need to use a real-time CT for the control of order and execution management, as this may be performed with delayed data. We understand that current regulatory requirements do not require a real-time CT. Any non-real-time reporting can be satisfied with end-of-day data or delayed data free of charge for any end user.

Furthermore, we do not avail of any evidence that real-time data are a necessary prerequisite for conducting proper market surveillance tasks. Rather, we consider the full display of the transaction originator down to the registered human being or the algorithm as a sufficient source of information which enables authorities to meet their tasks of supervising market integrity and to identifying any market manipulative behaviours. This sensitive information must not be part of a public CTP. Market surveillance is conducted by trading venues, in order to ensure fair and orderly trading on exchanges in line with exchange rules. NCAs and ESMA are conducting market abuse monitoring on the basis of reported transactions pursuant to Art. 26 MiFIR. Therefore, we do not see any added value which could be provided by a real-time CT.

As pointed out in our response to ESMA's consultation on the review of the market abuse framework, we are of the view that the established framework to request data on an ad-hoc basis where suspicion of market abuse exists is suitable and sufficient for achieving the intention of the law. So far, ESMA has not provided any evidence as regards potential shortcomings or deficiencies of the existing regime but noted that the exchange of information between NCAs according to the rules and procedures of the existing regime actually facilitated the detection of market abuse in a cross-border context. For liquidity risk management end-of-day data is being used. Alternatively, 15 minutes delayed data could be used for free. This is possible in the equity market with transparency provided in good quality by trading venues; however, it remains unclear how liquidity risk management is conducted in other, less transparent asset classes, such as OTC credit derivatives or bonds. A CT including pre-trade data may show available liquidity across multiple venues. However, due to multiple pre-trade waivers being used by various trading venues and SIs, liquidity detection will still be difficult. However, analytics are already available based on post-trade data to predict liquidity across venues and instruments. Furthermore, regulation requires venues to provide best execution analytics to IFs for free.

## 2. General features of the consolidated tape

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

During the EC workshop, the ESMA consultation, conferences and stakeholder meetings, it became clear that a majority of market participants believe that EU financial markets would benefit from the establishment of a CT. ESMA made the following recommendations<sup>2</sup> which appear very important for the success of an EU consolidated tape:

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

transparency and accountability and include provisions ensuring the continuity of service.

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

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

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

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

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

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

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

*5,000 character(s) maximum*

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

Information displayed on a CTP should be clearly labelled according to its data source to ensure reliable and transparent data provision. A CTP should not be allowed, though, to change requirements on the content of trading venues' data, i.e. it should not be considered a path for ever more granular data. As exchange data is produced based on very complex and public rulebooks, changing or manipulating this data could create a considerable amount of damage to both the consumer and the relevant markets operated by the exchanges. Liabilities resulting out of any wrongly displayed data, need to be clarified upfront, taking into account as well the substantive sanctions possible under MiFID II/MiFIR.

Furthermore, DBG questions the costs/benefits of a real-time CT in the EU emanating from the perceived shortcomings of the CMU. In order to create a CMU, different measures than a CT are necessary. Proposing a full CT across 170+ venues in the equity space to be used by all market participants should take into consideration that the production, dissemination and consumption of data might come at a cost to the environment. The streaming of 170+ venues' data (in the equity space, especially in case of pre-trade data being included) - regardless if the full set of data is needed or not, and regardless if users can access it without further investments necessary - will add to the emission bill of the EU. In the light of the European Commission's revamped Sustainable Finance Strategy (and as the environment as a production factor comes at a cost, too), we would like to recommend including a further component in the cost/benefit analysis on a CT: environmental cost in form of emissions due to operating additional consolidated data stream across 170+ venues in the equity space to thousands of users, without any regulatory use case.

The following shortcomings of a real-time CT should be carefully considered: a) no regulatory use case exists, which would ensure the funding of a CT comprising of all venues and finally allow for the check on effectiveness and efficiency of the regulation; b) high quality data provided by trading venues is already consolidated as of today, creation of a CT will add costs to the overall industry; c) 170+ venues offering equity instruments (including SIs) data would need to be consolidated and used by financial market participants; d) however, it is unclear if entities are in the position to digest such a big feed, especially in case pre-trade data would be included as well; e) additional costs would occur for those who currently do not stream such a high set of data and who would need to invest in technical means for the use of such data volumes; f) especially second and third tier entities could struggle as regards those investments; g) any CT inherits latency, and in case used as a benchmark for best execution by investors, there are significant risks of front-running potential at the expense of investors and against to clear target of investor protection within MiFIR/MiFID II; and finally, h) streaming data consumption creates emissions as well, a cost factor which in future should not be neglected in a sustainable EU.

**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):**

*5,000 character(s) maximum*

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

High data quality is a pre-requisite for a trustworthy CT in first place. Unless off-venue data becomes more reliable, a CT would always represent an unreliable source. Mixing trading venues' high-quality data with low quality off-venue data overall results in unreliable data. Potential consequences: ill-informed investment decisions, inaccurate disclosures to regulators/investors, disingenuous marketing materials, mis-selling claims.

Data quality shortcomings of off-venue data are multifaceted and may incur for various reasons: insecurity on who reports the transaction for selected instruments, shortcomings in FIRDS database, wrong/double classification of an instrument on EU level (e.g. bond instead of equity), wrong flagging of trades, or missing flags for double-reporting or deletions, etc. Additionally, publication delays may differ across member states. All of the above has a detrimental effect on the quality of a real-time CT and its use cases. A structured comprehensive approach is necessary to improve off-venue data quality. Already today, trading venues and SIs must make their data available to any interested party, this would include a CTP as well. Mandatory contributions might therefore not be required. ESMA states in its report on market data and the CTP (ESMA70-156-1606) that at least for the early phases of running a CT in the EU, mandatory consumption is needed to ensure required resources. At the same time market participants fear mandatory consumption since they would have to pay for all data streams of which many may not even be used.

In the US, the CT is used for best execution under RegNMS the CT is thus funded through the regulatory use case of the CTPs. However, the US is scaling significantly higher, while only 17 instead of 170+ venues offering equity instruments like in the EU need to be consolidated. Costs for setting up and operating an EU CTP indeed will create higher costs for EU market participants, compared to those in the US.

As of today, high quality data provided by trading venues is already consolidated and available via various aggregators. Missing is off-venue data (SIs and OTC). In order to make a clear difference to available commercial solutions a meaningful CT needs to display 100% of the EU market (e.g. show the full liquidity of instruments traded in the EU, incl. SIs and OTC). However, liquidity information can be extracted and used from a TOR as well at lower cost for the industry. As regards a real-time CT please see our very detailed answer under Q11.

Furthermore, the order protection rule is part of US RegNMS. DBG does not consider it sensible to copy single rules from comprehensive regulations from another jurisdiction as in the end any single regulatory system must work for itself in an effective, efficient and integrated way. Besides risk of front-running to the detriment of investors, the EU CT may foster unfair competition for trading venues displayed on a CT but not accessible for execution due to lack of interconnectivity like in the US. Full interconnectivity, however, would be very costly in case of 170+ venues in the equity space. Having one tape for all asset classes would create a stream of data which would not be manageable.

Moreover, a strong governance framework can be considered as another

key component of any CTP. DBG considers the current data reporting services provider (DRSP) regime as the minimum for a regulated CT. A strong focus on the avoidance of conflicts of interest, corporate transparency and strict BCM requirements would be of essence. Governance must ensure fair and ethical behaviour across the board, with full representation and voting power for contributing trading venues within the CTP board. The board should include neutral representatives too (e.g. ESMA). It should be responsible as well for monitoring the impact of the CT on the capital market and to report on risks and/or benefits to the regulators providing fact-based evidence where necessary including scientists (e.g. impact of latency on private/institutional investors). On top, governance needs to ensure reliable and transparent data provision with a clear identification of each trading venue attached to data displayed on the CT. A CTP should not be allowed, though, to change requirements on the content of trading venues' data, i.e. it should not be considered a path for ever more granular data. As exchange data is produced based on very complex and public rulebooks, changing or manipulating this data could create a considerable amount of damage to both the consumer and the relevant markets operated by the exchanges. Furthermore, it must be ensured that the CTP will not be in any preferable situation (including the provision of additional services) having potential impact on a fair level playing field within the EU.

**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:**

*5,000 character(s) maximum*

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

We agree with ESMA's final report on market data and the CTP (ESMA70-156-1606) that the development and the operating of a CTP will be costly. In our view, costs will include the technical set-up and operating of the CT, back-up facilities and business continuity, management costs and HR, fulfilment of all DRSP requirements, compliance with it, audits, funding of supervisors, administration, billing, etc., while there is a risk of significant sanctions under MiFID II which should not be neglected either. These costs will occur, while the benefit of a CT for the overall industry remains unclear. Indeed, we acknowledge that the industry is divided on the benefits of a CT, including user associations and single users. In case a CT would be established, it would have to be funded up-front for the set-up and, once set-up, on an ongoing basis. This would require that at least all CT users contribute to the funding, potentially even the whole industry. Please also see our response to Q11.1. For the avoidance of doubt, DBG does not consider it appropriate at all to use taxpayer's money (as suggested by ICMA) to fund the CTP for the benefit of large capital markets firms.

**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):**

*5,000 character(s) maximum*

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

In the US, the CTPs act as the benchmarks for best execution under RegNMS with the main focus on price, and the requirement to route to the best price available, which requires interconnectivity for all displayed venues on the CTs. Thus, competition for the execution of an order is ensured for all venues which display their data on the CTP. As the CTP is being used by any broker and IFs which need to ensure best execution indeed trade by trade (unlike in the EU), the funding as such is ensured as well.

In the EU, which is significantly more fragmented (different member state regulations, different languages, even different classification of instruments in some cases, number of executions venues 170+ in the equity space vs. 17 in the US etc.) the best execution requirements comprise multiple components, such as price, market impact or speed of execution to mention a few, and always include implicit as well as explicit transaction costs for every trade execution. Explicit transaction costs, however, are not displayed on a CT, while providing the crucial cost factor, especially for small investors.

Furthermore, best execution requirements in the EU generally are not targeted at each single trade, and they do by far not require connectivity to or execution on each and every venue in the EU (e.g. for equities this would be 170+ venues according to ESMA) as it would not be efficient. Including venues in the CT without execution capabilities would a) create an illusion of "the possibility to execute" on all displayed markets while it is not possible, b) be questionable as regards fair competition between liquidity pools in the EU (venues display their prices but are not able to compete for the flow), and c) create a real-time behemoth of data, even if it is focused on one asset class per CT only, where it still is questionable who and how would need and be able to use all that data.

Additionally, in case of "best execution reporting" as suggested by the European Commission all the above arguments apply as well. Any price benchmark would a) not include the necessary transaction costs applicable, b) create the risk of front-running to the detriment of investors, and c) most likely have an impact on fair competition to the detriment of lit markets, which finally will result in less transparent markets.

Furthermore, if a CTP would only exist for SIs to execute within the spread of TVs in an even more systematic way, market structure and competition would be affected severely. While CTP prices in the US are the benchmark to investors and are referenced for best execution, IFs use direct feeds from the respective trading platforms and as such may potentially front run orders to the detriment of investors. Such a problem would be aggravated in case market depth of 5 would be added to the CTPs, as pre-trade data consumes a lot of capacity (well over 90%), and high data volumes always add to latency. Being aware of Brexit, we do not recommend creating any third country overarching CTP. First of all, it is unclear how regulations will continue to develop in the UK. Additionally, it is questionable under which law such a setting would be running and last but not least, we question how such a mega tape could be digested by users. In case transactions executed on any third country venues should contribute to the transparency in the EU, and potentially be part of the best execution review, transactions could be

reported to APAs and as such appear in the EU data consolidation. Alternatively, a TOR could be a cost-effective provision. It would enable market participants to assess fragmentation and available liquidity across venues, as well as to support execution analysis allowing investors to validate the execution provided by their brokers. It would constitute a distinct offering and would not burden market participants with duplicative costs.

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N.A.
The CT should be funded on the basis of user fees	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Fees should be differentiated according to type of use	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Revenue should be redistributed among contributing venues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
In redistributing revenue, price-forming trades should be compensated at a higher rate than other trades	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 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 other important feature(s) for the funding and governance of the CT you did identify?**

*5,000 character(s) maximum*

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

As pointed out before, DBG recommends that any discussions about funding and governance features should be based on a cost/benefit analysis that encompasses a thorough assessment of the impacts on market microstructure as well as on competition.

**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):**

*5,000 character(s) maximum*

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

In case a CT would be established, it will have to be funded on an ongoing basis. Either it could be funded through mandatory use and payment of data fees, or it may be paid for in a similar way as supervisory costs are attributed to any supervised entity. However, while the latter model may be more secure to ensure ongoing funding, it is questionable how third country firms would be included in the funding. Furthermore, it would most likely not differentiate between heavy use of data or little use of data, which could be considered as unfair. For the avoidance of doubt, DBG does not consider it appropriate to use EU taxpayer's money (as suggested by ICMA) to fund a CTP for the benefit of large capital markets firms.

Please also see our comments on funding in Q11.1. DBG believes that mandatory consumption together with mandatory payment by each market participant would be necessary for the establishment and operations of a CT since it would ensure funding and revenues to the CT. When reflecting upon the overall funding structure, mandatory tape fees should reflect the number of data sources and the data fees of the respective data sources plus operational charges for the tape provider. It is important to underline that in the event of an EU CT the number of data sources would be significantly higher than the number of contributors to the tapes in the US. For this reason, the tape fees that exist in the US can neither be compared nor be used as a benchmark for tape fees in the EU, since they would not reflect the make-up of capital markets in Europe and would misrepresent the number of data sources (more), as well as the number of data users (less), in the EU. We also wish to underline that the sum of the fees of an EU tape should not also be compared to the US market since markets in the EU are more fragmented than the US market, which means that the costs of producing and disseminating market data are higher as there are less economies of scale.

A feasible and workable CT model would have to charge for the provision of consolidated data and redistribute a meaningful part of the revenues to the contributing entities, reference price forming venues especially. In this context, it is of essence that price formation is being rewarded. Contrary to expectations, since MiFID II/MiFIR has become effective there has not been a significant improvement of off-venue transparency. As mentioned in our answers to Q4 and Q94, we are therefore of the view that the pre- and post-trade transparency regimes for equities and non-equities need to be adapted in order to improve contribution to the price formation process and foster the development of the CMU.

### 3. The scope of the consolidated tape

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

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

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

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

Credit default swaps post-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

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

*5,000 character(s) maximum*

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

DBG has always been a keen promoter of transparency and continues to do so. However, we observe that certain markets are still significantly lagging behind as regards the provision of public transparency in particular in those asset classes which are predominantly traded off-venue, such as bonds. Publicly available transparency should be an effort across all asset classes and most importantly, across all trading and execution venues in the EU. Please also see our comments to Q8 and Q15.1. in this context.

However, DBG does not promote a real-time equity pre- and post-trade CT, and consequently not for any other asset class either. We doubt that a CT across hundreds of venues will be able to provide best execution in any way better than it is possible today, for various reasons. Firstly, EU best execution requirements always include explicit transaction costs. This is information not part of a CT and as such would not be visible to any investor upfront. Secondly, there is no possibility to execute on each of the displayed venues on the CT either, which would require technical and commercial connectivity to each of the displayed venues – this is impossible when speaking about several hundred ones. Under these circumstances a CT does not only create a false picture to investors but as well unfair competition to those venues displaying their data on the CT, while not even being in the position to compete for the transactions displayed, unless full technical and commercial connectivity across the displaying venues becomes a regulatory requirement. Thirdly, a CT creates a (false) benchmark for best execution to investors. As any CT always introduces latency when being aggregated (with a simple rule: of many the higher the data volume, the higher the latency), the assumed benchmark will be slower than the direct link to the execution venues, and as such allows for front-running possibilities of the IF at the expense of the investor. Artificially slowing down execution venues cannot be considered as a solution as it would require significant and expensive ongoing fine-tuning costs on top for the industry. In case there would be competing tapes for best execution, it lies in the nature (physics) of data aggregation, that the different CTs may display different sequencings, as some data might arrive at CT 1 quicker than at CT 2, and vice versa. In other words: multiple CTs would almost never display the same picture at one point in time. This is currently even further aggravated as the data fields for the time stamps vary across venues, with exchanges having the most granular ones, as well according to regulation (RTS 1 and RTS2). Consolidation with diverging time stamps would therefore not allow market participants to determine which event occurred first, resulting in a confusing picture of liquidity and market dynamics within time intervals.

The only added value in our view that a post-trade CTP could provide compared to existing data aggregation services, would be a 100% comprehensive and accurate overview of transactions within the EU. This would require that besides all on- and off-venue sources of such data (TVs, SIs, APAs and OTC), all instruments – liquid as well as illiquid – should be included in a CT, in order to provide for a 100% view of liquidity in the EU. In this context, Art. 65 MiFID II would have to be adapted as well in order to provide the full liquidity picture as

outlined above.

In case a real-time CT including pre-trade data would be further proceeded, we deem the above scenarios as the minimum scenarios which would need to be part of a thorough and fact based cost/benefit analysis, ideally conducted by a physicist for the sake of investor protection one of the main focus of MiFID II/MiFIR. In this context we would like to strongly recommend as well a proper cost/benefit analysis, as regards additional investments necessary for IFs and investors side, in order for all of them (especially smaller ones) to be able to access and consume such amount of data provided by a CT.

**Question 15.1 Please explain your answers to question 15:**

*5,000 character(s) maximum*

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

In an environment, with multiple providers in the EU providing data aggregation to any interested party already, we continue to question the need for another costly data aggregator in terms of a CTP without a regulatory use case within the EU.

We would like to reiterate that data quality is an essential first step. While on-venue data is unrivalled in terms of quality, timeliness and depth, it is well understood in the industry that off-venue data is of inferior quality. Having a CT aggregating bad and good quality data, will lead to a bad CT quality overall. The lack of quality in off-venue data is also the reason that existing aggregators do not yet consolidate all available data sources in the equity space. This leads to the fact that a large part of the off-venue market is not consolidated by aggregators/data vendors.

As mentioned in our answer to the previous question, DBG does not support a real-time equity pre- and post-trade CT, and consequently not for any other asset class either. Rather, we consider the improvement of off-venue data quality as an essential element to bring transparency in equity and non-equity markets forward. Based on improved off-venue data quality, DBG recommends a Tape of Record as a viable alternative which would be a significantly less complex and costly technical set-up, while providing a comprehensive database to the benefit of the entire industry (for details please see our answer to Q8 and Q10).

