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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, "*our people and our business can only thrive if the economy works for them*". To that effect, it is essential to complete the Capital Markets Union ('CMU'), to deepen the Economic and Monetary Union ('EMU') and to offer an economic environment where small and medium-sized enterprises ('SMEs') can grow.

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

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

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

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

Responding to this consultation and follow up to the consultation

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

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

This consultation document contains three sections.

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

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

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

This consultation is open until 18 May 2020.

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

More information:

- on this consultation
- on the consultation document
- on the protection of personal data regime for this consultation

About you

* Language of my contribution

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

* I am giving my contribution as

- (○) Academic/research institution
- (○) Business association
- (◉) Company/business organisation
- (○) Consumer organisation
- (○) EU citizen
- (○) Environmental organisation
- (○) Non-EU citizen
- (○) Non-governmental organisation (NGO)
- (○) Public authority
- (○) Trade union
- (○) Other

* First name

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* Surname

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* Organisation name

255 character(s) maximum

BNP PARIBAS SA

* Organisation size

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

Transparency register number

255 character(s) maximum

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

78787381113-69

* Country of origin

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

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles

- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey

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

* Field of activity or sector (if applicable):

at least 1 choice(s)

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

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

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

Credit institution

* 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.

[x] I agree with the personal data protection provisions

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.

( ) I want to respond only to the **short version** of the questionnaire

- (●) I want to respond to the **full version** of the questionnaire

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

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

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

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

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

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

5000 character(s) maximum

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

To BNPP's opinion, it is too soon to make a proper assessment. It has been only two years that MiFID II has been implemented and Brexit will have major impacts on the European financial market that we cannot anticipate at this stage.
As a preliminary remark, BNPP would like to stress that the ESMA has launched different initiatives to make improvements or clarifications to certain topics relating to market transparency regime, inducements and costs disclosure requirements and it is unclear how those initiatives articulate with the current consultation.
The three MiFID II major goals (investor protection, market integrity and transparency) have been partially achieved.
Regarding investor protection, for non-professional clients, MIFID2 works well and achieves almost fully its goals: the product governance (target market and product approval process) and the cost and charges disclosure work well for financial instruments bought by retail investors (even if the level of detail expected can lead to information overload and might defeat the purpose), and we wish the MIFID II retail investor protection framework to remain stable for the years to come even if several improvements are expected. In addition we thinks that the current MIFID2 inducement regime is well balanced and should be preserved.
One of the main criticism is the lack of proportionality in MiFID II. Indeed, investment firms' obligations when dealing with professional clients or eligible counterparties have been to some extent aligned with obligations applicable when dealing with non-professional clients which creates unnecessary burden to firms.
Regarding Market infrastructure, the framework could be improved in some targeted areas:

- The Systematic Internaliser regime appears too ambitious and not easily applicable to financial instruments that are not securities,
- Data quality needs improvements and suffers probably the overly complex set of information to report. Simplification would be welcomed.
- Data costs: it would be wise to consider if the current costs are sustainable.

With respect to costs and charges for retail, a better articulation with other regulations (i.e. PRIIPS regulation) would be more than welcome, but we understand the convergence of PRIIPs costs level to MIFID II costs will be performed as part of the review of PRIIPs. In this context the costs methodology should be similar in both regulations to allow clients to compare effectively the costs.
The territorial application of MiFID II/MiFIR has not been properly addressed and the application of certain MIFID/MIFIR obligations to the operations of EU investment firms outside the EU (either because of a very wide drafting of certain requirements or as a result of ESMA's interpretation) is causing major concerns. In particular, we believe that the share trading obligation, the derivatives trading obligation, and the pre and post trade transparency regimes should not apply to the operations of non-EU branches and affiliates of EU firms.

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).	○	◉	○	○	○	○
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	◉	○	○	○	○	○
The different components of the framework operate well together to achieve the MiFID II/MiFIR objectives.	○	○	○	◉	○	○
The MiFID II/MiFIR objectives correspond with the needs and problems in EU financial markets.	○	○	○	◉	○	○
The MiFID II/MiFIR has provided EU added value.	○	○	○	◉	○	○

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

5000 character(s) maximum

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

As a general remark we think that a more collaborative and pragmatic approach would have allowed a smooth implementation of the new MiFID II/MiFIR framework. In this context, regulators, markets participants and market operators should have worked more closely together to exchange their views and define pragmatic solutions. Moreover a phase in approach would have given all the necessary time to the regulators and the industry to review the cost/benefit and meaningfulness of each obligation, adapt accordingly and dedicate efforts only on workable solutions for both the industry and the clients.
The costs and benefits of the implementation are not well balanced.
The pre-trade transparency requirements are only relevant for liquid markets where standardized products are traded (i.e. equities). There is no rational to have the same expectations for non- standardized products. A similar approach to the one taken in the US, where pre-trade transparency is required solely for equity products which are tradable on multilateral trading facilities should be preferred.

As of the end of 2020, the costs of the implementation of MIFID II will exceed €M 250 for the whole BNP Paribas group. The implementation of the reporting framework has been extremely expensive since multiple reporting of all types are now to be provided (i.e. transparency, cost & charges, best execution, transactions reporting), lots of efforts were necessary to implement the European Market Template, the terms of business were amended, the client's journeys were transformed, new rule books triggered operational changes, new market making agreements were implemented and new concepts that do not add value but increase complexity have been created (i.e. systematic internaliser for non-equity, ISIN for derivatives, TOTV status…).

While it is unquestionable that some benefits are manifest notably regarding investor protection, transaction reporting to NCAs and post-trade transparency across all asset classes and products, it is also unquestionable that the benefits of certain requirements (best execution reporting and transparency across many venues and APAs) are very limited.

In addition, the running costs to maintain such framework are high due to the over complexity and the burden of all the processes that have been implemented internally. It is unlikely that these costs will be compensated by any revenue increase in the future. Moreover the exponential cost increase of market data has further negatively impact the overall cost of MIFID II implementation project. Lastly, with regard to the day to day client' relationship, too much time is now dedicated to the implementation of this new framework which reduces the time allocated to servicing the client.

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

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

Question 3.1 Please explain your answer to question 3:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

MiFID II, as a maximum harmonization directive, should have been implemented similarly in all the Member States, except where expressly provided otherwise. In practice, some Member States have issued local guidance which creates specific local framework and discrepancies between local regimes. BNPP believes that the ESMA should limit those discrepancies by issuing guidelines on those topics. The adoption of different solutions in each Member States has incurred additional costs since different models have been implemented in each jurisdiction preventing firms to maximize their costs of implementation by adopting a one fits all solution within the EU.
As per example, in respect of the distribution of investment products to non-professional clients, NCAs have confirmed specific rules in addition to local interpretation of the MiFID II/MiFIR regulatory framework, which trigger major difficulties and uncertainties to distribute some products to those clients. These different local rules create regulatory framework and market fragmentation within the European Union. Consequently, certain investment firms might perform regulatory arbitrage, which is detrimental to investor protection objective.
In the same manner, major differences between Members States have been noticed regarding the criteria taken into account to determine whether an investment service is provided or not on their territory. This creates also unleveled playing field between investment firms.
Some market practices have led to an extremely cautious, if not excessive application of the MiFID II product governance rules (for instance target market limited to professional and ECP only) to avoid taking risks not being compliant with the regulation. This has impacted badly the retail market, and in particular the bonds retail market, and indirectly the diversity of the products that can be offered to clients.
Regarding the local application by NCAs, we often had to deplore a lack of answer from them as they did not dare to take interpretative position that could differ from the European ones.

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

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

Question 4.1 Please explain your answer to question 4:

5000 character(s) maximum

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

It is too early to assess the potential benefits of pre and post-trade transparency regime. Our preliminary view is that, if the objective is to obtain a good level of comparability across all EU financial instruments, we should simplify the granularity level of data that are currently needed to be reported.
The main limitation of the Post-Trade Transparency regime is the access to market and trade data from TVs and APAs since they resist to the free and public dissemination of the data and the consolidated tape remains to be developed. In that context non-regulated vendors, in an attempt to consolidate APA data in a normalised feed, have enforced additional usage restrictions and exclusive access to data.

The data quality has been a challenge in the first years of MiFID II / MiFIR. This is the direct adverse consequence of doing it for all asset classes and products at the same time rather than adopting a phased in approach.
o Investment firms have had to consolidate the reporting from many internal booking systems, which has been a challenge in itself;
o MiFID II / MiFIR have introduced a very extensive level of complexity in terms of new concepts, often not appropriate (systematic internaliser for non-equity, ISIN for derivatives,) and lack of golden source of reference data.

However, large progresses have been made over the last 2 years, and continue to be made. With time and the increase use of the data via a consolidated tape, the definition of new industry data standard will emerge and bring the data quality to the appropriate level.

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

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

Question 5.1 Please explain your answer to question 5:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There are major differences between an SI and a trading venue. A venue brings together multiple third parties buying and selling interests with no use of the trading venue balance sheets, hence with no risk and no capital charge for it, while an SI deals on own account by offering its balance sheets when executing clients orders. There is therefore no rationale to make such a comparison and in our view the framework applicable to Systematic Internaliser in terms of pre and post trade transparency and obligation to trade cannot be aligned with the framework applicable to trading venues, and should be more flexible and carefully tailored.

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

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

Question 6.1 If you have identified such barriers, please explain what they would be:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Legislators and NCAs have enacted specific local rules in respect of distribution of some products (OTC and securities) for non-professional clients. Some European directives and regulation targeting a better information of the retail investors (e.g. PRIIPS) remain subject to interpretations and impact to a certain extent the MiFID II product governance rules. This means that issuers refrain themselves to allow a distribution of those products in some Member States due to legal uncertainty and additional constraints. This is particularly relevant for structured products, bonds, and some OTCs where ESMA rules are extremely detailed and should have guaranty a full harmonization of the rules at the European level, by over-riding any NCA's specific requirement.
In the same manner, the AIFM directive considers that it is a Member State duty to determine whether private equity funds can be sold to non-professional clients. Such an approach create market fragmentation and triggers uncertainties, risks and costs in the distribution of those products. This might narrow the products offer to the client. The position of ESMA Q&A stating that all AIF are deemed to be complex is a problem.

