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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

Helle Soeby

* Surname

Thygesen

* Email (this won't be published)

hst@fida.dk

* Organisation name

255 character(s) maximum

Finance Denmark

* 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.

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* 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)
- ☑ 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
- [ ] Benchmark administrator
- [ ] Corporate, issuer
- [ ] Consumer association
- [ ] Accounting, auditing, credit rating agency
- [ ] Other
- [ ] Not applicable

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

Finance Denmark is a business association for banks, mortgage institutions, asset management, securities trading and investment funds in Denmark

* 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.

Finance Denmark welcomes the opportunity to respond to the European Commission's "Public consultation on the review of MiFID II/MiFIR regulatory framework ". However, as the deadline for this consultation falls within the period of the COVID-19 situation, which puts significant restraints on the functioning of all stakeholders, we reserve the right to come back with further comments at a later stage. In particular, we would like to under-line the importance of taking a cautious approach to any legal changes at this point in time as the market situation as a consequence of COVID-19 is and will be for a long period of time under significant stress and not fit for absorbing larger amendments. Moreover, if amendments are made it is crucial that the need for adequate implementation time is taken into account.

The purpose with MiFIDII/MiFIR was, in particular, to address the shortcomings in the securi-ties markets in the wake of MiFID I and the financial crisis and to improve the transparency and oversight of the securities markets. Additionally, MiFIDII/MiFIR aimed to enhance inves-tor protection and improve conduct of business

rules as well as conditions for competition in the trading and clearing of financial instruments.

With market structure issues in mind, Finance Denmark is first and foremost of the opinion that the poor data quality has undermined the possibility for MiFIDII/MiFIR to prove its worth. Taking the liquidity calibrations as an example, Denmark has at present 2 liquid Danish covered bonds and taking the estimations into account, Denmark should have had 38 liq-uid covered bonds by now (Nasdaq 2016).

Additionally, Finance Denmark has observed a continuous increase in market data costs contrary to the requirements in MiFIDII/MiFIR, which we have documented at several oc-casions (https://finansdanmark.dk /boersmaeglerforening-danmark/medlemmer/publikationer/). The ESMA MiFIDII/MiFIR Review report No. 1 con-firms this development and suggests a number of clever steps, which Finance Denmark fully supports. If these steps do not efficiently handle the market data problems within a reasonable period of time, additional steps must be taken (as the buy- and sell side in Eu-rope agrees upon).

In this context, Finance Denmark believes it is a misconception to view a Consolidated Tape to be a “fix-it-all” solution to a number of the issues as suggested in Q10. There is and will always be a need for access to proprietary data and the use of the US Consolidated Tape is a good and supporting example for why this is the case. A Consolidated Tape is therefore not a mean to solve the problems with market data costs as these are due to a market failure. On the contrary, it will most likely increase market data costs and must on these grounds not be subject to mandatory consumption.

With investor protection issues in mind, Finance Denmark is of the opinion that a significant part of the investor protection rules within the MiFID II/MiFIR framework is functioning well and meets the aim of the regulation. That said there are also parts that have shown not to be working as intended. Some of these inexpediences can be solved without changing the whole MiFID II/MiFIR set-up. Finance Denmark recommends three key elements in re-forming investor protection in the EU:

Horizontal alignment between legislation to ensure transparency and comparability, especially uniform information for similar investment products and services.

- There is a gap between IDD and MiFID II investor protection requirements. A process to level out this gap providing level playing field and providing con-sistent disclosures across sectors should be addressed.
- Furthermore, to horizontal alignment, Finance Denmark also encourage to en-sure better alignment between legislation regulating investment products (e.g. UCITS, AIFM and PRIIPs) and the rules regulating the services (e.g. MiFID II).

Tailored information and investor protection towards client types and simplifying dis-closures where relevant.

- Possibly by introducing a new client category or by amending opt-out (of disclo-sures) possibilities and opt-up (as professional) flexibility. Both for less experienced and for knowledgeable and experienced retail clients there is an information overload.
- With regards to the costs and charges disclosure there should be a greater distinc-tion between the different client categories, leaving out the professional clients and eligible counterparties of the ex-ante disclosure requirements altogether.
- The suitability assessment could also be fine-tuned when it comes to experienced and knowledgeable retail clients.
- Product governance requirements should be simplified so that simple products are not in scope and the concept of negative target market should be re-evaluated.

Consumer testing: Base future regulatory action on consumer testing.

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.

MiFIDII/MiFIR is one of the most comprehensive regulatory regimes within EU and invest-ment firms have faced significant challenges with the implementation. As co-legislators could not agree on fundamental issues such as the transparency including liquidity calibra-tions, these very political topics were pushed to level 2 and even level 3, thereby lacking the needed, political attention. On top, a great deal of unwelcomed surprises were experienced in that journey, such as lack of clarity about the SI regimes, interpretation of the investor protection regime e.g. in relation to unbundling requirements at level 2, unclarity about reporting regimes, definition of algo trading and so forth.

From a practical perspective, requiring application of significant legislation around new year is critical as it-development is subject to a frozen period from early December to late January. Such restrictions are necessary as a lot can go wrong when you change it-systems around year-end.

The lack of clarity regarding the interpretation of a number of issues leading up to the ap-plication of the rules 3 January 2018 was also unfortunate.

A recent, problematic example was the amendments to the tick size regime, which was introduced through a fast track procedure, using the Investment Firm Review as a vehicle. This procedure did not allow for an impact assessment of the proposals which is very unfortunate and can lead to unintended consequences.

Additionally, we are one European market and we could and should expect a level play-ing field. That is not necessarily the case when some Member States are very fast and comply with deadlines for application when others are not. Some Member States even adds a certain National flavor on regulations. This creates uncertainty and undermines level playing field. We see a need for a more stringent single rulebook approach and more regular peer reviews.

Finance Denmark encourages a process where level 1 and level 2 are final, clear and un-ambiguous before the deadline for application is set. The timespan from final level 1 and level 2 rules should at least be 1,5-2,5 years depending on the magnitude of the legislation. Please beware that sufficient time is crucial as the value chain with implementation of new legislation is long (vendors, producers, venues, CCPs, investment firms, etc.). In the work, proper impact assessment of new/changed initiatives are crucial.

With regards to investor protection provisions MiFID II has aimed to prevent mis-selling to investors but in a way, which promoted severe administrative burdens and costs. In addi-tion, investors are being directed towards simple investment products due to the provi-sions and some clients are consequently not able to fulfill their investment objectives and might withdraw from capital markets. Altogether, in some instances due to a lengthy and complex process which is disproportionate to the amount the client is seeking to invest. These consequences counter the aim of other important European long term agendas such as the CMU and the sustainable finance action plan.

There are several areas within the MiFID II framework which add very little value com-pared to the costs. Much is due to the “one-size fits all” approach in the regulation. This is the case with

- The Product Governance regime which covers all instruments and all client types,
- the best ex reporting regime which covers too wide an area of instruments and does not add much value from a retail client perspective,
- the costs and charges regime which has the same methodology no matter which instrument type and no matter which kind of investment service,
- the advisory services processes which are now much more complex across all client types as well as the amount of information delivered to the client, especially with regards to advisory services.

The negative target market provisions links product governance and suitability in a way that we do not think is well calibrated from the regulator. In addition, the target market provisions add unnecessary complexity and frictions in the market. An example of such friction being clients that change bank and the new bank does not have product govern-ance on one or more of the client’s products and the client refuses to sell. The costs and charges provisions of MiFID II do not operate with PRIIPs since the methodology regarding product costs do not coincide. The scope for the product governance rules is too broad and should not apply to products such as shares and bonds. In general, the lack of interaction and similar definitions between legislative acts is a problem, which we have ad-dressed several times. This is e.g. the case in relation to MiFIDII/MiFIR vs IDD vs PRIIPs vs MAR.

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.

In general Finance Denmark supports the Commission and ESMA's intentions to reduce regulatory complexity/red tapes. In this context Finance Denmark believes the mixed use of Directives and Regulations in some cases provides unnecessary complexity in the inter-play between EU law and national law. This is especially the case where level 1 Directives are supplemented with level 2 Regulations or vice versa. Directives should be used when it is decided to provide Member States with the sufficient tools to implement EU Law in na-tional law in a way that suits the individual Member States unique market characteristics. Preferably, Directives should consequently not be supplemented with detailed level 2 Regulations, but rather with level 2 Directives.

We neither see national legislation nor the existing market practices as a severe barrier for the effective implementation of MiFID II – at least not in our jurisdiction or in the Nordics. We see some already mentioned negative market effects of MiFID II and in some areas large differences in the level of detail in the MiFID II provisions. Whereas some provisions are really detailed others such as for instance inducement rules and costs and charges have been left rather undetailed leaving much for interpretation by NCAs. Therefore, we see some areas of the regulation where more European guidance or NCA convergence is needed for the framework to be efficient and to ensure level playing field and integrated markets.

We also see that the governance around the regulatory process is ill protected. The Q&A form is non binding legislation as such; however NCAs and ESMA still expect firms to follow the ESMA Q&As. In that respect they de-facto become hard law. We propose that ESMA ensures practices where the sector is heard before answers are finalized in Q&As. In addition, there is no implementation time and the Q&As come throughout the calendar disregarding that some Q&As have severe implications on system developments and process-es. We would therefore strongly suggest making thematic Q&A updates every year, with enough time for the sector to implement the changes. Timing of such updates could also be announced in advance to the markets. This would allow the sector to plan for these changes, and thereby adapting their systems in the most cost efficient manner. We would also strongly advise that the industry and other impacted stakeholders are given the possibility to comment on the proposed answers to questions, before answers are published and final.

In addition to the above, we would like to point to some quite specific areas in the regula-tion that are a barrier to convergence and level European playing field with regards to investor protection regulation. This goes for instance for the interpretation of offering, providing, recommending or selling of financial products and services. The boundaries between these terms are set locally mainly by local legislation and NCA interpretation of what constitutes marketing. Large divergence exists across Europe on how these rather important terms are understood in practice and by NCAs.

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.

Finance Denmark is of the opinion that the level of transparency has increased in some markets. Objectively, the level of transparency should have increased significantly more, as:

- OTC transactions are published via APAs,
- There are new transparency requirements for non-equities
- There are more stringed post trade transparency for equities (from 3-1 minute) etc.

However, as initially mentioned, the data quality is not yet as expected and should be the subject of further attention as the level of transparency is not truly reflecting what it should. It is the view of Finance Denmark that efforts aimed at improving the quality of existing transparency data should be the first priority, rather than to introduce new transparency rules. Hence, whether the objective of creating further transparency is met, should not be measured solely by the number of published trades, but also on the actual usability of the published data.

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.

No. As for level playing field in the Market Data space, trading venues’ monopoly on mar-ket data has not been solved and the market data costs continue to increase as we have documented at several occasions. In that context, many trading venues charge SIs for dis-tributing and publishing their quotes, which hampers competition between trading venues and SIs. This is not in line with MiFIDII/MiFIR.

As for level playing field in the Execution Space, it is of importance to understand the dif-ferent structure for trading venues versus systematic internalisers. Trading venues are matching orders on a multilateral basis, whereas Systematic internalisers offer bilateral execution putting their own capital at risk. Trading venues are most efficient when there are overlapping, opposite orders, which can be matched according to certain criteriaSys-tematic internalisers on the other handact as “buffers” if e.g. all want to sell/buy, if the size of the order is too large to be executed on a trading venue without causing significant market impact, if a client needs immediate execution and so forth. Both business models serve a purpose for end-investors and must be able to co-exist.