However, in case a CT should be created, we would deem it most sensible to consider starting in those areas where there is currently no or hardly any transparency, and where information is important as well for funding of the economy, such as for example bonds. We would like to reiterate as well that it was in the OTC CDS markets, where the financial crisis took its toll in 2008, as well due to the fact that this market was fully intransparent. Consequently, when looking at additional costs for the industry, the costs would be best spent in those areas where mostly needed, e.g. where the markets are most intransparent, thus risking financial stability yet again. So consequently, OTC CDS would be an asset class where transparency is of essence in our view for the sake of market stability going forward.

DBG does not see the benefit of having pre-trade tapes (per asset class), unless there is a clear possibility to fairly compete for the order flow as well (execution possible at all venues on a CT to those who use the CT). Please also refer to Q15. In case competitors use the data for executing on their own markets solely or predominantly, we question a) fair competition in the EU, b) investor protection (illusion of best execution while there is a systemic risk of front-running), and c) technical capabilities for a 170+ venue feed offering equity instruments including pre-trade data. In case of pre-trade transparency being included, we would deem it necessary though, that all venues including SIs would have to display pre-trade transparency on the CT.

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:**

*5,000 character(s) maximum*

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

The information consolidated by the tape should be identical to the post-trade transparency publication requirements of trading venues and APAs. The industry has just transposed extremely costly regulatory requirements. Adding any new requirements for the industry on top, would add a disproportionate burden on the industry, especially in the current environment.

Setting up a new data aggregator in terms of a CT would require full coverage (100% of the market) as highlighted in our answer to Q15. This refers to all data sources, be it RMs, MTFs, APAs or SIs. As regards data fields, FESE members, including DBG refer to the information as lined out under Art. 65 MiFID II.

Besides all data sources, we promote as well to include all transactions for a full picture of the EU transactions. Non-addressable liquidity as defined under MiFID II/MiFIR should also be displayed but should be flagged accordingly. MMT should be used by any data source to ensure harmonised flagging.

To conclude, pointing out the pre-requisites for the creation of any CT above, we do not recommend adding any additional requirements beyond what is already required by the regulation.

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### **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.

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## Shares

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

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

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

**Please specify what other shares should in your view be included in the Official List of shares defining the scope of the EU consolidated tape?**

*5,000 character(s) maximum*

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

DBG does not promote a real-time CT, as the reason to introduce another data aggregator in terms of a CT seems unclear while adding additional cost to the industry. Please also see our responses to the previous questions.

In case, however, a CTP shall be installed, we are of the view that 100% coverage in terms of data sources (RM, MTFs, SIs and APAs) as well as covered instruments per asset class is required to provide added value for the financial industry as well as supervisors.

In the context of the proposals in the table above, we would recommend including shares traded on a trading venue (in line with Art. 23 MiFIR), and besides shares with an approved prospectus as well those without a prospectus approved but which are traded on an MTF or an SI.

**Question 17.1 Please explain your answers to question 17:**

*5,000 character(s) maximum*

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

DBG supports the alternative Tape of Record solution (please also see our responses to Q8, Q10 and Q15.1). Further, we reiterate our concerns raised on previous occasions regarding the necessity and feasibility of a CT, in particular against the background of multiple data aggregators active in the EU, which at least consolidate and make available aggregated data across all high-quality data offerings.

Consequently, we suggest that another consolidator (in terms of a CT) must at least bring additional value to the market, which could justify at least partially the additional expenditure for the industry for the set-up and maintenance of the CT. As currently existing data aggregators are not yet displaying full transparency given that off-venue data is missing to a large extent, we would see this to be one necessary differentiator of the CT. Once off-venue data quality at the source has been improved as a pre-requisite to consider any tape, a full coverage of both data sources and instruments by a potential CTP would be required, especially in those asset classes, where transparency is currently not or hardly available (e.g. fixed income).

The terminology of "official list", seems questionable to us, as it implies that there could be an in-official list as well, with an unclear purpose. In this context we would like to point out as well, that this term could lead to misunderstandings in the EU and be confused with the Official Lists of exchanges under the Listing Directive and which may not cover the same securities.

**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:**

*5,000 character(s) maximum*

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

DBG does not see the necessity to apply a filter for "sufficiently liquid shares". DBG e.g. publishes also data from less liquid shares. In any case we stand by our previously made comments, that in case a CTP should be set-up aside various already available data aggregation solutions, we would expect it to be comprehensive at least. This includes all instruments, regardless if they are classified as liquid or non-liquid.

**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:**

*5,000 character(s) maximum*

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

DBG believes there should be no flexibility. As explained in our answer to Q17, Q18 and Q28 we believe all instruments no matter if liquid or illiquid, if admitted to an EU regulated market or EU MTF or being simply included to trading (including those without a prospectus) should be included.

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**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:**

*5,000 character(s) maximum*

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

DBG generally questions the benefit of just another consolidator/aggregator of data through a CTP, above and beyond those providers already in service for the industry. In case there was a value for another provider, the most likely it should find a room in the less publicly transparent markets, e.g. bonds (please see our answers to Q15.1 in this respect).

In this context, we would like to point out that it would not be sensible to have an aggregated tape across all asset classes. While opposing the introduction of any CTP as laid down in our answers to the previous questions, we would recommend having separate tapes, for equity and equity like instruments, including ETFs, and separate tapes for bonds, and derivatives, where the latter would most likely be differentiated further, should EU regulators decide to introduce any CTP once data quality at the source has been improved.

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

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### 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:**

*5,000 character(s) maximum*

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

More than two years after the implementation of MiFID II/MiFIR, the framework has not delivered on its intended objectives to effectively limit trading in the dark and foster trading on lit multilateral trading venues in the attempt to improve the price formation process. Contrary to expectations, there has not been a significant change in the share of trading volume executed on-venue. Traded volume on lit venues during the continuous trading session has seen a significant drop decrease since January 2018 with a fall of more than 40% between the entry into force of MiFID II and December 2019 for STOXX 600 instruments. Taken as a percentage of the turnover through all venue types, the market share of lit order books has seen a significant decrease, from 41% to 29% in two years. Rather, a significant share of trading volume is still executed off-venue or under waivers, and hence is not subject to a sufficient level of transparency. More than 40% of the traded volume of STOXX 600 is executed either OTC, on SIs or on dark venues (source: big xyt and own analysis).

All the more, fragmentation increased with emergence of alternative venues like SIs and Frequent Batch Auctions (FBAs) rendering the sourcing of liquidity more difficult. We therefore see the need for changes to the current market structure to simplify the structure of European equity markets, level the playing field between different types of execution venues and to improve the overall transparency available to market participants. It is crucial that this review exercise is done with a view to ensure that the legislative framework becomes "fit for purpose" aiming at creating an efficient and high-quality ecosystem that fosters sustainable economic growth - notably in light of a new political and economic reality at the global level. Against this background, DBG would like to highlight that well-functioning equity markets are a prerequisite to a successful development of the Capital Markets Union given their key function to provide access to capital markets for companies and investors based on a robust and transparent price formation process, thereby limiting costs for end-investors and increasing capital allocation efficiencies. Acknowledging the given structural features of European capital markets, DBG suggests a simplified structure based on the MiFID II/MiFIR key principles of promoting fair, efficient and transparent markets, enhancing integrity of price determination, ensuring appropriate levels of investor protection and abolishing any conflicts of interest due to market design.

DBG believes that the STO can have a significant positive impact on transparency of share trading and the competitiveness of EU exchanges and market participants if the following modifications are taken into account (see also our response to Q23.1). First of all, the option to remove third country equivalent trading venues from the equation of the STO should be evaluated on the basis that with a clear set of EU/non-EU shares, the equivalence is of limited relevance. Secondly, exemptions should be removed where trades are "non-systematic, ad-hoc, irregular and infrequent"; instead, exemptions should only apply for those trades that do not contribute to price formation based on a clear and consistent list of qualifying non-price forming trades. Thirdly, the scope of the STO is too narrow, as it only applies to shares, and should be extended to other asset classes, in particular to ETFs in

order to incentivize lit trading and investor protection in this growing asset class. An extension of the STO to other asset classes is the right step forward as it allows investors to take informed investment decisions and prevents negative effects from market fragmentation. As a result, this strengthens investor protection and efficiency.

We are convinced that the introduction of the STO with MiFID II was needed and believe that our proposals above will address the current challenges. Indeed, we strongly oppose the idea to repeal the STO altogether as suggested by some respondents to the ESMA consultation (ESMA 70-156-2188) as this would be a step backwards, result in negative consequences for market quality and be against the spirit of MiFID II/MiFIR. Instead as we argued above, the STO should be extended to other asset classes. The argument that the removal of the STO would avoid fragmenting liquidity and unintentionally creating systemic risk and ensure a level playing field with other countries is flawed from our perspective. Indeed, liquidity fragmentation increased with MiFID II. Comparing the EU STO with other countries such as for example the US is not sensible as its market structure fundamentally differs. Instead the priority should be to really start levelling the playing field between trading venues and SIs (please also see our answer to Q5.1).

**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:**

*5,000 character(s) maximum*

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

No, DBG does not believe that there is sufficient clarity on the scope of the trades included or exempted from the STO. To the contrary, the STO has occurred to become a complex matter. The political fallout between Switzerland and the EU led to the halt in trading in Swiss shares on EU trading venues: the Swiss equivalence regime does not allow investment firms in both the EU and Switzerland on a cross-border basis if not recognised as equivalent. The case of Switzerland proves that there is a real risk in the absence of equivalence decisions or if the EU does not grant nor extend equivalence. Similarly, Brexit exposes a situation where firms that depend on the maintenance of equivalence decisions to facilitate access to their respective jurisdictions' trading venues are forced to rely on a framework that is potentially unstable and liable to sudden disruption. Although ESMA revised its statement from March 2019 in May 2019 as regards the determination criteria for the scope of the STO to further mitigate potential adverse effects of the application of the STO, the construct of the STO is still flawed.

DBG agrees with ESMA's view in the consultation paper on transparency regime for equity instruments that the ISIN is an easy identifier to determine which shares will be in the scope of the STO but proposes to include in addition all those shares with a country code not corresponding to an EU27 Member State if the issuer has its primary (fully-fledged) listing in an EU member state. This would prevent that the STO is circumvented by simply applying for an ISIN starting with a non-EU country code. A list of all those shares should be published and updated by ESMA periodically. Please note that we would disagree with the approach suggested by some respondents to the ESMA consultation (ESMA 70-156-2188) that the ISIN solution should only be a basic rule which should not apply if trading in the EU is below a certain liquidity threshold as this would cause additional complexity. Furthermore, we propose that in case a fully-fledged listing takes place simultaneously in an EU and non-EU country (dual listing, secondary listings are out of scope - included in STO where the ISIN is an EU ISIN) transactions can be executed on the non-EU trading venue. We believe that a Level 3 clarification would help defining the coverage of the STO. However, we would insist that in the case of transactions executed on third country venues by EU investment firms in instruments subject to the STO, trade reporting would still take place on an APA.

Moreover, to ensure further develop European capital markets and their attractiveness for investment flows in a global setting, any equivalence decision should be based on a risk-sensitive and case-by-case assessment. As foreseen in Article 81 (2b) of the recently amended ESMA Regulation following the ESA Review, the European Commission might want to consider the potential of a recognition regime for third country trading venues based on their systemic importance taking into account the effect on liquidity in EU shares, best execution for EU clients, access barriers and economic benefits for EU counterparties to trade globally as well as the development of the CMU. We do not agree with the view of one respondent to the ESMA consultation (ESMA 70-156-2188) that the most effective way to address the issues of the STO in this context would be to grant equivalence to the countries in

questions altogether. Granting equivalence without a proper evaluation and continuous monitoring would be a wrong signal to the overall market and shake up everyone's confidence.

Last but not least we recommend that ESMA should also evaluate the option to entirely remove third country equivalent trading venues from the equation of the STO on the basis that with a clear set of EU/non-EU shares, the equivalence is of limited relevance.

**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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Maintain the STO with adjustments (please specify)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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:**

*5,000 character(s) maximum*

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

DBG suggests maintaining the STO with the following adjustments:

- i) To address the third country impact by the current scope, the STO should apply to those shares with an ISIN starting with a country code corresponding to an EU27 Member State plus those starting with a non-EU country code but where the issuer has its primary (fully-fledged) listing within the EU27 while allowing for that transactions are executed on the relevant third country venue for dual listings (see also our response to Q22.1).
- ii) Moreover, the potential of a risk-sensitive, case-by-case based recognition regime for third country trading venues should be considered as foreseen in the review clause of the recently amended ESMA Regulation taking into account their effect on liquidity as well as the development of the Capital Markets Union; in this context the option to remove third country equivalent trading venues from the equation of the STO should also be evaluated on the basis that with a clear set of EU/non-EU shares, the equivalence is of limited relevance (see also our response to Q22.1). Please note that we would disagree with the approach suggested by some respondents to the ESMA consultation (ESMA 70-156-2188) that the ISIN solution should only be a basic rule which should not apply if trading in the EU is below a certain liquidity threshold as this would cause additional complexity.
- iii) Exemptions should be removed where trades are "non-systematic, ad-hoc, irregular and infrequent"; It remains totally unclear what exactly is meant by these terms questioning to allow for a proper application of the STO. Currently, it seems that there is no obligation for investment firms (IFs) to justify the flow ex-ante. Indeed, none of the respondents to the ESMA consultation (ESMA 70-156-2188) provides concrete examples of when they make use of such an exemption. Therefore, it is not surprising that the ones in favor of keeping the exemption are unable to prove a 'genuine need to trade occasionally on an OTC basis'. Rather it seems that the non-applicability of the STO is only justified ex-post and that ESMA has no means of verifying if such trades are indeed "non-systematic, ad-hoc, irregular and infrequent". Although a definition of thresholds or clarification of its meaning and eventually enforcement of the rules if they would be misused as suggested by some of the respondents to the ESMA consultation may be a solution to specify the trades subject to exemption (a), we however question the need of such an exemption entirely. Besides none of the respondents to the ESMA consultation has made any convincing proposals of a clear definition. The suggestion that any venue should be classified as "non-systematic, ad-hoc, irregular and infrequent", unless it is the primary liquidity pool, would go against the intention of the STO. In this context, it is important to remember why the STO got introduced: the goal was to bring back trading to transparent markets and thereby effectively reduce the amount of OTC trading. Given the high level of OTC trading in the EU (23% to 39% according to ESMA data) we are surprised that the removal of this exemption has not yet become a priority. From our perspective, exemptions should only apply for those trades that do not contribute to the price formation based on a clear and consistent list of qualifying non-price forming trades. Note that although article 2 of RTS 1 specifies the characteristics of those transactions in shares that do not contribute to the price

discovery process, it seems that the list provided on Level 2 may need to be reviewed. Overall, we believe that any modification should only be done via Level 2 by amending the current list of covered trades. The list should be clear and exhaustive in order to ensure that the STO will be applied in the same way by all market participants.

iv) The scope of the STO should be extended to ETFs in order to incentivize lit trading and investor protection in this growing asset class. ETFs have reached an important standing in the last few years and according to their structure they allow investors a cost-effective access to capital markets. They cover a wide scope of industries, countries and asset classes. ETFs create liquid secondary markets and provide for investors to participate in the economic development. They are used for diversification of risks, liquidity management, as well as for securities lending by market participants and issuers. All these aspects could be better monitored in a transparent market with clear rules and oversight. Therefore, we believe that an extension of the trading obligation to ETFs is the right step forward as it allows investors to take informed investment decisions and prevents negative effects from market fragmentation. As a result, this strengthens investor protection and efficiency in ETF trading.

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

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

*5,000 character(s) maximum*

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

DBG believes that the SI status should be revisited: We suggest modifying the SI regime for equities and equity-like instruments to trading only above LIS. Indeed, while DBG acknowledges the need for bilateral trading as investors performing large block transactions may have legitimate value from trading via a SI, we suggest restricting trading in SIs to trading above LIS in order to protect the price formation process and simplify the fragmented execution landscape. Above LIS trading would thereby constitute a legitimate dark space in which trades across bilateral execution venues and multilateral trading venues are not subject to pre-trade transparency and would benefit from delayed post-trade transparency. Our proposal implies that the pre-trade transparency requirements will no longer apply for SIs as SIs will only be allowed to trade above LIS with no restrictions apart from fulfilling post-trade transparency requirements. Note that the concept of standard market size (SMS) would consequently be obsolete. We feel that a modification of the SI regime appears as the most pragmatic and effective way to address the existing shortcomings of the SI regime when it comes to inconsistent flagging of trades or the question of riskless principal trading being based on a bilateral relationship. Our proposal also achieves to reduce complexity by providing a much simpler market structure.

**Question 24.1 Please explain your answers to question 24:**

*5,000 character(s) maximum*

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

As described in the recent ESMA consultation on transparency for equities (ESMA 70-156-2188) the market share of SIs has grown from 15% to 25% in the first 9 months of application of the SI regime under the new MiFID II/MiFIR rules. On the same period, we have observed a drop in lit book market share. Whilst acknowledging the need for bilateral trading we suggest restricting trading in SIs to LIS only in order to protect the price formation process, and this for all equity and equity-like instruments such as ETFs.

Indeed, from a DBG perspective, trading sub-LIS should in general only be allowed under the full pre-trade transparency scope. And while no waivers exist for SIs, and pre-trade transparency requirements are not comparable to those of trading venues, we question why sub-LIS trades should take place on SIs at all if they can be traded on a trading venue under full transparency. LIS thresholds imply that below a certain order size trading volume can be and hence must be absorbed by orderbooks, to maximize the level of transparency, the number of market players competing for these trading volumes and ultimately the quality of prices and liquidity available to end customers. Allowing trading on SIs below LIS thresholds implies that even though certain trade sizes could be absorbed by publicly available orderbooks, liquidity of orderbooks is compromised and threatened to be fragmented by trading these trade sizes on SIs instead. Our proposed measure will foster the robustness of lit order book systems which is essential for investors that have no access to SIs. The fact that SIs are closed shops is a concern pointed out by other respondents to the ESMA consultation (ESMA 70-156-2188).

From an investor protection point of view, we believe that our proposal of introducing a LIS restriction is highly beneficial. Such a simplification of the market structure would not affect investors' choice where to execute transactions as different types of execution venues are still available albeit subject to transparency requirements fundamentally different to the existing set-up. Of course, it makes sense for an individual to continue executing on less transparent markets until there is no possibility. However, this leads to a classic economic problem: the private gain of a market participant not sticking to the agreement will always be greater than the common loss.

Unfortunately, the common loss is at the expense of liquidity on public markets and thereby threatening the price formation process. Overall, as a respondent to the ESMA consultation (ESMA 70-156-2188) stated, the concern is that the true costs of trading are already obscured for investors and that there may be serious conflicts of interests by bundling arrangements (e.g. internalisation activity with other services or business lines). That being said, our proposal will not restrict investors' choice in modes of execution and ultimately execution outcomes when it comes to trading large tickets. The proposal is therefore in line with the view of a vast majority of respondents to the ESMA consultation (ESMA 70-156-2188) that SIs play a crucial role in the liquidity provision when it comes to trading large tickets.