Section 2. Specific questions on the existing regulatory framework

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

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

tape is already available in the United States, where a consolidated tape has been mandated for shares (consolidating pre- and post-trade data) and bonds (post-trade data).

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

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

PART ONE: PRIORITY AREAS FOR REVIEW

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

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

I. The establishment of an EU consolidated tape[1]

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	○	○	○	◉	○	○
Overly strict regulatory requirements for providing a CT	○	○	◉	○	○	○
Competition by non-regulated entities such as data vendors	○	○	○	◉	○	○
Lack of sufficient data quality, in particular for OTC transactions and transactions on systematic internalisers	○	◉	○	○	○	○
Other	○	○	○	○	◉	○

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

5000 character(s) maximum

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

The two main reasons why a consolidated tape (CT) has not emerged are the following:

Trading Venues and APAs holding on IP rights / licences of trades data (also called market data)

• First, trading venues and APAs are generally holding on the intellectual property rights / licences in respect of trades data or market data while in the first place, trades data's IP rights should belong to the counterparties who made the trade, not to the platform which facilitates the execution or the APA to which the trade is reported. We believe that trading venues (TVs) and APAs should not retain IP rights on trade data, to prevent such TVs and APAs from exercising unfavourable pressure on pricing of market data and restricting the usage of market data. The implementation of a CT requires to address these issues by means of a clear data policy, including definitions (display, non-display, redistribution, derived data usage).

Governance model

• Second, the governance model set out in MIFID II for CTP is not adequate. MiFID 2 expected for a private sector initiative to take the lead in the set-up of a European CT, but this approach was unrealistic for various reasons, including that such a private sector initiative would face significant challenge to address the IP rights issues on market data that are mentioned above (i.e. if it cannot force TVs and APAs to renounce to their rights on the data, there will be no real financial incentive for the launch of a CT). There is also a risk that such a private sector initiative would most likely claim IP rights on the aggregated feed, with the objective to monetise the CTP in licensing the tape to market participants and restricting their usage rights to increase its revenues, and potentially acting as a monopoly. Instead, the CTP should be formed of a well-balanced partnership between public sector and a private initiative, with deep industry involvement. The main characteristics of such working governance model would be as follows:

o Public sector-led initiative,
o With deep industry involvement (TV, APAs, Investment Firms…) for data normalisation, codification, validation, architecture, etc.,
o IT infrastructure implemented by IT specialists / private firm with expertise in financial markets,
o Trade data is public in all cases (i.e. no IP rights / licenses on anything, i.e. display, non-display, redistribution, derived data usage).

Question 7.1 Please explain your answers to question 7:

5000 character(s) maximum

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

In addition to the IP rights issue we discussed above, we consider that there is a lack of financial incentives for running a CT, given the high costs implied by consolidating trade data on all financial instruments across all asset classes in Europe. This is due to the operation of a CT which requires at least the following:

- connect to and to consolidate data from 400+ Trading Venues and 20+ APAs,
- consolidate all asset class and all products,
- define industry standards in term of trade data reporting, and
- define a reporting set-up based on “lack of golden sources” for reference data (e.g. traded on a trading venue instruments verifications, SI industry register).

We further note that there are overly strict regulatory requirements for providing a CT in the current proposal, such as the following:

- A phased approach in terms of asset classes and products, with review and assessment after each step would certainly encourage the emergence of the tape.
- The fact that the CT is assumed to be set up by a private firm could also be considered a strict requirement. Moving to a public sector and industry led initiative, should bring better results.
- Competition by non-regulated entities such as data vendors is also another reason why a tape has not emerged. Non-regulated data vendors are usually operating APA and MTF platforms. The public availability of the APA data in a simple delayed consolidated feed has not emerged and does not meet expectations to date. Any data vendor should be free to re-distribute the public and free trade data.

At the opposite, data quality is not the reason why the tape has not emerged. Data quality issues are the results of the big bang approach of the MiFID 2 start, in terms of reporting obligations and asset classes / products. Data quality improvements are on-going and will happen even quicker when the trade data are used / distributed on a tape.

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

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No.
The EU consolidated tape and transparency are one of the main principles of MiFID II / MIFIR.
As such we believe it is appropriate to keep the provisions governing the consolidated tape as part of the MiFID II / MIFIR framework.

1.2. Availability and price of market data

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

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

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

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

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We agree with the targeted amendments recommended by ESMA. Moreover, we believe that further items should be looked at, among others: (a) review the IP rights and licenses on market data, including quotes provided, and trades executed by investment firms and corporates; (b) set-up a framework to define, align and normalise licensing policies around TVs and APAs data and the application of the reasonable commercial basis provision; and (c) set-up supervisory authorities in charge of control and respect of cost of market data.

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)	○	○	◉	○	○	○
Ensuring best execution	◉	○	○	○	○	○
Documenting best execution	○	○	◉	○	○	○
Better control of order & execution management	◉	○	○	○	○	○
Regulatory reporting requirements	○	○	◉	○	○	○
Market surveillance	○	○	◉	○	○	○
Liquidity risk management	◉	○	○	○	○	○
Making market data accessible at a reasonable cost	○	○	○	○	◉	○
Identify available liquidity	◉	○	○	○	○	○
Portfolio valuation	○	○	◉	○	○	○
Other	○	○	○	○	○	◉

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

5000 character(s) maximum

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

The main goals of a CT are more liquidity, more market participants and market resilience

The main goal of setting up a tape is market transparency, thereby potentially attracting more market participants, increasing market liquidity and making the market more resilient in times of crisis. To this end, the key point is making market data accessible at a reasonable cost. This is the fundamental use case of CT. This is about making the market data accessible to firms which are not participants in a market yet, bring transparency on where the market is and as such possibly attract those firms to become new market participants. Next to this though, we do not think that the CT will be used by the current biggest market participants which have already access to various non-regulated market data sources. Therefore a mandatory consumption of the CT should clearly not become a regulatory requirement. We do not think either that the creation of the tape will directly impact the situation of exponential increase of market data cost for current market participants, buy-side and sell-side, unless regulators tackle the core issue of TVs and APAs holding on IP rights / license on quotes and trades data.

The main risk of a CT is impairing the current liquidity
However, bringing more transparency to the markets should not be done to the detriment of the current liquidity and current liquidity providers that commit their balance sheets and take risks to be able to provide this liquidity and attractive prices to their clients. It is therefore key to carefully assess and calibrate transparency rules so that the liquidity providers are able to hedge the risk they take when trading with clients.
All other uses cases for a tape are secondary or not relevant, as explained below.

- Ensuring best execution is not a use case for a tape. Best execution can rather be achieved by using appropriate trading protocols per market, asset classes, and products. For example, in the bond market and for relatively small sizes, sending and request for quote to multiple dealers. Documenting best execution could be a secondary use case, as it relates to post execution analysis.

- Better control of order and execution management is not a use case. This can rather be achieved by using appropriate internal execution management tools and trading protocols per market, asset classes, and products. For example, in the bond market and for relatively small sizes, sending and request for quote to multiple dealers.

- Identify available liquidity is not a use case. While the tape will make an additional step in the direction of transparency, the identification of available liquidity will not be a direct consequence and cannot be a use case. For example, non-equity markets do function with different trading protocols than equity markets. There are many more instruments which are not standardised and therefore have a much lower liquidity (than cash equity). To provide liquidity and prices, liquidity providers take a series a factors into account such as market risk, counterparty risk, size of the order, etc. Therefore pricing of each quote request is very much tailored to a counterparty risk profile and order type and size. As such, not all liquidity which is made transparent is available to any market participant. The available liquidity is usually identified by market participants by other non-regulatory means.

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[2] which appear very important for the success of an EU consolidated tape:

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

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

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

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

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

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

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

5000 character(s) maximum

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

The two main features that are important for the creation of an EU consolidated tape are the fact that TVs and APAs should not own the IP rights / licenses in respect of trade data, and the existence of a strong and appropriate governance framework for the CTP (both as further specified in our response to Q7).

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

5000 character(s) maximum

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

We set out below our comments in respect of each feature of the CT, as contemplated under Q11.

- High level of data quality.

We believe that data quality is important but, does not represent a key feature that will make the tape to emerge. The data quality has been a challenge in the first years of MiFID II / MiFIR but this was the only result that could be expected from starting with all asset classes and products at the same time. Firms have had to consolidate the reporting from many internal booking systems, which has been a challenge in itself. Moreover, MiFID II / MiFIR introduced a very extensive level of complexity in terms of new concepts, sometimes not appropriate (e.g. systematic internaliser for non-equity, ISIN for derivatives) and lack of golden source of reference data. While large progresses have been made over the last two years, and continue to be made, with time and the increase use of the data via a consolidated tape, the definition of new industry data standard will emerge and will bring automatically the data quality to the appropriate level.

- Mandatory contributions.

Mandatory contribution from TVs, APAs and possibly directly from investment firms is the basic principle of a tape.

- Mandatory consumption.

The consumption of the tape should not be mandatory. Many market participants are already connected directly to TV and APAs. A mandatory consumption of the tape would result in paying twice for the same data. Moreover, we can remain sceptical about the cost of the tape's market data until after the governance and financing are decided.

- Full coverage / Very high coverage (not lower than 90% of the market).

A 100% or 90% coverage is not essential to start, but can be a medium-term objective. In the short-term, we suggest to start with the largest quick win (i.e. per asset class and product type, to assess the main TVs and APAs and connect them to the tape although this will not represent the full coverage and probably not 90% of the market but should be very high and achievable in the minimum amount of time). In the medium-term, ramp-up the coverage by connecting all other TVs and APAs.

- Real-time (minimum standards on latency).