Additionally, in the non-equity space, the unlevel playing field still exists in the current pre- trade transparency for SIs. Unlike trading venues, SIs trade against their own capital which make them exposed to risk. That makes SIs more vulnerable to pre-trade transparency than trading venues, as SIs have to disclose their identity when making the quotes public.

In particular, the SIs are concerned with the requirement in MiFIR, article 18(6) that SIs shall allow other clients to execute transactions on the same terms. An SI should not be forced by regulation to provide quotes which are not considered acceptable from a commercial or risk perspective. Therefore, we urge to delete this requirement and in connection here-to, also to delete MiFIR, article 18(7) and 18(5) to ensure that quotes are not to be given to other clients. In case MiFIR article 18(6) and article 18 (7) are deleted, the present require-ments for SIs to publish quotes with name/MIC can also be abolished.

In the equity space, the former unlevel playing field between SIs and Trading venues in respect of tick sizes has now been leveled out due to the requirement of tick size valida-tion up to LIS.

Furthermore, the trading venues increasingly move away from continuous trading by intro-ducing auctions, which increases in particular the incumbent exchanges’ market power compared to other trading venues and lowers the quality of the overall trading venues’ order books as well as affecting the price discovery during the day. Finance Denmark is concerned with this development.

Firstly, this development undermines the share of the continuous transparency and price discovery during the day facilitated by trading venues, which is a t is a clear evidence of the poor quality of the trading venues orderbooks. This increases the importance of other execution venues, such as SIs.

Secondly, the concentration of volume during closing gives the trading venues – and in particular, the incumbent exchanges – even more significant market power, as the need to participate in these auctions are self-fulfilling as the volume increases.

Thirdly, it should be considered to introduce a limit on the share of the trading allowed in the closing auction. In case the limit is exceeded, the usage of closing auctions should be limited even further.

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.

Finance Denmark has identified barriers that have prevented investors from accessing the widest possible range of financial instruments. From a general perspective, the high and increasing market data costs force investment firms to scale their market data purchase back deselecting certain, smaller markets or products. This harms transparency and lim-its at an increasing pace the type of instruments and markets that investors access. Such development harms the less significant markets and companies, compromising market integration, transparency and investor choice.

Furthermore, barriers can also be found in the product governance rules, in the induce-ment rules, in the complex and administratively burdensome advisory processes which reject certain client types from advisory services and in the client classification which is very wide with respect to the retail segment. In addition, the PRIIPs regulation has created barriers in different ways.

The requirement in the product governance rules to identify target market and negative market has limited the range of instruments available for retail clients. The manufactures are cautious when identifying a target market resulting in a narrower scope for some in-struments and especially, the administrative burden of finding and maintaining data as well as the uncertainty with regards to product governance on external products has re-sulted in less supply of externally produced investments products and thereby less product variety for the retail clients through the distributers. This trend has been further intensified by the inducement rules as explained in the answer 49.1.

These regulatory changes in combination with the client classification, where the retail category is very broad, have led to the fact that a number of experienced and knowl-edgeable retail clients are prevented from investing in some products. For example, in a low yield environment, we have seen that experienced and knowledgeable retail clients are prevented from investing in more suitable products since these products are only available for professional clients. This may result in lower long term risk adjusted returns for these client segments.

In addition, the additional complexity and administrative costs especially in the advisory services following MiFID II have cut-off low AuM client segments from advisory services. These segments are increasingly left with the execution-only service or low cost robo-advisory platforms and within low AuM client segments there are large client groups for which robo-advisory solutions are far from optimal.

With regards to PRIIPs we see two ways by which the regulation primarily has limited the access to products for retail clients. Partly by the scope uncertainty effecting the issuers that are scoping out retail clients from all corporate bonds and secondly by third country PRIIPs producers not delivering PRIIPs KIDs for products. The second barrier is particularly relevant in smaller jurisdictions as the Danish where NCAs demand that PRIIPs KIDs are available in local language.

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	○	○	○	○	○	○

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.

The main impediment for the creation of a CT is the cost of market data: A consolidator will need data from at least all TVs and APAs in order to enable consolidation of the infor-mation. The costs of obtaining all this information will be prohibitive: With the existing price levels and market data policies from the trading venues, the costs of creating and using a viable CT would be extremely high and would not be affordable for users.

In this context, we also note that Q10 in this consultation stipulates a number of different problems which the establishment of a CT could solve. However, as initially stated, Finance Denmark does not consider that a CT would be a comprehensive solution to all of these problems as there will always be a need to purchase access to proprietary data, cf. our answer to Q8. Rather, if the problems with high and increasing market data costs are solved, industry driven solutions would appear concurrently with the handling of the data quality issues and data standardization (e.g. the Market Model Typology (MMT) from the FIX Trading Community).

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.

In case an EU Consolidated Tape is to be mandated under a new, dedicated legal frame-work, it is important that the following requirements are included besides in addition to what is already stated in MiFIDII, art. 65 and RTS 13:

For a CT to facilitate e.g. transparency, significant legal changes are required. In this context, it should at least include the following requirements:

1. The CT may cover equity- and equity like products as well as bonds (post trade only). Derivatives are too complicated to include at this stage. However, the legislation may be prepared to include this, if so needed.
2. The CTP must be a public, not-for-profit utility, preferably within ESMA.
3. All venues and all APAs must be required to send data in a non-discriminatory way to the CTP (The contributions from trading venues and APAs to the CTP is mandatory – in case a pre-trade CT, also systematic internalisers must contrib-ute). To ensure the value of information, the data quality should be improved. One model is to consistently require the Market Model Typology (see https://www.fixtrading.org /mmt/). The purpose is to standardize flags for post trade data from both trading venues and APAs. There must, however, be no requirement of mandatory consumption of the CT.
4. There must be no preferential treatment of trading venues' proprietary infor-mation, whereby trading venues must not offer market data on different terms to the CTP compared to a market participant
5. There should be strict requirements regarding "low latency" and "periods of delay" and a definition of Delayed Data
6. It would be preferable if market data from the CTP is of sufficient high quality to be included in the "best execution" assessment for instruments covered by the CT.
7. It follows a reasonable cost-based approach in the fee/reward structure (See CE reports on market data pricing and guideline to a cost benchmark) – both for CT data as well as proprietary data. In order for

the cost assessment, there is a need to implement a cost benchmark approach in order to verify and control the CT, the trading venues (and APAs) market data pricing meaning “step 0” must be enforced (every price change must be substantiated with a cost benchmark as a starting point).
8. CT data must be able to be used in all applications without any limitations/restrictions including no restrictions in usage and distribution of the data.
9. In contractual terms, CT data are considered unique and independent, not a substitute for data obtained directly from a trading venue in order for trading venues not to claim additional fees for CTP data (data users should not pay several times for the same data).
10. Governance of the CTP should be in the hand of ESMA and include an inde-pendent body consisting of elected experts representing various views with a proven record. Each term should be no longer than 5-7 years. Also, no trading venue can be allowed to acquire (at a later stage) the European CTP, nor help the CTP to administer the policy, licensing, reporting, collecting of fees, etc.
11. Strict control to ensure that parties send information at the exact same time to the CTP. (off-exchange: Parties must send information the same time to the APA and the CTP and for on-exchange, Trading Venues must publish duplicate information at the same time to the CTP).

Especially, Finance Denmark sees a significant risk that exchanges will seek ways to keep their current market power and large profits from selling market data. In the US, exchanges supplement their CTP data revenues by selling data directly to market participants. Doing so, they make sure to differentiate enough on the content (see 1-3 above) and quali-ty/speed (see 4-5 above) of the CTP data vs. data sold directly to market participants. The consequences are that security dealers and investors need to supplement their CTP data with data bought directly from the exchanges. Alternatively, the exchanges may require very high prices for suppling data to the CTP. Hence, ultimately, a CTP may most likely just imply anyway that dealers and investors must buy data from multiple sources.

In case it is decided to move forward with a CT, Finance Denmark expects a comprehensive consultation containing a concrete proposal for a CT including:

- Purpose of a CT (including target group(s) and potential use cases)
- Governance
- Concrete proposal for the construction of a CT (including but not limited to scope of the CT and instruments, purpose, level of information, data requirements and data standards. costs (costs of construction a CT, cost of day-to-day operation, funding model)
- Market data costs associated with usage including potential limitations in usage etc.
- Requirements for contribution/reporting
- Requirements for consumption (not mandatory)
- Timeline
- Impact assessment including cost/benefit analysis

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.

Finance Denmark fully agrees and supports ESMA's conclusions in their final report and the proposed measures for a first step to solve the problems (as described in the EC consultation page 14 and 15).
Finance Denmark urges that the proposal to add a mandate to the Level 1 text empower-ing ESMA to develop Level 2 measures specifying the content, format and terminology of the RCB information including the mandate to formulate standardized definitions, terms and audit procedures. Inspiration can be found in Appendix A in Finance Denmarks re-sponse to the ESMA consultation.
However, if these steps proposed by ESMA do not work within a reasonable period of time, additional steps must be taken as also highlighted by both buy- and sell side in EU (EFSA and EFAMA).
These additional steps could be as suggested by Finance Denmark; A Revenue Cap based on LRIC+, cf. our response to the ESMA consultation on market data.
As for the concrete changes to level 1 and 2, Finance Denmark agrees with ESMA and supports:

- To add a mandate in the level 1 text empowering ESMA to develop draft Technical Standards specifying the content, format and terminology of the RCB information as described in MiFIR, art. 13
- To amend the level 1 texts regarding access and publication of market data, stat-ing in a coherent and consistent form that RCB entails that market data is to be priced based on cost of producing and disseminating the market data plus a reasonable mark-up.
- To amend art. 4 of MFIDII and art. 2 of MiFIR by adding definitions of market data.
- To specify in detail in the level 2 rules the principles behind a cost calculation of producing and disseminating market data, preferably using a Long Run Incremental Cost (LRIC+) model.

Finance Denmark further suggests in this exercise to delete art. 7(2) (in Delegated Regulation (DR) 2017 /567 and art. 85(2) in Delegated Regulation (DR) 2017/565) The current wording of art. 7(2) and art. 85(2) allows the incumbent exchanges and APAs to rely on their market position to set prices for market data in a way, which are not based on their costs of producing and disseminating the market data. Trading venues and APAs must be allowed to earn a reasonable margin. However, they must not be allowed to subsidize other business activities through their market data revenue.

- To add a new control mechanism in the level 1 text by introducing a requirement for trading venues, APAs, SIs and CTPs to report their actual costs for producing and disseminating market data directly to NCAs and/or ESMA.

In this context, Finance Denmark refers to the "Guideline to a cost benchmark" prepared by Copenhagen Economics, which includes concrete examples and figures from IEX – the first exchange in the world to estimate the cost of producing and disseminating market data:

• To update and add requirements in DR 2017/567, art. 8 and DR, art. 86, for market data to be provided on a non-discriminatory, standardised basis, ensuring uniform definitions, pricelists and usage policies across all trading venues in the Union. Such requirements would in-crease the transparency and enable comparison across trading venues.

• Finance Denmark is of the opinion that art. 11 in DR 2017/565 (and art. 89 in DR 2017/567) has not been properly enforced and hence suggests that transparency obligation should be extended to include reporting those informations directly to the NCAs and/or ESMA in combination with disclosing it to the market. It should also be required that the disclosure must be clear, visible, transparent and easy accessible (as opposed to “10 clicks away”). Furthermore, historical price lists and market data policies must be available (at least for the past 5 years). If LRIC+ model is introduced a significant simplification will be the outcome. As for art. 11.2 (d) it should be specified more clearly, what is to be understood with market data revenue in order to ensure comparability, e.g. through reference to the market data definitions on level 1. Finally, regarding art. 11.2 (e), the CE proposed cost benchmark should serve as the basis for this information. The information should be published with figures in order to make it com-parable.