The argument that the disclosed identity of the SI provides a higher level of transparency than trading in a regulated exchange's orderbook

does not hold true for centrally cleared products, as for these products the identity of each trades' counterparty, namely the CCP, is also known to all market participants before any trade is executed. The argument that SIs have to hold their own capital against trades executed on the SI, does not benefit the SI's customers other than by implicitly decreasing their SI's counterparty credit risk towards them. However, considering the stringent prudential framework applicable to all EU CCPs, it can be assumed that a centrally cleared trade bears lower counterparty credit risk than a trade executed on an SI, all other things equal.

Furthermore, we do not believe that fundamental changes to the SI regime as we suggest would risk firms' confidence to continuously invest in their operations going forward despite the investments they may have had as one respondent to the ESMA consultation stated. We believe that this work is essential, and a simpler market structure comes to the benefit for all market participants, in particular for investors.

**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:**

*5,000 character(s) maximum*

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

DBG thinks that there are several aspects of the regulatory framework applying to SIs that should be revisited (see also our response to Q5 and Q26). When it comes to pre-trade transparency requirements the current minimum quoting size of 10% of the SMS is too low. Compared to MiFID I the current threshold only increased by 250 EUR to 1,000 Euro, which effectively is meaningless to increase transparency and even provides SIs with a competitive advantage. Requiring SIs to quote 10,000 Euro on each side as suggested in the ESMA consultation paper on equity transparency appears more appropriate.

When it comes to the instruments in scope DBG would agree with ESMA's proposal in its consultation paper on equity transparency that an extension of the transparency obligation for SIs to illiquid instruments would be an effective way to improve market transparency and level the playing field between on-venue and SI. Indeed, SIs currently benefit from a competitive advantage as trading in illiquid instruments is still not subject to any pre-trade transparency requirements. On the other side, illiquid instruments are in scope for pre-trade transparency for all trading venues unless a waiver from pre-trade transparency is used. DBG is of the view that such new requirements would not be overly burdensome for SIs and would rather effectively foster lit trading and overall transparency.

Furthermore, we believe that ESMA should review how SIs operate by looking more deeply into the transactions they conclude and report. One issue results from riskless trading. Hubs that have the potential to link up SIs and counterparties should be monitored to guarantee that they always work on a bilateral basis, and in case they do not but operate an internal matching system they must operate an MTF. Such activities must be monitored as there is the risk that trading takes place on a multilateral rather than bilateral basis. Moreover, there does not seem to be any specific details of the operation of the business model required. This is in contrast with what MTFs and Regulated Markets need to fulfil. Hence, we suggest establishing a level-playing field as regards the description of the business model and how regulatory compliance is maintained. In addition, there is no level-playing field with regard to flagging of SI trades at an EU level. Even more than two years after MiFID II got introduced the flagging is very unclear and inconsistent. One way to address this would also be a broader implementation of the Market Model Typology (MMT) which currently ensures consistency of exchange data. We think that the extension of the MMT would promote enhancing data consistency and contribute to the increase of regulatory oversight of SI activity. That being said, we however believe that the most effective way to address the shortcomings of the SI regime when it comes to inconsistent flagging of trades or the question of riskless principal trading being based on a bilateral relationship and to create a level-playing field would be to restrict SI activity to above LIS trading as explained in our response to Q24.1. DBG believes that such enhancements to the SI regime are necessary in order to increase transparency as well as price formation and promote a level playing field between trading venues and SIs. Above LIS trading would thereby constitute a legitimate dark space in which trades across bilateral execution venues and multilateral trading venues are not subject to pre-trade transparency and would

benefit from delayed post-trade transparency. The same is true also for non-equities for which we recommend closing the gap between SSTI thresholds and LIS thresholds. Turning those different types of thresholds into only one threshold applicable across all execution venues, permits quasi- or de-facto-bilateral trading only for trade sizes that cannot be absorbed by public orderbooks via SIs. Requiring trading of sizes below LIS on transparent RMs, MTFs and OTFs only would significantly reduce market fragmentation, aggregate liquidity and increase pre- and post-trade transparency in particular for retail investors. For bonds the LIS threshold may be too high to require all trading below LIS to happen on a RM, MTF or OTF. Therefore, we recommend for the special case of bonds to require trading of sizes at or below 100.000 Euro to be executed on a transparent trading venue. SI quotes (and prices) in bonds and securitized derivatives are mainly available using proprietary arrangements (if any) and websites of SIs. This conflicts with the aim to increase transparency in the traditionally opaque markets in these instruments. Therefore, DBG strongly supports ESMA's proposal to define the requirements to be met by SIs in non-equity instruments for publishing their quotes and to extend the requirements set out in art. 13 of Regulation 2017/567 on obligations for SIs to make quotes easily accessible to SIs in non-equity instruments.

**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:**

*5,000 character(s) maximum*

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

DBG thinks that there are several aspects that put SIs at a competitive advantage compared to trading venues (TVs) (see also our response to Q5/Q25). Compared to MiFID I the current minimum quoting size requirement 10% of SMS only increased by 250 EUR to 1,000 Euro, which effectively is meaningless to increase transparency. We do not agree with arguments that have been brought up in the responses to the ESMA consultation (ESMA 70-156-2188) such as that minimum quoting size would have an adverse impact for investors (increase of the bid-ask spread) and that the proportion of SI activity that becomes pre-trade transparent may have detrimental effects to the overall market quality and could lead broker-dealers to pull away from making markets altogether. We also do not share the view that an increase of minimum quoting requirements will require SIs to increase risk capital and risk management procedures and thereby potentially reduce market liquidity, as SIs may limit their market making activities. Rather, SIs have the information who their counterparties are and thus run less risk when quoting to these counterparties compared to market makers who quote on public, anonymous markets. They can control their risk and continue to use the top of book as the benchmark to quote and reflect prevailing market conditions. Hence because of these characteristics of SIs and competition amongst them (there are about 60 registered SIs) we do not see that liquidity will be impacted.

When it comes to the instruments in scope currently, DBG would agree with ESMA's proposal in its consultation that an extension of the transparency obligation for SIs to illiquid instruments would be an effective way to improve market transparency and level the playing field between on-venue and SI trading. Illiquid instruments are in scope for pre-trade transparency for all TVs unless a waiver from pre-trade transparency is used. DBG is not of the view that such new requirements would be overly burdensome for SIs rather they would effectively foster lit trading and overall transparency. We would like to oppose arguments that have been brought up in the responses to the ESMA consultation that extending the quoting requirement to illiquid stocks may push SIs to stop any facilitation activity in those names if the risk profiles are not sustainable and concerns that this may impose additional reporting and data costs. One should not forget that the nature of SIs is to take risks. Besides, competition between SIs will ensure coverage of illiquid instruments. As of today, Electronic Liquidity Provider SIs already cover a vast majority of stocks no matter if they are liquid or not. Regarding additional reporting costs, we like to remind that TVs already carry this burden. Regarding market data costs we would like to refer to our answers in the latest ESMA consultation on market data ([https://www.deutsche-boerse.com/resource/blob/1651984/432b02539173292c57c41ad549e4a585/data/20190731-db-response-3\\_en.pdf](https://www.deutsche-boerse.com/resource/blob/1651984/432b02539173292c57c41ad549e4a585/data/20190731-db-response-3_en.pdf)).

Furthermore, we believe that ESMA should review how SIs operate by looking more deeply into the transactions they conclude and report. One issue results from riskless trading. Hubs that have the potential to link up SIs and counterparties should be monitored to guarantee that they always work on a bilateral basis, and in case they do not but operate an internal matching system, they must operate an MTF. Such activities must be monitored as there is the risk that trading takes

place on a multilateral rather than bilateral basis and hence would be in violation with the legislation. Moreover, there does not seem to be any specific details of the operation of the business model required. This is in contrast with what MTFs and Regulated Markets need to fulfil. Hence, we suggest establishing a level-playing field as regards the description of the business model and how regulatory compliance is maintained. In addition, there is no level-playing field with regard to flagging of SI trades at an EU level. Even more than 2 years after MiFID II got introduced the flagging is very unclear and inconsistent. One way to address this would also be a broader implementation of the Market Model Typology (MMT) which currently ensures consistency of exchange data. We think that the extension of the MMT would promote enhancing data consistency and contribute to the increase of regulatory oversight of SI activity.

That being said, we however believe that the most effective way to address the shortcomings of the SI regime would be to restrict SI activity to above LIS trading. DBG believes that such enhancements are necessary in order to increase transparency as well as price formation and promote a level playing field between TVs and SIs. Above LIS trading would constitute a legitimate dark space in which trades across bilateral execution venues and multilateral TVs are not subject to pre-trade transparency and would benefit from delayed post-trade transparency.

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:**

*5,000 character(s) maximum*

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

In order to ensure the quality and robustness of the price determination mechanism for shares and other equity-like instruments, e.g. ETFs, which Regulated Markets set DBG proposes five major changes to the current regulatory framework by re-balancing rights and obligations deriving from the given structural features and a simplification of the overall structure. The first two changes revolve around the large in scale (LIS) threshold as the main tool to delineate between lit and dark equity trading as developed below.

The first proposal is to reduce the number of waivers to order management facility (OMF) and LIS in order to effectively limit dark trading which consequently leads to the removal of the DVC mechanism. The main purpose of the waiver regime is to protect market participants from adverse market movements following the execution of large orders, thus, there seems to be little market impact by trading small orders. Hence, all standard orders below LIS should be subject to full transparency requirements to contribute to price formation.

The second proposal suggests fundamental modifications to the SI regime. Although DBG acknowledges the need for bilateral trading we suggest restricting trading in SIs to trading above LIS in order to protect the price formation process and simplify the fragmented execution landscape. Above LIS trading would thereby constitute a legitimate dark space in which trades across bilateral execution venues and multilateral trading venues are not be subject to pre-trade transparency and would benefit from delayed post-trade transparency. In this context, such a modification of the SI regime appears as the most pragmatic and effective way to address the existing shortcomings of the SI regime when it comes to inconsistent flagging of trades or the question of riskless principal trading being based on a bilateral relationship.

The third proposal implies an introduction of minimum transaction size for RFQ executions in ETFs due to the significant shift of trading volumes in this asset class from lit order book trading systems to request-for-quote (RFQ) trading systems following the introduction of MiFID II/MiFIR. As RFQ trading systems provide less transparency given their nature of facilitating non-public requests an effective mitigating measure should be considered to ensure that lit order book trading can continue to play its pivotal role in enabling efficient and cost-effective access to ETFs for all types of investors.

The fourth proposal affects the STO for which we propose a clarification on its scope, its exemptions and its application to asset classes: To address the third country impact by the current scope, the STO should apply to those shares with an ISIN starting with a country code corresponding to an EU27 Member State plus those starting with a non-EU country code but where the issuer has its primary (fully-fledged) listing within the EU27 while allowing for transactions executed on the relevant third country venue for dual listings. Moreover, the potential of a risk-sensitive, case-by-case based recognition regime for third country trading venues should be considered as foreseen in the review clause of the recently amended ESMA Regulation taking into account their effect on liquidity, as well as the development of the Capital Markets Union; in this context the option to remove third country equivalent trading venues from the

equation of the STO should also be evaluated on the basis that with a clear set of EU/non-EU shares, the equivalence is of limited relevance. Additionally, exemptions should be removed where trades are “non-systematic, ad-hoc, irregular and infrequent”, instead exemptions should only apply for those trades that do not contribute to price formation based on a clear and consistent list of qualifying non-price forming trades. Finally, the scope of the STO should be extended to ETFs in order to incentivise lit trading and investor protection in this growing asset class.

Our fifth and last recommendation suggests a ban on payment for order flow (PFOF) practices. We urge the European Commission to intensify their regulatory scrutiny as regards the implication of PFOF on market quality and investor protection and to conclude on a common supervisory and regulatory approach towards PFOF. This examination should comprise also the option to outrightly ban these practices in order to achieve a level playing field in the EU (please also see our response to Q49). Contrary to some respondents to the ESMA consultation (ESMA 70-156-2188), we do not consider that a consolidated tape would further promote further transparency for equity trading, especially if the data quality is not sufficient (see response to Q10 and Q10.1).

## 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:**

*5,000 character(s) maximum*

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

No, DBG believes that the scope of the STO should not be aligned with the scope of the CT. As explained above we believe all instruments no matter if liquid or illiquid, if admitted to an EU regulated market or EU MTF or being simply included to trading (including those without a prospectus) should be included.

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:**

*5,000 character(s) maximum*

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

In our view the scope of any CT should align with the securities that are subject to pre- and/or post-trade transparency requirements, and not the other way around, meaning the focus should be on the instruments per se. The proposed approach by European Commission seems to introduce unnecessary complexity into the process, which would add on cost to the industry as well as to the risk of errors.

In any case, as outlined in our responses to the previous questions DBG is a keen promoter of transparent markets and would of course welcome the availability of broad public transparency as well across other asset classes than equities. However, we do not recommend introducing any CTPs to this end, rather other measures should ensure that data quality will be enhanced across asset classes and across all execution venues (including SIs and OTC). Once data quality has been improved at the source, and EU regulators are still of the view that a CTP should be introduced to further increase transparency, as in the case of equities we would promote a TOR rather than a real-time tape. Please also see our responses to Q8, Q10 and Q15.1.

### 4.3. Post-trade transparency regime for non-equities

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

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

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

**Please specify what other measures could in your view be appropriate to ensure the availability of data of sufficient value and quality to create a consolidated tape for bonds and derivatives?**

*5,000 character(s) maximum*

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

As mentioned in our answer to the previous questions, DBG does not support a real-time equity pre- and post-trade CT, and consequently not for any other asset class either. Rather, before considering the development of any CT, it is of essence that the relevant data is made available to the public at a reliable and timely quality. Consolidating bad data with good data, results in bad data overall. This applies to any asset class alike.

As regards bonds, we would consider it highly beneficial if transparency similar to transparency of equities markets was promoted by regulators. Not only would this help to make EU capital markets more transparent, and as such support capital market stability too, but it would allow for highly relevant data to be used in passive investments which is currently concentrated in equities mainly. This would be highly beneficial to investors and future retirees alike. Under the current regulation, however, there is hardly any sensible transparency in bonds available. Please also see our comments to Section 3 and Q94 as regards the level of transparency reached for bonds and recommended policy actions in this context.

Besides overly long delays, the possibility to publish selected data points of one single transaction in bonds over a certain period, is not only overly complex but it prevents usable transparency to the public rather than providing it. This is to the disadvantage of EU investors, as proper transparency data in bonds could enable passive investment as well in bonds for the benefit of investors and issuers alike.

Where instruments are "unique" such as in a large part of the derivatives markets, a consolidated view is probably not sensible at all.

The current transparency regime for off-exchange derivatives has shown that the reference data provision is still a problem. Before expanding into the derivatives market, we therefore recommend starting with fixed income first.

**Question 30.1 Please explain your answer to question 30:**

*5,000 character(s) maximum*

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

As mentioned in our answer to the previous questions, DBG does not support a real-time equity pre- and post-trade CT, and consequently not for any other asset class either. Rather, we consider the improvement of off-venue data quality as an essential element to bring transparency in equity and non-equity markets forward. Based on improved off-venue data quality, DBG recommends a Tape of Record as a viable alternative which would be a significantly less complex and costly technical set-up, while providing a comprehensive database to the benefit of the entire industry.

With the caveats of first raising data quality through various policy measures as outlined in our answers to Q4 and Q94, DBG considers the value of any tape by far a larger issue in asset classes other than equities being still quite opaque. In particular, given the size of the market, fixed income significantly lacks public transparency. Provision of timely as well as comprehensive transparency would generate in our view a much higher benefit to the market compared to equity markets, which are already highly transparent. Having reliable and timely financial instrument data available, without the current lengthy delays, could support passive investments as well in the non-equity space for the benefit of investors and EU economies alike. Furthermore, any publication delays even in case allowed for particular trades in line with the regulation make a consolidated view less usable as they provide fresh and old price points together in a streaming fashion. As an example: there is one instrument's last sale price available in milli- or nanoseconds from an exchange, the next price is stalled as has been delayed by 60 minutes or 120 minutes or longer, while overriding the last real-time price. This issue would be less problematic in a Tape of Record, though. In case of a real-time tape, however, we would strongly argue for abolishing overly long or complex delay mechanisms, while only leaving the possibility to delay until the end of day in selected cases only. Furthermore, we strongly suggest that there should be no different deferral regimes across member states, either, which add to complexity and the risk of errors within the CT.

Besides the harmonization and strict reduction of delays, we strongly recommend price and volume data to be published to the market.

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

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**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](https://data.consilium.europa.eu/doc/document/ST-14815-2019-INIT/en/pdf) (<https://data.consilium.europa.eu/doc/document/ST-14815-2019-INIT/en/pdf>) invited the Commission to consider introducing new categories of clients and optimising requirements for simple financial instruments where this is proportionate and justified, as well as ensuring that the information available to investors is not

excessive or overlapping in quantity and content.

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention has been successful in achieving or progressing towards more investor protection.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 investor protection.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More investor protection corresponds with the needs and problems in EU financial markets.	<input type="radio"/>	<input 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 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:**

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

**Qualitative elements for question 31.1:**

*5,000 character(s) maximum*

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

MiFID II/MiFIR has rightly set investor protection as one of its most important political objectives. DBG supports increased investor protection across sectoral legislation and actively promotes investors' access to capital markets and broad spectrum of investment possibilities. Thus, we are of the view that proportionality is key and that rules should not become overly prescriptive in order not to create any disincentives for retail participation in capital markets.

In this context, authorities might want to take into consideration to take a cautious approach as regards product intervention mechanisms. The investor protection regime may not work as a market entry barrier for new products and assets catering for retail investors' needs as well as for professional investors' needs (e.g. exchange traded derivatives in relation to risk management and hedging purposes). Where investor protection concerns do arise, they rather result from misconduct and/or overly burdensome provisions.

Against this background, we argue to take a prudent and nuanced approach when it comes to assessing the need to take supervisory action against certain products. As an important principle, the well-conceived and highly integrated safeguards and organisational requirements for regulated trading venues as established by MiFID II should be considered as a differentiating factor. When designing and implementing the MiFID II regulatory framework, policy makers and supervisors rightly acknowledged the beneficial contribution that these regulated trading venues bring to markets - not only but in particular for those asset classes that are at early stages of their product lifecycle and hence their readiness to be shifted from OTC to central infrastructures, like trading venues and CCPs, based on the G20 commitment in 2009. Allowing products to be transferred from opaque to transparent environment makes them available for trading in a secure, transparent and well-established exchange environment. These undisputed achievements of MiFID II to enhance the safety, integrity and supervision of trading in a regulated environment should be leveraged and further enhanced for any investor protection measures as well. A CFD in the OTC space, vulnerable to fraudulent players should not be mixed in the same category with products that might resemble similar product features but are embedded in a robust regulatory/ legal, functional and technical environment offering utmost investor protection. It is recommended to provide guidance to ESMA in this regard.