Real-time submission should not be an objective or a priority in the short-term, as it does not represent a key feature that will make the tape to emerge. For non-equity and for the reporting of investment firms to APAs, we suggest to remain at the level of the current obligation of "real-time and in less than 15 min". Moving to the next level of "real-time and in less than 5 min" might risk to divert IT resources from more important data quality improvement. Moreover, it is important to note the key difference between real-time submission and real-time publication. We believe that the key feature to push for the tape to emerge is the consolidation of the data, available free to the public. This aspect is distinct from the calibration rules and deferral regimes of the post-trade transparency obligation, which are key for maintaining market liquidity. It is really key that such deferral regimes for the post-trade transparency obligation are maintained.

- The existence of an order protection rule.

There should not be any order protection rule. The order protection rule is a US rule for the pre-trade transparency of order of cash equity. There is no need to bring such an obligation in Europe, especially not in non-equity. Moreover, the tape should be about post-trade transparency only.

- Single provider per asset class.

This does not represent a key feature that will make the tape to emerge.

- Strong governance framework.

This is the most important feature. This is one of the two main factors that will bring the CT to life.

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

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

5000 character(s) maximum

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

We do not support mandatory consumption of CT at all, and it should not be made mandatory, for the following reasons. Many market participants are already connected directly to TV and APAs. A mandatory consumption of the tape would result in paying twice for the same data. Moreover, we can remain sceptical about the cost of the tape's market data until after the governance and financing are decided. In the worst but far from impossible case, we could see a monopoly where a unique private actor defines freely a high price for the market data.

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

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

5000 character(s) maximum

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

In our view, there is no particular link between CT and best execution. Please refer to our responses to Q10. 1 for more detail.

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	◉	○	○	○	○	○
Fees should be differentiated according to type of use	◉	○	○	○	○	○
Revenue should be redistributed among contributing venues	◉	○	○	○	○	○
In redistributing revenue, price-forming trades should be compensated at a higher rate than other trades	◉	○	○	○	○	○
The position of CTP should be put up for tender every 5-7 years	◉	○	○	○	○	○
Other	○	○	○	○	◉	○

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- No user fees

Regarding the funding of the tape, we argue that it is essential not to have any consumption or end user fee. This means no restrictions on the use of the data provided under the CT framework, and no licensing associated to its use (e.g. Derived Data, Non display).

- Financed by public sector bodies

Given the market wide objectives of the CT, the tape should rather be financed and supported by public sector bodies. Ultimately, this will be funded by market participants and market operators which pay fees / taxes to their NCAs. And this should be charged on reasonable cost basis, i.e. on the actual costs of producing and disseminating market data. This will also realise a much better control of the cost of trade data.

If brought in, the consumption and end user fees will only continue to aggravate the case for the issue of IP rights / licences on trade data (which should belong to the counterparties of the trades not the TVs or APAs).

Question 14.1 Please explain your answers to question 14 and provide if possible detailed suggestions on how the above features should be implemented (e.g. according to which methodology the CT revenues should

be redistributed; how price forming trades should be rewarded, alternative funding models):

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We set out below our comments in respect of each suggested funding features for the CT, as set out under Q14.

• The CT should be funded on the basis of user fees.

We disagree with this statement. The CT should not be funded on the basis of user fees, given the uncertainty about the cost of the tape's market data which will remain until after the CT governance and financing model are clarified. In the worst, but far from impossible case, we could see a monopoly where a unique private actor defines freely a high price for the market data.

• Fees should be differentiated according to type of use.

The CT should not be funded on the basis of user fees.

• Revenue should be redistributed among contributing venues.

As mentioned in our answer to Q.7, TVs and APAs should not own the trades data and should therefore not be redistributed any revenues. TVs are paid by their members (mostly investment firms) for their execution services and use of their "own" market data. APAs are paid by investment firms for handling their post-trade transparency obligations. Non-regulated market data vendors are paid by investment firms to access consolidated feeds. Therefore, if anyone should be redistributed any revenue, it should be the members of TVs and investment firms that use those APAs.

• In redistributing revenue, price forming trades should be compensated at a higher rate than other trades.

If so, one can wonder what is the use-case of transparency and the tape for non-price forming trades.

• The position of CTP should be put up for tender every 5-7 years

We strongly argue for a governance framework with a regulators / industry partnership with IT done either by ESMA or outsourced to private company(ies) or contractors. Handling the whole tape to a private company will create a situation of monopoly, with most probably (i) opaque handling of the data, (ii) abuse in fees levels determination and (iii) licensing restrictions

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?

		2		4	5	

	1 (disagree)	(rather not agree)	3 (neutral)	(rather agree)	(fully agree)	N. A.
Shares pre-trade[3]	○	○	○	◉	○	○
Shares post-trade	○	○	○	○	◉	○
ETFs pre-trade	◉	○	○	○	○	○
ETFs post-trade	○	○	○	○	◉	○
Corporate bonds pre-trade	◉	○	○	○	○	○
Corporate bonds post-trade	○	○	○	○	◉	○
Government bonds pre-trade	◉	○	○	○	○	○
Government bonds post-trade	○	○	○	○	◉	○
Interest rate swaps pre-trade	◉	○	○	○	○	○
Interest rate swaps post-trade	◉	○	○	○	○	○
Credit default swaps pre-trade	◉	○	○	○	○	○
Credit default swaps post-trade	◉	○	○	○	○	○
Other	○	○	○	○	○	◉

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

Question 15.1 Please explain your answers to question 15:

5000 character(s) maximum

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

Phased Approach

We argue for a phased approach, per asset class and product. This means to launch each in-scope product every few years, and take the time to assess the cost-benefit of the set-up for that particular product and re-adjust accordingly. We strongly believe that a start with all assets and products at the same time, which has proven difficult with the launch of MiFID II in many areas, should be avoided. At the opposite, the example of TRACE shows a more careful approach with an initiative spread over several years for corporate bonds, before moving on to other credit instruments, also over several years.

- In terms of asset class and product roadmap, we would recommend the following sequence:

1. Share post-trade
2. Share pre-trade
3. ETFs post-trade
4. Corporate Bond post-trade
5. Government Bond post-trade

We suggest to focus on the above “cash” products and to look at the derivatives (more complex to define reporting standards) at a later stage, depending on the success of the implementation and usage of the tape for cash products.

- KPI / Measurement of costs & benefits

For assessing the benefits of the tape, clear policy objectives should be identified at the outset for the tape together with defined clear factors and features reflecting those objectives that can be measured. Similarly, market participants in the tape should have a good understanding of all costs involved in setting up the tape and how those costs evolve, the goal being to keep the implementation and maintenance cost under control, which is also a key factor for the success of the tape.

- Scope – Start with Post-Trade Transparency for cash products

In terms of content of the tape as to whether it should include pre and/or post-trade transparency market data, we believe that the priority is to consolidate the existing post-trade transparency from TVs and APAs. Next to that, for listed instruments for which trading is based on an order book, the consolidation of Pre-Trade Transparency market data does make sense, as a way to make that data available to smaller or not currently active investors. At the opposite, after 2 years in MiFID II, the pre-trade transparency for non-equity off-venues trades (published by SIs) has not been proven as being useful to anyone. It should therefore not be included in CT objectives.

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

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The same information as defined in MiFID II post-trade transparency should be used. However, it is important that the set-up of a CT does not reconsider the approach of MiFID II to the post-trade transparency deferred publication regime. It is essential that trades which benefit from deferred publication are not published on the tape until after the deferral period has expired.

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

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

Shares

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Shares admitted to trading on a RM	○	◉	○	○	○	○

Shares admitted to trading on an MTF with a prospectus approved in an EU Member State	○	◉	○	○	○	○
Other	○	○	○	○	○	◉

Question 17.1 Please explain your answers to question 17:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Knowing that the primary function of a CTP is data aggregation, we don't see any reason why the scope of transparency should be different from the scope of the CTP. The CTP should aggregate all data available from transparency requirements as it is its main purposes. It would be much more efficient and simple to focus on calibrating transparency accurately rather than having different scope for transparency and CTP.

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

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to Q.17.

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

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to Q.17.

ETFs, Bonds, Derivatives and other financial instruments

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

Please explain your answer and provide details by asset class:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Knowing that the primary function of a CTP is data aggregation, we don't see any reason why the scope of transparency should be different from the scope of the CTP. The CTP should aggregate all data available from transparency requirements as it is its main purposes. It would be much more efficient and simple to focus on accurately calibrating transparency rather than having different scope for transparency and CTP.

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

4.1. Equity trading and price formation

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

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

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Overall, the Share Trading Obligation under MIFID II has increased complexity in the market without obvious benefits for investors. We believe that the following reasons are solid arguments justifying that Share Trading Obligation regime should be amended:

- no other jurisdiction has implemented similar mechanism and this put EU at a competitive disadvantage without being aligned with the CMU objectives;
- MiFID ensures that multilateral trading takes place on a RM or a MTF while SI regime provides further supervision for OTC trading;
- trading in EU shares was already taking place on EU Trading Venues before the introduction of the STO and there is no obvious reasons indicating that it will cease to be the case;
- the threat of a Brexit 'no deal scenario' has highlighted the STO's inherent risk in the absence of Trading Venue equivalence
- Overall pushing to increase trading on venues via the STO might impact the ability for firms to provide best execution to clients

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

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

Question 22.1 Please explain your answer to question 22:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We suggest limiting the STO scope and obligations to EU shares with a primary listing in the EEA only, rather than to all tradable shares. The rule should also acknowledge that where European issuers has chosen to raise capital and list corresponding instruments on a third country regulated market, trading in that listing should remain accessible to EU investment firms and EU investors. This is a commonly accepted enhancement within the industry.

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)	○	◉	○	○	○	○

Maintain the STO with adjustments (please specify)	○	○	○	○	◉	○
Repeal the STO altogether	○	○	○	○	◉	○

Question 23.1 Please explain your answers to question 23:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As stated and explained in question 21 we would welcome the removal of the Share Trading Obligation. If it was to be maintained we would welcome adjustments proposed in question 22.