• To delete art. 86(2) of DR 2017/565 and 8 (2) of DR allowing for trading venues, APAs, CTPs and SIs to charge for market data proportionate to the value the market data represents to users. Finance Denmark also suggests to delete art. 86(1) of Delegated Regulation 2017/565.

The concrete proposal for changes in level 1 and level 2 can be found in the attached Market Structure Position Paper, which is a part of our response and uploaded together with this

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.

Generally, it is Finance Denmark's view that the use case for a CT is very limited as also initially stated. At best, a CT, to a certain extent, could be partly used in the TCA and the best execution control with the important point in mind that best execution is not only about price, but also costs, likelihood of execution etc. Also beware that the timestamp is problematic as the same exact trading time does not equate to the same accessibility. The location is too important today. Latency in between geographies means, by necessity, that two trades done at the exact same instant would be seen in a different order depend-ing on your location. A transaction in London would be seen later in Copenhagen and vice versa. This also means that the actual accessibility would be in a different order as a func-tion of location. Therefore, a European CT cannot, with fairness, be used for controlling ex-ecution quality.

In this context, Finance Denmark underlines that a CT cannot be used to ensure "reasonable cost of market data", as a CT cannot cover the market data need and there will al-ways be a need to continue to purchase proprietary data licenses. Therefore, the significant problem with high market data costs must be handled separately.
With reference to our response to Q8, Finance Denmark calls for a comprehensive consul-tation containing a concrete proposal for a Consolidated Tape in order to enable us to provide concrete comments to an elaborated proposal.

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.

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[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	○	○	○	○	○	○

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.

Finance Denmark believes that most of the factors in the scheme are easy to perceive. However, as for the need for full coverage – we believe the consequences of a lack of full coverage will leave the venues (left out) at a considerable disadvantage. These venues will be “faded out” and become less relevant venues going forward.

Finance Denmark is of the opinion that in order for a Consolidated Tape to create at least some value, a CT needs to be based on high data quality, full coverage within the chosen asset classes and include data from all sources. In this context at least trading venues and APAs must be mandated to send the information to the CTP.

Consumption must not be mandatory as a substantial part of the data users will need to purchase the proprietary data from the trading venues anyway.

There should only be one CT in Europe covering all relevant securities in all relevant asset classes. The single provider of an EU CT must a public utility with a strong governance framework and a consistent implementation across different asset classes. Please also see Q8. Finance Denmark once again wish to stress that a concrete proposal for a CT is expected in order for stakeholders to provide proper assessment of the such.

Please also see our response to Q8 for further elaboration.

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.

Finance Denmark does not support mandatory consumption. As the use case is not evi-dent and investment firms have different needs, the consumption must not be mandatory as this will only add to the problems with increasing market data cost. Please also see our response to Q1 and Q8 above.

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.

There should not be a link, since best execution is not only about price, but also costs, likeli-hood of execution etc. and investment firms will need additional information to include in the best execution assessment.

Investment firms should be allowed to evaluate which best execution factors are most reasonable to include in their best execution evaluations, taking into consideration their specific business model, client base etc. Likewise, they should be allowed to evaluate the relative importance of each best execution factor.

As to the reporting obligations placed upon execution venues any meaningful link to a CTP shall not be established prior to a possible existence of a functional and well-established CTP, to prevent increasing market data costs.

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

		2				

	1 (disagree)	(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	○	○	○	○	○	○

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.

Finance Denmark is of the opinion that a CT needs to be funded by user fee. There is a need for a tender every 5-7 year to ensure that the CT is always “on the top”. Beware that the usage of the CT data must not be limited in any way and usage must be voluntary (not mandatory). See also Q8 for additional input.

3. The scope of the consolidated tape

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N.A.
Shares pre-trade[3]	○	○	◉	○	○	○
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.

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

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

Covered Bonds

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.

Finance Denmark is of the opinion that a CT cannot solve the scheduled problems in Q10. There will always be a need to buy access to proprietary data and therefore a CT cannot be used to ensure ”reasonable cost of market data”. In case the construction of a CT will continue despite the poor use cases, It is Finance Denmark’s assessment that:

- An equity post trade CT may be used to facilitate additional transparency
- A post trade "all bond classes" CT may be used to facilitate transparency

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.

Finance Denmark suggests that the following information is required:

- If a pre-trade CT is created, the needed information is:

Venue, Bid, Offer, Size, Time Stamp Quote Type, InstrumentID (ISIN+ TV MIC (SINT for SIs) +Currency)

- If a Post-trade CT is created, the needed information is:

Venue, Traded Price, Size, Time Stamp, Trade Type, InstrumentID (ISIN+ TV MIC (SINT for SIs) + XOFF) – no SI ident.

The CT must respect the deferral publication regime and not publish trades via the CT 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.

Finance Denmark is of the opinion that shares admitted to trading on a Regulated Market as well as shares admitted to trading on a MTF with a prospectus approved in an EU mem-ber state is relevant to include in

the Official List of shares defining the scope of the EU Consolidated Tape.

We do not see a need to include third country shares as this will minimize the usefulness of the tape as Finance Denmark also proposes to remove the STO (if SIs are excluded as eligible execution venues for the STO) or limit the scope and exclude third country shares (if SIs are still encountered as eligible execution venues for the STO).

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

Please explain your answer:

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

No. In case there is a wish to move on with the CT, all shares must be included as the less shares and information that are included in order to be non-exclusive, the bigger need for buying the proprietary market data from the trading venues.

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.

No flexibility, cf. Q17

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.

As initially stressed, Finance Denmark is very sceptical regarding value of a consolidated tape. Also well-founded use cases as well as a comprehensive cost-benefit analysis are missing. That said, if a CT is mandated Finance Denmark suggests only to enable a post trade bond CT mainly for transparency purposes. All types of derivatives should be exclud-ed as well as warrants and certificates. See also our response to Q16.

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.

The purpose with the STO is to force as much share trading on trading venues and SIs as possible in opposition to MiFID I where a significant part of trading occurred OTC and via BCNs.

According to own experiences and to the ESMA consultation on the transparency regime for equity and equity-like instruments, the STO has – not surprisingly – resulted in more trading via Trading Venues and via SIs than before and therefore more transparency. Apparently, SIs are facing an increasing market share of the trading at the expense of the trading venues and the question is why this is the case:

The trading venues' ability to facilitate trading efficiently and with minimal market impact is reduced due to low quality of the trading venues' order books and the development is self-perpetuating: As the market players algorithms increasingly deselect venues with low execution quality, the ability for these venues to support good execution quality decreases even further.

Finance Denmark believes that the quality of the trading venues' order books has de-creased considerably since the application of MiFID I in 2007. This is e.g. due to the frag-mentation and the trading venues' unhealthy approaches to attract liquidity from each other. For example, the usage of maker-taker fee attracts only shortsighted liquidity which disappears in times of distress and the "one-size-fits-all" tick size table in MiFIDII/MiFIR (RTS 11) has resulted in too low tick sizes in some markets/shares and too high tick sizes in other markets/shares. It should be considered to revisit the RTS 9 (which is regulating the or-der/trade ratio), RTS 10 (which is regulating fee structures for trading venues) and RTS 11 (the regulation of tick sizes). As for RTS 11, please see Q25 for elaboration. For RTS 9 it should be considered to limit order/trade ratios centrally and for RTS 10 it should be considered to revisit which type of fee structures that supports healthy orderbooks.

Also, the general market quality and transparency is compromised due to the increasing importance of closing auction for incumbent exchanges.

Firstly, this development undermines the continuous transparency and price discovery dur-ing the day on trading venues. Thereby, it is natural that the SIs take over the role as execu-tion venues which provides the requested execution, transparency, and price discovery during the day as liquidity providers. However, such development is another clear evi-dence of the poor quality of the trading venues' orderbooks, which should be paid proper attention instead of blaming the SIs in general.

Secondly, the concentration of volume during closing gives the trading venues – and in particular, the incumbent exchanges – even more significant market power, as the need to participate in these auctions are self-fulfilling as the volume increases.

Thirdly, it should be considered to introduce a limit on the share of the trading allowed in the closing auction. In case the share is exceeded, the usage of closing auctions should be limited even further.

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.

The Swiss model is clever in the sense that the trading restriction in MiFIR article 23(1) will no longer apply to EU investment firms for Swiss shares, because these are no longer "admit-ted to trading on a regulated market or traded on a trading venue" in the EU (except for any 'grandfathered' dual-listed shares). So, in short, it could be considered to reduce the scope of the trading obligation via excluding third country shares.

However, in case this is not a chosen path, we still face the problem of shares admitted to trading on a regulated market or traded on a trading venue in the EU and which still are traded in third countries and therefore also subject to the trading obligation. Equivalence allows firms to access this liquidity in order to ensure clients best execution. With absence of equivalence it is expected that this liquidity will seek to EU (some UK based MTFs have already operations within EU), and over time, the problem is expected to solve itself. How-ever, there will be a period where investment firms cannot access third country liquidity pools which must be taken into account by the supervisors due to possible challenge with best execution when these liquidity pools cannot be accessed.

As for longer term fears – we direct your attention to the ESMA proposal of removing SIs as eligible execution venues under MiFIR article 23. In short. This is not in the interest of the cli-ents and will lead to de facto exchange monopolies not only in market data as we face now, but also in trading. And please bear in mind that exchanges and MTFs are for profit companies and not utilities. We see this proposal as highly inappropriate and this will cer-tainly not benefit the development of a Capital Markets Union. We strongly believe that SIs must be maintained as eligible execution venues and in Q24 there is an activity-based description of what Sis can do, as we do recognize that SIs may not become multilateral venues. In case SIs are removed as eligible execution venues, the Share Trading Obligation must be removed as well to avoid a concentration rule and to ensure clients best execu-tion and choices.

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.

Finance Denmark strongly supports to keep the STO if and only if SIs continue to be considered as eligible execution venues under the STO, as argued under Q21. If this is not the case, the STO must be repealed all together to avoid concentration rules.

If SIs are included as eligible execution venues the STO should be amended and not in-clude third country

as argued under Q22.

Also, it should be considered to follow the ESMA proposal in their consultation on equity market transparency and remove “carried out between eligible and/or professional coun-terparties” in the exemption provided in MIFIR, art. 23 (1) b) in the STO, as non-price form-ing trades are not only carried out between eligible and/or professional counterparties.

Please beware that in order to accommodate the apparent concerns of some SI behavior, we have provided a suggestion on how to clarify the SI activity in Q24.

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.

Finance Denmark has heard there is a concern that the SIs market share has increased too much, and that SIs are acting multilaterally rather than bilaterally.

Firstly, we do not see a problem with an increasing role of SIs as long as the SIs business model is complying with the requirements in MiFIDII/MiFIR. One of the fundamental reasons for introducing quantitative requirements and opt-in possibilities for becoming an SI in MiFIDII/MiFIR was to move trading away for pure OTC/BCNs and to increase the number of SIs to strengthen the competition between execution venues to the benefit of the clients and the efficiency in the capital market.

Secondly, we are missing documentation of the apparent, multilateral business model of some SIs. From a

Nordic perspective we cannot recognize this behavior. Finance Denmark is, however, open towards strengthening the description of the compliant SI activity and include this in level 2 regulation rather than in Q&As, if so needed.

Thirdly, as for the SIs market share of trading, ESMA should bear in mind that the success of SIs to a great extent is due to the poor quality of the trading venues order books which is not supporting on-venue trading, and in particular not for larger size orders.

SIs provide clients with more efficient execution, more choices and at lower costs than trading venues.