It is also important to keep in mind, that investors have access to reliable, high quality market data provided by trading venues allowing for transparent evaluation of current market situation and informed investment decisions. Nevertheless, a very fundamental prerequisite of investor protection is still not achieved: a sufficient degree of transparency across all asset classes and execution modes. This is due to the high level of fragmentation of European equity market structures leading to distortions of price formation. If prices do not reflect market conditions correctly due to diverging regulatory requirements across different types of execution venues and enforcement of these requirements, this is an issue for retail investor protection, too. Throughout our response to this consultation, DBG addresses the current shortcomings of market structures and provides a number of

recommendations how to simplify the market structure and enhance the current level of transparency across different asset classes, which will contribute to the political objective of the legal framework to effectively foster investor protection.

Finally, we would like to highlight the very essential contribution to investor protection by market operators as well as financial market infrastructures in times of market stress. They organize fair and transparent markets to finance businesses and offer investment opportunities available to investors, delivering highest levels of investor protection. They provide for a resilient environment for investors, issuers and market members enabling them to fulfil their needs with arrangements that protect investors. Especially in the current, unprecedented crisis situation due to the COVID-19 pandemic, continued trading on trading venues allows for loss-mitigation measures and risk management by investors. The controls and numerous safety mechanisms installed by trading venues, such as circuit-breakers, in place are working normally and with the necessary flexibility to meet markets' demand.

**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 type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs and charges requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conduct requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**1. Easier access to simple and transparent products**

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

**Question 32.1 Please explain your answer to question 32:**

*5,000 character(s) maximum*

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

**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

**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?**

	Ye s	N o	N.A .
Professional clients and ECPs should be exempted without specific conditions.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Only ECPs should be able to opt-out unilaterally.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Professional clients and ECPs should be able to opt-out if specific conditions are met.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
All client categories should be able to opt out if specific conditions are met.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

*5,000 character(s) maximum*

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

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

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

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

**Question 35.1 Please explain your answer to question 35:**

*5,000 character(s) maximum*

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

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

	Ye s	N o	N. A.
General phase-out within the next 5 years	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
General phase out within the next 10 years	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
For retail clients, an explicit opt-out of the client shall be required.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
For retail clients, a general phase out shall apply only if the retail client did not expressively 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:**

5,000 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:**

5,000 character(s) maximum

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

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

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

**Question 38.1 Please explain your answer to question 38:**

*5,000 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:**

*5,000 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 investors<sup>5</sup>. The CMU-Next group suggested a new category of experienced High Net Worth (“HNW”) investors with tailor made investor protection rules<sup>6</sup>.

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

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

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

- 1 - Disagree

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

**Question 40.1 Please explain your answer to question 40:**

*5,000 character(s) maximum*

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

**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:**

*5,000 character(s) maximum*

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

**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:**

*5,000 character(s) maximum*

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

**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 type="radio"/>
Information provided on costs and charges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Product governance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 43.1 Please explain your answer to question 43:**

*5,000 character(s) maximum*

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

**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:**

*5,000 character(s) maximum*

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

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

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

*5,000 character(s) maximum*

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

#### 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:**

*5,000 character(s) maximum*

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

Access of retail investors to classic corporate or bank bonds is increasingly limited due to regulation. Besides the inclusion of classic bonds into the PRIIPS regulation already discussed under Q6 and the increasing number of bonds issues with a minimum investment of 100,000 EUR triggered by reduced requirements based on the prospectus regulation, new provisions for product governance defined in the "Guidelines on MiFID II product governance requirements" further reduce retail investors' possibilities to invest in classic bonds. These new provisions for product governance require issuers to define a target market for every product, including classic bonds. Retail banks on the other hand must consider the target market for every buy order by comparing the target market with the individual customer characteristics.

There is an increasing trend towards issuers of classic bonds defining the target market of their bond issuances as "institutional" irrespective if the bonds may be suited for retail investors or not. In this case retail investors are not able to invest in these bonds as retail banks are not allowed to provide the possibility for retail investors to buy these bonds. The reasons why issuer do this may vary (e.g. reduce risk of being sued by retail investors). However, to counter this trend regulators should ensure that the target market definition is not adversely used by issuers to prohibit retail investors to invest into products like classic bonds otherwise suited for them.

In light of exchange traded derivatives (ETDs), we would raise attention to shortcomings in the PRIIPs regulation, as a closely linked dossier to MiFID that confuse paradigms and might ultimately confuse retail investors, who want to manage their risks. Please refer to Q6.1 for detailed descriptions of our observations and concerns.

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

	Ye s	N o	N. A.
It should only apply to products to which retail clients can have access (i.e. not for non-equities securities that are only eligible for qualified investors or that have a minimum denomination of EUR 100.000).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
It should apply only to complex products.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other changes should be envisaged – please specify below.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Simplification means that MiFID II/MiFIR product governance rules should be extended to other products.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The regime is adequately calibrated and overall, correctly applied.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 47.1 Please explain your answer to question 47:**

*5,000 character(s) maximum*

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

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:**

*5,000 character(s) maximum*

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

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:**

*5,000 character(s) maximum*

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

DBG has observed that Payment for Order Flow (PFOF) schedules which were historically mainly applied in OTC markets have become an established feature of certain Regulated Markets. Please note that while a binding definition does not exist as of today, the UK FCA has described the commercial relationships between order flow providers, liquidity providers/market makers and exchanges in detail which may serve as a common point of reference for the consideration of the potential implications of PFOF schedules (<https://www.fca.org.uk/publication/multi-firm-reviews/payment-for-order-flow-pfof.pdf>). These market developments have been ignited by the increase in market fragmentation as well as the proliferation of trade execution modes as stipulated by MiFID II/MiFIR. The trend was further spurred and enhanced by online brokers (order flow providers, OFP) which actively route free of charge their clients' order flows for execution exclusively to venues that facilitate PFOF schedules and receive a fee or commission from liquidity providers/market makers closely connected to these venues in return.

We are of the view that PFOF schedules warrant further supervisory scrutiny and potentially regulatory action. We consider it important to assess PFOF not only from the perspective of their compliance with best execution provisions and inducement rules but also from a market structural perspective. Only combining both dimensions allows to get a comprehensive view on the economic prerequisites enshrined in the respective exchange rules that facilitate PFOF.

Online brokers/order flow providers are exposed to a serious conflict of interest. Where they receive payments in exchange for the submission of order flow, this undermines their incentives and ability to act on behalf and in the best interest of their clients.

Further, from a retail investor's perspective it is worrisome that there is an inherent trend towards higher PFOF from larger market makers/liquidity providers to order flow providers which may impair competition and/or serve as entry barriers for new market participants. This may diminish choice for retail investors which we understand to be contradicting the MiFID II policy objectives in general and the best execution regime in particular.

Against this background, we urge the European Commission to intensify their regulatory scrutiny as regards the implication of PFOF on market quality and investor protection and to conclude on a common supervisory and regulatory approach towards PFOF. This examination should comprise also the option to outrightly ban these practices in order to achieve a level-playing field within the EU.

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:**

*5,000 character(s) maximum*

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

As regards the criteria for the assessment of knowledge and competence required under Article 25(1) of MiFID II, ESMA's [guidelines](https://www.esma.europa.eu/sites/default/files/library/esma71-1154262120-153_guidelines_for_the_assessment_of_knowledge_and_competence_corrigenum.pdf) ([https://www.esma.europa.eu/sites/default/files/library/esma71-1154262120-153\\_guidelines\\_for\\_the\\_assessment\\_of\\_knowledge\\_and\\_competence\\_corrigenum.pdf](https://www.esma.europa.eu/sites/default/files/library/esma71-1154262120-153_guidelines_for_the_assessment_of_knowledge_and_competence_corrigenum.pdf)) 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:**

*5,000 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:**

*5,000 character(s) maximum*

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

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## 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:**

*5,000 character(s) maximum*

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

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

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

**Question 54.1 Please explain your answer to question 54:**

*5,000 character(s) maximum*

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

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## 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:**

*5,000 character(s) maximum*

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

DBG understands given the formulation of the comments by the European Commission that the question targets specifically investments firms and reports produced by those investment firms stemming from RTS 27 and RTS 28. We would however point out that all trading venues are requested to produce Best Execution reports according to RTS 27 and that those reports aim at supporting the design of best execution policies established by investment firms as well as allowing ex post check for those investment firms.

Like all trading venues, DBG put enormous efforts and resources into the production and publication of RTS 27 reports. Following the lack of feedback from regulators pre January 2018 - which is understandable as the topic was not directly impacting trading activities from 3 January 2018 onwards - we as well as all other institutions in the industry, be it execution venues or investment firms (incl. SIs), did our best to interpret regulatory requests and statistics calculations. Let us recall as well that the RTS 27 reports are produced for every trading day and each traded instrument on a given trading venue and covers pre- and post-trade statistics, costs, qualitative information. Hence, they represent a considerable amount of data to be processed and stored. DBG is publishing best execution reports for its cash markets (Xetra and Boerse Frankfurt) and its derivatives market (Eurex). In this context, we provide more timely information than the regulatory guidance suggests; for example, we provide the reports on a daily basis due to the huge amounts of data to be provided on a less frequent basis, or in case of costs on a monthly basis due to our calculation logic.

Moreover, it was indeed questioned whether the publication of statistics up to six months after the trading day as per RTS 11 (see article 11) could still be of any relevance for investors. The reports are available in machine readable format on the relevant websites free of access. They are produced for each market segment of Deutsche Boerse markets, hence segmented per Market Identifier Code (MIC).

Regarding the content of the different reports, DBG has done a thorough review of the regulation to understand the requirements as well as respect the spirit of the regulation where interpretation of the texts was uneasy. In the absence of an industry led initiative on RTS 27 (the FIX Best Execution group being more focused on RTS 28), we are well aware that some discrepancies might arise between interpretations of statistics hence figures provided by trading venues. We understand this might bring confusion for market participants especially since most of the time the only support investors can refer to is the regulation itself, RTS 27 and annex of RTS 27. We would however urge the regulators to refrain from any potential review of RTS 27 and to work closely with trading venues and investment firms on what would be meaningful and undisruptive changes (see our answer to question 56).

**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:**

*5,000 character(s) maximum*

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

DBG cannot comment on the best execution reports published by investment firms. We would however reiterate that all parties, be it investment firms or trading venues, have put enormous efforts and resources in the production and publication of RTS 27 reports. Whilst some improvement might be desirable, please keep in mind that the range and amount of data to process on a daily basis and for all traded instruments is considerable as it covers pretty much all aspects of trading (pre- and post-trade costs). Moreover, the numerous calculations requested in all RTS 27 tables as well as the storage capacity requested (daily reports shall be available for free for 2 years) imply significant IT capacities.

More than two years after the entry into force of MiFID II, best execution reports are published according to a methodology which has been defined in the past five to four years and covers format, calculations, publication frequency, storage. If the regulators were to amend in any way the regulation, we urge them to take into account the costs associated with any type of change - small or large - to make to those reports and to apply a reasonable approach which would take into account the ratio costs/benefits of those reports, consult thoroughly the investment firms and the trading venues, provide enough time to investment firms and trading venues to implement those changes and not request retroactive application of the regulatory texts.

**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:**

*5,000 character(s) maximum*

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

As indicated in the previous responses, one off costs for producing and publishing the RTS 27 across all DBG's business areas were in the mid six Euro figure digits, excluding running costs; running costs amount to four-digit figures yearly. And still, those costs do not include following one off costs to modify the reports, add tables, modify calculation logics which arise from the decommission or launch of new products, new pricings, creation of new market segments etc. Benefits for investors are from our point of view rather unclear and in any case not quantifiable regarding RTS 27. Judging by the requests we received from our members, less than a handful looked at the reports and not a single request came from retail investors. While understanding the intention of the regulators to provide transparent and free information directly from the IFs/execution venues to the final investor, DBG does not believe best execution reports have improved trading decisions, at least regarding RTS 27, which translated in high costs and low benefits.

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

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

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

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

**5,000 character(s) maximum**

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

Since January 2018, MiFID II has accelerated the reduction in equity research focusing on smaller issuers. 334 European smaller issuers lost coverage completely in 2018, 91% of which only had one analyst before the implementation of MIFID II (Bingxu et al (2019): The Effects of MiFID II on Sell-Side Analysts, Buy-Side Analysts and Firms). Now, most small and mid-caps are covered by zero to one analyst whilst large caps benefit from much wider coverage and better visibility to investors. The number of SME research has decreased. In order for SME to receive research coverage, they usually have to commission and pay for research themselves. An increasing number of SMEs have found themselves in a position where they have to fund equity research, thereby justifying the increase in sponsored research. A survey led by the CLIFF showed that 80% of issuers with a market capitalization >€500 million used sponsor research in 2019 (compared to 60% in 2018). Two thirds of these issuers only rely on this sponsored research.

In the following, we summarize our policy recommendations to address the shortcomings of the current regime and to improve research coverage with a particular focus on SMEs:

1. We strongly speak out in favor of public funding for research for SMEs to ensure a broad coverage. Research firms providing research coverage for companies listed in the registered SME Growth Market could receive a certain reimbursement from public funding. The research reports should satisfy certain criteria predeveloped by national or European associations for financial analysis.
2. Also, we believe that a program set up by a market operator to finance SME research would improve research coverage. This is based on the fact that market operators are facing regulatory burdens when distributing research reports originally provided by research firms for their listed SMEs.
3. We support the review of requirements imposed on investment firms as regards the production and dissemination of investment recommendations under the Market Abuse Regulation, as well as under MiFID II/MiFIR and their respective Delegated Regulations which require them to disclose their interests or indicate conflicts of interest.

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.

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## 1. Increase the production of research on SMEs

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## 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 \(https://www.esma.europa.eu/sites/default/files/library/esma35-43-349\\_mifid\\_ii\\_qas\\_on\\_investor\\_protection\\_topics.pdf\)](https://www.esma.europa.eu/sites/default/files/library/esma35-43-349_mifid_ii_qas_on_investor_protection_topics.pdf)).

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

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

**Please specify what other proposals you would have in order to increase the production**

**of SME research:**

*5,000 character(s) maximum*

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

Pre-MiFID II, research was supplied as part of a bundled service, paid by execution fees. Research post-MiFID II is required to be unbundled and priced separately from execution of financial instruments. A growing number of SMEs are paying independent research providers to write research and take the initiative in approaching investors directly. However, this is challenging due to potential conflict of interests and a lack of recognition and coverage limitations due to budget constraints. Some exchanges have launched programs to cover the costs of SME research coverage and the first results suggest that it can create additional liquidity for the listed SMEs. A Pan-European program could be launched to cover the costs of research coverage based on the lessons learnt from these pilot programs. However, the preferred solution would be to enable bundling again and the market should be able to recover itself. A possible additional way to improve liquidity of SME shares would be to establish user-friendly platforms for analysts to share their reports on. Retail investors should also have access to such a platform.

As a result of unbundling rules, fund managers are prevented from accepting research on small companies provided by brokers for free. The rules should be amended to allow brokers to send SME-research reports to fund managers without having to establish a research contract with them. In doing so, a threshold could be established for what should be considered an SME.

In sum, access to equity research on SMEs could be improved by:

- Preferably allow bundling of research costs for SMEs or otherwise launch a Pan-European program to cover the costs of research coverage.
- Establish user-friendly platforms for analysts to share their reports on.
- Amend unbundling rules to allow brokers to send SME-research reports to fund managers.

**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:**

*5,000 character(s) maximum*

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

## 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:**

*5,000 character(s) maximum*

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

As outlined in our response to Q59, this is to a certain extent already being done as some exchanges have launched programs to cover the costs of SME research coverage and the first results suggest that it can create additional liquidity for the listed SMEs. A Pan-European program could be launched to cover the costs of research coverage for companies listed in dedicated SME Growth Markets based on the lessons learnt from these pilot programs hosted by the stock exchanges. A possible additional way to improve liquidity of SME shares would be to establish user-friendly platforms for analysts to share their reports on. Retail investors should also have access to such platforms.

In line with the European Commission's priority to strengthen the CMU, this pan-European program could also be part of the means dedicated to the private-public fund for SMEs' IPOs. Both initiatives can be complemented to cover the costs of research coverage of newly listed SMEs. In effect, this would further incentivise SMEs to raise funds via the use of public capital markets in line with their respective financing strategy.

However, market operators are facing regulatory burdens when distributing research reports originally provided by research firms for their listed SMEs. In addition to notification obligations with the NCAs, maintenance of insider lists and/or plausibility checks regarding the research reports can be a consequence of such distribution.

Section 86 of German Securities Trading Act ("WpHG") imposes a duty of disclosure to BaFin on certain persons who, in the exercise of their profession or in the course of their business activities, prepare or disseminate investment-related recommendations. The provision was inserted into the WpHG by Art. 1 No. 14

Anlegerschutzverbesserungsgesetz (AnSVG - investor protection improvement law). The AnSVG served to implement the Market Abuse Directive (MAD). The MAD was replaced in 2016 by Market Abusive Regulation (MAR), which is now in principle directly applicable. However, the competences for monitoring must still be regulated by the national competent authorities. The MAR does not directly require a duty of notification, but it also merely sets out minimum standards. Without such notification, effective monitoring would hardly be possible. Violations of the regulation can only be detected and punished if the persons responsible are known to BaFin. The duty of disclosure under section 86 is intended to provide BaFin with this necessary knowledge.

The rule which has been implemented into German laws to ensure compliance with this MAR obligations leads to extensive obligations laid upon research distributors, e.g. stock exchanges.

DBG is aware of the missing direct link to MiFID II regulation. However, the "SME research coverage"-topic should be considered and treated holistically. Also, we believe, the questions raised in Q60 et seq. request for a comprehensive feedback from market operators specifically on "market operator to finance SME research". So, we prefer to address all issues arising in this context. The below mentioned national laws are to be seen in the broader context of the EU framework. If the framework will change the rules imposed on financial analysis and research, so will then the NCA need to amend their regulation. The German NCA's interpretation of "disseminate investment-

related recommendations" includes any form of financing of such by third parties, e.g. a market operator.

**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:**

*5,000 character(s) maximum*

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

As stated in our response to the previous questions, we would strongly support public funding for research for SMEs to ensure a broad coverage. Research firms providing research coverage for companies listed in the registered SME Growth Market could receive a certain reimbursement from public funding. The research reports should satisfy certain criteria predeveloped by national or European associations for financial analysis. Some exchanges have launched programs to cover the costs of SME research coverage and the first results suggest that it can create additional liquidity for the listed SMEs. Hence, DBG would support the launch of a Pan-European program to cover the costs of research coverage based on the lessons learnt from these pilot programs.

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

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

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

**Question 62.1 If you agree, which recommendations would you make on the form that such use of artificial intelligence could take and do you see risks associated to the development of AI-generated research?**

*5,000 character(s) maximum*

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

From DBG's point of view, SME research could benefit from artificial intelligence (AI). However, as the technology relies on a large amount of relevant data in good quality, its application could be limited in rather niche respectively new sectors. Also, even in well-established industry sectors the data would have to be standardized and properly accumulated and stored. It has also to be noted, that even if the relevant data is available for an AI application, it is not granted that this could solve existing problems with SME research, e.g. identify "unicorn" / first mover.

Thus, AI facilitated research should be complemented by human-made research to meet market demand for qualitative investment research. The use of AI should not restrict the research analysts' access to pre-AI analysed figures or make it more difficult for them to form an assessment based on data that can be used or delivered by the technology. The research analysts' qualitative assessment of its investment research is what investors value most.

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

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

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

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

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

**Question 63.1 If you do agree that the creation of a public EU-wide SME research database would facilitate access to research material on SMEs, please specify under which conditions this database should operate:**

*5,000 character(s) maximum*

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

Research reports need to be publicly accessible on such a website. The database would be of high value, if retail and institutional investors have access to it. All companies listed in SME Growth Market should be covered by the reports funded by the partially public funding program. There should be a limited liability imposed on research providers for the content of the reports.

That being said, DBG considers that the EU Single Access Point (former EU EDGAR+) should include information disclosed by companies listed in SME Growth Markets. EU Single Access Point would facilitate access and availability of data about companies and as such serve as a basis for investors' assessments, potentially informing their decisions. SMEs would benefit from pooling the information they disclose at a one-stop shop: The SMEs' visibility would be increased and barriers to access capital reduced, overall ensuring and increasing their competitiveness. EU Single Access Point could also serve as a starting point for the establishment of a European database for SME-research. In terms of approach, we suggest that a federal model would be best whereby ESMA maintains the central database, but the information is still filed locally and flows through to the ESMA database.

Currently, research coverage for SMEs is rare and, in most cases, only accessible for institutional investors. Through such database research firms could be encouraged to distribute the reports further. This could increase liquidity in SME securities as there is a higher percentage of semi-institutional and retail investors investing in SME. Institutional investors tend to refrain from investments in SME due to their ticket sizes. Since, a distribution of "one size fits all"-research reports, i.e. research reports written for all types of investors may lead to claims from lesser informed investors (typically retail investors), there should be some form of protection mechanism for the research providers, e.g. limited liability.

**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:**

*5,000 character(s) maximum*

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

ESMA as a neutral European institution and at the same time responsible for keeping up the register of SME Growth Markets would be the natural starting point for the search of financial analysis related to SMEs listed in these SME Growth Markets.

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:**

*5,000 character(s) maximum*

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

**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:**

5,000 character(s) maximum

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

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

	1 (least effective)	2 (rather not effective)	3 (neutral)	4 (rather effective)	5 (most effective)	N. A.
Introduce a specific definition of research in MiFID level 1	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Authorise bundling for SME research exclusively	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Amend Article 13 of delegated Directive 2017/593 to exclude independent research providers' research from Article 13 of delegated Directive 2017/593	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prevent underpricing of research	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Amend rules on free trial periods of research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Create a program to finance SME research set up by market operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Fund SME research partially with public money	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Amend rules on issuer-sponsored research	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

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

*5,000 character(s) maximum*

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

Please refer to our response to Q59 and Q62.1.

**Question 68.1 Please explain your answer to question 68:**

*5,000 character(s) maximum*

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

Please refer to our response to Q59 and Q62.1.

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

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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](https://ec.europa.eu/info/sites/info/files/strengthening-international-role-euro-swd-2019_en.pdf) ([https://ec.europa.eu/info/sites/info/files/strengthening-international-role-euro-swd-2019\\_en.pdf](https://ec.europa.eu/info/sites/info/files/strengthening-international-role-euro-swd-2019_en.pdf)) that “There is potential to further increase the share of euro-denominated transactions in energy commodities, in particular in the sector of natural gas”.

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

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N.A.
The EU intervention been successful in achieving or progressing towards improving the functioning and transparency of commodity markets and address excessive commodity price volatility.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits with regard to commodity markets are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

<p>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.</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>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.</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>The position limit framework and pre-trade transparency regime for commodity markets has provided EU added value.</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

**Quantitative elements for question 69.1:**

	Estimate (in €)
Benefits	

C  
o  
s  
t

Both the one-off implementation and the annual maintenance costs are estimated at a 1-digit million EUR figure each. This includes internal and external resources in terms of IT projects, technical requirements, compliance, reporting and surveillance costs. As this assessment relates to one venue, the total costs for the industry should thus be multiplied by the number of actors as this has to be done individually and there is very little to no synergy in implementing the requirements. Furthermore, this exchange-based assessment does not include the implementation costs for market participants, which in total is likely to be an even higher number than for exchanges due to the substantially higher number of actors. Importantly, however, this cost assessment does not include the costs of the slowed growth of commodity derivatives markets in Europe because of the hampering effects of MiFID II/MiFIR. This is estimated as by far the biggest cost of the regime, while difficult if not impossible to precisely quantify. (Please refer to our response to Q69.1 below for a more extensive qualitative explanation.) As stated above, an exact cost assessment including indirect costs is very difficult to provide. However, when taking the direct costs into account, the overall cost of the two regimes should be assumed between 50 million to 100 million EUR and when also looking at the indirect costs, a loss of 250 million to 500 EUR seems most realistic.

**Qualitative elements for question 69.1:**

*5,000 character(s) maximum*

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

DBG's commodity derivatives branch, EEX Group, fully agrees with the objectives of MiFID II/MiFIR to "improve the functioning and transparency of commodity markets and address excessive commodity price volatility". However, we feel these objectives have not yet fully materialised with the respective regimes.

Thereby, the establishment of and compliance with MiFID II/MiFIR has proven to be a burdensome and costly process for both commodity derivatives exchanges and market participants. As explained above, implementing and running both regimes has cost several millions for EEX Group. Operating costs for both market participants and exchanges are especially large. An additional cost derives from the duplicative reporting infrastructure and connection to competent authorities and their maintenance. Compared to the small added value to the integrity and functioning of the market, the compliance burden today seems disproportionate. Indeed, already today, contracts are subject to extensive monitoring and reporting based on the principles laid down in the Regulation on Energy Markets Integrity and Transparency (REMIT) and Market Abuse Regulation (MAR). In addition to our indications, indirect costs following from the prevention of growth of commodity derivatives markets should be highlighted. Contrary to the general intention of EU financial policy to bring more trades onto regulated markets in order to increase safety, efficiency and transparency, notably the position limits regime has slowed-down growth at exchanges. At the same time, the benefits of the implementation of MiFID II/MiFIR to the markets and end consumers are small as of today.

Where the position limits regime has worked mostly well for mature benchmark contracts, it has introduced adverse effects on the development of new and nascent contracts. Following restrictive (de minimis) limits and a lack of flexibility, market participants have rather been discouraged from on-venue trading, limiting the execution of trades, which could have a negative impact on the orderly pricing of contracts, as well as on the general transparency in the market. Specific regulators in Europe have taken this into account by changing limits for nascent contracts from 2,500 lots into a "tba" status in order to give the contract time for development, however leading to an unequal treatment compared to other countries. Relating to the negative impact of the position limit regime on the business climate in Europe, the regime has significantly reduced the chances that additional benchmark commodity derivative contracts develop inside the EU, making the subsequent costs far greater than merely the absence of the associated trading activity. Commodity derivatives are by nature global products that are traded in a highly competitive environment. The current calibration of the position limit regime has thereby negatively impacted the EU's competitive position compared to other jurisdictions.

Against this background - and in line with ESMA's proposal in its recent report on the position limit regime (ESMA70-156-2311) to simplify the regime to the extent possible with the aim to make it work more efficiently for market participants and competent authorities, as laid down in its recent review report on this topic - we see clear merit in limiting the application of the regime to a restricted set of mature, critical, benchmark contracts.

Additionally, we believe that a more tailor-made pre-trade transparency regime would foster liquidity and competitiveness of EU commodity markets. Commodity markets differ from classic financial markets and hence often suffer from a one-size fits all regulatory approach to the regulation of financial instruments. As currently tailored, the pre-trade transparency regime limits pre-negotiated transactions from being concluded on exchanges and submitted for central clearing, constraining the ability of market participants to hedge their commercial exposures on exchanges.

Our answers to Q70 on the position limits regime and to Q76 on the pre-trade transparency regime (which are further elaborated in the attached Annex I), together with our responses to ESMA's complementary consultations, provide additional examples on the current functioning and shortcomings of the two regimes. Against this background, we explicitly welcome the European Commission's recognition of the role of European commodity markets in strengthening the role of the Euro and Euro-denominated products. For both promoting new contracts and fostering liquidity in contracts that are already denominated in Euro, it is key that the Eurozone as such is attractive for market participants and its regulatory framework is fit for purpose. More proportionate and efficient position limits and pre-trade transparency regimes would contribute significantly to the competitiveness of globally-connected EU commodity markets.

## 1. Position limits for illiquid and nascent commodity markets

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

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

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

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

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

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

*5,000 character(s) maximum*

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

The current regime has a substantial impact on the development of new/less liquid products and growth of existing products as we observed a stagnation in markets of which we believe they would have been more liquid otherwise. We largely agree with the three underlying causes of constraints as indicated in this question:

A) the de minimis rule of 2,500 lots becomes too restrictive when a contract comes close to 10,000 lots of open interest (OI);

B) an incorrect categorization caused by a slow pace with which a contract is considered liquid and hence receives a bespoke limit, or a flawed liquidity assessment following lot sizes that do not reflect market realities; and

C) the lack of flexibility for NCAs to deal with special circumstances occurring in the underlying markets. And whilst in theory, in line with ESMA Q&As, NCAs can use derogations for illiquid markets with an OI between 5,000 and 10,000 lots, these are difficult to apply in practice and are often not sufficient to mitigate the negative impact of unduly low limits.

In addition, we want to highlight the damaging fact that the hedging exemption is only available for non-financial entities, even though financial entities engage in genuine hedging activities. (Please refer to our response to ESMA's Call for Evidence for more details per asset class.)

**Dry Bulk Freight:** The most important reason for position limits having hampered the development of EEX freight contracts, is that for more critical clients - on which the take-off of a contract is fundamentally dependent - the de minimis rule is too restrictive (A). Figure 1 in Annex I gives the example of Capesize 5TC, where after a strong growth in OI, the 2,500 lots limit hampered the development of the contract as soon as the OI approached 10,000 lots. A second reason is the slow pace with which a contract is classified from illiquid to liquid and hence, receives a bespoke position limit (B). Figure 2 in Annex I provides the example of Panamax 4TC, which received a bespoke limit months after becoming liquid. Finally, the lack of flexibility in the rules for NCAs to deal with special circumstances (C). EEX freight contracts are going through the process of transferring to an index that is more representative of the underlying markets e.g. from Capesize 4TC to Capesize 5TC. Until the market has switched to the new product, the old and new index contracts run in parallel. The inability of NCAs to consider 4TC and 5TC as the same contracts but rather 5TC as new contract subject to the de minimis rule, has resulted in limit breaches and clients having stopped trading as liquidity is unsatisfactory.

**Gas:** In the gas market, the main reason for the position limits having hampered the development of contracts is the restrictive de minimis limit of 2,500 lots OI (A). This occurs together with an inflexible categorization (B) or inadequate representation of the underlying market (C). Figure 3 in Annex I gives the example of a market with an OI oscillating between 5,000 and 20,000 lots with periods where the 2,500 lots limit represented only 12.5% of OI. This follows the strict definition of a liquid contract and the slow pace with which contracts receive a bespoke limit (B & C). Additionally, financial entities, are unable to benefit from the hedging exemption. In these cases the 2,500 lots OI limit hampered the development of contracts. Please see Q75 for

a detailed example.

Finally, if the definition of lots does not sufficiently follow economic considerations, the limit might be artificially low, and a market might be artificially liquid or illiquid (B). The lot size definition of gas contracts follows the rules of nominating gas, which are defined by the operators of virtual trading point (not by exchanges), and which differ among member states.

Power: In power, three elements hampered the development of liquid contracts; The slow pace with which bespoke limits are set and reviewed (B); the lack of flexibility in the rules for NCAs to deal with special circumstances (C), and; the relatively complex process to apply for the hedging exemption. For power contracts that became liquid after MiFID II implementation, the time between the contracts exceeding 10,000 lots OI during three consecutive months and the contracts receiving a bespoke limit on average amounted to two to three months. Figure 4 in Annex I gives the example of the Romanian Base Power contract which became liquid in June 2019 but has yet received a bespoke limit. Finally, at the end of 2017 following the underlying bidding zone split, EEX split its Phelix German/Austrian benchmark contract into a German and Austrian power future. Although expected that the liquidity of the German product would soon pick up after launch, the position limit regime does not allow a forward-looking approach to determine the OI on which the position limit should have been set (C).

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

*5,000 character(s) maximum*

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

Power and gas markets are usually separated by "market areas" (power) or "hubs" (gas). These market areas and hubs in most cases correspond to a country, meaning that there is for example one gas market for France. The share of cleared transactions ranges from 0-90%, depending on the underlying and the market. The size of the OTC space might therefore be identical to the size of the market (for example UK power market) or might only constitute a relatively low share (for example Italian power market). And then, the markets itself can be large or small.

In essence, we believe that also in small markets, like Belgium, market participants should have the opportunity to trade cleared derivatives on a liquid market - independently of the size of the OTC space in such a market. This is however today not possible, since the position limits for illiquid markets hamper the growth in such markets.

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

*5,000 character(s) maximum*

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

The future market share of a nascent contract depends on the market itself and the underlying commodity of that market, and is difficult to predict in detail beforehand.

In some markets, the introduction of cleared derivatives trading has led to a very large increase of on-venue trading in only some years, for example in the Italian power market. In this specific example, trade registration has played a detrimental role in establishing trust between market participants, by registering pre-negotiated trades on the exchange for execution and clearing, thereby taking away counterparty risk.

In other markets, this development did not take place, for example in the Belgian gas market. We believe that this is partly due to the strict position limits for illiquid markets and the inability of financial counterparties to hedge their commercial risks sufficiently as outlined in our answers to the previous and following answers. We stand ready to answer any questions the European Commission might have on specific asset classes.

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

*5,000 character(s) maximum*

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

DBG's commodity branch, EEX Group, runs markets in Europe, Asia and North America and is home to trading in different currencies. This is why making decisions on whether to launch a new EEX Group contract denominated in euro or in another currency is part of our everyday business. EEX Group's offering comprises markets for energy, agriculture, freight, metals, and environmentals, including the EU Emissions Trading Scheme.

Today, the vast majority of commodity derivatives listed at EEX Group are denominated in Euro. Notable exceptions are futures relating to freight, Japanese power, LNG and UK power and gas.

However, commodity derivatives are by nature global products that are traded in a highly competitive environment. The introduction of the position limit regime as currently calibrated has negatively impacted the EU's competitive position compared to other jurisdictions (please see our response to Q69.1). It is therefore important to further allow development of an EU-based commodity-trading sector, as it also helps to increase the role of the euro as a denominating currency and can avoid the lock-in of trading into non-European infrastructure exposed to third-country influence. The currency for derivatives follows that which is the standard for the underlying physical market.

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

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

*5,000 character(s) maximum*

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

DBG suggests considering a position limit exemption for securitised derivatives as well as cash-settled derivatives on broad-based indices composed of commodities related items.

As indicated by ESMA in its recent final review report on the position limits regime, securitised derivatives should be excluded from the scope of the position limit and position reporting regime to ensure a more consistent approach of instruments sharing similar characteristics under MiFID II. DBG supports ESMA's recommendation. We are of the view that the position limit framework fails to recognise the unique characteristics of securitised derivatives compared to other commodity derivatives and therefore does not appear to be an appropriate tool for preventing market abuse and ensuring orderly pricing and settlement conditions in those instruments.

As opposed to commodity derivative contracts, securitised derivatives based on commodities are transferable securities. The commodity securitised derivatives market is characterized by a large number of different issuances, each one registered within the central securities depository for a specific size and any possible increase follows a specific procedure duly approved by the relevant CA. This contrasts with standard commodity derivatives where the amount of open interest, and thereby the size of a position, is potentially unlimited. It is also worth noting that at the time of issue, the issuer or the intermediary in charge of the distribution of the issuance holds 100% of the issue, which challenges the very application of a position limit regime. In addition, most of securitised derivatives are then ultimately held by a large number of retail investors, which does not raise the same risk of abusing a dominant position or to orderly pricing and settlement conditions as for ordinary commodity derivative contracts. It is also worth noting that securitised derivatives are very similar to Exchange Traded Commodities (ETCs), which are classified as debt instruments and do not fall under the position limit regime. Contracts for differences (CFDs) based on commodities are not classified either as commodity derivatives and fall outside the position limit regime as well. Moreover, the notion of spot month and other months, for which position limits are to be set under Article 57(3) of MiFID II, is not applicable to securitised derivatives. The concept of open interest is not well suited to those instruments.

Also, DBG strongly recommends that cash-settled derivatives on broad-based indices composed of commodities related items should not be included in the scope of the position limits regime. As stated in our responses to ESMA's Call for Evidence as well as Consultation on the position limits regime, we believe that derivatives on broad-based commodity indices are wrongly captured in the scope of the regime which has been introduced with the policy objective to avoid market abuse and ensure orderly pricing and settlement in the commodities derivatives market. However, compared to the regime's effectiveness, rather exchanges' market oversight systems, including compliance, supervision and surveillance activities which have been calibrated prior to the MiFID II position limits regime have proven to effectively prevent market abuse and ensure orderly pricing and delivery while allowing new

and illiquid products to develop.

Especially for cash-settled derivatives on broad-based commodities index underlyings, it does not seem reasonable to have an additional limit on the index derivatives, as the individual components are already under position limit regime on the exchanges where these are traded. Moreover, these contracts are cash-settled, and it is not possible to squeeze (corner) a market link in a physically-delivered derivatives contract.

While we acknowledge that regulators and legislators might be concerned that the exclusion from the scope might open opportunity for loopholes, we would like to suggest again that product design and mechanisms of derivatives on broad-based commodity indices - already fulfilling the objectives of the regime - should be taken into consideration. The position limits regime does not provide a reasonable measure for increasing market integrity but impairs the growth of and demotivates clients' flow to shift to transparent and electronically traded markets. It also limits the capability of liquidity providers to fulfil their role and comply with the regulatory requirements, as these are stemming from a mis-categorisation into the scope of the regime.