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	○	○	○	○	◉	○
SIs should no longer be eligible execution venues under the STO	◉	○	○	○	○	○
Other	○	○	○	○	○	◉

Question 24.1 Please explain your answers to question 24:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response

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

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response

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

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response

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

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

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response

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

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

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

- (●) 1 - Disagree
- ( ) 2 - Rather not agree
- ( ) 3 - Neutral
- ( ) 4 - Rather agree
- ( ) 5 - Fully agree
- ( ) Don’t know / no opinion / not relevant

Question 28.1 Please explain your answer to question 28:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The purposes of the STO and the CTP are originally completely different so we disagree with an alignment. The CTP goal is mainly to aggregate transparency data while the STO original goal was to ensure that trading for shares remains on EU infrastructures. As explain in question 21 our preferred option is to remove the STO while being supportive of a CTP to help transparency data consolidation.

Both topics should be clearly segregated in order to get the best outcome for both individually.

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

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

- (●) 1 - Disagree
- ( ) 2 - Rather not agree
- ( ) 3 - Neutral
- ( ) 4 - Rather agree
- ( ) 5 - Fully agree
- ( ) Don’t know / no opinion / not relevant

Question 29.1 Please explain your answer to question 29:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Considering that the primary function of a CTP is data aggregation only, we don’t see any reason justifying that the scope of transparency should be different from the scope of the CTP. The CTP should aggregate all data available from transparency requirements as it is its main purposes. It would be much more efficient and simple to focus on calibrating transparency accurately rather than having different scope for transparency and CTP.

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	(●)	( )	( )	( )	( )	( )
Shortening of the 2-day deferral period for the price information	(●)	( )	( )	( )	( )	( )

Shortening of the 4-week deferral period for the volume information	◉	○	○	○	○	○
Harmonisation of national deferral regimes	○	○	○	○	◉	○
Keeping the current regime	○	○	○	○	◉	○
Other	○	○	○	○	◉	○

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

BNPP believes that a phased approach per asset classes and products, a strong governance framework and free and public market data are the main measures that should mandatorily be implemented to ensure the creation of the consolidated tape for bonds and derivatives.

Question 30.1 Please explain your answer to question 30:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We continue to argue for a phased in approach. The different steps of this phased approach could be:

- Focus on building a consolidated tape, per asset class and product;
- Assess the level of transparency delivered;
- Continue with calibration of deferrals thresholds (Stages 2-3-4)
- Assess the level of transparency delivered.

We do not favour the immediate shortening or removal of transparency deferrals. We believe this would (i) negate the current market structure and ignore the role and functioning of the services provided by liquidity providers and (ii) be a hazardous exercise impacting the existing market liquidity directly and adversely, at the expenses of all markets participants.

Hence, consolidated tape and transparency regime rules are two distinct subjects. The Consolidated tape is the aggregation of transparency from TV and from investment firms / APAs. The transparency regime is a set of rules governing the transparency that include beyond others the deferrals regimes, the SSTI and LIS thresholds and the list of liquid instruments

Tape

The tape has struggled to emerge in the first 2 years of MiFID 2 / MiFIR and this is not because of the transparency regime rules. Please refer to our answer to question 7 explaining the reasons why the tape has yet not emerged.

We recommend working on setting up the tape, i.e. the consolidation of the existing transparency, before considering changing the transparency regime rules. We believe that the tape will bring more industry / regulatory interactions, data reporting standardisation and data quality. Then the expected outcome of enhanced visibility to additional and potential participants, liquidity and market resilience will be achieved.

Transparency regime

- MiFID 2 / MiFIR have already introduced the largest transparency regime in the world in term of scope of asset classes and products.
  - The goal of the transparency regime is to reinforce market resilience by trying to increase liquidity by opening the markets to additional market participants.
  - As such, transparency is about bringing more visibility to on- and off-venue trading, and as such setting a level playing field between TV and systematic internalisers (SI). However at the same time, we should continue to recognise the distinct role of SIs as liquidity providers, intrinsically linked to risk taking & hedging activity.

- Calibration to allow liquidity providers to play their role: provide liquidity and hedge their risk
  - At the same time as setting up a level playing field, this transparency regime and the related calibration were set-up to take into account the crucial difference between TV and liquidity providers.
  - The main risk of setting up a tape and bringing more transparency to the markets is to do it to the detriment of the current market participants, especially current liquidity providers that commit their balance sheets and take risks to be able to provide liquidity and attractive prices to their clients.
  - It is therefore key to carefully assess and calibrate transparency rules so that the liquidity providers are able to hedge the risk they take when trading with clients.

- ESMA transparency calibration is active and updated continuously
  - ESMA calculates and updates a list of liquid instruments on a quarterly basis, and the SSTI and LIS thresholds on an annual basis.
  - Moreover, ESMA is continuously assessing the impact of transparency and will initiate moves to the next levels of transparency (Stages 2-3-4 corresponding to 40-50-60 percentile) when deemed appropriate, in terms of data quality and market environment.

- TRACE - Finally, coming back to the subject of deferrals, as we often hear about the comparison with the US TRACE transparency regime for corporate bonds, we would like to underline some key points:
  - TRACE was built very progressively: focusing over one sub-asset class and increasing calibration over 3.5 years.
  - TRACE is using “cap”, which can be seen as volume omission deferral, currently set to 6 months.
  - TRACE and the impact on market liquidity is continuously assessed by regulators, the industry, independent research and academic study.
  - FINRA is currently studying an increase of the initial dissemination to 48 hours.

    Regulatory Notice 19-12, FINRA Requests Comment on a Proposed Pilot Program to Study Recommended Changes to Corporate Bond Block Trade Dissemination, June 2019, https://www.finra.org /rules-guidance/notices/19-12

- Harmonisation of national deferral regimes - We should certainly harmonise and keep the existing supplementary deferrals for all national regimes.

II. Investor protection[4]

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

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

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

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

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

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

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

Quantitative elements for question 31.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 31.1:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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	◉	○	○
Costs and charges requirements	◉	○	○
Conduct requirements	○	◉	○
Other	○	○	◉

1. Easier access to simple and transparent products

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

Question 32.1 Please explain your answer to question 32:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

BNPP believes that the MIFID2 investor protection rules for structured investment products are satisfactory, and do not need major changes. Thanks to the considerable efforts of the industry in setting up the target market sections of the EMT (European MIFID Template), the target market rules are getting more harmonized for funds and securities distributed in the EU.
However, a few amendments to the product governance would be welcome for corporate investment grade bonds and shares traded on a trading venue. We believe that the following changes to the product governance and costs and charges regimes should be made for the above mentioned products:
(i) A predefined target market should be set out in the regulation by default. This predefined target market should include non-professional investors to facilitate their access to the corporate bond market. Financial instruments with such a generic target market should not fall within the scope of the PRIIPs

regulation and should therefore be exempted from the obligation to have a KID.

(ii) These financial instruments should be subject to a simpler product governance regime where more proportionality would be applied. For example, manufacturers should be exempted from certain requirements namely the ones set out in article 9.9 (positive and negative target market); 9.10 (scenario analysis); 9.11 (return analysis); 9.12 (costs analysis); 9.13 (relationship with distributors); 9.14 and 9.15 (reassessment of product) of the MIFID II Delegated Directive which are not accurate.

Moreover and from a distributor point of view, product governance requirements should not lead to a duplication of controls performed through suitability or appropriateness processes and these requirements should be more proportionate to the type of service provided to the client.

BNPP considers that Target Market must be determined at a « client group level » leading to the decision to consider that a product X can be offered to clients group Y through service offering Z.

For example if an execution service with appropriateness test is provided the criteria knowledge and experience should be deemed assessed through the appropriateness test which is informative only and which allow the client to proceed even where a warning is provided. In the same manner if an advisory service is provided, the criteria “ability to bear losses”, “risk tolerance” and “client objectives & needs” should be deemed assessed through the suitability test.
We also believe that reporting to manufacturers of the transactions performed outside the target market should be amended. For the time being all transactions outside the target market are systematically reported regardless of their number and their proportion. This leads to a significant number of data to be processed by manufacturers with limited added value. Hence, it is unlikely that the reported information could be accurately used by the manufacturers to determine whether the target market needs to be reviewed. Accordingly, we believe the reporting to manufacturers should be either limited to sales within the negative target market or give distributors discretion to determine which transactions are to be reported to the manufacturers.
In the same manner, greater proportionality is required in respect of costs and charges disclosures requirements for those financial instruments (i.e. shares and simple corporate bonds investment grade). Professional and non-professional clients have expressed limited interest in receiving this information, and have requested that we cease sending this information in some instances.

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

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

Question 33.1 Please explain your answer to question 33:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We assume that complex products are to be understood as defined in the ESMA Guidelines on complex debt instruments and structured deposits for the purposes of article 25.4 MIFID II. We would like to stress

however, that article 57 of the Delegated Regulation 2017/565 leaves room for an appreciation on a case-by-case basis. This appreciation is based on inter alia: liquidity, losses limited to the cost of the product and risk. Where a financial instruments meets these conditions, it can be classified as simple products. Consequently, simple AIFs should also be classified as simple products where they meet the above criteria and then be distributed to non-professional clients.
On this basis, we consider that, subject to the disadvantages described below, the information and disclosures provided to retail clients are broadly appropriate for complex products (general information duties, costs and charges, approach based on total costs regarding execution policy, appropriateness / suitability tests, suitability statement, ongoing suitability …). We do not believe that the regulatory protections offered to retail clients need to be further increased, as they are already at a very high standard.
Requirements regarding complex products do have some drawbacks: the compliance burden for these products increases the costs for firms and, as a consequence, limits their supply and reduces the product offering for retail clients, even where those products are appropriate or suitable for them. For example, structured products, all alternative investment funds and derivative transactions are considered 'complex products' without further distinction. This means that none of these products benefit from the exemptions to the appropriateness requirements as set out under Article 25.4 of MiFID II. However, we believe that certain derivatives (e.g. non-structured derivatives entered into for hedging purposes (to be defined further in MiFID II)) should benefit from this exemption.
We also consider that the 10% alerting obligation as set out in article 62 of Commission Delegated Regulation should be amended as follow:

- the latest reporting value should be the value of reference to calculate the 10 % loss (as for portfolio management);
- derivative transactions entered into for hedging purposes should be excluded from this alert, the reporting having no meaning on the hedge taken individually;
- the definition of leveraged financial should be clarified to ensure that data provided by data vendors are reliable.

