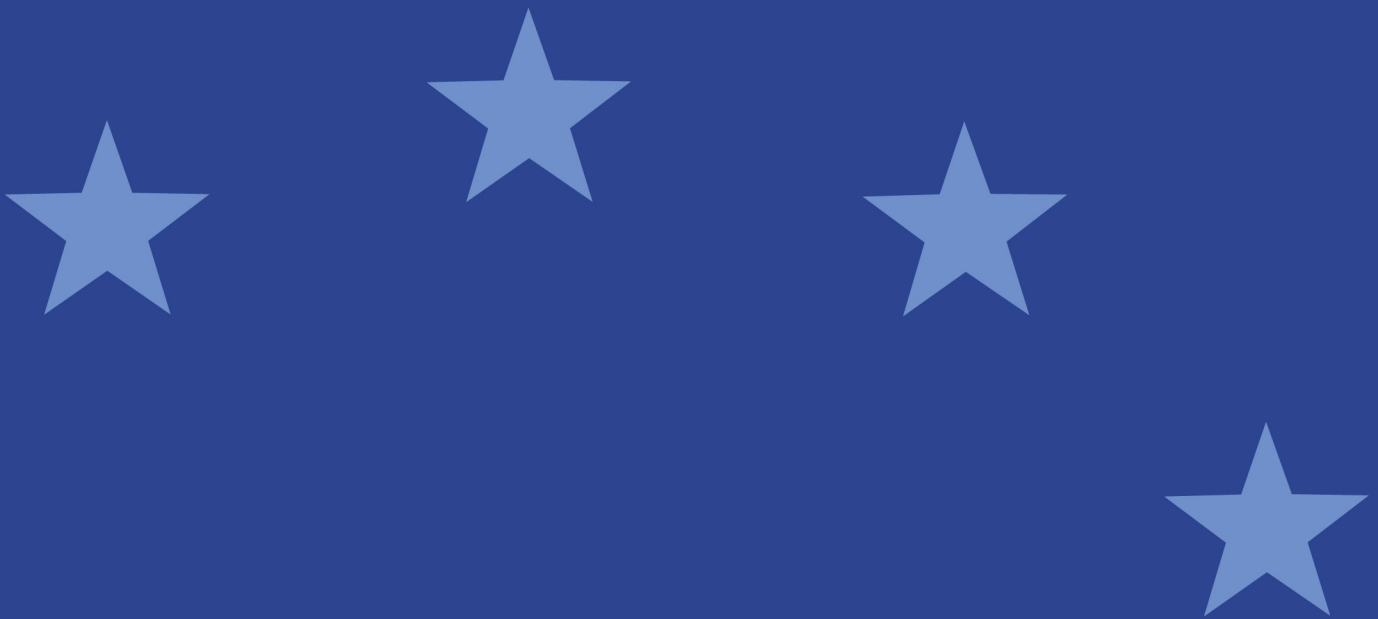




European Securities and
Markets Authority

Response form for the Consultation Paper on Review of the MiFID II framework on best execution reports



Responding to this paper

ESMA invites responses to the questions set out throughout this Consultation Paper and summarised in Annex II. Responses are most helpful if they:

- respond to the question stated and indicate the specific question to which they relate;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **Thursday 23th December 2021**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the steps below when preparing and submitting their response:

- Insert your responses to the consultation questions in this form.
- Please do not remove tags of the type <ESMA_QUESTION_BEEX_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
- When you have drafted your response, name your response form according to the following convention: ESMA_BEEX_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_BEEX_ABCD_RESPONSEFORM.
- Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading 'Your input – Open consultations' → 'Consultation on Review of the MiFID II framework on best execution reports').



Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. If you do not wish for your response to be publicly disclosed, please clearly indicate this by ticking the appropriate box on the website submission page. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading '[Data protection](#)'.

Who should read this paper?

This document is of interest to execution venues, investment firms and their associations, investors, consumer associations, as well as any market participant engaged in the execution of orders under the MiFID II framework.