For retail clients, SIs can provide immediate execution at a known price. For wholesale clients – such as pension funds - SIs can minimize market impact when executing larger orders, which trading venues in general are unable to support. This is not at least due to the in general poor quality of the trading venues order books with low volume and undue inter-ference from non-genuine “liquidity-providers” which is a consequence of e.g. inappro-priate incentive schemes and insufficient tick sizes.

For all clients there is a wish to minimize costs and maximise return. There is no reason in punishing clients by forcing them to accept higher costs due to lower execution quality. This is not proper investor protection. Additionally, eliminating SIs as eligible execution places will diminish client choice and increase costs for endusers which is also not in line with MiFIDII/MiFIR.

Rather, Finance Denmark suggests enhancing the description of the SI activity in order to eliminate any doubts of what proper SI activity is. This should be implemented on level 1 or 2 instead of Q&As as is the case now. Finance Denmark suggests that such strengthening is formulated in line with the attached proposal in our Market Structure Position paper (uploaded together with this 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.

Finance Denmark considers for SI in equities that if the suggested changes in Q21 and Q24 are implemented, it would also embrace the apparent problem with low latency firms, opting in as SIs and only providing risk capital for micro or nano seconds. This is not proper SI activity or proper risk taking.

For SI in non-equities, the SI determination as scheduled in Delegated Regulation 2017/565, art. 13 was, very late in the process, changed for bonds from “per ISIN” to “per asset class”. The change was not in accordance with MiFIDII/MiFIR, e.g. MiFIDII, art. 4 (2) (20) and MiFIR, rec. 19. Furthermore, the wording "issued by the same entity or by any entity within the same group" implies that an investment firm deemed an SI in e.g. one covered bond will become an SI in all covered bonds issued by the relevant mortgage bond institution. We understand that you had corporate bonds in mind when changing the approach and aimed to ensure SIs in at least some corporate bonds (due to their decreasing liquidity pro-file). However, this is not in line with level 1. Additionally, in Denmark there are approximately 2700 ISINs (covered bonds) issued primarily by 6 large mortgage bond institutions. If a firm for example is deemed an SI in 1 (one) ISIN in each of the 6 mortgage bond institutions, the firm becomes an SI in all 2700 ISINs.

However, under the conditions that ;

1. The ESMA proposals to delete MiFIR art. 18.6 and 18.7 are implemented and MiFIR art. 18.5 in addition is deleted in order to remove the obligation to provide quotes to other clients and
2. The best execution reporting requirements (MiFIDII, art. 27, RTS 27 and RTS 28) are modified for SIs,

the “per asset class” approach can in our view continue. If this is not the case, Finance Denmark suggests to limit the applicability so that If the ”classes of bonds..” encompass more than X ISINs, the IBIA approach (per ISIN) is chosen instead for the SI determination. If X is set to for example 20 or 30 ISINs, then if the ”classes of bonds” contains more than 20 or 30 ISINs, the approach would be that the consideration on whether an investment firm is to be considered as SI will be set in respect of each bond (= ISIN level) where it internalises according to the criteria in art. 13 (similar to the original approach and for shares in art. 12). With X set to 20 or 30 only a few corporate bonds will be subject to the IBIA approach and the vast majority (+90%) of the affected ISINs will be banks /financials issuers, which are normally not considered being ” corporate bonds”. If an additional criterion of newly issue size above 1 bn EUR is added, the amount is even lower.

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.

Please see Q21, Q24 and Q25 for our proposal.

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.

Finance Denmark would like to stress that price discovery not only can be attributed to trading via Regulated markets, but also via multilateral Trading facilities, via Systematic Internalisers, other liquidity providers /market makers. Additionally, a number of other fac-tors contribute to price discovery such as company news, earnings, industry development, the macroeconomic situation, international development and so forth. See our proposal which is attached.

As described in Q21, the incumbent exchanges are increasingly using auctions and in particular the closing auctions attract a lot of liquidity. This increases the market power for the incumbent exchange and leaves a vacuum in the on-venue continuous trading during the day and compromises the price discovery that stems from this kind of trading. This implies that the price discovery increasingly depends on other execution venues, such as SIs.

In this context, Finance Denmark suggests the following measure to improve the price dis-covery process:

- Remove both the Double Volume Cap (DVC) and the Reference Price Waiver (RPW). The DVC is an inappropriate and complicated tool to solve the issue with the misuse of particular the Reference Price Waiver (RPW), which leads to less transparency and less efficient price discovery. We suggest removing the RPW as well as the DVC all together leaving the Negotiated Trade Waiver (NTWI without limitations. Finance Denmark considers the NTW as an important tool for clients to achieve better “on-venue” execution and could also be a tool to limit the SI mar-ket share.
- Increase the minimum quoting size for SIs from 10% to 50% as this will lead to in-creased transparency and contribute to better price discovery.
- Limit the share of the trading volume allowed in the closing auction as too much volume in the auctions hampers the price discovery process during the day. In case the share is exceeded, the usage of closing auctions is limited even further.
- Revise the RTS 9 (order/trade ratio), RTS 10 (fee structure) and RTS 11 (tick sizes) to improve the microstructural framework to support better quality of the orderbook.

Finance Denmark agrees that steps should be taken to incentivize lit trading as there is a common interest in supporting trading venues’ ability to support the order flow and to offer execution also for larger orders with minimal market impact. However, the trading venues’ ability to facilitate this is reduced and the development is self-perpetuating: As the market players algorithms increasingly deselect venues with low execution quality, the ability for these venues to support good execution quality decreases even further.

Finance Denmark believes that the quality of the trading venues’ order books has de-creased considerably since the application of MiFID I in 2007. This is e.g. due to the frag-mentation and the trading venues’ unhealthy approaches to attract liquidity from each other. For example, the usage of maker-taker fee attracts only shortsighted liquidity which disappears in times of distress (RTS 10), the lack of requirements of limiting the order/trade ratio in RTS 9 makes it inexpensive to flood the orderbook with non-genuine orders and the “one-size-fits-all” tick size table in MiFIDII/MiFIR (RTS 11) has resulted in too low tick sizes in some markets and too high tick sizes in other markets.

For RTS 9 it should be considered to limit order/trade ratios centrally, for RTS 10 it should be considered to revisit which type of fee structures that supports healthy orderbooks. For RTS 11, research reveals that, for instance, in the Nordic market, the present tick size tables have challenged the ability to provide good execution quality in the shares which faced a tick size decrease under RTS 11:

- In shares where the tick sizes declined, the spreads also declined
- In shares where the tick sizes declined, volumes on the best price level declined
- In shares where the tick sizes declined, the BBO price update frequency increased

All of these factors make it more difficult for market players to execute large orders on-venue without or with minimal market impact (this includes both the direct market impact of executing a larger order and the adverse selection (where the price moves after the trade has been (partly) executed) and liquidity moves away and/or larger orders are sliced in several, smaller orders which implies increasing transaction costs for the clients. Finance Denmark’s proposal for a solution can be found in the attached Market Structure Paper, which is uploaded together with this 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.

Finance Denmark does not see any idea in aligning the scope of the CT with the scope of the STO.

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.

Finance Denmark disagrees as it is unclear which instruments that are in scope for CT and therefore, we are unable to assess the potential consequences.

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	○	○	○	○	○	○

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.

First step is to Improve data quality as this will increase the transparency. As stated in Q1, in the Danish covered bond market only a few covered bonds are deemed liquid in contrast to the estimation performed by Nasdaq in 2016.

Furthermore, harmonisation of the various member states' deferral regimes will improve the data quality and remove regulatory arbitrage regarding transparency.

As Systematic Internalisers and liquidity providers are providing risk capital to facilitate liquidity in the market. Too much transparency may expose the SI to undue risk as the in-formation will compromise the SIs' ability to unwind its risk. This may affect SIs and liquidity providers willingness to provide risk capital in the market negatively which will cause less liquidity in the market and potentially increasing cost for the clients.

That said, in case it is decided to move on with a CT for non-equities, Finance Denmark strongly calls for a proper consultation as stated in Q8. That said it is important that de-ferred trades are not included in the CT as long as they are subject to deferral, as this would expose SIs/liquidity providers to undue risks.

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	Ruhr University has made an impact study: “Effectiveness and Efficiency of New Regulations in the Context of Investor and Consumer Protection.” . The results of the study show that an average implementation costs of 3.7 million euros per bank and running costs of 508.000 euros per year. Implementation costs to big banks in Germany averaged at 35 million euros per bank and running costs at 4.2 million euros per year. These figures seem realistic but in the lower compared to the level we have seen in the Danish Market. Also keep in mind that they are only dealing with the costs for banks and not other financial in-stitutions covered by the regulation and only on the implementation of the investor protection parts of MiFID II.

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.

European investor protection regulation has through many years focused on ensuring dis-closures of all potentially relevant information to all investors and protecting investors from mis-selling. Adding to complexity, different products and distribution channels are regulat-ed by different EU legislative acts, and processes governing especially advisory service have grown in complexity due to MiFID II and they are expected to grow even more in complexity when integrating ESG into the MiFID II framework. These facts have led to a very complex and not always consistent landscape of regulatory acts with the overall ef-fect that investors receive too much information, which is not always consistent and lead-ing to information overload. This has been documented by Ruhr University and their study.
The complexity and volumes in investor protection information which we call overload does in fact equal less investor protection and less transparency for the vast majority of retail clients. A useful illustrative comparison is the disclaimers used on phones apps – they are detailed, have all potentially relevant information but no one reads them, and they are just accepted as a premise whereby they add little value and do not encourage trust. We do not see this as an example to follow. Finance Denmark sees great potential from an investor protection point of view and from an investor experience point of view in re-balancing the regime focusing on less and more relevant information to investors. Offering less but better information more tailored to the specific client type may be accompanied by placing more responsibility on the service provider.
As stated in answer to Q1 Finance Denmark recommends three key elements in reforming investor protection in the EU:
Horizontal alignment between legislation to ensure transparency and comparability, es-pecially uniform information for similar investment products and services.
Tailored information and investor protection: Tailoring information and investor protection towards client types and simplifying disclosures where relevant.
Consumer testing: Base future regulatory action on consumer testing.
Investor protection
With regards to investor protection provisions MiFID II has aimed to prevent mis-selling, but in a way, which has promoted severe administrative burdens and costs which at least part-ly are paid for by the clients. Also, certain retail client segments are deferred from certain instruments and services. Deferring retail clients in general from a wide range of financial instruments and services including riskier and/or complex instruments is not to be confused with investor protection per say. We see low AuM client segments increasingly left without access to certain services such as portfolio management and investment advice, while high AuM and knowledgeable retail clients are cut off from riskier and/or more complex instruments due to MiFID II provisions. These distorting effects of the investor protection framework leaves certain client types with less possibility of long term optimization of their risk adjusted returns of their savings. These distorting costs are very hard or perhaps even impossible to measure.
MiFID/MiFIR cost vs. benefit
MiFID/MiFIR cost vs. benefit are not balanced. There are several areas within the MiFID II framework which add very little value compared to the costs. We will outline some exam-ples.

- Product Governance requirements cover all instruments and all client types – this ought to be re-calibrated.
- The best ex reporting, and in particular RTS 27 does not add much value from a re-tail client perspective.
- The costs and charges follows the same methodology no matter which instrument type or which kind of investment service.
- The advisory service processes are too complex across all client types.