Giving right to the above enhancements would reduce the regulatory burden and the associated costs for firms and would therefore improve access to these products for retail clients.
In addition, the rules are not fully harmonized at the European level. Several NCAs have decided to maintain their own local rules/policies resulting in a fragmentation of the rules applicable to complex products. As a result, non-professional clients in one country can access products that would not be accessible if they were in another country.

2. Relevance and accessibility of adequate information

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

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

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

	Yes	No	N. A.
Professional clients and ECPs should be exempted without specific conditions.	◉	○	○
Only ECPs should be able to opt-out unilaterally.	○	◉	○
Professional clients and ECPs should be able to opt-out if specific conditions are met.	○	◉	○
All client categories should be able to opt out if specific conditions are met.	○	◉	○
Other	○	○	◉

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As a preliminary remark, the above proposals do not reflect the ex-ante costs and charges disclosure regime that should be implemented. BNPP is of the opinion that it should not be required to provide ex-ante cost information to professional clients and ECPs, unless they expressly request to be sent this information (in other words, these client types should be exempted without specific conditions, but with a possibility of requesting (or 'opting in' to receiving) this information if they so choose). On the other hand, non-professional clients should be granted the possibility to opt out (in other words, they will continue to receive ex-ante cost information, unless they request that we cease sending this information to them).
BNPP considers that firms dealing with professional clients and ECPs should not have to provide these clients with ex-ante costs and charges disclosures. Generally, those clients do not analyse the details of the costs. In practice when they conclude transactions, they tend to compare only the 'all in price' of the trade, which makes the information on costs and charges less relevant.
For ex-ante information, two regimes could be applicable:
ECP: they should be exempted - meaning that no costs and charges information will be provided to them.
Professional clients: they should be exempted - meaning that no costs and charges information will be provided to them.
However, professional clients could expressly request (i.e. opt in) to receive the information, in which case investment firms would be allowed to provide them with cost information through a generic fee grid (based on ranges of maximum cost and charges that can apply to each asset class and/or underlying, and per maturity).
For Retail clients, the existing disclosure regime should continue to apply (i.e. disclosure on both product costs and service costs on a trade-by-trade basis) unless they explicitly request to receive cost information through a fee grid. This approach would address notably the voice trading issue by removing the costs & charges disclosure on a durable medium before the conclusion of the transaction.

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

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

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

Question 35.1 Please explain your answer to question 35:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We support the modification of article 3 of the Commission Delegated Regulation 2017/565 of 25 April 2016 in order to specify that the client will only receive from the investment firm documents by means of electronic communication (e-mail or website). This would apply unless the client expressly requests receiving information in paper or if the investment firm considers that that medium is not appropriate to the context in which the business is to be carried on or if the client has no e-mail address. Firms should not be required to ask clients which form of communication they prefer, as electronic means should apply by default since the use of secured digital mediums guarantees a level of protection and evidence at least equivalent to paper. This request is consistent with the CSR objectives of the financial sector.

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

	Yes	No	N. A.
General phase-out within the next 5 years	(●)	( )	( )
General phase out within the next 10 years	( )	(●)	( )
For retail clients, an explicit opt-out of the client shall be required.	( )	(●)	( )
For retail clients, a general phase out shall apply only if the retail client did not expressively require paper based information	(●)	( )	( )
Other	( )	( )	(●)

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

5000 character(s) maximum

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

This should be clearly stated in the Regulation that information will be provided in electronic means. However investment firms should notify their existing clients that they won't receive paper based information unless otherwise requested.

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

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

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

Question 37.1 Please explain your answer to question 37:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The objective of the creation of an EU-wide data based is not clear. This might be costly to implement and maintain and might not be used by investors/clients. It is premature to develop such a tool only two years after MiFID II entry into effective application.
A data base might be useful but primarily for the use of distributors who have sometimes difficulties in getting the information they need to ensure smooth product governance and costs & charges processes. However objectives and costs would have to be carefully assessed and compared to existing private alternatives in particular.
The EU database requirement already exist under the EU cross-border distribution of collective investment undertakings legislative package dated of July 2019. These news requirements will be implemented by February 2022. Pursuant to the above, ESMA will be required to publish on its website a central database of all AIFs and UCITS marketed in a Member State other than their home state, along with details of their relevant manager and a list of all the Member States in which they are marketed. BNPP believes that it is premature to develop such a new tool within the MIFID II context. It should be useful to wait for the first feedback and outcomes of the funds database before implementing a new database for the other investment products.
In addition, investment funds are quite standardized as opposed to structured products or derivative transactions which creates more difficulties in implementing a database for them. Lastly, we do not believe that such a database will be used by clients or end-users. Priorities to define this type of tool should be defined at EU level.

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	○	○	○	○	○	◉
All products that have a PRIIPs KID/ UICTS KIID	○	○	○	○	○	◉
Only PRIIPs	○	○	○	○	○	◉
Other	○	○	○	○	○	◉

Question 38.1 Please explain your answer to question 38:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

Question 39.1 Please explain your answer to question 39:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As explained above BNPP does not support the creation of an EU wide data base.
There are currently many professional data managers/providers that have an extensive knowhow on managing data. Due to the different nature of products, some specialist data providers emerge. Accordingly the ESMA may not be the most qualified to develop such a tool. Having only one provider may not be efficient and secured.

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[5].The CMU-Next group suggested a new category of experienced High Net Worth ("HNW") investors with tailor made investor protection rules[6].

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

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

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

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

Question 40.1 Please explain your answer to question 40:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The MIFID client classification rules require firms to categorise as retail clients all natural persons and all corporates that do not satisfy the minimum balance sheet total (EUR 20 million); and/or net turn over (EUR 40 million); and/or own funds (EUR 2 million).
These high thresholds show that the policy objective of the client classification rules is to exclude retail SMEs and retail natural persons from the professional client category generally. To maintain this approach while providing SMEs and high net worth individuals greater flexibility as regards to their MIFID classification and access to specific products, it is desirable to simplify the professional on-request criteria.
The professional on-request regime is not adequately calibrated for SMEs and high net worth individuals, as they need to satisfy at least two of the three following conditions to be eligible: average frequency of 10 transactions per quarter over the previous 4 quarters on the relevant market; hold a portfolio of financial instruments or deposits for a size greater than EUR 500K; working experience in the financial sector.
We believe that investment firms should be allowed to treat as professional clients SMEs and high net worth individuals that wish to be treated as such, as long as firms have satisfied themselves that those clients have the adequate level of expertise, experience and knowledge of financial instruments in light of the nature of the transactions or services envisaged and are capable of making investment decisions and understanding the risks involved. In this context we consider that the professional on-request criteria should be reviewed

(please refer to our answer to Q 41) below.
We believe that the condition based on trading frequency should be simplified since the high threshold and the “relevant market” condition prevent SMEs and high net worth individuals to request a professional client classification. A new alternative criteria, based on a minimum investment amount per transaction, 100 000 Euros, should be added (please refer to our answer to Q 41). The condition on professional experience should be drafted in broader terms to better capture the knowledge and experience of the relevant person. Specific quantitative thresholds related to balance sheet, net turnover and own funds should be determined to better address the SMEs specificities.
Once classified, a professional client should be considered as professional per se with no specific exception whatsoever. In addition, investment firm should be granted the possibility to propose to their clients at their own initiative to modify their classification (as the client may not spontaneously ask for a change which could be useful for him).

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

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

Question 41.1 Please explain your answer to question 41:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As stated in Q 40, the criterion of 10 transactions per quarter over the previous 4 quarters on the relevant market should be modified. This criterion does not operate properly. Hence as a matter of example, in certain Members States, non-professional clients are prevented from accessing private equity funds, closed-ended AIFs or some complex PRiIPS products as none of those non-professional clients can justify 40 transactions on the above products over the previous year, while some other Member States allow non-professional clients to access such products based on national private placement regimes. As such, and in order to align high net worth individual investment opportunities in each EU Member State, BNPP suggests that:
- the 10 transactions per quarter over the previous 4 quarters on the relevant market criterion be replaced by a 30 transactions per year on any market having similar features (and not on the sole relevant market);

- since the size of transaction made by an individual is an indication of his knowledge and experience of financial instruments, a new alternative criteria, based on a minimum investment amount per transaction, €100000, should be added.

The existing criterion of the experience in a financial sector is too restrictive. We support the idea of removing the criterion of a position “in the financial sector” to also consider job positions in other sectors requiring financial knowledge such as Chief Financial Officer, Chief Executive Officers, teacher of economics…..
Since the size of the actual portfolio of an individual is an indication of his knowledge and experience of

financial instruments, we consider appropriate to keep the €500 000 size portfolio criterion. However, insurance based investment products and employees saving schemes shall also be included in addition to cash deposits and financial instruments.
The purpose of these modifications simplification is to allow clients with the required knowledge and experience to be treated as professional clients where this is appropriate.
This will ultimately allow clients to have access to a wider scope of financial instruments and a more sophisticated set of services, from which they are currently unable to benefit because of certain regulatory protections that are overly-restrictive given their trading and investment objectives.
Lastly specific criteria should be defined for SMEs, as the 500 K€ is not relevant for a firm and assessing this amount on the portfolio of the firm's representative does not seem relevant.

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

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

Question 42.1 Please explain your answer to question 42:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not see benefits in the creation of a new category of semi-professional clients. However as explained in Q 40 and Q 41 above we see real benefits in reviewing the opt-up criteria to facilitate the treatment of certain retail clients as professional clients.
Under the current framework, natural persons and SMEs cannot be treated as professional clients despite them having appropriate knowledge and experience of financial instruments. As a result, they continue to benefit from regulatory protections they do not necessarily need but cannot waive. This prevents them from accessing certain products or services.
It is also key that the regulatory regime that applies to clients who have opted-up to professional status must be exactly the same as the one applicable to per se professional clients. Currently, the regime applicable to elective professionals and per se professionals is not the same, the regulatory protections afforded to each being different. For example, Annex 2 states that "those clients shall not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in Section I".
Therefore, we believe that instead of creating a new client category, it is better to facilitate opt-up mechanisms, and fully harmonise the professional client regime across all professional clients, be they elective professionals or professional per se.

