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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and the Banking Union (MiFID-MiFIR)
Subject:	MiFIR: - Questionnaire following MiFIR/MiFID working party meeting on 24.05.2022 (Agenda WK 7289) Replies from 20MS

Deadline: 1 June 2022 cob

Questionnaire following MiFIR/MiFID working party meeting on 24.05.2022

The new questions in red were added after the working party.

MS : FI BE NL LV SK BG AT LU IE ES SI HU SE DE LT HR IT PT PL MT

Question	MS reply
I. Compromise Proposal on the regulation of payment for order flow	
Q.1. Do you agree with the compromise proposal on PFOF? **Option A: Yes**; **Option B**: No (if so, why?).	FI (Comments):FI Option B: No (if so, why?). We are still of the view that the strict ban would be clear to supervise and simple rule to obey. There would be no grey area in the regulation, which you could still interpret in different ways in different member states. We do not also really see payment for order flow to be the only way forward to give retail investors possibility to execute their transactions in cost effective way with the best possible price. BE (Comments):BE Belgium: Option B: No. We are still sceptical regarding the compromise proposal and in favour of banning PFOF as the latter is the most straightforward measure. We

Question	MS reply
	consider that several of the safeguards proposed, like information about costs, are already included in MiFID today. