



European Securities and
Markets Authority

Response Form to the Consultation Paper

MiFIR review report on the obligations to report transactions and reference data



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in the Annex. Comments are most helpful if they:

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

ESMA will consider all comments received by **20 November 2020**.

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 below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_CP_TRRF_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. 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.
4. When you have drafted your response, name your response form according to the following convention: ESMA_TRRF_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_TRRF_ABCD_RESPONSEFORM.
5. 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 paper on MiFIR review report on the obligations to report transactions and reference data").

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. 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 [Legal Notice](#).

Who should read this paper?

This document will be of interest to all stakeholders involved in the securities markets. It is primarily of interest to competent authorities and firms that are subject to MiFID II and MiFIR – in particular, investment firms and credit institutions performing investment services and activities and trading venues. This paper is also important for trade associations and industry bodies, institutional and retail investors and their advisers, and consumer groups, as well as any market participant because the MiFID II and MiFIR requirements seek to implement enhanced provisions to ensure the transparency and orderly running of financial markets with potential impacts for anyone engaged in the dealing with or processing of financial instruments.

General information about respondent

Name of the company / organisation	Finance Denmark
Activity	Banking sector
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Denmark

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_CP_TRRF_1>

Finance Denmark finds that the extension of the scope of reference data reporting, transaction reporting and transparency by including instruments traded through an SI creates a new and complex SI regime which will increase cost and could lead to fewer SIs.

The proposals could result in less competition amongst SIs since for smaller SIs the regime will be too complex, which could lead to fewer SIs (opt in SI) and probably lead the competition to the largest investment firms which are more capable of competing with trading venues. ESMA's proposals in the MiFIR Final Report on systematic internalisers in non-equity instruments simplify many of the requirements applicable to quotes in non-equities. The proposed expansion of the scope for SI as regards transaction reporting, reference data and transparency will have the opposite effect. Furthermore, it will make it more costly to operate as an SI due to the need for access to up to date data, which will lead to higher costs for the end clients.

The proportionality of the requirements should be weighed against the added value of expanding the scope. Please note that there is already limited positive effect for a Financial Institution in being an SI. It has signal value towards the customers and SIs will handle
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trade reporting on behalf of customers that are not SIs. In addition, being an SI allows a Financial Institution to trade shares OTC. Apart from that, being an SI seems only to entail regulatory burdens.

Also, we see very little positive effect on the market surveillance or on the ability for NCAs to fulfil their general obligation to uphold the integrity of markets under article 24 of MiFID. The Consultation paper does not in any detail show the benefits of the suggested increased burdens on the SIs. It should also be taken into consideration that these transactions are also reported under EMIR.

<ESMA_COMMENT_CP_TRRF_1>

Questions

Q1 : Do you foresee any challenges for UCITS management companies and AIF managers in providing transaction reports to NCAs? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_1>

No, its the same under EMIR and SFTR and they can delegate if needed

<ESMA_QUESTION_TRRF_1>

Q2 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_2>

See no challenges, but should be answered by the trading venues

<ESMA_QUESTION_TRRF_2>

Q3 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_3>

See no challenges, but should be answered by investment firms with branches

<ESMA_QUESTION_TRRF_3>

Q4 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_4>

No comments, but must be answered by competent authorities

<ESMA_QUESTION_TRRF_4>

Q5 : Do you envisage any challenges in increasing the scope including derivative instruments traded through an SI as an alternative to the expanded ToTV concept? Please justify your position and if you disagree please suggest alternatives.

<ESMA_QUESTION_TRRF_5>

None of the proposed options come without significant challenges and we do see several problems arising from the widened scope. Under all circumstances, the proposed changes will result in increased complexity, significant new fees and IT expenses. Thus, the number of SI is expected to decrease, because smaller SI can't cope with the new requirements. That would be counter-productive in relation to one of the main goals of MiFID, to ensure strong competition. Please refer to initial remarks. The OTC market is characterized by great amounts of trades with small differences. Each of these is handled as a different product. The number of products requiring ISIN/UIP is thus expected to become challenging to handle without significant loss of system performance if ISIN/UIP are to be verified and new identifiers have to be created if not available. The proposed changes of logic from ToTV to SI status as determining factor for transparency, transaction- and reference data reporting forces IF to review and potentially change a broad variety of systems.