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	○	○	○	○	○	◉
Information provided on costs and charges	○	○	○	○	○	◉
Product governance	○	○	○	○	○	◉
Other	○	○	○	○	○	◉

Question 43.1 Please explain your answer to question 43:

5000 character(s) maximum

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

N.A.

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

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

5000 character(s) maximum

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

N.A.

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Semi-professional clients should possess a minimum investable portfolio of a certain amount (please specify and justify below).	○	○	○	○	○	◉
Semi-professional clients should be identified by a stricter financial knowledge test.	○	○	○	○	○	◉
Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise.	○	○	○	○	○	◉
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.	○	○	○	○	○	◉
Other	○	○	○	○	○	◉

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N.A.

4. Product Oversight, Governance and Inducements

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

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

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

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

Question 46.1 Please explain your answer to question 46:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Broadly speaking, BNPP is of the opinion that the MiFID II product governance regime is a major improvement and has achieved its objectives. There are only a few occurrences where retail clients are prevented from accessing products that are appropriate or suitable to them. BNPP considers that those occurrences should be addressed to make the product governance regime fully satisfactory.
As explained above the following changes to the product governance regime should be made for non-complex, shares and simple corporate investment grade bonds that are traded on a trading venue. This list

of non-complex products should also include simple AIFs, notably the “Fonds d’investissement à vocation générale” and the “Fonds de fonds alternatifs” which are French AIFs.

A predefined target market should be set out in the regulation by default. This predefined target market should include non-professional investors to facilitate their access to the corporate bond market, those instruments being suitable to them. Hence non-professional would be given access to corporate investment grade bonds and this would put an end to the current behavior consisting in using the selling restriction concept to avoid falling into PRIIPs regulation scope, and be required to draft a KID.

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

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

Question 47.1 Please explain your answer to question 47:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As a preliminary remark, all types of product “complex” or “non-complex” under MIFID2 should be subject to product governance regime. As explained in question 46.1, BNPP considers that a proportionate approach allowing the implementation of a standardised target market should be defined for certain products rather than exempted certain products. Such an exemption would have side effects of (i) limiting further the offering of product, and (ii) complexifying the decision tree for manufacturers as to which products are in scope or not.
As explained in question 32.1 BNPP considers that

- Ordinary shares and corporate investment grade bonds should be given a predefined target market set out directly in the regulation;
- Firms advising corporate for their issuances of shares or bonds in the primary market should not be qualified as manufacturers;
- The distribution definition should not include the situations where the firm does not perform any

marketing action to sell products.

- Situations where no investment advice is provided or active marketing tasks performed should not be qualified as distribution. Similarly, the distribution concept should not capture the situations of firms acting for their own account with no intention to immediately reselling the financial instruments acquired. None counterparty being the client of the other, no information of any kind should be provided both counterparties being deem to have the highest knowledge, understanding and experience. There are good arguments to consider that eligible counterparties acting for their own account should be fully exempted from any product governance requirements.
- Activities of (1) centralisation of subscriptions and redemptions orders for funds' units and shares and (2) RTO and Execution on behalf of third party dealing (when a firm is appointed by investment managers which have decided to outsource their dealing desk to transmit/execute orders strictly following the trading conditions and the list of brokers/counterparties defined by these investment managers – this service is commercially branded as "dealing services") should be expressly exempted from the product governance requirements. These services are provided on a purely "passive manner". Given the nature of these services the product governance should not apply.

The obligation of manufacturers as set out in article 9.15 of the MIFID II Delegated Directive to reassess their products and monitor the occurrence of so-called "crucial events" should be further clarified. In the current drafting, it is not clear whether such obligations apply only to existing products which are subject to be reissued or relaunched or whether it applies to any existing products. Given the obligations attached to the occurrence of a "crucial event" as set out in article 9.15 (including a potential change of the terms and conditions of the relevant product), we believe that these obligations to reassess and monitor crucial events should only apply when a firm is considering to re-issue a product (i.e. where the terms and conditions of such new product are identical to the ones of an existing product).

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

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

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

Question 48.1 Please explain your answer to question 48:

5000 character(s) maximum

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

BNPP considers that there is no legitimate reason to open again this topic as the ESMA has already clarified it in its guidelines.

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

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

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

Question 49.1 Please explain your answer to question 49:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

BNPP considers that the inducement regime set out in MiFID II is well calibrated and protect adequately the interest of its clients. One of the objective of MiFID II was to improve the transparency of the costs and charges associated with any transaction and we believe that the current regime answers positively this requirement.
BNPP considers that disclosure of inducements through costs and charges disclosures is a major improvement. It is adequate as disclosures give clients the expected single overview of all the costs of their transactions. BNPP is of the opinion that information provided are clear enough and do not need to be further amended or complemented. No additional language is necessary to explain the purpose of inducements. If need be explanation could be given separately (i.e. on a fee grid).
The ex-ante disclosure of inducements on an ISIN by ISIN basis (excluding for the sake of clarity OTC transactions) has improved the transparency of the costs of a transaction. Such an information provided on an ex-ante basis to clients allow them to have a clear understanding of the amounts of costs they will have to bear before they enter into a transaction. Conversely, BNPP dos not consider that the inducement information should be given on an ISIN by ISIN basis when it is given ex-post. A generic ex-post disclosure would perfectly meet clients’ expectations (if they have any).
The current regime which (i) prevents inducements where portfolio management or independent investment advice is provided and (ii) legitimate inducements only to the extent they improve the quality of the service provided is strict enough to make sure that investment firms will refrain themselves from only advising highly commissioned products. In this context, BNPP considers that the inducements regime together with the non-independent investment advice regime (which requires investment firms to only recommend or advise financial instruments, which are suitable to the client profile) has delivered the objectives of the MiFID II’s reform.
The rules are now well understood notably by structured products distributors and BNPP does not support too frequent regulatory changes, which might cause uncertainty.
Irrespective of the above BNPP is opinion that amendments to the current inducements regime are necessary to make it fully satisfactory. Notably, BNPP would favour (i) an in depth review of the research regime and (ii) more harmonisation of underwriting and placing agent fees treatment.
The research regime should be reviewed as the regime set out in MIFID II has had and continue having major adverse effects for small and medium caps which do not benefit anymore from any research.
In the same manner, the treatment of underwriting and placing agent fees should be better harmonized since

certain national competent authorities consider those fees as inducements when others do not. This is highly detrimental for investment firms acting in jurisdictions where those fees are qualified as inducements
Given these conflicting views on characterization, BNPP would prefer for these fees not to be treated as 'inducements'. This will notably ensure a level playing field between the Union and the UK. However, if this cannot be accommodated, our preference would be to give underwriters and placing agents the choice to disclose these fees upfront to all investors or to offer to disclose only to investors who have expressly requested to receive this information. We believe that a degree of flexibility is warranted as clients have generally not shown an interest in receiving this commercially sensitive information.

Some consumer associations have stated that inducement rules inducements under MiFID II/MiFIR are not sufficiently dissuasive to prevent conflicts of interest in the distribution process. They consider that financial advisers are incentivised to sell products for which they receive commissions instead of recommending the most suitable products for their clients. Therefore, some are calling for a ban on inducements.

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

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

Question 50.1 Please explain your answer to question 50:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

BNPP is totally opposed to such an outright ban for multiple reasons.
Firstly, the current regime is well balanced and already allows investors to choose investment services (discretionary portfolio management service choose an investment advice on an independent basis) where inducement bans already exist. The current regime already offers the flexibility for investors who refuse to be charged inducements.
Secondly, inducements are used to cover the costs of the services investment firms provide to their clients. Many investment firms have not opted for independent investment advice simply because they were not able to set up a business model where the fees paid by the clients would be sufficient to cover their costs to provide the service. It is worth recalling that some investors are not keen to pay a fee for such a service. This means that clients would lose the benefit of advice provided through the current non-independent investment advice regime. In addition, from a client perspective and in some Member States, tax implications would be also quite detrimental to clients as the advisory fee falls within the scope of VAT and increases the advisory fees. Moreover in certain Member States those costs cannot be deducted from income tax.
A total ban of inducements would have a consequence of a service level decreasing for investors, as well as unintended consequences for many investor who will be left without any investment advisor.
The range of financial instruments offered by investment firms might be significantly impacted if such an outright ban was implemented. This would affect the service provided to our clients as the number of suitable financial instruments would be reduced in such a regime.
Lastly, the example of the UK and the Netherlands, where an outright ban have been put in place since 2013, has had negative consequences among which a proportion of self-directed investors choosing highly

speculative short term investments over medium to long term principal protected, or partially protected products.

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

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

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

Question 51.1 Please explain your answer to question 51:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Certification requirement for staff is an appropriate way to comply with the requirement to assess knowledge and competence of staff providing investment advice and other relevant information as defined in Article 25 (1) of MiFID II.
The French NCA sets-up a certification mechanism which is an official recognition of a core professional knowledge which guarantee the quality of the service provided to clients in France. In Belgium a specific legislation stipulates the diploma requirements of bank staff and the additional formal training required for those candidates who do not have this type of diploma.

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

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

Question 52.1 Please explain your answer to question 52:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A certification mechanism would certainly be an appropriate answer to ensure consistency through all Member States. But other mechanisms could be appropriate to fulfil the requirement. The most important to improve efficiency is the setting up of a mutual recognition mechanism between Member States by way of European passport like mechanism. Once authorised in one EU Member State, a staff should be authorised in the other Member State without any further knowledge assessment.
The setting of a European certification framework would create additional implementation costs and regulatory changes. Moreover this would prevent NCAs to focus on local market specificities and preferences which are key to assess. Therefore each Member State should remain responsible for determining their own regime to comply with the requirements to assess knowledge and competence of staff providing investment advice and other information.
In any case should the European certification mechanism be adopted, it is crucial to insert a grandfathering mechanism to avoid regulatory burden.