Different components of the framework
Different components do not work well together in all areas of the regulation. The target market provisions links target market and suitability in a way that we don't think is neces-sarily intended from the regulator. The costs and charges provisions of MiFID II do not op-erate with PRIIPs since the methodology regarding product costs do not coincide. The de-tailed cost & charges rules apply in the same manner for pure investment products and hedging products, causing issues with percentage calculations. In general, a regulatory solution is warranted throughout MiFID II and PIRIIPs regulation with regards to instruments used for hedging purposes since these cannot from an investor protection point of view be seen independently form the position or instrument they hedge. It is simply not meaningful.

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.

Please specify which other MiFID II/MiFIR requirements should be amended:

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

Finance Denmark sees a number of MiFID II requirements that a review should also in-clude:

Client categorization. See our position on this in answers to Q34.

Information to clients. The information that clients receive especially when receiving in-vestment advice is too much for the vast majority of clients to grasp. Simple retail clients should receive much less, much simpler and to the point information.

Best execution. The reporting requirements are far too complex, in particular RTS 27 and difficult to understand. They do not fulfil their objective of providing clients with a tool for evaluating best execution. The scope needs clarification and content calibrated so that it is not a one size fits all approach. Content wise we suggest differentiating more between types of financial instruments and trading.

Inducements. They are the market's way of ensuring:

- Broad supply of financial products by incentives
- Broad access to investment advice also for the low AuM segments

The partial ban strikes a balance between the above and the fact that inducements might result in conflict of interest and that large AuM clients pay for the access to services by small AuM client. We are in favor of this balanced approach and for increased supervisory convergence. Currently we believe that the rules are too broadly defined, thus leaving too much discretion to NCAs thereby sustaining an unlevel playing field across EU. Very strict interpretations of what constitute proportionality and quality enhancing services result in de-facto inducement ban in some jurisdictions and de-facto no-rule regime in others. A ban or very strict interpretations of the partial ban will indeed lower the product supply and the access to advice as seen in UK countering the CMU project.

PRIIPs. We see two ways by which the PRIIPs regulation has limited the access to products for retail clients. Partly by the scope uncertainty effecting the issuers that are scoping out retail clients from all corporate bonds and secondly by third country PRIIPs producers not delivering PRIIPs KIDs for products. The second barrier is particularly relevant in smaller jurisdictions as the Danish where NCAs demand that PRIIPs KIDs are available in local language.

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.

Finance Denmark welcomes the Commission's initiative to look at an improvement of the direct access to simple investment products for retail clients.

Product Governance:
Simple financial instruments do not change their structure or payment profile during their life cycle. In general, a periodic review of such instruments in the product governance requirements as well as regulation on the initial product governance at product launch does not lead to additional benefits for clients and is only adding costs. A balancing regu-latory approach would aim to avoid the toxic products by regulating certain product clas-ses not to regulate all financial instruments. An obvious example is the UCITS products that are designed to be open for all types of retail (and professional) clients by the structure and the investor protection inherent in the product. Posing target market regulation on top of the UCITS framework seems doubling the protection and thereby as unnecessary admin-istration and costs.
The same argumentation goes for products only available to professional clients or eligi-ble counterparties. These clients are by the client categorization by definition fully aware of the product, its performance and risks. Regular evaluation in the product governance regime adds no value. Furthermore, Finance Denmark believes that third-country issues relating to the product governance regime as well as to the PRIIPs regulation must be re-viewed in order to prevent unnecessary limitations in the scope of products available to EU retail clients.
For further elaboration on product governance – please see answers to questions directly targeted product governance issues below.

Cost and Charges:
Finance Denmark is of the opinion that cost disclosures should be simplified for the retail clients. Our members must deal with a lot of confused clients and almost no retail clients ask for greater detail in the cost disclosures as they are entitled to according to MiFID II. A single cost figure is more than enough for the vast

majority of all retail clients. Hence the minimum legally required granularity should be minimized to fewer, and perhaps just one cost number with supplementary information on the amount of inducements.

Since time is often of essence in phone trading, it should be considered to introduce a type of one-off disclosure for clients trading frequently. Furthermore, it should be possible to provide clients with ex ante disclosure on the same conditions as the provision of the suitability report when using distance communication.

In addition to the above, the strengthened requirements on disclosing information about cost and charges to clients that was introduced with MiFID II has shown to be interpreted in a variety of ways. For that reason, Finance Denmark sees a need for more guidance on the interpretation of the regulation.

As of 1 January 2022, PRIIPs will also apply for simple UCITS funds which calls for an align-ment between MiFID II cost disclosures and the provisions of the PRIIPs regulation.

For further elaboration on cost and charges please see answers to questions directly tar-geted cost and charges.

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.

Finance Denmark is of the view that the rules for complex products are adequate and we do not support additional investor protection requirements for complex products. In some circumstances and especially for some investment products and some retail clients the protection seems too restrictive, however this is more a question of recalibrating how products and clients are categorized.

Finance Denmark is of the opinion that the MiFID II/MiFIR requirements provide adequate protection for retail clients regarding complex products. The product intervention measures have shown a strengthened effort towards retail clients by limiting distribution of speculative products such as binary options and CFDs to this category of clients.

Below we have listed areas where rules could be amended without compromising inves-tor protection:

• Experienced and knowledgeable retail clients should be able to opt-up to profes-sionals in order to be able to invest in complex products. The criteria in Annex II needs to be made subject to a thorough review and better calibrated – see an-swer to Q41.1.

• Derivatives are complex products under MiFID II, however, some of the require-ments in MiFID II do not take into consideration that OTC derivatives are funda-mentally different products than investment products and used for fundamentally different reasons (to hedge risk not take risk) and they are bilateral in nature. Cer-tain investor protection rules such as the illustration of the cumulative effects on return, the percentage cost calculation, product governance, RTS 27, and PRIIPs in its current form do not work for OTC derivatives. These requirements make almost no sense for OTC derivatives. Some of the information is even misleading for cli-ents.

• Too many standard products are considered as complex. Units in non-UCITS should not be considered as complex instruments if they are in compliance with re-quirements in article 57 Delegated Act MiFID II.

• The 10 % Loss Threshold Reporting for portfolio management (all clients) and lev-eraged instruments (only retail client), currently required according to article 62 of the Delegated Regulation should be reviewed and an opt-out possibility for clients should also be considered. In addition, professional clients do not need this infor-mation with regard to portfolio management and the rules assume daily valua-tions for all types af securities which is not always possible. The European Commis-sion should also consider whether these '10% warnings' run counter to the notion of long-term investing for retail clients, effectively encouraging pro-cyclical behavior.

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.

Finance Denmark supports that the Commission reviews the investor protection regime in general regarding the requirements towards ECPs and professional clients taking into ac-count whether or not client categorization is re-calibrated or not and how. As goes for pro-fessional clients and ECPs as defined today we believe that an exemption from the ex-ante cost information should be introduced. We would also support an opt-out option from ex-ante cost information for retail clients if certain conditions are met.
Retail clients
A retail client should have the possibility to opt-out from the ex-ante cost information for all trades in simple investment products, such as equities and bonds, either through the advi-sory agreement or by publicly and easily available cost information for execution-only. If a retail client is trading in the same type of simple investment product on a relatively fre-quent basis the ex-ante cost information does not provide any value for the client and is purely information overload. In such situations, it should be allowed for the retail client to opt-out. Hence, retail clients with sufficient knowledge and experience and having re-ceived ex-ante cost disclosures in conjunction with their initial trade, should be allowed to - on their own initiative and in writing to opt-out of the ex-ante cost disclosures on a case-by-case basis.
Professional clients and ECPs
Professional clients and eligible counterparties should be exempted from the ex-ante cost information. The ex-ante information does not provide professional clients and eligible counterparties with any added value, and it is in fact a source of irritation for these clients . A second best solution would be for these clients to be able to opt-in to receive the infor-mation.

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 fully support a phase-out of paper-based disclosures. The amendment should allow a default solution, meaning that investment firms provide information to clients electronical-ly unless otherwise agreed, and in

addition, if the business model of the investment firm is digital only, it should be allowed not to provide any paper-based information at all. This is in line with both the digital economy of tomorrow, the digital strategy of the Commission and our sustainable responsibilities. The new generations will swipe through an investment advisory solution so the disclosure rules should be able to embrace this world and bridge from the old one. Regulation should rather focus on content of disclosures than on the me-dia to deliver information through.

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.

Finance Denmark supports a phase-out of paper-based information and we believe that 5 years phase-out should be allowed. Though it should be kept in mind that some clients are not technology-savvy, for which reason exceptions should be allowed. Such exceptions should be agreed with the clients in writing. Finally, Finance Denmark believes that regula-tion should focus on content and less on the media for distribution. The amount of infor-mation that must be provided to clients have increased with MiFID II. When moving away from paper-based information it is important to keep in mind that the clients should be able to read all this information for example on a tablet. Therefore, it is crucial to also focus on the level of detail of the information that must be provided to clients.

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.

Finance Denmark acknowledges that there can be a lack of comparability for some cost information, but we also see some challenges with establishing an EU-wide database at this point in time. We believe that the lack of comparability can be related to the incon-sistent interpretation of the rules. There are still some uncertainties when it comes to the interpretation of the rules regarding the cost and charges disclosure requirements. In addi-tion, a database will require a significant amount of workload and maintenance not at least from ESMA but also from the investment firms. Today we see this challenge and work-load with the EMT data (European MiFID II Template) which is not a tedious task. In addition, today ESMA handles the database regarding equity and non-equity transparence calcula-tion results, and this has shown to be a quite challenging task.
Furthermore, if data is published through an EU-wide database e.g. administered by ESMA the data will be viewed as fail proof truth which might not be the case.
For the above reasons we believe that at this stage, we are not ready for an EU-wide data-base.
Furthermore, it is a concern that the amount of data will be so extensive that it will not help create a useful overview for clients.

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.

Finance Denmark does not see a need for an EU-wide database, please see our answer to Q37.

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.

Please see answer to Q37.

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.

It is our members’ experience that retail clients who can be considered as experienced and knowledgeable clients view current regulation as overly protective and even unnec-essary. As previously stated, it has created information overload. Sufficiently experienced clients do not see the need for sharing all the information required in the MiFID II regulation they are fully capable of making their own investment decisions. Retail clients with a high level of experience and knowledge continuously challenge our members as to why they are obliged to provide all the information that are required in the suitability test which is fully understandable. Retail clients with a high level of experience and knowledge typically have frequent contact to their adviser, and therefore do not understand why they repeat-edly must receive the same information, i. e. cost & charges, KID/KIID’s, suitability reports etc. – this is simply causing more frustrations than it provides protection.

In a low yield environment, we also see that experienced and knowledgeable retail clients are prevented from investing in more suitable products since these products are only available for professional clients. This results in less than optimal risk adjusted returns for these segments of clients which also cause frustration. . It could be considered if the client categories for experience and knowledge in the EMT (European MiFID Template) can be used constructively for differentiating.

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.

Finance Denmark would support lowering the threshold, but we are of the opinion that other conditions such as knowledge and experience are more suitable for qualifying a client as professional. This is also to some extent reflected in the regulation today, where the suitability test for re-classified professional clients includes the client's ability to bear losses, whereas this is not included in the suitability test for per se professional clients. Gen-erally, the criteria set in Annex II of the MiFID II Directive can be challenging to handle in practice and more guidance is valued as well as a review of the criteria.

Criterion on knowledge/experience
The criterion on knowledge/experience that relates to a person having worked in the fi-nancial industry is often irrelevant. The majority of professions within the industry does not mean that the client knows about specific products (e.g. an equities trader doesn't neces-sarily have knowledge about exchange traded products or bonds). It is more relevant whether the customer understands the product and the risks involved. We have also noted that the knowledge/experience requirement is interpreted differently in different coun-tries, which creates difficulties for firms and clients operating in multiple jurisdictions. We therefore suggest that the condition that relates to the client's work experience should be amended.