**Question 71.1 Please explain your answer to question 71:**

*5,000 character(s) maximum*

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

DBG believes that to overcome the negative impact of the current regime, a fundamental review is needed. To solve the issues we have outlined in our responses to this as well as ESMA's complementary consultations, we need to move towards a more proportionate and efficient position limit regime, by refocusing on a more limited set of mature, critical, benchmark commodity derivative contracts. Such a refocus would ensure that the goals of the position limit regime are met, mitigate the current unintended consequences for nascent and illiquid contracts and reduce the compliance burden for all concerned parties (market participants, trading venues, NCAs/ESMA).

As outlined in detail in our responses to the ESMA Consultation and Call for Evidence, we believe the regime could contribute to the MiFID objective of avoiding excessive speculating adversely affecting prices rather than to the prevention of market abuse or improved orderly pricing and settlement. For this, it is sufficient to consider mature products which serve as a benchmark in their respective markets and are relevant for the price formation for the underlying commodity. New and nascent products are unlikely to influence price movements in the underlying physical commodity market and cannot negatively impact consumers. The same approach is also taken in the US position limit regime. This view is also shared by ESMA which, in its recent review report on position limits and position management (ESMA70-156-2311), acknowledges that "the scope of position limits should be limited to commodity derivatives where position limits can play of valuable role, i.e. to well-developed critical contracts where price formation takes place and that have a role in the pricing of the underlying commodity and other related commodity derivatives."

Additionally, a focused scope would allow new and nascent contracts to develop and mitigate the current constraints addressed in Q70. This contributes directly to the policy objective of the Directive as expressed in its implementing RTS 21: "Position limits should not create barriers to the development of new commodity derivatives and should not prevent less liquid sections of the commodity derivative markets from working adequately".

These (non-critical) contracts would remain subject to the position reporting regime under Art. 58 MiFID II, the pre-existing position monitoring and position management measures by exchanges and the market oversight practices of exchanges' market supervision and market surveillance departments that apply the principles laid down in REMIT and MAR. Thus, removing position limits for such contracts would not pose a risk to the transparency and functioning of the respective markets or undermine the goals of the regime.

We believe limiting the scope of the regime to 'critical' benchmark contracts would increase the competitiveness and liquidity of European commodity markets. Contracts on third country venues are often near-perfect, more liquid substitutes for EU derivatives, leaving EU trading venues with a competitive disadvantage following the stringent limits. From this perspective, given the majority of commodity trading is happening outside the EU, as presented by ESMA in their Review Report, similar contracts listed on third-country exchanges should be taken into account when determining an EU specific list of critical benchmark contracts.

In this context, we also support ESMA's proposal for a more pragmatic approach towards competing critical contracts on different venues with the same characteristics and physical underlying. In combination with a reduced scope, this will solve potential competitive disadvantages between EU exchanges. The definition of "same contract" does not reflect the commodity derivatives markets' reality. Instead, the open interest figure which serves as a basis for setting the other month's limit could be provided by the trading venue providing the critical contract that has the highest average open interest over a certain period, i.e. one year.

In sum, we believe that limiting the scope of the position limits regime to 'critical' contracts will address the issues brought forward in Q70 and ESMA's complementary consultations. It would lead to more volumes being traded on the exchanges, contributing to a more transparent trading environment needed for a cost-efficient energy transition. Lastly, a more efficient regime would contribute to the European Commission's objective to strengthen the competitiveness of European commodity derivatives markets in the context of the international role of the Euro.

Finally, we strongly support ESMA in its recommendation of a two-tier approach that short term amendments to RTS 21, and notably Art. 15, are needed to already mitigate the negative impact of the regime on nascent and illiquid contracts while the more fundamental reform is dealt with as part of the Level 1 review.

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

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

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

.....

**Open interest:**

**Threshold for open interest:**

300.000

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

20

**Please explain why you consider that the open interest is a criterion that could be used:***5,000 character(s) maximum*

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

DBG considers that a contract should have at least 300.000 lots of open interest on average over one year to qualify as 'critical'. Based on 2019 (pre-Brexit) figures, this would apply to more than twenty commodity derivative contracts.

Exchanges use various, often highly correlated, criteria to assess the liquidity of a market. They include, inter alia, open interest, share of open interest versus deliverable supply, number of active trading participants, churn ratio (for physically-delivered contracts), share of screen execution and average trading horizon. Open interest is in this regard the most relevant and most often referred to. Therefore, we consider a commodity derivative contract to be 'critical' once it has developed into a highly liquid instrument with open interest levels that imply that all the various more detailed liquidity criteria have been met.

Based on these criteria which exchanges use to determine which markets should be considered mature and developed, DBG recommends a contract should have at least 300,000 lots of open interest on average over a year to qualify as 'critical'. This number should serve as a minimum threshold which qualifies a contract to the position limits regime and should be assessed against a deeper market understanding. Please refer to our response to Q72.1 for more details.

**Question 72.1 Please explain your answer to question 72:***5,000 character(s) maximum*

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

As specified above, open interest is the most important indicator for exchanges to determine whether an instrument is highly liquid and mature. When assessed in function of the market reality, it shows the potential of instruments to serve as a benchmark contract for the underlying commodity.

In relation to the "type and variety of market participants", in the interest of transparency and simplicity of the regime, we recommend that this criterion is not considered. However, should the European Commission wish to take it into account in addition to open interest, we recommend that there should be at least 50 active trading market participants in a contract on average over a one-year period. This number of market participants is also a factor to be considered by NCAs when setting position limits under the implementing legislation of Art. 57 MiFID II. As suggested above, to qualify as "critical", a contract would have to breach the thresholds for open interest and actively trading participants.

Furthermore, ESMA rightly points out in its review report (ESMA70-156-2311) that, in a post-Brexit environment, a more limited amount of benchmark commodity derivative contracts will reside in the European Union. However, we would like to urge the European Commission and the co-legislators to refrain from artificially classifying contracts as critical. This would hinder the development of genuinely non-critical commodity derivative contracts in the European Union and thereby at best maintain the status quo. Rather than designing thresholds to cover a wider range of contracts, European policy-makers should ensure that the EU financial services legislation is proportionate and effective. A reduced scope to genuine 'critical' mature contracts, identified by using 300,000 lots open interest as a reference minimum threshold, would allow Euro-denominated commodity derivative contracts to develop into European and global benchmark contracts.

In case the European Commission may wish to take more criteria into account, we believe taking a two-tier approach would be most appropriate. The open interest figure on average over one year should hereby serve as a strict minimum threshold to qualify contracts for the regime. This gives NCAs and ESMA the opportunity to, in a second step, assess the 'critical nature' of these highly liquid contracts and set bespoke limits based on a deeper market understanding. This was previously impossible due to the enormous number of contracts for which limits needed to be defined. Such approach ensures that only mature products that are able to function well under the position limit regime receive an appropriate limit and 'critical' status, while nascent contracts are given the opportunity to further develop.

This second determination step should take into account whether the price signal of a 'critical' contract is broadly recognised in the wider market as a relevant benchmark price for its underlying commodity. Thereby, it is particularly important to consider the existence of non-EU derivatives markets with the same underlying commodity. If a market has developed elsewhere for the same underlying commodity, there is a risk that the non-EU market attracts the liquidity of the EU-based market.

Lastly, we would support looking at the underlying commodity in order

to fulfil the objective to avoid excessive speculation adversely leading to price volatility. As highlighted in our response to ESMA's consultation on the position limits regime. It should be noted that it is not scientifically proven that excessive speculation leads by default to price volatility. While for some (agriculture) contracts, in particular time frames, this has been demonstrated, for others it was price volatility that cause excessive speculation, while in further cases there was a bilateral relationship.

We appreciate ESMA's recommendation in the Review Report that further work and consultation will need to be undertaken to determine relevant thresholds and ensure that an appropriate number of benchmark commodity derivatives traded in the EU remain subject to the regime. This will allow for more timely adjustments as required by market developments. For this, it is of utmost importance that ESMA consults all relevant actors in the identified commodities' value chain.

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:**

*5,000 character(s) maximum*

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

We do not consider any further harmonisation of position management controls to be necessary. Thereby, as position reporting, monitoring, management and control activities are already subject to REMIT, MAR and MiFID II principles, we are convinced there is already sufficient consistency across trading venues. These regulations as well as the establishment of market supervision and market surveillance departments have been effective in preventing market abuse and excessive speculation.

To recall from our responses to ESMA's Call for Evidence and complementary consultation, besides being subject to the MiFID II position management regime, exchange-traded gas and power derivatives markets are also under close scrutiny of the exchanges' market supervision and market surveillance departments. The departments apply the principles set out in REMIT and MAR. While REMIT introduces a sector-specific legal framework for identifying and penalizing insider trading and market manipulation in wholesale energy markets across Europe, MAR establishes a pan-European regime to prevent and detect market abuse, market manipulation and insider dealing in financial markets, including energy derivative markets.

It has to be noted that it is the legal responsibility of the EEX Group Market Surveillance Department (from DBG's commodity branch) to ensure that trading processes and pricing are carried out on a fair and manipulation-free basis. In Germany, the Market Surveillance Department is an independent and autonomous body of the exchange, which is only subject to instructions by the Saxon State Ministry of Economic Affairs, Labor and Transport.

For example, if the EEX Market Surveillance Department has the justified suspicion that an order or transaction violates the provisions of Art. 3 or 5 REMIT, it has to inform the national (energy) Market Monitoring Authorities or in case of Art. 14 or 15 MAR (ban on engaging in or attempting to engage in insider dealing or market manipulation), it shall inform the German Federal Financial Supervisory Authority thereof.

Another example of position management regimes commonly implemented across exchanges before and since MiFID II are accountability levels. EEX Group has successfully implemented accountability levels which trigger an information request from the trading venue to better understand the reason and intention of the position built and the potential risks attached to it. EEX Group then follows up as appropriate, and potentially asks a person to reduce or terminate a position if no adequate answer is provided.

In sum, as the nature of membership as well as characteristics of contracts can diverge substantially across individual exchanges, DBG is supportive of the current approach whereby a substantial responsibility for position monitoring, management and control is delegated to exchanges.

**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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Illiquid	<input checked="" 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:**

*5,000 character(s) maximum*

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

DBG fully supports a position limit exemption for financial counterparties under mandatory liquidity provision obligations, similar to the one outlined in Art. 2(4) MiFID II. The lack of a liquidity provision exemption in combination with the minimis limit being too restrictive has been a substantial barrier to the development of new contracts, such as EEX agriculture and EEX dry bulk freight contracts. However, we want to reiterate that reducing the regime's scope to critical benchmark contracts receives our highest priority and would in the most efficient manner solve the problems for new and nascent contracts.

However, in case such exemption is considered, it should not be limited to financial counterparties only, but expanded to non-financial counterparties too, as in many cases, if not in most cases, non-financial counterparties fulfil mandatory liquidity obligations as well. The exemption is in particular necessary for new contracts that need financial or non-financial entities to incentivise trading in the contract, at least if the position limit regime continues to include the restrictive 2,500 lots limit on new and illiquid contracts. If no such exemption is available and the 2,500 lots limit continues to apply, exchanges have to contract a "panel" of liquidity providers to ensure that none of these firms exceed the 2,500 lots limit. In nascent markets it is highly possible that there may not be the required number of counterparties to build such a "panel" and even where this is the case, it adds significant costs for the exchange.

In order to avoid such a situation, we recommend that the position limit regime includes such an exemption based on the same conditions as the liquidity provision exemption outlined in Art. 2(4) MiFID II and the ESMA Q&A on MiFID II/MiFIR commodity derivative topics.

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

	Ye s	N o	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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
A financial counterparty	<input checked="" 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:**

*5,000 character(s) maximum*

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

DBG fully supports a hedging exemption for both kinds of financial counterparties in relation to positions which are objectively measurable as reducing risks. This, in combination with a focus on 'critical' benchmark contracts would address our concerns with the regime as explained in Q70 and our responses to the complementary ESMA consultation and call for evidence.

Currently, financial entities, though mainly engaging in hedging activities, are unable to benefit from the hedging exemption. Investment banks as well as commodity trading houses play a vital role in providing smaller commercial players with access to commodity derivatives markets. Moreover, also commercial players can be an investment firm under MiFID II. This does not imply that they do not need a hedging exemption anymore for the commercial activities they are undertaking as their main business.

In iron ore and freight, for example, it is possible that a bank would finance a miner or steel mill with the caveat that the business needs to initiate a hedging programme to remove volatility from future costs or revenues (or both). The hedging programme would usually be conducted with the bank on an OTC basis with the bank then offsetting that risk in the cleared market. Even though within the context of such a transaction the bank clearly performs a hedging activity, it would not be able to make use of the exemption envisaged under Art. 8 MiFIR or Art. 57 MiFID II.

Figures 5 and 6 (in the attached Annex I) illustrate the negative impact of the 2,500 lots limit in combination with the lack of hedging exemption possibilities for financial counterparties on the Gas Czech Virtual Trading Point, CZ VTP, and Zeebrugge Trading Point (ZTP) gas future markets. Both markets took off in the course of 2018, but then declined when the 2,500 lots limit became too restrictive. With only 10 to 12 market participants registered to trading and only 1 or 2 very active market participants being responsible for most of the volumes - an absolutely normal situation for a new contract -, the position limit put a halt to the further development of the contract. Important participants in this example are investment firms, trading gas derivatives to hedge its retail activity. However, because of its classification as investment firm, they have no other option than to stop trading and look for other hedging alternatives. This increases its costs and in turn the costs to end consumers. In such a case, the investment firm should be allowed to benefit from a hedging exemption. As stated in our responses to the complementary ESMA call for evidence and consultation, exchanges have extensive experience with operating a position management system allowing for exemptions from limits of positions held for genuine hedging purposes by market participants, regardless of their legal status and nature of business. This approach allows commodity market participants to manage their risks efficiently. We believe a similar system, inclusive of financial counterparties, could be operated by financial regulators across the EU all the more given the amount of information they receive about the activities of such entities.

## 2. Pre-trade transparency

MiFIR RTS 2 (Commission Delegated Regulation (EU) No 2017/583 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R0583>)) sets out the large-in-scale (LIS) levels are based on notional values. In order to translate the notional value into a block threshold, exchanges have to convert the notional value to lots by dividing it by the price of a futures or options contract in a certain historical period.

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

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

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

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

*5,000 character(s) maximum*

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

DBG fully agrees with the objectives of MiFID II/MiFIR commitments to “improve the functioning and transparency of financial and commodity markets and address excessive commodity price volatility”. While we support the pre-trade transparency regime, we believe the current calibration could merit a more tailor-made approach to commodity derivative markets. When taking into account the below suggestions, the regime would allow for pre-negotiated transactions of the most illiquid and nascent contracts to be brought to an exchange and to central clearing and subsequently familiarise commodity traders with the beneficial features of increased transparency and security of orderbook trading. The current regime at times limits pre-negotiated trades in developing contracts from being submitted to exchanges and to central clearing, thereby in particular constraining the ability of market participants to hedge their commercial exposures on exchanges. The current methodology and its segmentation approach (such as liquidity accumulation across venues) has led to a significant number of niche and nascent products being inappropriately (re-) classified as liquid, and thus becoming subject to significantly broader transparency requirements, which were previously reserved for developed markets. We therefore recommend that both Level 1 and 2 provisions are revised: We recommend that the hedging exemption pursuant Art. 8(1) MiFIR is extended to cover all market participants managing risks arising from activity in the physical market, incl. financial counterparties. Such a solution would allow to build liquidity and permit market participants to sufficiently hedge their positions which are objectively measurable as reducing risks.

Appropriate amendments in RTS 2 should be made to adjust the factors currently leading to inappropriate qualification of products as liquid and LIS thresholds:

First, the inclusion of price in the calculation of LIS threshold values and assessment of liquidity can lead to misinterpretations and confusion when measuring liquidity in instruments that are not natively defined in notional values. Applying notional value as per, for example, the ADNA (Average Daily Notional Amount) across all asset classes has proved to be impractical to an analysis of market liquidity. Moreover, market players typically hedge their production and consumption by trading in lots and not in notional value. Thus, we recommend that any liquidity analysis and in particular the expression of the LIS thresholds is normalised to a base quantity unit that is native to the asset class. For commodities, this will typically be a specific unit of measure (e.g. MW).

Second, in order for a market to be considered liquid, a sufficiently high number of trades should be executed on each trading day. We recommend that the threshold should be set at the median of 100 transactions per day instead of the current average of 10. Considering the fact that liquidity is the ability to find a counterparty in a relatively short period of time within a given trading day, a threshold of 100 trades per day has the practical implication that it represents an average of approximately 1 trade every 5 minutes on an 8-hour trading day. In contrast, a threshold of 10 trades represents just 1.25 trades per hour.

For the same reason, a median is proposed as the minimum instead of a

mean. The mean can simply be an alternate view of the sum count of trades per year.

Third, the ADNA does not automatically reflect a large number of trades and thus a high level of liquidity. We suggest to rather look at trade frequency and standard size, excluding unrelated vectors such as price and currency.

Fourth, the current percentile-based approach can lead to significant counterintuitive effects, which is important to keep in mind when setting LIS thresholds. Instruments with lower liquidity cannot support higher LIS levels than high-liquidity instruments. We therefore suggest adapting this approach. In a similar fashion, for many commodity markets, the minimum threshold of 500.000 EUR is not reflective of the currently available liquidity and should be adjusted. By bringing the LIS value more closely in line with the actual market conditions, the overall negative market impact should be reduced.

Finally, we want to reiterate our proposal to separate liquidity assessments by trading venue. Although the illiquid instruments waiver is intended to protect new and illiquid markets, accumulating liquidity across exchanges defeats this purpose. We do not think a liquidity assessment accurately reflects market conditions if an instrument is considered liquid on one venue (although liquidity is low) just because it has been found to be liquid on another venue. This makes it practically impossible to launch a new contract that is already liquid on another exchange.

Please see Annex I for an example.

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

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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.

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### V. Derivatives Trading Obligation<sup>9</sup>

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

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

products.

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards more transparency and competition in trading of instruments subject to the DTO.	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more transparency and competition in trading of instruments subject to the DTO.	<input checked="" 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 checked="" 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 checked="" 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:**

*5,000 character(s) maximum*

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

DBG has welcomed the introduction of the trading obligation for OTC derivatives (DTO) under MiFIR as one of the key cornerstones of the G20 reforms in the aftermath of the financial crisis. DBG considers central clearing and trading of OTC-derivatives on exchanges as beneficial for the overall level of transparency and ultimately as integral for the stability of financial markets.