5. Distance communication

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

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

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

Question 53.1 Please explain your answer to question 53:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The provision of information before the transaction is made as required by articles 46 and 50 of the Delegated regulation is not compatible with phone execution services since the provision of information on a durable medium delay the execution of the transaction. Therefore for certain transactions (derivative transactions in particular), where speed of execution is of the essence, it should be possible to systematically provide the costs and charges disclosure after the transaction is executed, having in mind that clients buying derivatives only care about the all-in price. For orders executed over the phone, information would have to be given orally before the execution and disclosed on a durable medium afterwards.

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

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

Question 54.1 Please explain your answer to question 54:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Taping and record keeping allow both the financial institutions and the clients to keep evidence of the context of the transaction in case of complains or control. We believe however that existing framework works properly. Accordingly we do not claim for any change in this matter.

6. Reporting on best execution

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

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

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

Question 55.1 Please explain your answer to question 55:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The current best execution-reporting regime is not appropriate for end investors, who generally do not consider the reports useful. This is mainly due to the high level of complexity of those reports and the huge amount of data that is required to be included in them. This creates significant complexity without creating commensurate benefit for the end clients. This means in practice that the client does not read them.
The costs associated with the production of those report is extremely high. Since the obligation to generate reports also applies in the context of best selection, it is worth mentioning that we do face significant

difficulties in receiving the relevant information from the brokers. The obligations places too much responsibility on banks providing investment services, which fall within the scope of the best selection process (reception and transmission of orders for retail and private banking activities).
We consider that best execution/best selection is a topic where much more flexibility and proportionality should be granted. The objective being to provide adequate information to the client, the reports should be built with this single objective in mind.
In certain circumstances, the reports require the inclusion of information which is useless for the end clients. The obligation to provide the report at the corporate entity level rather than business lines level means that the data reported for retail banking activities also encompass data related to corporate investment banking activities, making the reports potentially misleading and unhelpful for end clients.
Furthermore, these reports are not necessary for professional clients as they have already access to multiple places of execution (shopping around) where this information is available. By contrast, for retail clients, the reports are too technical and too complex. Most of the information included in those reports is not relevant for them.

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	◉	○	○	○	○	○
Format of the data	◉	○	○	○	○	○
Quality of data	◉	○	○	○	○	○
Other	○	○	○	○	○	◉

Question 56.1 Please explain your answer to question 56:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The reports are too complex for clients and should be amended to include only the information which is relevant and understandable and which allow clients to evaluate the relevance of the choices made by the investment firms.
However, we do not support in the short term a global review of the best execution/best selection regime and would rather favor removing from the report all the data fields that do not bring added value for the end investor and/or which are too complex to be used. We do not believe the industry would welcome having to perform major investments in this field. Any reform envisaged should be as inexpensive as possible.
In this context, we suggest that some fields/data should be removed from the report as they do not provide any added value to the client: percentage of passive order, percentage of aggressive order, percentage of directed order and the percentage for each broker and each type of investment product.

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

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

Question 57.1 Please explain your answer to question 57:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Those reports are highly costly to produce (and similarly the implementation costs were extremely high) but, as explained, above provide no evident benefit for end investors (the information being too complex), who are generally not able to analyze the data specified in those reports. As any changes to the current regime will give rise to costs for firms producing these reports, it is critical that any changes to this regime focus solely on the removal of certain fields and data (please see above).

III. Research unbundling rules and SME research coverage[7]

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

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

From a buy side point of view notably, the implementation of unbundling has involved a rationalization of set-ups through a thorough review of needs, providers and tools as well as a review of research budgets.
All research providers, including those focusing on SMEs are offering “Read Only” packages as it is sometimes simply what users (Portfolio Manager, Advisors, Buy side analysts) are interested in. A lot of them offer discounted price for this service as it represents a marginal cost. One large US bank has been more aggressive with a $ 10k package offering access to an unlimited number of users in one legal entity. But for groups like BNP Paribas, this discounted price multiplied by a number of legal entities equals to similar offer from other Bulge Bracket actors.
Although some concentrations took place as well as a juniorisation had been observed in the Research industry globally, leading to a decline in quality for some financial analysis including the SME research, we did not notice a drastic decline in the research offering nor a deterioration of its quality. The offer as a whole remains large and rich.

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

1. Increase the production of research on SMEs

1.1. EU Rules on research

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

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

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

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

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- Issuer-sponsored research by companies should be developed.
- Issuer-sponsored research should be more accessible and free for all investors in Europe and not reserved only for the clients of the analyst.

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Extending the trial period appears relevant. An alternative could be to reduce the waiting period from twelve to six months.

1.2. Alternative ways of financing SMEs research

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

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

- (●) 1 - Disagree
- ( ) 2 - Rather not agree
- ( ) 3 - Neutral
- ( ) 4 - Rather agree
- ( ) 5 - Fully agree
- ( ) Don’t know / no opinion / not relevant

Question 60.1 Please explain your answer to question 60:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

If a program is set up by a market operator to finance SME research, it must be funded by a private platform and investors must be able to buy only the research they need.
Private platforms already offer to users a large access to research reports from multiple independent research houses, brokers or banks. This allows users to buy specific reports on stock, especially of SMID caps. We therefore do favor the development of such platforms to make them better contribute to the distribution of SME research.

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See above

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

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

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

Question 62.1 Please explain your answer to question 62:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Artificial intelligence may probably help the production of research but not specifically on SMEs. In any case, that may not come in the short term and not necessarily enough for keeping on producing high quality research.

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

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

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

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

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

Question 63.1 Please explain your answer to question 63:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Such a database could aim at improving the broadcasting of sponsored research.
We think that the creation of this research database could increase the access to research material on SMEs, but costs of creating and operating this database should not be supported by investors and it should be limited to sponsored research.
Alternatively and in order to avoid spending public money to create a new EU platform, SME research providers could be incentivized to distribute their research on existing research platforms which already broadcast, for free, issuer-sponsored research from their existing partners.

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

- (●) 1 - Disagree
- ( ) 2 - Rather not agree
- ( ) 3 - Neutral
- ( ) 4 - Rather agree
- ( ) 5 - Fully agree
- ( ) Don’t know / no opinion / not relevant

Question 64.1 Please explain your answer to question 64:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As mentioned above, existing research platforms that already broadcast, for-free, issuer-sponsored research are already offering such service.

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

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

- ( ) 1 - Disagree
- ( ) 2 - Rather not agree
- ( ) 3 - Neutral
- ( ) 4 - Rather agree
- (●) 5 - Fully agree
- ( ) Don’t know / no opinion / not relevant

Question 65.1 Please explain your answer to question 65:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

- (●) 1 - Disagree
- ( ) 2 - Rather not agree
- ( ) 3 - Neutral
- ( ) 4 - Rather agree
- ( ) 5 - Fully agree
- ( ) Don’t know / no opinion / not relevant

Question 66.1 Please explain your answer to question 66:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We consider issuer-sponsored research as a minor-non monetary benefit.
Including sponsored research into the scope of article 36 would limit issuer-sponsored research access to the clients of the research provider.

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

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

- (●) 1 - Disagree
- ( ) 2 - Rather not agree
- ( ) 3 - Neutral
- ( ) 4 - Rather agree
- ( ) 5 - Fully agree
- ( ) Don’t know / no opinion / not relevant

Question 67.1 Please explain your answer to question 67:

5000 character(s) maximum

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

N.A.

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	◉	○	○	○	○	○
Authorise bundling for SME research exclusively	◉	○	○	○	○	○
Amend Article 13 of delegated Directive 2017/593 to exclude independent research providers' research from Article 13 of delegated Directive 2017/593	◉	○	○	○	○	○
Prevent underpricing of research	○	○	○	○	◉	○
Amend rules on free trial periods of research	○	○	○	○	◉	○
Create a program to finance SME research set up by market operators	◉	○	○	○	○	○
Fund SME research partially with public money	◉	○	○	○	○	○
Promote research on SME produced by artificial intelligence	○	○	◉	○	○	○
Create an EU-wide database on SME research	○	○	○	◉	○	○
Amend rules on issuer-sponsored research	◉	○	○	○	○	○
Other	○	○	○	○	○	◉

Question 68.1 Please explain your answer to question 68:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N.A.

IV. Commodity markets[8]

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 positon has to be closed. Another option would be to allow for trades negotiated over the counter (i.e. not on a trading venue) to be brought to an electronic exchange in order to gradually familiarise commodity traders with the beneficial features of “on venue” electronic trading.

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

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

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

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

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

	1	2	3	4	5	

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

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

Quantitative elements for question 69.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 69.1:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N.A.

1. Position limits for illiquid and nascent commodity markets

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

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

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

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

	1 (most appropriate)	2 (neutral)	3 (least appropriate)	N.A.
Current scope				
A designated list of 'critical' contracts similar to the US regime				
Other				

Question 71.1 Please explain your answer to question 71:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

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

Question 72.1 Please explain your answer to question 72:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

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

Question 73.1 Please explain your answer to question 73:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

	Yes	No	N.A.
Nascent	○	○	○
Illiquid	○	○	○
Other	○	○	○

Question 74.1 Please explain your answer to question 74:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

	Yes	No	N. A.
A financial counterparty belonging to a predominantly commercial group that hedges positions held by a non-financial entity belonging to the same group	○	○	○
A financial counterparty	○	○	○
Other	○	○	○

Question 75.1 Please explain your answer to question 75:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2. Pre-trade transparency

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

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

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

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

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

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

V. Derivatives Trading Obligation[9]

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

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

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

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

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

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

Quantitative elements for question 77.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 77.1:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We are supportive of the Derivatives Trading Obligation which was a G10 commitment following the 2008 crisis and we fully comply with all related MiFIR's requirements However, we are overall neutral regarding its implementation.
The main Derivatives Trading Obligation implementation concern remains the on-going threat of a Brexit no-deal scenario in the absence of full equivalence between EU/UK Trading Venues. The final outcome could have a significant impact on all answers in term of: competition, costs, transparency... Until we get clarity on such topics it is difficult to provide accurate and definitive feedbacks.