Trading frequency
We would also like to point out that the opt-up criterion concerning trading frequency does not work in practice, given that it treats all instruments in the same manner. Looking at fixed income transactions or illiquid products, these are not in general traded at the level of frequency indicated in the opt-up criterion and this criteria is therefore useless in this regard. Furthermore, a criterion related to trading frequency carries a risk of creating incentives to increase the number of transactions for the client to be reclassified. We would propose not to let the number of trades be opt-up criteria since it has little to do with the clients abilities neither financially nor with regards to knowledge and experience. If they are kept anyway, they should rather be differentiated on instrument types in a mean-ingful way.

A possible solution going forward could be for regulators to specify that the objective cri-teria are of a soft nature so that an investment firm can lift a client to professional given that the firm can document that it is done on the client's initiative, that the client has been made aware and understood the consequences and the firm can document certain skills and knowledge on behalf of the client.

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.

Finance Denmark appreciates that the Commission acknowledges the challenges we see with the current client categorizations. The retail client category has shown to be very broad and it can be argued that it is too broad comprising both ordinary clients and clients that are wealthy, knowledgeable and experienced. As mentioned in Q40, this has shown to have unintended consequences such as information overload to less

experienced clients which simply does not understand all this information and to experienced retail clients and also limitations in products available for them. Clients considered as experienced and knowledgeable see the regulation as too protective and unnecessary for them, and they do not see the need for sharing all the information required in the MiFID II regulation, they are fully capable to make their own investment decisions. Retail clients with a high level of experience and knowledge do not understand why they are obliged to give all the infor-mation that are required in the suitability reports which is fully understandable.
However, there is a number of circumstances that must be taken into consideration when introducing changes to client profiling and classification. First and foremost, it is important to conduct a thorough review of the set-up around client classification and analyze which requirements in the regulation that are connected to the client classification. Th focus must be to ensure the right level of investor protection and transparency going forward. It is therefore important to focus on which criteria that should be used when either changing the opting-up criteria or introducing a new category. Finance Denmark is of the opinion that criteria should focus on knowledge and experience rather than criteria targeting trad-ing frequency and portfolio size thresholds even though the latter play a role as a measure of the client's loss absorption capability.
Arguably, the most important aspect is whether a client has a good understanding of the investments which the client wants to enter into. Second, it must be assessed which parts of the regulation that has shown to be overly pro-tected for experienced and knowledgeable retail clients and therefore should not apply to these clients, see our comments to Q43.
Introducing a new category will have an impact not only on the requirements that fol-lowed the MiFID II regulation but will also have a huge impact on all of the procedures and IT systems that the investment firms have developed, implemented and maintained since MiFID entered into force back in 2007, and which is a highly integrated part of the daily work. If a new client category is to be introduced, we believe that the category should reflect the experienced and knowledgeable retail clients. Depending on the crite-ria used to identify clients in this category, a new category may be labeled "qualified retail client" or "knowledgeable retail client" rather than "semi-professional". Please also see our comments in Q44.

In connection with the above analysis, we would also like to propose to rethink the regula-tory disclosure requirements and advisory processes to reflect the client type. This could be achieved either through the knowledge and experience evaluation in the suitability test or through the type of distribution (execution only, advice and portfolio management). Important in this process is to simplify the content in disclosures and processes for "simpler clients" and evaluate if the more sophisticated clients and especially professionals should receive less information or have opt-out options on certain requirements.

The still growing complexity in requirements towards advisory processes and disclosures drives especially advisory services costs up. In combination with overall margin pressure from a competitive market and the inducement regime, it leads to an increased gap in the advisory services for low AuM clients is growing and soon only digital solutions (low cost) investment services will be available for the low AuM segments. Our members have growing concerns regarding service availability for low AuM clients not fitted for the digi-tal advice or execution-only solutions. We might leave these clients in the dark. One might say that these clients are the ones that indeed are in need of financial advice and regula-tors should consider a low cost, simple product regime to bridge this growing gap.

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.

As Finance Denmark has stated in Q42 we see challenges with the current client classification. But before deciding on a new client category it is important to conduct a thorough analyses of pros and cons with introducing a new category, hence this will have an impact on the whole MiFID set-up. Therefore, the below comments to Q43.1 should be considered both in relation to a new client category and to retail clients that are opted-up to be a professional.

Suitability and appropriateness test and suitability statement
Especially for experienced and knowledgeable clients, we see benefits in reducing the amount of information that is required both to and from these clients. Today knowledge and experience are not part of the suitability test for professional clients per se and re-classified professional clients. We are in favor of amending the rules so that this part of the suitability test is removed from the suitability test for experienced and knowledgeable cli-ents.
When providing investment advice, the investment firm must provide the retail client with a suitability statement. An experienced retail client does not see any value in receiving a suitability statement specifying the advice given and how that advice meets the prefer-ences, objectives and other characteristics of the client. We therefore suggest that expe-rienced clients should be exempted from this requirement.

Information on cost & charges
Information on cost & charges has shown to be an overload of information for the basic retail client. For these types of clients a single percentage and/or cost amount would be adequate while the existing framework delivers value for the knowledgeable and experi-enced clients, however as stated in Q34, one might consider if the knowledgeable and experienced clients necessarily see value in receiving ex-ante cost disclosures for every trade and for all types of instruments and investment services. We therefore suggest that knowledgeable and experienced clients shall have the possibility to opt-out from ex-ante requirement, see also our comments to Q33.

Product governance
For the product governance requirements, we believe that target market should only ap-ply for retail clients and that the concept of a negative target market should be deleted altogether preferably as elaborated in answer to Q48.

Investment firms are required to undertake scenario analysis of how their financial instru-ment would perform in adverse conditions, for example, if the market environment dete-riorated or if the manufacturer or the third party involved in manufacturing the product experienced financial difficulties. For some instruments, and especially towards profes-sional and eligible counterparties who often set the requirements and specific

transaction specifications, Finance Denmark finds that this requirement brings little value for the professional and eligible counterparties, and we often find that they are not interested in such analysis. Finance Denmark therefore proposes that such requirement, for professional and eligible counterparties only, is changed to be on a request-basis only

Loss reporting and PRIIPs
We recommend that the loss threshold reporting requirement is amended and that knowl-edgeable and experienced clients are given the possibility to opt-out of the obligation to be provided with a PRIIPs KID /KIID.

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.

Introducing a new and fourth client category will require a substantial amount of resources both one-off and ongoing. As stated under Q42.1, a new client category will affect not only the requirements that were introduced with MiFID II but the whole set-up developed since 2007 where MiFID entered into force.
New IT system and support must be developed, training of employees, review of current client database in order to ensure correct client classification, written information to cli-ents both in general terms and on individual level, review of current procedures etc.

It is therefore of utmost important to conduct a thorough assessment of whether a new client category shall be introduced or amendments to the opt-up criteria should be con-sidered instead. In the short term an amendment to the opt-up criteria could be the most appropriate solution and on a longer term, based on experience gained from the opt-up regime, introducing a clear split in the retail category might be a better long term solution. A division of the current retail category which is very broad could likely in the long run introduce benefits to both clients, investment firms and issuers.

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.

As mentioned above, Finance Denmark is of the opinion that applicable criteria should relate to knowledge and experience rather than criteria targeting trading frequency and portfolio size thresholds, though the client' s ability to bear a loss should be a consideration. Arguably, the most important aspect is whether or not a client has a good understanding of the investments which the client wants to enter into. We therefore support a one-off in-depth suitability test in connection with a stricter financial knowledge test, and we do not see that such an assessment shall be based on whether the client has experience from working in the financial sector or not.

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.

First of all, we would like to point out that the product governance rules have a dual pur-pose, both in relation to investor protection but also in relation to ensuring market stability.
Finance Denmark believes that the current product governance rules have reduced the number of products offered to retail clients. This partly due to the requirements laid down on manufacturers and distributors in

regards of product features etc. All the product infor-mation can be challenging to handle and requires a lot of resources to update both for manufacturers and distributors. Distributors might be reluctant in selling products to clients in order to avoid mis-selling. The result of this regime is that distributors have reduced the number of products offered to clients which is opposite of the intention with the regulation. This trend has been worsened by the MiFID II inducement regime.

Also, we see limited access to third country products, such as US ETF's, since the manufactures from third countries do not deliver product governance data, and they do not necessarily provide PRIIP KIDs especially in local languages of smaller European jurisdictions where NCAs often require PRIIP KIDs in the local language. We believe that ESMA could facilitate convergence in this area perhaps by guiding NCAs to accept English PRIIPs documents in line with the PRIIPS regulation art. 7. At least when trades are done on the basis of advisory services and execution-only.

We believe that a simplification of the product governance rules could be a way of avoid-ing the reduction of products offered to clients without compromising the main goal with the rules – ensuring that the products sold to clients meet the clients' need.

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.

Finance Denmark is in favour of simplifying the product governance requirements for sim-ple financial products (including UCITS). Simple financial instruments do not change their structure or payment profile during their life cycle. In general, a periodic review of such instruments in the product governance

requirements does not lead to additional benefits for clients and is only adding costs. The same argument goes for products only available to professional clients or eligible counterparties – they are fully aware of the product, its per-formance, costs and risks. Regular evaluation of these products adds no real value to any-one. only added costs. In conclusion we are in favour of limiting the product governance requirements to complex products and to products which retail clients can access.

The product governance rules go beyond what is just product governance level and inter-fere with suitability. This goes for instance for the practical implication and treatment of negative target market for services only requiring an assessment of knowledge and expe-rience and client type. We propose that the rules more clearly separate product govern-ance from areas which are in fact already regulated through the suitability and appropri-ateness rules. We are generally in favour of removing the concept of negative target mar-ket in the regulation.

From a manufacturer's point of view, it has shown to be difficult to monitor compliance with the target market in the distribution chain and this requirement might be re-evaluated first best or at least European guidance should be provided.

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.

Yes, we believe that the possibility to sell a product both outside a target market or to a negative target marked if the client insists should be kept. In such situations the investment firm must be able to document that the client has been informed about the target market respectively negative target market and the impact hereof and therefore not suitable for the client. This obligation already exists today, according to ESMA Guidelines on MiFID II Product Governance.

However, we may see a need for products which are leveraged or include a contingent liability being limited to the positive target market.

Finance Denmark would also like to address the concept of a negative target market and whether it is appropriate to operate with such a definition. The negative target market adds an unnecessary level of complexity to the members' processes and the clients' ex-perience when interacting. It could be argued that it should be sufficient with a positive target market and then a client can be either within or outside the target

market. Hence, we support to exclude the negative target market from the regulation. Addressing the handling of negative target market should also be viewed in connection with PRIIPs and the prospectus rules.

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.

Inducements are the market's way of ensuring:

- Broad supply of financial products by incentives
- Broad access to investment advice also for the low AuM segments

The partial ban is a European political compromise that aims to strike a balance between the above-mentioned positive effects of inducements and that inducements in some situ-ation might increase conflict of interest and that large AuM clients to some extent pay for the access to services by small AuM clients. We are generally in favour of this balanced approach and therefore welcome ESMAs advice to the Commission to assess the impact the MiFID II inducements regime has had on the distribution of retail investment products across the Union.
The regime suffers from the fact that the rules are too broadly defined leaving too much up to NCA interpretations. Very strict NCA interpretations of what constitute proportionality and quality enhancing services result in de-facto inducement bans in some jurisdictions and de-facto no-rule regime in others. This has become a barrier to cross border distribu-tion and a source of unlevel playing field across jurisdictions. Finance Denmark therefore supports further supervisory convergence.