General information about respondent

Name of the company / organisation	Finance Denmark
Activity	Non-governmental Organisation and Other Associations
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Denmark

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_BEEX_1>

Finance Denmark¹ welcomes the ESMA consultation on RTS 27 and RTS 28 with a deadline 23 December.

We have noted that the European Commission in their CMU package regarding the review of MiFID II/MiFIR published on 25 November 2021 has suggested a permanent suspension of the RTS 27 report. We support this suggestion from the European Commission. In relation to this we would like to emphasize the importance of legal certainty in regards of the current temporary suspension of RTS 27 that runs until February 2023 and the proposal from the European Commission. If the proposal from the European Commission is adopted we strongly encourage ESMA not to adopt any changes to RTS 27 for an interim period. We would support either an extension of the quick fix/temporary suspension or a status quo on RTS 27. It will come with significant and unjustified costs if new RTS 27 reports are to be developed.

Please also bear in mind that the European Commission argue that a Consolidated Tape can be used for proving best execution. However, we believe this would require a change of level 1 (MiFID 27, 1) including a revisit of the requirements in relation to the order execution policy as this policy for obvious reasons only includes a subset of the venues included in a CT whereby the use of a CT for proving best execution most likely would imply a misleading result.

Finance Denmark welcomes that ESMA has taken an initiative which aims at reducing the amount of data published in the reports. In particular, Finance Denmark welcomes that market makers are excluded from reporting and recommends that “other liquidity providers” are either excluded or quantified in order to allow for legal certainty.

However, as RTS 27 so far is suspended for two years we believe it is a good opportunity to have a closer look at the value of RTS 27 as the current set-up for RTS 27 does not work in practice. In our opinion the first best solution would be to make the suspension of RTS 27 permanent, which the European Commission also have proposed, as the value of the data, even with the proposed changes, is limited if at all fit for use. We are aware that this would require a change at Level 1.

A less preferred step could be a merger of RTS 27 and RTS 28, since it to a large extent is the same data that are used for two reports. In this context, RTS 27 and RTS 28 should only be applicable for equities and bonds as the data for derivatives and other non-equity instruments is of very limited value, if any. We are aware that this also would require a change of level 1.

Finally, we could like to draw ESMA’s attention to the classes of financial instruments in Annex I in RTS 28. The classification does not work today since there is a degree of subjective discretion when determining which class a specific instrument belongs to, which reduces the level of comparison between different reports published according to RTS 28.

¹ Finance Denmark is a business association for banks, mortgage institutions, asset management, securities trading and investment funds in Denmark. EU Transparency Register – registration number 20705158207-35.



<ESMA_COMMENT_BEEEX_1>



Q1 : Do you agree with the proposed scope in terms of execution venues for the reporting under a possible new RTS 27?

<ESMA_QUESTION_BEEX_1>

Finance Denmark welcomes the proposal to exclude market makers from the scope of the new reporting regime. However, we also believe that liquidity providers should be excluded from the definition of execution venues for the purpose of the best execution reporting regime for execution venues. If liquidity providers are to be kept in the definition of execution venues we strongly encourage ESMA to quantify a liquidity provider since the current definition does not work in practice. However, if ESMA is aiming for an approach where liquidity providers are quantified we urge ESMA to avoid a duplication of the SI regime in order not to complicate the SI regime further.<ESMA_QUESTION_BEEX_1>

Q2 : Do you agree with the proposed level of granularity by types of financial instruments instead of individual financial instruments under a new potential reporting regime? In particular, do you agree with the two proposed categories concerning shares (i.e., shares considered to have a liquid market and shares not considered to have a liquid market)? If not, please state the reasons for your answer and clarify what alternative categorisations you would propose in order to have a meaningful level of granularity for a new reporting regime.

<ESMA_QUESTION_BEEX_2>

Please first of all we would like to refer to our introductory comments regarding the proposal from the Commission and our support to a permanent suspension of RTS 27.

That said, Finance Denmark supports the proposed level of granularity.