If the said increase of scope is implemented in spite of the mentioned concerns, it is absolutely crucial, that level 1 and 2 regulation does not leave room for any interpretations. Since that is nearly impossible in all details, we do fear, that IF implement slightly different solutions and the effect on transparency will be eliminated.

<ESMA_QUESTION_TRRF_5>

Q6 : Do you agree that the extension should include all Systematic Internalisers regardless of whether they are SI on a mandatory or voluntary basis? Please justify your position.

<ESMA_QUESTION_TRRF_6>

No. SI are to some extent forced into the SI role, due to a challenging SI calculation process. (data availability/quality). Voluntary SI accept the terms an SI has to operate by, even though there are almost no upsides. On top of that, the voluntary SI do not necessarily have significant turnover in all the products they are SI in and the improvement of transparency is very limited. Thus it would be completely out of proportion to include voluntary SI in the regime.

<ESMA_QUESTION_TRRF_6>

Q7 : Do you envisage any challenges with the approach described in paragraphs 45-46 on the scope of transactions to be covered by the extension? Please justify your position and indicate your preferred option for SIs under the mandatory regime explaining for which reasons. If you disagree with all of the outlined options, please suggest alternatives.

<ESMA_QUESTION_TRRF_7>

We would like to stress once again, that we do not believe, SI should be burdened with data reporting as described in paragraphs 45-46. The added value of slightly heightened transparency is unproportional to the described significant impacts for the SIs. If SI are to be burdened anyway, we would prefer version 3. If the SI reporting regime should work (which we highly doubt it can), IF has to determine, which party is acting as an SI in the trade in question. If this is not known to both parties, both parties would potentially create different ISINs and thus report the same product with different ISINs. Hence, it will probably be least costly, if IF only have to collect data and create ISIN in the cases, where they actually act as SI.

<ESMA_QUESTION_TRRF_7>

Q8 : Do you foresee any challenges with the proposal to replace the reference to the term “index” in Article 26(2)(c) with the term “benchmark” as defined under the BMR? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_8>

Will require that ESMA clarifies how to keep instruments out of BMR if moved from index to benchmark but still are used for internal index only

<ESMA_QUESTION_TRRF_8>

Q9 : Which of the three options described do you consider the most appropriate? Please explain for which reasons and specify the advantages and disadvantages of the outlined options. If you disagree with all of the outlined please suggest alternatives.

<ESMA_QUESTION_TRRF_9>

Option 3

<ESMA_QUESTION_TRRF_9>

Q10 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_10>

See no challenges, but should be answered by the trading venues

<ESMA_QUESTION_TRRF_10>

Q11 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_11>

See no challenges, but should be answered by the trading venues

<ESMA_QUESTION_TRRF_11>

Q12 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_12>

It will be preferable if trading venues provides reference data when request for admission to trading in a trading venue has been made

<ESMA_QUESTION_TRRF_12>

Q13 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_13>

No further obligations on SI's should be enforced if TV already have reference data which will only increase complexity pls also see general comments. We would like to point out, that there is an inconsistency between the headline ("instruments exclusively traded on SIs") and the proposal ("..admitted to trading or traded on a trading venue or systematic internaliser").

<ESMA_QUESTION_TRRF_13>

Q14 : Did you experience any difficulties with the application of the defined list concept? If yes, please explain.

<ESMA_QUESTION_TRRF_14>

It will significantly increase the burdens on the SI's which should be avoided since not all SI's use this product on a daily basis and thus cant provide reference data on a daily basis. Should be TV that provide reference data on a daily basis

<ESMA_QUESTION_TRRF_14>

Q15 : Do you foresee any challenges with the approach as outlined in the above proposal? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_15>

It will significantly increase the burdens on the SI's which should be avoided since not all SI's use this product on a daily basis and thus cant provide reference data on a daily basis. Should be TV that provide reference data on a daily basis

<ESMA_QUESTION_TRRF_15>

Q16 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_16>

It will significantly increase the burdens on the SI's which should be avoided since not all SI's use this product on a daily basis and thus cant provide reference data on a daily basis. Should be TV that provide reference data on a daily basis

<ESMA_QUESTION_TRRF_16>

Q17 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_17>

No, seems reasonable

<ESMA_QUESTION_TRRF_17>

Q18 : Do you foresee any challenges with the approach outlined in paragraphs 75 and 76? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_18>

Yes, even though it may be a sensible and needed adjustment at first sight, the proposed approach will require a great amount of IT development by venues, venue- members, investment firms and in the infrastructure in general. There will be a issue with the additional code as it moves down stream. Different codes at different venues will increase complexity dramatically.

<ESMA_QUESTION_TRRF_18>

Q19 : Do you foresee any difficulties with the implementation of an additional code generated by the trading venue to be disseminated down the transaction chain in order to link all transactions pertaining to the same execution? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_19>

This will significantly increase burdens on the whole trading chain and especially smaller banks that trades through brokers. We see a need for clear format requirements of the TVTIC since high risk of change of formats through the trading chain fx first characters needs to be unique and could be segment MIC.

One of many potential problems is for example, the application of the approach to trades wich are split between different venues and/or SI and have to be applied to different portfolios in the IF, which appears to me impossible.

<ESMA_QUESTION_TRRF_19>

Q20 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_20>

No, seems reasonable

<ESMA_QUESTION_TRRF_20>

Q21 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_21>

No comment

<ESMA_QUESTION_TRRF_21>

Q22 : Which of the two approaches do you consider the most appropriate? Please explain for which reasons.

<ESMA_QUESTION_TRRF_22>

We prefer solution a).

It would be counterproductive to operate with different definitions of short selling in SSR and MiFIR. Allignment of definitions in different regulations is high priority in general. No matter the definition, it will be hard or even impossible for many clients, to provide the necessary information to all dealers in real time

<ESMA_QUESTION_TRRF_22>

Q23 : Do you foresee any challenges with the outlined approaches? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_23>

No, we do not see any problems with the removal of that piece of information

<ESMA_QUESTION_TRRF_23>

Q24 : Do you foresee any challenges with the outlined approach to pre-trade waivers? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_24>

This will increase burdens on SI's pls also see general comments

<ESMA_QUESTION_TRRF_24>

Q25 : Have you experienced any difficulties with providing the information relating to the indicators mentioned in this section? If yes, please explain and provide proposals on how to improve the quality of the information required.

<ESMA_QUESTION_TRRF_25>

This will increase burdens on SI's pls also see general comments

<ESMA_QUESTION_TRRF_25>

Q26 : Do you foresee any challenges with this proposal? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_26>

No, but we recommend the deletion of Article 5(3) of MAR as a consequence

<ESMA_QUESTION_TRRF_26>

Q27 : Do you agree with this approach? If not, please clarify your concerns and propose alternative solutions

<ESMA_QUESTION_TRRF_27>

No, since it will imply new burdens on receiving firm which are out of their control and it could potentially lead to double reporting. There has to be a contractual agreement between transmitting firm and receiving firm on reporting responsibility

<ESMA_QUESTION_TRRF_27>

Q28 : Do you agree with this analysis? If not, please clarify your concerns and propose alternative solutions.

<ESMA_QUESTION_TRRF_28>

Yes

<ESMA_QUESTION_TRRF_28>

Q29 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_29>

No

<ESMA_QUESTION_TRRF_29>

Q30 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_30>

We are also in favor of a unification of regimes in the areas that make sense in relation to the purpose of the current reporting. Basically, it is hard to see how the use of UPI rather than ISIN for OTC products can meet the expected challenge of double reporting. We do not recognize the value of the difference in product ID with the consequent of increased costs for development, maintenance and Marketdata.

<ESMA_QUESTION_TRRF_30>

Q31 : Are there any specific aspects relating to the ISIN granularity reported in reference data which need to be addressed? Is the current precision and granularity of ISIN appropriate or is (for certain asset classes) a different granularity more appropriate?

<ESMA_QUESTION_TRRF_31>

It might solve of the unclarity on ISINs today but it will significantly increase workload and burdens on SIs

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<ESMA_QUESTION_TRRF_31>

Q32 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_32>

On long term its good with alignment but will increase workload and burdens significantly in short term

<ESMA_QUESTION_TRRF_32>

Q33 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_33>

See no challenges, but should be answered by the trading venues and SI'.

Could be a sensible approach, there will make it easier.

You need to be able to demand the LEI from the issuer, and to demand the Issuer renews the LEI.

<ESMA_QUESTION_TRRF_33>