In Denmark the NCA has taken a very strict and far reaching approach to its interpretation of the inducement rules, which has caused the supply of investment funds from a single distributer to shrink. Several problems have emerged e.g. in relation to cross border distri-bution, regarding rebalancing of business models and regarding the investment firm's ob-ligation to act in the best interest of its clients. The definition of proportionality and quality enhancement is a key factor when interpreting the MiFID inducement regime and it is not sufficiently clarified by European legislation.

Discussions in the industry and general uncertainty prevail on areas such as how to cali-brate the client segmentation and whether segmentations can prevail on AUM which is meaningful for clients and therefore the preferred business model for distributers or whether they should be based on expected paid

inducements. Related questions around calibrating business models in distribution are how to bundle service packages and which services are qualified for which client segments The re-calibration of distribution models is further complicated by uncertainty with regards to the definition of the baseline from which quality should be increased in order to qualify as quality enhancing in the regime. One key basic problem is that a term such as quality (one side of the proportionality equa-tion) is by definition subjective to the individual client – one service might deliver quality to one client but to not another client - while the inducements (the other side of the equation) is indeed quantifiable and disclosed to clients (as they should). .
Investment firms in Denmark have traditionally operated with quite a broad range of ser-vices for all clients disregarding what kind of instruments they invested in (AuM segmenta-tion) however proportionality (only inducements on investment funds not on single instru-ments) between quality enhancing service packages and paid inducements makes the client segmentation problematic. Requiring a strict take on the proportionality criteria ef-fectively leads firms to push more quality enhancing services up the client segmentation ladder, in order to ensure that the high AuM client segments are safeguarded. This leads to a drain of services for the majority of retail clients. In that sense the rules seem to be based on the view that a service has a fixed cost pr. client receiving it while in fact many and most services have a marginal cost of zero for the next client to receive it. In addition, strict interpretation of proportionality (as practiced by the Danish NCA) entails that invest-ment firms are not allowed to deliver “too much” service to clients. This interpretation bring about all sorts of practical market problems in the Danish market. If you are a dis-tributer only offering one single execution-only platform service then the platform cannot include funds without inducements, since the distributer will then deliver too much service for some clients (the ones investing in these funds) and how should distributers in general under these interpretations handle the fact that some otherwise similar clients trade single instruments without paying inducements as opposed to clients paying inducements trad-ing investment funds.

As indicated above these rules are far from trivial to comply with in practice and therefore very strict interpretations of the terms’ proportionality and quality enhancement result in a de-facto ban and it will indeed lower the product supply and the access to advice as seen in UK countering the CMU project. We therefore strongly suggest that regulators deliver more precise regulation or guidance that ensures level playing field throughout ju-risdictions.

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

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

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

Question 50.1 Please explain your answer to question 50:

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

We would strongly advise against a full ban on inducements which is also in line with the recommendation from ESMA in their Technical Advice to the Commission, in which they state that this may create an uneven level playing field with other types of products. Fi-nance Denmark agrees with ESMA's recommendation to the Commission, who should therefore rely on alternative options to improve clients' understanding of inducements. A ban on inducements would not lead to an improvement in access to independent advice – at least not in a market structured as the Danish market. The market structure in Denmark is characterized by distribution channels being owned by banks and insurance companies also having in-house manufacturing as well as distributors without in-house manufacturing. In this market structure the inducements are key to uphold a wide product supply through each distributor and thereby to the clients. In that sense they uphold an open market struc-ture and support market competition. The inducements support a broad access to adviso-ry services also for low AuM clients through the banks since they support a cross subsidi-ation of services from high AuM clients to low AuM clients. In this context a full ban would have several unwanted effects.

Firstly, an inducement ban would create an advice gap for low AuM clients since they would either not afford advise or it would be too expensive compared to their invest-ments. This would lead clients without access to advice and it would thereby negatively affect their opportunity to save optimally for later consumption or retirement. Secondly, a ban would negatively affect the broad supply of investment products and thereby indi-rectly competition in the market since the inducements are the economic incentives that ensures a broad range of products available in the banks in the Danish market structure

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.

Finance Denmark does not support a European wide certification. National laws for in-stance on tax must be an integral part of the certification. In order to have a full certifica-tion program there would need to be national certification on top. We generally support the flexibility current regulation gives on national level, of course bearing in mind that lev-el playing field across the Member States must be observed. ESMA guidelines must support the level playing field.

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.

Finance Denmark does not see a need for setting up an EU-wide framework for certifica-tion. In the MiFID II directive, there are requirements for the assessment of knowledge and competence for staff providing investment advice etc. We support the flexibility this regulation gives on national level with the support from the ESMA guidelines.

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.

Finance Denmark supports the suggestion from the Commission. The cost information pro-vided before the transaction is executed is not information that the clients have request-ed. Therefore, we believe that this information shall only be mandatory to provide to a specific category of clients and for specific types of

financial instruments.
First of all, there shall be a distinction between retail clients on the one hand and profes-sional clients and eligible counterparties on the other. When it comes to professional cli-ents and eligible counterparties, we do not see a need to provide these clients with the regulatory defined cost information since these clients are well aware of the costs. Retail clients shall have the possibility to opt-out. For simple products this shall be possible on a general level and for complex products on a case-by-case basis.

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.

No, we do not see this as a necessary tool to reduce the risk of product mis-selling. Further, these provisions were mainly introduced as market abuse provisions.

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.

Finance Denmark does not believe that the best execution reports are of sufficient good quality to provide investors with useful information on the quality of execution of their transaction. This is e.g. due to some meaningless reporting requirements, “one-size-fits-all” approach and a lack of limitation of the reporting requirement to ToTV instruments only. See also Q56.

It could be considered to differentiate the reporting based on various asset classes. With the present requirements, the RTS 27 reporting is better suited for shares than any other as-set classes.

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 new reporting requirements in MiFIDII/MiFIR regarding execution quality (RTS 27) intend to enable clients as well as investment firms to compare and monitor execution venues in order to evaluate the quality of its order execution practices. . However, the current re-porting requirements have been drafted according to a “one-size-fits-all” approach and has resulted in the publication of very large volumes of unhelpful data. In order to achieve the above-mentioned policy goals, the Commission should carry out a comprehensive review of RTS 27 in close dialogue with stakeholders.

In order to provide meaningful execution quality reports, the characteristics of different asset classes and how the instruments are traded need to be considered. In this connec-tion, it should be noted that there is significantly more data available on liquid equities which are traded on a venue than for OTC traded instruments. For non-standardised or be-spoke products, the information, which is currently required under RTS 27, have little or no comparative value for clients. For investment firms this fact is also problematic consider-ing that other parts of MiFID II in fact require firms to take the RTS 27 report into account. Thus, with the above mentioned policy objectives in mind, Finance Denmark takes the firm view that the Commission should make necessary amendments to the RTS 27 in order to ensure that it only applies to products where adequate and meaningful data is available, such as instruments traded on a trading venue (ToTV). In comparison the US rules under SEC Rule 605 and Rule 606 have a much narrower instrument scope than RTS 27 (only stocks and stock options).

Moreover, on many points there are still legal uncertainties as to the scope of the RTS 27 requirements. In our opinion, the concept of “other liquidity provider” needs to be further clarified.

Below, several reporting requirements are identified, which we consider to be meaning-less:

Table 1:
Issue for SI trading
- “Scheduled Auctions” is not relevant for SI trading
- “Market segment” is not defined. To let each SI define their “market segment” creates legal uncertainties and makes comparisons more difficult.

Table 2:
Issue for SI trading
- ISIN is not a good identifier for OTC-derivatives. A written description does not create compa-rability between instruments. RTS 27 should be limited to ToTv.

Table 3:
Issue for SI trading
- As a general point, table 3 has very little value from an execution quality perspective.
- Intra day price information (0930, 1130, 1330 and 1530) is not relevant for many asset classes nor for SI trading which often is on a RFQ basis.
- Trading Mode as defined in article 2 i) is generally not generally applicable for SI trading.
- Best Bid & Offer is generally not applicable for SI trading.
- Reference price is either not relevant or available for SIs. It is already the obligation of an SI to reflect prevailing market conditions. This should be reflected in the price of the instrument, not via a reference to a reference price

Table 5:
Issue for SI trading
• ”Rebates” and ”discounts” are generally not relevant for SI trading.

Table 6:
Issue for SI trading
• “Number of Designated Market Makers” is not relevant for SI trading.

Table 7:
Issue for SI trading
• The non equity market Is characterised by RFQ trading though SIs. As an RFQ is not ”continuous quotes”, table 7 is generally not applicable to such trading.
• “Book depth within 3 price increments” is not relevant for SI trading

Table 8:
Issue for SI trading
• The non equity market Is characterised by RFQ trading though SIs. As an RFQ is not ”continous quotes”, table 8 is generally not applicable to such trading.

Table 9:
Issue for SI trading
• The costs which are associated with the collection of data required in Table 9 for SI trading is unproportionate to the usefulness of this information.
• Availability/costs related to the collection of data differs depending on how the instrument is traded, e. g. electronic, telephone.

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.

No – please see our input to Q56. Also, it is our experience that hardly anyone uses the RTS 27 reports.

As for the RTS 28 reports, it is Finance Denmark’s view that it would be valuable with an assessment of the usage of the reports.

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.

Finance Denmark sees positive effects along with some unintended consequences from the unbundling rules. We have seen that international asset managers have reduced the number of local sell side firms that they interact with (such as buying research) due to the burdensome procedures in keeping these relationships open under the unbundling re-gime. Buy side firms have significantly reduced their research budgets and in conse-quence reduced the number of relations with sell side firms and it has also had a spillover in relation to execution with increased market shares to the same sell side firms. This reduc-tion in the number of counterparties has a negative effect on the ability of the sell side firms to place equity issues and IPO's. The contact list, for several sell side firms has shrunk as their ability to contact institutions they historical had contact with has been severed. However, the unbundling regime has also delivered transparency and driven the price for research down on the buy-side effecting costs for the end clients. The lowered costs have come at the price of the above mentioned frictions in communication between buy- and sell side, administrative burdens having to register and price all types of communication and lowered research coverage in some SMEs and fixed income markets. We would like to point out, that the Commission has not defined a SME in the consultation. We do see a need for a such definition when evaluating the proposals, and we do not see the definition of a SME as defined in the EU recommendation 2003/61 as suitable for this purpose.

Research payments and cost on buy-side have declined significantly since the introduc-tion of MiFID II which has resulted in a fall in the supply of SME research. Lack of SME re-search has also impaired the price discovery process for SME issuers-resulting in an infor-mation premium to the detriment for issuers and the society as a whole. This will cause that cost of capital increases. The flipside to higher direct research costs for asset managers is that it gives large asset managers a competitive advantage relative to smaller asset managers. For large asset managers the research cost burden is manageable. This could eventually end up with smaller asset managers exiting, which would hurt competition in asset management.

A way to improve research coverage on SMEs without rolling back the unbundling regime could be to promote issuer sponsored research. This way a SME will have the possibility to engage with an investment firm if they see a need for raising awareness to their company in order to increase investments, liquidity etc.

We therefore propose that regulators facilitate issuer sponsored research for SMEs by imposing more clarity and level playing field with regards to conflict of inter-est disclosures. Naturally the conflict of interest from the fact that the issuer finances the research, must be clearly addressed by regulation and we propose level

three guid-ance or Q&As stating under which conditions sponsored research can be drafted and considered minor-non-monetary benefits. Such conditions could be that the relationship between the issuer and the investment firm is clearly disclosed on the research material in a standardized manner, that it must be clearly marked as issuer sponsored research and the relationship between issuer and investment firm is clearly stated. At the same time the regulation should clearly specify that issuer sponsored research under these condi-tions constitutes a minor non-monetary benefit. In addition, regulators should analyze ways to facilitate issuer sponsored research also past the point of issuance.