ESMA's Annual Statistical Report on the EU Derivatives Markets in 2019 (ESMA 50-157-2025) shows that the DTO has increased the notional volume executed on trading venues from 13% to 17%. DBG considers this a promising first result. However, this also means that 83% of the notional is still executed OTC off-venue. DBG therefore wants to underline that ESMA and the European Commission should not stop here in its efforts to bring trading volumes from opaque OTC markets to trading venues.

If the current share of the notional volume executed on trading venues cannot be further increased via the current design of the DTO, DBG suggests considering further measures in order to deliver on the final goal of the DTO. Please see our responses to the following questions in this context.

**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:**

*5,000 character(s) maximum*

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

DBG thinks that the focus of the DTO with regard to products in scope should be extended to draw more notional volume from OTC-markets to trading venues in the attempt to increase transparency and stability of financial markets. DBG acknowledges that a scope extension would come along with initial fixed costs for OTC market participants. However, DBG considers that the short-term costs are outweighed by the long-term benefits of more notional volume executed on trading venues. The more OTC market participants engage in the resilient, transparent and regulated environment of trading venues, the more liquidity will be attracted, and trading activities will increasingly shift from opaque OTC markets to transparent and regulated venues.

Moreover, we are of the view that discrepancies between the MiFIR Transparency Regime and the Trading Obligation should be aligned to the best extent possible. To our view, it is imperative for ESMA to take into account the interplay of the trading obligation for OTC derivatives and the adjacent transparency requirement that would apply to trading venue offering the for trading eligible instruments. Hence, we disagree with ESMA's current approach taken in its parallel consultation on the transparency regime for non-equity instruments, the DTO and RTS2 not to investigate if and how the transparency regime and the trading obligation should be better aligned.

DBG would consider a combination of trading obligation and adequate transparency regime in the following way to be ideal:

- First, ESMA to define which asset classes are generally appropriate for trading on trading venues (i.e. trading eligible under the MiFIR trading obligation);
- Moreover, trading venues to assess the application of pre- and/or post- trade transparency exemptions in order to mitigate any adverse effects, and consequently to apply for waivers and deferrals with competent authorities.

ESMA has already put a lot of effort in designing thresholds for pre- and post-trade LIS in OTC derivatives. This effort has resulted in various threshold levels that allow trading venues to waive pre- and post-trade transparency where meaningful but allow the market structure to evolve in a way that the trading obligation sets the tone for the asset class to be traded on trading venues in the first place.

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](https://www.esma.europa.eu/press-news/esma-news/esma-publishes-final-report-mifir-alignments-following-introduction-emir-refit) (<https://www.esma.europa.eu/press-news/esma-news/esma-publishes-final-report-mifir-alignments-following-introduction-emir-refit>).

**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:**

*5,000 character(s) maximum*

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

DBG acknowledges the target of EMIR Refit to relief smaller market participants from unnecessary burden and understands the proposal on the alignment of the MiFIR provisions to reflect the EMIR Refit changes as part of this attempt.

DBG wants to highlight that the scope alignment will lead to an exemption of smaller counterparties from the DTO. As a result, these market participants might be inclined to turn to OTC-markets as they have no legal obligation to trade on trading venues anymore. It seems questionable whether exempting these market participants will eventually serve to their advantage as they will most likely remain strongly bilaterally exposed to a potential default of large market participants and overall will increase their dependence on these. While the exemption from both clearing and trading obligations may appear as an initial cost relief for some, these firms might become undercollateralized, exposed to the default of systemic banks which in turn is keeping the resilience of the overall system limited and the benefits of increased transparency overall.

Any recommendation to the European Commission to align the trading obligation for OTC derivatives under MiFIR with the recent changes to the counterparties in scope of the clearing obligation under EMIR Refit should therefore not be rushed - but rather based on evidence. The proposals to remove counterparties from the trading obligation on the basis of this alignment has the air of a cascade of rolling back regulatory reform.

Secondly, in order to achieve an optimal outcome for the market and legislative intentions, we believe any exemption from key rules agreed by the G20 with a view to making our markets more stable and resilient should be based on a thorough impact assessment conducted by ESMA in order to avoid that any unintended side effects will override the common goal of avoiding unnecessary regulatory burden in particular for smaller market participants.

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## VI. Multilateral systems

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

Some trading venues express concerns due to emerging trends which allow alternative type of electronic platforms to offer very similar functionality to a multilateral system for the matching of multiple buying and selling interests. These electronic platforms are not authorised as regulated trading venues, hence they do not have to comply with the associated regulatory requirements, notably in terms of reporting obligations or business rules to manage clients' relationships. The main argument advanced against regulation of these electronic systems is that they match trading interests on a bilateral basis and not via a multilateral system.

However, according to traditional trading venues, this alternative electronic protocol may cause competitive distortions, effectively creating a level playing field distortion against the regulated trading venues which are bound by MIFID II/MiFIR provisions. There is a debate whether MiFID II/MiFIR should therefore take a more functional approach and define the operation of a trading facility in broader terms than the current definition of trading venues or multilateral system as to encompass these systems and ensure fair treatment for market players.

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

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

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

*5,000 character(s) maximum*

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

DBG does rather not agree that the concept of multilateral system under MiFID II/MiFIR is uniformly understood and does not believe there is a level playing field between the different categories of market players in the equity space. Please see our responses to Q5.1, Q25 and Q81.1 below. National regulators should carefully monitor if market structures evolve that circumvent license requirements applying to multilateral systems. Against this background, DBG would suggest that it may make sense for the European Commission to consider including clear restrictions that apply to bilateral trading systems when revisiting the MiFID II/MiFIR legislation.

Indeed, in the case of systematic internaliser (SI), it left open the possibility to conduct riskless back-to-back transactions and the potential for banks to enable Broker Crossing Network (BCN) type models to be operated within SIs; ESMA sought to clarify the situation by initially providing guidance through Level 3 Q&As. This ultimately led the European Commission to amend one of the Level 2 Delegated Acts. The Level 2 amendment prohibits investment firms, when dealing on their own account, from entering into matching arrangements with entities outside their group with the objective of carrying out de facto riskless back-to-back transactions in financial instruments outside trading venues. This is an important legislative amendment to ensure that investment firms cannot simply use SIs to accommodate BCN models and thereby transform SIs into a hybrid trading model. These changes were subsequently complemented by a further ESMA Q&A on back-to-back trading across asset classes. Notwithstanding these initiatives, we believe that regulators should continue to be alert to the potential for investment firms to develop models by which third party proprietary traders are enabled to provide liquidity to the customers of SIs. This would actually resemble multilateral systems rather than pure bilateral systems. In this respect, we recommend considering if additional disclosure requirements may contribute to gain a better understanding of the modus operandi of bilateral trading models, their legal framing as well as their regulatory scrutiny.

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

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N.A.
The EU intervention been successful in achieving or progressing towards the objective of more transparency in share trading.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input 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 transparency in share trading.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More transparency in share trading correspond with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The DVC has provided EU added value	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

**Quantitative elements for question 82.1:**

	Estimate (in €)
Benefits	

Costs	
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**Qualitative elements for question 82.1:**

*5,000 character(s) maximum*

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

As underlined by ESMA in its Consultation Paper on the transparency regime for equity and equity like instruments (ESMA70-156-2188), regulators did attempt to limit the amount of dark trading with the DVC mechanism targeting the reference price and the negotiated trade waivers and thereby avoiding to deteriorate the price discovery process. It did however result into a cumbersome process without any improved transparency, market liquidity nor price efficiency. Rather, volumes turned to quasi-dark trading mechanisms, being re-routed to SIs or other alternative execution venues like frequent batch auctions (FBAs) and thereby further fragmenting equity markets. Note as well that from a market participant perspective, the DVC mechanism requires a constant monitoring of traded volumes on markets and a rerouting of orders (fine tuning of SORs) each time a dark venue or all dark venues get hit by the 4% or 8% cap.

When ESMA published the first DVC data in March 2018, 44 instruments of the DAX, MDAX and SDAX were banned from trading for six months as they breached the caps. As observed on Xetra, trading on FBAs increased from 1.15% to 4.3% between February and May 2018 for those instruments. For all other instruments still traded on dark venues, the market share of FBAs increased more modestly from 0.52% to 1.41% on the same period. Those results were confirmed by the analysis conducted by Rosenblatt Securities who observed a "seesaw effect" with an immediate shift back to dark pools in September once the ban was lifted. In banned stocks, dark pools traded 2.16% of the volume in August 2018, reverting to 5.13% in the month after the caps were lifted. In the same time, periodic auctions on banned stocks dropped from 2.16% to 1.17% (Rosenblatt Securities Inc., MiFID II dark caps: no light at the end of the tunnel, Trading Talk Market Structure Analysis, 19 November 2018).

Therefore, DBG supports the policy option raised by ESMA in its consultation to remove the DVC mechanism as part of the reduction of pre-trade transparency waivers for equities and equity-like instruments with a view to simplify the regime and effectively limit dark trading. DBG however strongly objects the pure and simple removal of the DVC mechanism as proposed by some respondents to the ESMA consultation (ESMA 70-156-2188) without mitigating measures to ensure a limitation of the volumes executed on dark trading venues. As other respondents alternatively proposed to introduce a threshold to orders on NT and RP venues, DBG considers the only relevant threshold is the LIS, hereby rendering the NT and RP waivers obsolete. Moreover, as developed in our response to Q27, the average trade size under RP and NT waivers is rather limited and does not justify execution away from lit markets in terms of price impact/information leakage. The average trade size in dark venues is approximately 17k including LIS venues where the average trade size is above 800k, meaning the average trade size for the other waiver-based venues is very small; hence exemptions from full transparency are not justified (see Rosenblatt Securities, Let there be light: Monthly Dark Liquidity Tracker - European Edition, 16 December 2019). Rather we understand that the execution at midpoint is the key factor to redirect those orders towards dark venues. If limitations to dark trading were entirely removed, and FBAs not subject to the tick size regime combined with unchanged transparency requirements for SIs, a significant flow on equities would move further to midpoint trading

venues and reduced transparent markets, resulting in an inevitable deterioration of price formation.

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

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

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

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

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

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

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

**Question 83.1 If you do see any particular operational or technical issues in applying open access requirements which should be addressed, please specify for which financial instrument(s) this would apply and explain your reasoning:**

*5,000 character(s) maximum*

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

Art. 35 and 36 MiFIR introduced non-discriminatory or "open access" provisions for transferable securities and money market instruments since 3rd January 2018. While applying open access provisions to these much simpler and short-term cash markets poses less systemic risk compared to Exchange Traded Derivatives (ETD) markets and increased competition across cash Trading Venues (TVs) and CCPs, operational and technical difficulties have nonetheless been significant and resulted in a much longer timespan between receipt, approval and implementation of open access requests. Please refer to Annex II for a detailed explanation of these difficulties.

However, introducing open access provisions for ETDs would bring significantly more financial stability and liquidity risks, and thereby overall costs for markets, with potential dire implications for the broader economy.

Well aware of the differences with other asset classes, the co-legislators included the possibility for the European Commission to further delay the introduction of open access provisions for ETDs. To this date, we note that the European Commission, under consideration of the reports provided by the European Supervisory Authorities (ESMA, ESRB), has been unable to conduct a quantitative impact assessment regarding the potential financial stability risks resulting from extending the open access provisions to ETDs, as was originally mandated. Rather, the reports were conducted on a qualitative assessment with little to no evidence to support that the financial stability risks would be negligible compared to cash products. By contrast, all concerned NCAs have decided to follow the principle of precaution and have granted temporary transitional provisions for their CCPs and TVs from the open access requirements for ETDs, which is set to expire on 3 July 2020.

This decision is based on the fact that ETDs are fundamentally different from cash products. Derivative contracts can have a long duration (sometimes decades), are far more complex, and require much more stringent requirements and controls from CCPs as neutral and independent risk managers.

Similarly, ETDs are different from OTC contracts by design as the contract specifications of ETDs are unique to the regulated market (RM) on which they are admitted to trading. Their specifications relate not just to technical conditions but also to their legal status and the jurisdiction of any disputes arising and/or insolvency law that would apply. Preserving control over ETD contract specifications enables RMs to effectively deliver on their legal responsibilities in terms of risk management and orderly functioning of markets. By contrast, standardised OTC derivatives are by industry convention subject to ISDA specifications. In other words, the TV on which the OTC derivatives are traded - or indeed, if they are traded bilaterally - has no impact on the product itself.

The provisions in those contracts will however have a significant importance on the recovery and resolution (RR) plans of CCPs with multiple links to different TVs. Fragmented markets, with activities of market participants spread across different venues will make the default management process and the potential RR plans more complex, time consuming and risky, as they add an additional channel of

contagion across CCPs. Importantly, this will not only hold true for CCP operators but notably also for resolution authorities that may not be able to resolve a serious CCP crisis where concerned transactions are subject to different laws and requirements (such as national insolvency laws and its impact on the quantification of the No Creditor Worse Off). In its January 2019 report, the ESRB notably called to clarify the treatment of interoperability arrangements in the upcoming CCP RR framework, highlighting the “systemic risks arising from operational complexity, concentration risks, the danger of complete market closures, as well as the need for adequate cross-CCP margins and additional concentration margins for directional CCP link exposures”.

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

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

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

*5,000 character(s) maximum*

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

While applying open access provisions to cash products poses less systemic risk and has resulted in operational and technical problems driving implementation costs for both NCAs and market operators and infrastructure providers as outlined in Q83.1 and Annex II, introducing open access provisions for ETDs would bring significant financial stability and liquidity risks and thereby overall costs for markets, with potential dire implications for the broader economy.

**Concentration of clearing services & risk of single point of failure:**  
We share the view of the European Commission (as well as ESMA and ESRB) in its report that "one of the main risks associated with open and non-discriminatory access provisions for ETDs is the concentration risk. Under this risk scenario, the possibility for TVs to choose their CCP could lead to a situation where the most attractive CCP for one specific ETD or asset class becomes the single place for central clearing" across all asset classes, in order to maximise netting efficiency and reduce collateral requirements. Moreover, the Commission's Report adds that "a high level of concentration would expose the financial system to a single point of failure with potential systemic consequences and the impossibility for market participants to efficiently move their positions to another CCP in case of failure."

**Decreasing competition across CCPs & weakened innovation for TVs:**  
Concentrating all clearing activities into one CCP would effectively diminish competition in the EU (the very thing open access provisions are supposed to enhance) and bring down innovation due to increased latency in approving new products and services. For example, both LIFFE (former ICE Futures Europe) and LME opted to split from LCH.Clearnet their common clearing house due to inhibitions to competition and innovation.

**Fragmentation risk of ETDs:**

Breaking the links between the TV and its CCP would disrupt liquidity and the price discovery process of ETDs across different exchanges. In practice, if a Regulated Market (RM) had access arrangements with different CCPs, the RM would be forced to hold separate order books for each CCP, as trades can only be cleared if two Clearing Members wish to clear in the same CCP, thereby diminishing the likelihood of trades matching and breaking the liquidity pool.

As ETDs contracts are never exactly the same (i.e. not fungible compared to OTC contracts), a CCP may consider a contract, as economically non-equivalent and apply different margin and collateral methodologies. While these decisions are allowed under ESMA's RTS to ensure the safety and resilience of CCPs given their systemic role for financial stability, it also shows that the fragmentation issue cannot be fully resolved for ETDs and that markets will remain split and less liquid under open access provisions. This may have negative implications for the effective functioning of ETD markets as risk transfer markets, with the knock-on effects on monetary policy.

**Destabilization of financial markets:**

A transparent and resilient price discovery system for ETDs is crucial for financial markets as a whole, as they reflect the market's expectations of future fluctuations of these underlying markets. The most prominent case observed has been for the sovereign bond markets, which are so opaque and fragmented in the EU, that most market participants use ETDs as benchmarks to manage their exposures to Euro Area sovereign debts. Functioning ETD markets are also key for the proper conduct of monetary policy as Interest Rate Derivatives are key indicators as to how markets expect rates set by central banks to evolve.

ETD markets are also key for OTC markets users which typically turn to ETD markets during a crisis as part of a flight to quality run for deeper liquidity pools, as other more scattered and shallow OTC pools dry out. During the Great Financial Crisis, this has been particularly visible for Interest Rate Derivatives, where IRS markets froze and preferred to move to IR futures.

More specifically, we believe open access for ETD would have particularly negative and undesired impacts of ETD market structure with additional costs to be borne by market participants. Please see Annex II for further details as regards operational risk & IT costs, increase in concentration of Clearing Members as well as increase in capital requirements.

**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:**

*5,000 character(s) maximum*

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

The departure of the UK from the EU and the recent market impact by COVID-19 mean that the EU27 needs to consider the functionality and effectiveness of some critical aspects of European financial regulation to ensure financial stability and market integrity.

In the recent crisis, the ETD markets have proven again their resilience and that they are vital to the health of EU financial markets. The EU27 needs deep and liquid euro-denominated ETD markets, ensuring the proper functioning of resilient private risk transfer mechanisms and limiting costs for investors and end-users in the EU. In this context, it appears counterintuitive to risk breaking the EU's most liquid and successful markets through open access provisions at the very moment when the EU is ambitious not only to develop a thriving CMU and increase the international role of the euro, but importantly also to safeguard Europe's financial stability and market integrity in times of unprecedented market turmoil.

As laid down in the previous questions, open access provisions for ETDs constitute a key risk to EU27 financial stability and competitiveness, undermining the stability and liquidity of EU derivatives markets, as these financial instruments are fundamentally different and inherently more complex than transferable securities, thus requiring a more stringent and long-term oversight and management of risks. EU legislators clearly shared these concerns and introduced safeguards to prevent systemic risks from materializing. In light of this precautionary principle, NCAs across the EU decided on a temporary exemption until July 2020 due to Brexit.

Moreover, decisions on market structure for ETDs cannot be looked in isolation from the rest of the world. The EU is the only major jurisdiction to have fully fledged open access provisions for ETDs, while other major open market economies, such as the US and Japan, have decided against them. Further, the third country safeguards around the open access provisions appear particularly weak. Under an equivalence determination limited to Art. 38(3) MiFIR, the third country CCP is merely required to be 'subject to authorisation and to effective supervision and enforcement on an ongoing basis' and to have similar access provisions. There are no provisions to ensure a comparable trading environment in the third country, meaning the application of the same transparency and market structure requirements. This would not only mean that EU TVs and CCPs would be put at an artificial competitive disadvantage via regulatory intervention, it also means that the EU would put its sovereignty at risk by allowing third country TVs and CCPs to access EU TVs and CCPs without being subject to common supervision or enforcement of EU law. The alleged gains of open access for ETDs are highly questionable in a global context where other jurisdictions do not pursue the same objectives but rather focus on size and scalability. ETD open offer systems are extremely robust and efficient systems which have been preferred models in jurisdictions with developed and liquid markets.