As we have mentioned in our introductory comments we are of the opinion that derivatives and other non-equity instruments in general should be excluded from the RTS 27 and not only derivatives determined not to have a liquid market and not subject to the derivatives trading obligation and non-equity derivatives with no liquid market.

We welcome the narrowing of the scope for liquid instruments and illiquid instruments. However this requires that the data quality is improved considerably.

<ESMA_QUESTION_BEEX_2>

Q3 : Do you agree with the proposed metrics to report the execution quality obtained by execution venues?

<ESMA_QUESTION_BEEX_3>

First of all we would like to refer to our introductory comments where we suggest that the RTS 27 reports should be deleted permanently.

As goes for the data in the proposed metrics we are of the opinion that the data does not give useful information indicators of best execution. That said we acknowledge that it is difficult to provide more granular and detailed information without exposing the execution venues and revealing sensitive information.

<ESMA_QUESTION_BEEX_3>

Q4 : Have you observed good or bad practices of reporting by execution venues under the current RTS 27 that can be relevant for the elaboration of proposals to enhance access and user-friendliness of this information? Please provide specific examples if possible.

<ESMA_QUESTION_BEEX_4>

We support the proposal from ESMA to align the reporting with existing reporting standards under MiFID II/MiFIR. This is due to the fact that the current reports from venues are very difficult to interpret statistically and therefore almost impossible to compare. Also, the download history of RTS 27 reports shows that they are very seldom used which indicates that the format and hence consumption of the data is not working as intended.

Finance Denmark also supports easy and equal access for the users to the RTS 27 reports.

Finance Denmark does not support the proposal from ESMA to shorten the period for venues' publication of RTS 27 from 3 months to one month.

<ESMA_QUESTION_BEEX_4>

Q5 : Have you observed good or bad practices of reporting by investment firms under the current RTS 28 that can be relevant for the elaboration of proposals to enhance access and user-friendliness of this information? Please provide specific examples if possible.

<ESMA_QUESTION_BEEX_5>

Finance Denmark welcomes ESMA's proposal to delete firms' obligation to report the percentage of executed orders that were passive and aggressive.

<ESMA_QUESTION_BEEX_5>

Q6 : Do you agree with the classification for reporting proposed in Annex I of the possible new RTS 28, especially with regard to the suggested methodology for the reporting on equity instruments? If not, what alternative categorisations would you propose?

<ESMA_QUESTION_BEEX_6>

Finance Denmark sees some challenges with the classes of financial instruments as defined in Annex I, which are the same classes as we have in the RTS 28 today. The classes are not sufficiently precise which leads to a subjective assessment for some instruments. Hence it is difficult to compare the reports published by different firms. Therefore, we encourage ESMA to revisit Annex I to ensure that the classification of instruments are done on an objective basis going forward. A mapping based on CFI could be a solution.

<ESMA_QUESTION_BEEX_6>

Q7 : Do you agree with the proposals for a possible review of RTS 28?

<ESMA_QUESTION_BEEX_7>

We support to align the format for publication and we think that CSV could be a good format.

As for the RTS 27 report where we are of the opinion that derivatives and other non-equity instruments should be excluded, this exclusion should also apply the RTS 28 report.



<ESMA_QUESTION_BEEX_7>

Q8 : Do you agree with the cost benefit analysis as it has been described in Annex II?

<ESMA_QUESTION_BEEX_8>

Even though venues and firms already today provide reports in accordance with RTS 27 and RTS 28, the new reporting obligation as proposed in the consultation paper will require not insignificant costs that comes with the development of the new reporting set-up. Especially, the proposed RTS 27 report will require a lot of development, for which reason it is very important that it is well-thought through. Hence we also see some challenges with the deadline for 2023.

<ESMA_QUESTION_BEEX_8>

Q9 : Are there any additional comments that you would like to raise and/or information that you would like to provide?

<ESMA_QUESTION_BEEX_9>

<ESMA_QUESTION_BEEX_9>