A thorough analysis of the rules that shall apply to issuer sponsored research is required. We believe that the rules on issuer sponsored research can be based on the rules that applies to investment recommendations according to the market abuse regulation, with some modifications. Due to the conflict of interest, issuer sponsored research can only have im-plicit recommendations and suggestions, and the disclosure requirements as stipulated in Delegated Regulation (EU) 2016/958 cannot all be applicable to issuer sponsored re-search, but some of the disclosure requirements, such as whether the research has been disclosed to the issuer before publication, date and time of the publication etc. should also apply to issuer sponsored research.

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	2	3	4	5	

	(irrelevant)	(rather not relevant)	(neutral)	(rather relevant)	(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	○	○	○	○	○	○

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

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

As mentioned above we see a more formalized introduction of sponsored research as a tool to increase the production of SME research. However, promotion of issuer sponsored research will not alone solve the fact that the MiFID II unbundling rules have caused a concentration of research (and spillover to execution) with large sell side firms with the possibility of economy of scale compared to smaller, local sell side firms. We therefore suggest that the Commission look at this unintended consequence of the current unbun-dling regime.

In general Finance Denmark does not see the proposed measures as measures that would increase the production of SME research.
In order to smoothen the communication between buy-side and sell-side and re-balancing the framework with regards to operational costs we would propose a more precise definition of research in MiFID II level 1 which should be linked to unique data or substantiated written material based on data. This would leave room for ordinary commu-nication to occur in the market without having to record time spent on all types of com-munication as for instance phone calls. Whether an introduction of a level one definition is recommendable depends on the definition. It is important that communication between buy- and sell side can flow more smoothly and with less administration.

We do not see bundling for SME research or excluding independent research providers from Article 13 as appropriate solutions. First of all, a set-up where bundling for SME re-search is permitted would require a

comprehensive IT set-up and excluding independent research providers from Article 13 would create an unlevel playing field amongst the re-search providers.

Generally, regulation of pricing should be absolutely last resort and in very special circum-stances only. However, since we cannot guess what the Commission entails by the state-ment “Prevent underpricing of research” we refrain from answering.

Finally, we do not see a need for amending the rules on free trial periods of research. We believe that the Q&A from ESMA provide sufficient clarity on this question.

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.

Finance Denmark does not support a solution where operators of a regulated market and SME growth market should set up a program to finance research on SMEs.

We do not see this as a service for a market operator. Such a program will have a cost and therefore de-pendent on some kind of financing. We do not see that this is a cost that shall be decided by the market operators.

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.

Finance Denmark does not support a partially public funding program. We believe that the demand for research should be market driven.

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.

Finance Denmark acknowledges that artificial intelligence can be used as a tool to cre-ate statistic on certain figures for comparable SMEs within the same sectors. Such statistics may give clients an overall and general comparison of key figures, but we do not see that this statistic can be equated with research. Research includes long term strategic views which cannot be reflected in a statistic. Additionally, a well-prepared research requires interpretation of the data, financial situation and knowledge about the relevant market which cannot be reflected in an AI-generated research. Therefore, the use of artificial in-telligence can be a supplement to research but not a substitute. Finally, reports produced solely based on artificial intelligence must be labelled as such and not labelled as a re-search.

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.

Finance Denmark does not support a public EU-wide SME research database.

We do not consider this as a viable solution. We would rather see that sponsored research is used. The request for research should be market driven and the individual SMEs must engage with the provider that is found most useful in respect of distribution channels.

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.

Please see our answer to Q63.

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.

Provided that the relationship between the investment firm and the issuer is clearly dis-closed, the issuer sponsored research does not provide any investment advice and is made available at the same time to any investment firms wishing to receive it or to the general public, we believe that issuer-sponsored research qualifies as an acceptable mi-nor non-monetary benefit in accordance with Article 12 of Delegated Directive (EU) 2017/593.

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.

Finance Denmark is of the opinion that issuer-sponsored research does not qualify as in-vestment research. See also our answer to Q65.

In addition, Article 37 of Delegated Regulation (EU) 2017/565 provides rules on conflict of interests for investment research and marketing communication. Investment research is defined in Article 36 of delegated regulation 2017/565.

However, issuers and providers of investment research consider that the definition of Article 36 would in most cases not apply to issuer-sponsored research which as a result, would not qualify as investment research. As a consequence, the rules on conflict of interests applicable to marketing documentation would apply to issuer-sponsored research.

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

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

Question 67.1 If you do consider that rules applicable to issuer-sponsored research should be amended, please specify how:

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

Finance Denmark believes that the rules applicable to issuer-sponsored research could be amended to address the conflicts of interest embedded in the set-up. Such amendments could be disclosure requirements such as the relationship between the issuer and the pro-vider of the research must be clearly stated and it must be clearly labelled as issuer spon-sored research.

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.

Please see the above responses.

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.

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.

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

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

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

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

Question 79.1 Please explain your answer to question 79:

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

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

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

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

Question 80.1 Please explain your answer to question 80:

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

As thoroughly analysed and concluded in ESMA Final Report Alignment of MiFIR with the changes introduced by EMIR Refit of 7 February 2020, we support ESMAs conclusion of a need for a full alignment between the CO and the DTO. The existence of a standalone DTO could in practice create a quasi-obligation to clear for counterparties exempted there-from under EMIR Refit, which would contradict the objective of EMIR Refit.

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 negative, please indicate which amendments you would suggest and why:

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

Please see Q21, Q24 and Q27 where you will also find a specification of the compliant SI activity in our attached position paper, which is a part of our response.

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.

Finance Denmark strongly urges to remove the DVC as the cap is an unnecessarily com-plicated instrument to handle the problems with a misuse of particular the Reference Price Waiver (RPW), where even small orders can benefit from the waiver. Please also see Q27. Additionally, the DVC increases uncertainty in the market as the DVC is unpredictable due to the various interdependencies.

ESMA should rather remove the RPW as Finance Denmark believes that the LIS waiver cap-tures what the RPW should have done but failed to do.

The Negotiated Trade Waiver (NTW), however, should not be limited in usage as this waiver is an important tool not at least in smaller markets and markets with lower liquidity levels. The NTW does indeed work to the benefit of retail clients, who are often directly affected via investments in pension funds. Furthermore, to our knowledge, the NTW has not been a source of misuse as the case has been for the RPW.

Smaller markets may not have sufficient depth of liquidity in the order book to match or-ders above a certain size at a particular point in time. This means that orders even slightly larger than average (but below a size which would qualify for the large in scale waiver) can negatively impact on the market resulting in increased price volatility to the detriment of clients. Even shares classified as “liquid” under MiFIDII/MiFIR can still go through periods of lower liquidity when the use of the NTW becomes more critical in order to reduce in-creased price volatility and support trading activity.

Increasing the possibility of using the NTW for liquid shares during lighter trading periods will have the effect of increasing the client appetite in such shares, at least in the smaller mar-kets.

Negotiated trades are recognized as on-exchange transactions which are handled sub-ject to the rules of the trading venue as supervised by the relevant regulator. In the Nordic regions, the negotiated transactions are made at or within the volume weighted spread on the lit order book of that trading venue. All negotiated transactions in equities are:

- Supervised by the same surveillance department that is also supervising the transparent order book,
- Reported in immediately to the trading venue and executed subject to the trading rules of the market, and
- Published immediately in the trading venue’s post-trade system and integrat-ed into one data feed with order book deals, thereby included in all price sta-tistics, including index calculations and the official closing price.

This demonstrates that negotiated transactions are a reliable and transparent trading method which provides benefits to the client but also supplements the price formation process in the transparent order book and provides additional liquidity to the equity mar-kets.

Having regard to the pursuance of the policy goals of price formation and best trading outcomes for clients, the following specific conditions should be attached to the execu-tion of NTW assisted transactions:

- NTW should only be used by trading venues that have lit order books, so that it can provide additional liquidity to that trading venue
- It should only be used for trades that are done on a bilateral basis and report-ed in immediately to the

trading venue's system, so that it is included in index calculations and price statistics

- It must be done under the rules of the trading venue and be subject to full market surveillance
- The trading venue must be obliged to react on any misuse and if the price formation is negatively affected, and to report the same to the competent authority,
- The competent authority, when approving the waiver for the trading venue and also when supervising the activity on the trading venue, retains the rights to withdraw or modify the approval for the waiver, and
- ESMA could be given a coordinating role and, if deemed necessary, could be provided with mandate to introduce restrictions such as requirement on the trading venue that offers the NTW.

By clarifying these specific features for negotiated transactions in MiFIR it will be ensured that the NTW cannot be abused to create new separate dark pools or OTC-trading that could have negative effects on the price formation process.

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 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.

Finance Denmark believes the open access benefit clearing and to a certain extent also trading. However, as liquidity is "sticky" and trading venues (in particular incumbent ex-changes) use (closing) auctions to keep and enhance their market power also in the trad-ing space, additional measures should be considered such as limiting the (closing) auction market share.

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.

A good example is Euronext approach to CCP access in the Norwegian market after the Oslo Børs takeover. Euronext did listen to the market participants and opened for the re-quested CCPs.

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.

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.

Finance Denmark would like to address the importance of keeping disclosure require-ments technology neutral – meaning that all the required information must be able to be shown and read on a mobile phone or other tablet.

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

Please explain your answer:

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

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

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

Question 89.1 Please explain your answer to question 89:

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

The online environment puts a strong focus on providing products to customers as fast as possible, with as few barriers as possible. As far as financial services are concerned, this might endanger retail clients if they do not take enough time to reflect on purchasing complex financial products. On the other hand, making the product quick and easy to purchase (e.g. speedy or ‘one-click’ products) makes it easier for clients to buy and sell at least simple investment

products online. Taking all of the above into consideration, the Commission would like to gather feedback on whether certain rules in the MiFID II/MiFIR framework on marketing and provision of information to clients should be adjusted to better suit the provision of services online.

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

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

Question 90.1 Please explain your answer to question 90:

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

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.

Finance Denmark does not believe it is appropriate to include non-financial instruments in MiFIDII/MiFIR.

1. Investor protection
With respect to investor protection topics, a potential regulatory gap might exist on FX spot transactions. However, ACI Global Code of Conduct covers many of those topics. In addition, the FX spot market is one of the most, if not the most, liquid market in the world. Furthermore, FX spot transactions are often executed on platforms, even for retail clients, giving a perfect pre-trade price disclosure.

2. BestEx and Post trade price disclosure
Best execution on FX spot transaction is included ACI Global Code of Conduct.
FX spot rates changes instantaneously, therefore RTS 27 reports and post trade price disclosure do not provide any useful information.

3. Transaction Reporting
From a Transaction Reporting perspective, one could argue that it might be interesting to disclose the volume of FX spot transactions. Because of the nature of FX spot transactions with a very short maturity, it probably wouldn’t make much sense.
From our point of view the benefits would be limited compared to the resources spent.

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

Please explain your answer:

5000 character(s) maximum

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

Section 3. Additional comments

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

Please, where possible, include examples and evidence.

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

Please see Finance Denmark's attached position paper which is a part of our response to this consultation (European Commission public consultation on the review of the MiFIDII/MiFIR regulatory framework with deadline 18 May 2020) and which provides concrete solutions to Q9, Q24 and Q27:

- Needed legal changes to ensure reasonable costs and conditions for market data (Q9)

- How to ensure SIs are acting as a bilateral execution venues (Q24)

- How to improve the quality of the lit order books (Q27)

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

Please explain your answer:

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

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

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

Useful links

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