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

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In the context of Brexit, where a potential 'no-deal' scenario has highlighted DTO implementation issues, especially around extra-territoriality, we would, as a matter of priority, welcome as our preferred option a full equivalence between EU/UK Trading Venue similarly to what has been granted to US CFTC Swap Execution Facilities (SEF) and MAS Trading Venues in Singapore.
If such equivalences are unfortunately not granted, we would, at the very least, welcome the removal of EU DTO requirements for third country branches of EU firms especially when trading in-scope instruments with non EU clients. Otherwise, and limiting the example to EU investment firms trading in-scope instruments with UK clients through their London branches, such trading would have to comply with both (i) the EU DTO (ie: limiting the trading on EU trading venues and third county venues deemed equivalent, especially on US SEFs) and (ii) the future UK DTO (ie: limiting the trading on UK trading and third country venues which shall be deemed equivalent for UK purposes: the US SEF's notably). As a consequence, such trading could occur only on US SEFs, and this outcome would be detrimental.

Outside of the context of Brexit we would still welcome the removal of EU DTO requirements for third country branches of EU firms especially when trading in-scope instruments with non EU clients, as the purpose of the DTO is to ensure an appropriate client protection rather than ensuring market integrity. As such, we could consider that the relevant DTO to apply is the DTO that the client must fulfill, and not the EU DTO for non EU clients.

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

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

Question 79.1 Please explain your answer to question 79:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As mentioned above, in addition to a scope based on product instruments, it would be useful to clarify that the DTO is a client protection measure (ie: trading in trading venues where pricing and reporting environment can be considered as optimal for the clients), which means that the DTO applicable to the clients, depending on their place of trading/incorporation would have to be fulfilled only.

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

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

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

Question 80.1 Please explain your answer to question 80:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We fully support the answers provided by ISDA to the ESMA consultation on that topic and support the alignment of the DTO regime with changes introduced by EMIR Refit with regard to the clearing obligation for small financial counterparties and non-financial counterparties.

VI. Multilateral systems

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

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

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

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

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

5000 character(s) maximum

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

As it currently stands, the definition of multilateral system, from our point of view, is adequately reflecting the actual functioning of the market and therefore would welcome a status-co.

VII. Double Volume Cap[10]

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards the objective of more transparency in share trading.	○	◉	○	○	○	○
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	◉	○	○	○	○	○
The different components of the framework operate well together to achieve more transparency in share trading.	○	◉	○	○	○	○
More transparency in share trading correspond with the needs and problems in EU financial markets.	○	◉	○	○	○	○
The DVC has provided EU added value	◉	○	○	○	○	○

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

Quantitative elements for question 82.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 82.1:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

VIII. Non-discriminatory access[11]

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

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

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

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

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

- ○ Yes
- ◉ No
- ○ Don’t know / no opinion / not relevant

Question 83.1 Please explain your answer to question 83:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

BNP Paribas considers that the IT developments operated by clearing members and trading parties as a consequence of opening access to financial market infrastructures do not raise any major operational and technical issues, at this stage.

In addition, BNP Paribas considers that in order for open access to be fully effective, conditions under which CCPs/trading venues and competent authorities could refuse a request submitted under Articles 35 and 36 of MiFIR should be limited. Indeed, under the current regime, requests for open access principles can be denied on the basis of criteria that could be seen as too subjective and not precise enough, such as the anticipated volume of transactions, the number and type of users, arrangements for managing operational risk and complexity as well as other factors creating significant undue risks.

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

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

BNP Paribas acknowledges that, in the EU, all markets have not yet implemented open access requirements. Against this background, BNP Paribas's experience is only based on open access of cash equity markets, as regards the markets which already have implemented open access. Our experience shows that open access spurred competition among market infrastructures and leads to an overall decrease of costs, particularly for comparable fees (execution, settlement). However, as regards clearing, open access has also raised significant costs for clearing members, in terms of collateral. Those costs, which are very opaque and applied unevenly among CCPs, are related to the application to clearing members of interoperable CCPs' margin calls. Overall, the amount of those margin calls applied by CCPs is so high that it makes the decrease of costs related to open access less palpable.
In that context, we are of the opinion that the framework for interoperability arrangements for listed derivatives should be reconsidered to allow effective implementation of open access for these instruments.

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

Please explain your reasoning and specify which countries:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

BNP Paribas is aware of a European CCP, based in the Netherlands, working on a 'preferred access' solution, which enables two trading parties on a trading venue to contractually agree to clear their transactions on the CCP they select by themselves. Such solution constitutes a good example of open access among financial market infrastructures. BNP Paribas reiterates that costs related to CCPs' margin calls are a bad example of an unintended consequence of open access.

IX. Digitalisation and new technologies

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

Furthermore, it is evident that digitalisation and new technologies are transforming the financial industry across sectors, impacting the way financial services are produced and delivered, with possible 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, and may consult later this year on further topics in the context of the future Digital Finance strategy.

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

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

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The current financial regulation is demanding and create barriers to new actors/entrants. Consequently, this should lead to partnership between the banking actors and new entrants (such as major internet players). This would create new distribution channels. New platforms operated by digital economy actors could be used as new distribution channels and offer new distribution opportunities. Clients would have a more direct access to investment products. However, this should not lead to less protection for the clients.
Existing investment services providers are very cautious of their client data, which are pivotal in their relationship with their clients. Consequently, it is likely that investment services providers favor the development of digital solutions for their exclusive account rather than using standardized existing solutions.

In this context, dedicated cloud solutions would probably be developed to meet investment services providers' expectations and constraints.

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

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not have identified any.

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

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Digitalisation and new technologies should create:

- more transparency of market;
- more efficiency of the trading life cycle with continuous quotation and trading : this should increase the liquidity of certain illiquid assets;
- more accessibility to information and data;
- better accuracy of reporting.

Decision based on neutral solution technology would be more objective. Intelligence artificial would envisage multiple scenarios one of which will meet the client situation. In the same manner in a near future tax simulators would be much more developed and should be able to address multiple tax scenarios and situations.

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

- 1 - Disagree
-

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

Question 89.1 Please explain your answer to question 89:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To improve liquidity it should be useful to favor quotations on different trading venues. This would imply a harmonization of the existing quotation rules (regulatory constraints in that field can vary a lot between various jurisdictions.
NEW TECHNOLOGIES MAY LEAD TO LESS INTERMEDIATION, WHICH WOULD TRIGGER A DECREASE OF THE FEES.

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

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

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

Question 90.1 Please explain your answer to question 90:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not consider that product governance and distribution provisions should be relaxed or less stringent to better suit digital offers. The regulatory framework should remain the same and no differences between digital solutions and investment services provided through banking agency network should be implemented.

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

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

Question 91.1 Please explain your answer to question 91:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

X. Foreign exchange (FX)

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

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

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

Question 92.1 Please explain your answer to question 92:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe that the adhesion to the FX Global Code of Conduct, designed especially for FX activities and developed by market participants and central banks, is the appropriate instrument for the monitoring of the FX market and the prevention of potential misbehavior. It is worth noting that ESMA, in its consultation paper 70-156-1459 outlined that "it might be advisable waiting for the Code to be more deeply embedded into the

market […] before promoting an amendment of MAR in that respect". Rather than adding FX spot transactions in scope of the MIFID qualification of "financial instruments" (which in our view would be a very complex and burdensome exercise, with many unanticipated consequences, such as the inclusion of those transaction in the EMIR framework), it would be more advisable to ensure-through the ESMA channel for example- the promotion of the Code, which can become rapidly the industry standard.

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

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA could be granted the power to ensure a public promotion of the Code, aiming at making its adhesion a quasi-obligation for market participants.

Section 3. Additional comments

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

Please, where possible, include examples and evidence.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Costs and charges ex-post disclosure for private equity fund and real estate closed ends funds
Regarding specifically private equity and real estate closed-end funds BNPP is of the opinion that they should be excluded from the ex-post reporting obligations. This would avoid clients receiving unrepresentative and misleading information.
Regarding those products, the main costs are charged as a percentage of a client's initial investment commitment. This commitment is usually called over a five year period of time. This means that the "full" investment starts at the end of this "commitment period".
During this initial period, reporting the full costs and comparing them to the net asset value of investments hold by the client is not relevant. This can lead to costs in excess of a position's NAV and is therefore misleading. We propose to exclude private equity and real estate closed-end funds from the ex-post costs reporting obligation.
Should this obligation be maintained, it should be clarified that the ex-ante cost & charges estimate is to be

used and applied to the NAV (instead of the actual annual amount of costs & charges expressed as a percentage of the NAV).
Costs and charges ex-ante disclosure
Concerning corporate actions, given the functioning of the securities market and relevant market practices, it is impossible to correctly simulate the “impact of costs on return”. To address this specific topic BNPP believes that there is room for more proportionality as it is questionable to consider that helping investors to take an informed decision in case of corporate actions worth the efforts necessary to implement a full disclosure solution. Investment firms should only be required to disclose the transaction related costs.

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

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Reporting obligations in respect of execution of orders
Article 59 of the Delegated Regulation provides that where the order is executed in tranches, the investment firm may supply the client with information about the price of each tranche or the average price. Where the average price is provided, the investment firm shall supply the client with information about the price of each tranche upon request. There is no similar easing regarding the venue identification meaning that in all circumstances the investment firm must mention all the trading venues through which the transactions have been executed. To avoid major IT development BNPP wish to remove the requirement to mention the different trading venues in the report to only provide this information if so requested by the client. The average price for retail client is a more relevant information than the trading venue identification which does not bring added value for the client.
Suitability tests where clients execute orders in the same class of financial instruments several times a day. Suitability tests must be performed at each order, even in the case where clients execute orders in the same class of financial instruments several times a day. BNPP believes that the suitability assessment should not be repeated each time. Professional clients and eligible counterparties should sign up to an “investment policy statement” specifying their investment objectives, needs and constraints. The suitability test would only be required should their objectives, needs or constraints change.

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

The maximum file size is 1 MB.
You can upload several files.
Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Useful links

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

More on this consultation (https://ec.europa.eu/info/publications/finance-consultations-2020-mifid-2-mifir-review_e

Specific privacy statement (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)

Contact

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