Since June 2019, the only example of a voluntary interoperable link for ETDs in the EEA has ceased to exist as Oslo Børs and the London Stock Exchange Derivatives Markets announced they were ending the interoperability arrangement between Six x-clear (Norwegian branch) and LCH Ltd. Oslo Børs stated in its press release that the model of two

interoperable clearing houses required such an increase in margin to balance the risk between the two clearing house that the link was no longer viable.

More generally, industry trends have historically preferred ETD models for being safer and more resilient. The seamless integration of trading and clearing of ETDs has not prevented competition from taking place in Europe. In the past, DTB (former Eurex) successfully competed with LIFFE on the Bund-Future thanks to innovation (electronic execution), while new products are regularly developed to cater for new market needs, as for example the recent pick up in the Environmental Social Governance (ESG) Derivatives at Eurex.

By contrast, the market has observed cases where the concentration of clearing in one CCP has damaging impacts on the possibility of TVs to innovate to a point where some preferred to split from their common CCP. For example, both LIFFE (former ICE Futures Europe) and LME opted to split from LCH.Clearnet their common clearing house due to inhibitions to competition and innovation.

To conclude, we urge the European Commission to provide a short term relief via a prolongation of the national exemptions as discussed under the COVID-19 response package, while conducting a review of Art. 35/36 MiFIR on Level 1 taking into consideration the operational and technical issues as well as the risks and costs involved as outlined above and in the previous questions.

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## IX. Digitalisation and new technologies

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Technology neutrality is one of the guiding principles of the Commission's policies and one of the key objectives of the [Commission's Fintech Action Plan \(https://ec.europa.eu/info/law/better-regulation/initiatives/crypto-assets-2019/public-consultation\\_en\)](https://ec.europa.eu/info/law/better-regulation/initiatives/crypto-assets-2019/public-consultation_en). 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 emergency 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 \(https://ec.europa.eu/info/law/better-regulation/initiatives/financial-services-digital-resilience-2019/public-consultation\\_en\)](https://ec.europa.eu/info/law/better-regulation/initiatives/financial-services-digital-resilience-2019/public-consultation_en), 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:**

*5,000 character(s) maximum*

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

DBG in its capacity as a financial market infrastructure (FMI) provider uses modern IT and technological solutions to operate, and service the financial sector worldwide. DBG's technologies are at the core of its operations, where they are used to organize the regulated markets, are an integral part of the regulated services we operate. We ensure the efficient functioning of these markets; including but not limited to market data, stock exchange indices, clearing, securities custody, etc.

Regarding new technologies, we are currently working on the use of cloud technology, AI and distributed ledger technology (DLT) / blockchain as well as automation of processes. We use these technologies in a rather gradual, granular and tested manner, hence continuing to guarantee transparency, stability and investor protection at all times.

In this context, we started co-operations with institutions and companies, including start-ups, see for example the recent successful launch of HQLAx (<https://www.hqla-x.com/>), which leverages DLT to provide liquidity management and collateral management solutions for institutional clients in the global securities financing markets. Another example is the BLOCKBASTER for digital assets, a delivery versus payment (DVP) solution for settlements on DLT (<https://www.bundesbank.de/resource/blob/766672/29feab3f9079540441e3abdaled2d2c1/mL/2018-10-25-blockbaster-final-report-data.pdf>) as well as the "Collateralized Coin", a Central Bank Money backed coin, aimed to achieve DVC on a DLT. This concept can be used to bridge multiple Commercial Bank Backed Coins. Transactions have been settled in EUR and CHF with banks and buy-side institutions (link <https://www.deutsche-boerse.com/dbg-en/media/press-releases/Commerzbank-Deutsche-B-rse-and-MEAG-to-reach-further-step-in-post-trade-services-using-distributed-ledger-technology--1631510>).

We observe that the digital economy through the use of DLT is on the road to decentralization; this is particularly true for the financial industry. In this regard, we would like to stress on the importance of maintaining principles such as tech-neutrality and "same business, same risks, same rules" to uphold transparency, fairness, stability, investor protection and market integrity. Especially as some forms of DLT, such as public blockchains have no legally accountable entity to be held liable for failing to implement risk management procedures to address the risks in financial markets, which is a risk by itself.

In this regard a Trusted Third Party (TTP) is required in the financial industry to create trust in the market; and ensure investor protection. In a DLT environment TTPs are building a bridge for the existing financial instruments in the "traditional world" via DLT solutions, increasing market integrity by e.g. "off-chain to on-chain bridging" and guaranteeing the substance of a token, which is backed by financial instruments that is kept off ledger/chain. TTPs will play the role of a gatekeeper for future native digital assets, which will be issued directly on the chain.

In this regard, a TTP will be responsible for addressing following functions such e.g.:

- 1) Control access/admission
- 2) Set rules for the participating nodes

- 3) Address potential conflicts of interest and KYC and AML requirements
- 4) Apply risk management measures
- 5) Be reliable for market integrity, security and other regulatory requirements

The TTP will check standards for admission and the eligibility of an asset on chain: e.g. it will check if the asset is a security and transform it to a security token. Another role that the TTP will play would be to check smart contract codes (programmable deterministic language), that could be in the form of assessing adherence with international standards ISO in general ISDA for Derivatives (ISDA Master Agreement) / ICMA (Repo). A TTP should operate within a regulatory compliant framework and adhere to the relevant existing rules and regulation.

**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:**

*5,000 character(s) maximum*

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

As stated in our previous answer, DBG is currently working on the use of cloud technology, AI and DLT/blockchain as well as automation of processes. As these technologies are used in different areas of application, with different goals in mind and within different regulatory frameworks, which might need possible amendments in order to provide legal clarity and profit from the benefits of the technologies in the EU.

From our point of view, a technology-neutral approach as an overarching principle is very important, as regulation should be independent of the used technology.

However, not all of these challenges can be tackled by ensuring the principle of tech-neutrality, but have to be addressed technology-specific, as every technology mentioned presents its own challenges:

1. Cloud: outsourcing of material functions, proper risk management, clarity of the liabilities on both sides and currently missing standard contract clauses to facilitate the burdensome negotiations of compliant contracts with CSPs, especially for small / mid-sized institutions as well as a missing appropriate overarching oversight paradigm for CSPs, given the increasing importance of their services for companies in different sectors, etc.

2. Big data / AI: quality, and source and ownership of data, data protection and data sovereignty as well as ethical questions (e.g. reconciliation of decisions, biases)

3. DLT/blockchain: liability and accountability in public permission less chains, and smart contracts, material outsourcing considerations data protection and new IT-risks.

With regard to the existing framework, we find the third example in the realm of DLT/Blockchain very important, where the principle of tech-neutrality should be upheld.

We think that regulators should treat the technology itself as any other IT system, based on the principle "same business, same risk, same rules" regarding its use and connected risks.

Further, regulators should focus especially on the "records" maintained in this environment, as they could be digital representations of different forms of assets, used in the financial industry. From our point of view, these digital or crypto-assets should be treated in a "substance-over-form" approach, meaning that if they, for example, fulfill the criteria of a financial instrument in accordance with the current regulatory framework, they should be treated as such.

The current regulatory framework is widely in accordance to tech-neutrality and therefore applicable. If digital or crypto-assets represent a currently existing financial instruments (e.g. shares, commodities etc.), then they should adhere to the existing regulatory framework (MiFID II/EMIR/CSDR etc.), again, following the "same business, same risk, same rules" approach.

However, MiFID II must clarify as to which digital assets fall under the scope of financial instruments (as stipulated in Annex I of MiFID II Section C), to reflect these new assets. To this end and in order to ensure tech-neutrality further a number of other, existing regulatory requirements to financial instruments should be also applicable (e.g. MiFID II, EMD, MAR, SSR, Prospectus, CSDR, SFD, FCD, EMIR, UCITS, AIFMD).

This could be accomplished by defining a new category of financial instruments in the Annex I of MiFID II (Section C) for those crypto-assets, which are currently out of scope of the existing framework (like "crypto-currencies") and apply the relevant financial regulation to this new category as well.

Further, as new technologies carry technology-specific risks (forks, 51% attacks, network integrity etc.), regulators should consider ensuring a high level of IT security, as within any other technology. Lastly, it should be clarified that existing actors, e.g. financial market infrastructures like CCPs and CSDs, are already allowed to process these new assets, as they do with other assets classes (e.g. CCPs to accept crypto-assets as margins or CSDs to offer services on "crypto-assets").

To ensure the integrity of the financial markets and mitigate risks, new emerging actors, like custodial wallet providers, should comply with existing financial rules and regulations and ideally be licensed accordingly. For example, custodial wallet providers have to comply with (Art. 1 (2) (d) (19)) AMLD V.

In general, to uphold the principle of tech-neutrality and to benefit from new technology, it is important to strike the right balance between safety and the availability / usage of innovative technology.

**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:**

*5,000 character(s) maximum*

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

In general, we think of new technologies as an enabler bringing new opportunities to the financial industry as a whole, including the trading lifecycle specifically. At the same time, we expect an evolutionary process, rather than a revolution, due to the high level of financial stability standards and the importance of market integrity. Currently, depending on the technology, the financial industry is adapting and is still in an early stage. The benefits of the technologies differ, but are for example: increased transparency, cost reduction, speed of software development and quality by more extensive testing, increased geographical, resilience etc. We are certain that new asset classes, procedures, services and actors are emerging.

**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:**

*5,000 character(s) maximum*

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

Please refer to our response to Q88.

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:**

*5,000 character(s) maximum*

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

**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:**

*5,000 character(s) maximum*

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

## X. Foreign exchange (FX)

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

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

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

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

*5,000 character(s) maximum*

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

DBG would like to highlight that many EU authorized trading venues already monitor trading in spot FX transactions in conjunction with FX derivatives in order to detect and prevent market abusive behaviors in this segment of the global FX market. However, we believe that further consideration of the global dimension and peculiarities of spot FX markets, which have been subject to significant abuse in the recent past, and an assessment of the potential impact on their inclusion into the regime of the Market Abuse Regulation (MAR) should be carried out.

While we acknowledge that the Global FX Code of Conduct ("GFXCoC") - as the standard for spot FX market participants to adhere to - is aspirational, we question the effectiveness and adequateness to leave spot FX transaction being governed by the Code. The purpose of the GFXCoC is to address the mutual expectations and the specific technical considerations around FX market conduct. We do observe public adherence statements by a significant proportion of the market and that some clients are requesting firms' adherence with the Code as part of their on-boarding process. But whilst the GFXCoC complements the same objectives as MAR, best practice does not replace the criminal perimeter, nor the influential threat of real enforcement actions. We therefore consider the GFXCoC to be of limited reach and to be insufficient in respect of the size and nature of the spot FX markets.

Further, as a platform operator we would find it more difficult to monitor and police a principles-defined code of conduct than we would for a legal statute and concomitant national rules. Last but not least, whilst we and other FX trading venues have effective electronic surveillance systems in place for monitoring for abusive behaviors in the FX market (and hence the inclusion in the MAR regime should not cause any inconvenience for these venues) it is questionable whether in practice this is also effectively done by the unregulated platforms pertaining to support the FX markets. As trading venues avail of the tools and procedures to detect market abuse we observed that the detection of such behavior is far higher on regulated market order books than if conducted on a variety of unregulated matching technologies that have proliferated in the past few years.

Indeed, we have been deeply concerned of risks arising from the influx of these non-regulated facilities operating as aggregators or as outsourced technology providers yet who are performing the self-same arranging and matching activities as those firms who operate within or together with the MiFIR perimeter. A more consistent approach to spot FX regulatory provisions under MAR should level the playing field, in particular for EU trading venues operating inside the MiFIR perimeter whilst additionally adhering to third country regimes.

This is why DBG recommends that a broader application of MAR should be accompanied under the review of the MiFID II/R framework. We call the European Commission to consider references to some of the specific considerations of the GFXCoC and to extend FX spot under the MAR perimeter to facilitate the application of a consistent cross-border approach using the articulation developed by the Code.

Should the European Commission consider extending the scope of MAR to spot FX contracts, we believe the scope of MAR should not be directly aligned with that of MiFID, but that it can go wider to encompass the different roles played by currency transfers such as hedging, payments and funding. Please refer to Annex II provided to this consultation for further explanations in this context.

**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:**

*5,000 character(s) maximum*

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

DBG is of the view that NCAs should have the same powers for spot FX as regards other asset classes, including the remit to take appropriate steps to investigate and sanction unfair behaviors that represent a threat to the integrity of the financial markets.

However, we would like to reiterate our reservations concerning the implication of reporting cross market order books. There is no evidence as regards potential shortcomings or deficiencies of the existing regime, rather ESMA noted in its recent consultation on the MAR review that the exchange of information between NCAs according to the rules and procedures of the existing regime actually facilitated the detection of market abuse in a cross-border context. Thus, in our opinion the established framework to request data on an ad-hoc basis where suspicion of market abuse exists is suitable and sufficient for achieving the intention of the law while purpose and scope of an additional reporting tool remains unclear. As a result, DBG strongly opposes establishing a regular reporting mechanism for cross market order books as we do not see any benefits, but rather a large burden for both NCAs and trading venues in terms of adapting their IT-infrastructures, with little to no improvement on monitoring efforts.

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## Section 3. Additional comments

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

**Please, where possible, include examples and evidence.**

*5,000 character(s) maximum*

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

We would like to express our concerns on the impact of Brexit on the MiFID II framework for commodity derivatives and the ancillary activity exemption. If total trading activity in financial instruments in the EU declines and the thresholds of the ancillary test, and more specifically the market share test, are not adapted early enough, trading activity in financial instruments might be reduced. Therefore, we strongly encourage the European Commission to use the opportunity of the current MiFID II review to as well review the ancillary activity exemption and the criteria thereof. We therefore welcome and support the proposal from ESMA to reconsider the quantitative test approach set out in Art. 2(4) MiFID II for eligibility to the ancillary activity exemption following the UK departure from the EU.

In addition to our comments to Q4, we would like to highlight that bond and securitized derivatives trading is still opaque and there was no increase and pre- and post-trade transparency triggered by MiFID II as concluded by ESMA in its consultation paper (ESMA70-156-2189).

ESMA seems to accept that bond and securitized derivatives trading is bilateral, takes place OTC (more than 90% percent of traded nominal is reported by APAs) and, as a consequence, provides limited access for market participants and less transparency than multilateral trading on RMs, MTFs and OTFs. Therefore, we urge the Commission to support initiatives to bring more trading of bonds and securitized derivatives to transparent and multilateral trading venues.

Bonds and securitized derivatives trading is very fragmented, i.e. takes place on 166 bond SIs, 45 securitized derivatives SIs and 293 non-equity trading venues (no separate numbers available for bonds and securitized derivatives trading venues). It is commonly understood that publicly available orderbooks of regulated exchanges maximize transparency and hence benefits for overall financial markets. Therefore, orderbook trading at regulated exchanges should be encouraged by financial regulation wherever possible. We recommend allowing trading of sizes below LIS on transparent RMs, MTFs and OTFs only. This would significantly reduce market fragmentation, aggregate liquidity and increase pre- and post-trade transparency in particular for retail investors.

For bonds the LIS threshold may be too high to require all trading below LIS to happen on an RM, MTF or OTF. Therefore, we recommend for the special case of bonds to require trading of sizes at or below 100,000 EUR to be executed on a transparent trading venue. This threshold is used by the prospectus regulation to ease the requirements for issuers of bonds for the publication of a prospectus. Furthermore, pursuant to RTS 2 trades below 100.000 EUR are not relevant for the consideration of the liquidity of a bond. Therefore, this threshold is suited to delineate lit trading from dark trading and to bring more liquidity onto orderbooks on transparent markets.

**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:**

*5,000 character(s) maximum*

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

In context of our response to the previous question as well as to Q4, we would like to express our support for several of ESMA's proposals stated in its consultation on non-equity transparency:

The overall pre- and post-trade transparency regime is not effective as too many non-equities are falsely qualified as liquid or illiquid.

To tailor the pre-trade transparency regime to the specifics and market reality of commodity derivatives, please see our recommendations on a review of the current ill-calibrated waiver thresholds methodology and a widened hedging exemption for financial counterparties laid down in our response to Q76. In this way, the regime would allow for pre-negotiated trades of the most illiquid and new contracts to be brought to an exchange and subsequently familiarize commodity traders with the beneficial features of increased transparency and secure on-venue trading.

Generally, a reasonable step to support the simplification of the pre-trade transparency regime is removing the SSTI waiver, in particular for RFQ and voice trading. While we are not of the view that there should be a uniform reduction of the LIS threshold but rather a recalibration of the existing methodology to determine LIS-thresholds, a reduction in some asset classes (i.e. commodity derivatives) would help to mitigate the adaption of waivers. This should be accompanied by removing the SSTI-concept also for the SI-quoting obligation and replacing it by a reference to the LIS threshold as discussed in Q5.1.

We therefore also support ESMA's approach to further define requirements for making pre-trade transparency information more accessible and comparable. However, in order to ensure a level playing field across venues and increase transparency especially regarding SI trading which is still very opaque, the proposed standardization of pre-trade information should be applicable to all types of venues, including SIs. Together with the requirement for SIs to publish their quotes free of charge after 15 minutes (as trading venues are required to do) this measure would be a significant step forward to increase pre-trade transparency.

Further, we agree with ESMA that more real time post-trade transparency information should be made available to enhance competition among market participants, reduce information asymmetries and deliver high quality information for market users to enable them to make better informed investment decisions. Only a minor fraction of all transactions in non-equities, especially in exchange traded derivatives, should be eligible for deferred publication to maximize post-trade transparency. In addition, timely post trade transparency, meaning a publication after 15 minutes and 5 minutes in the future, should be further improved by increasing the amount of transaction data published. Further, we suggest reducing the complexity of the current framework by only allowing one timeframe for deferred publication, no matter which waiver was used. Deferral periods of up to four weeks immensely decrease the value of the respective data for market participants, as data will be outdated and thus irrelevant. Hence, we support a single regime, requiring the publication of all transaction related data at the end of the day.

Regarding bonds, we support ESMA's proposal to move to the S2 phase for the liquidity test of bonds to increase the share of bonds defined as

liquid, although only in a very limited way (0.32-0.48% of total bonds under S2 compared to 0.21-0.31% of total bonds under S1). Furthermore, we would recommend including trades below 100.000 EUR into the liquidity test. We see no reason why a trade below 100.000 EUR on a regulated market would not support to the liquidity of a bond.

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:

**20200518\_Deutsche\_B\_rse\_Group\_Annex\_I.pdf**

**20200518\_Deutsche\_B\_rse\_Group\_Annex\_II.pdf**

### Useful links

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

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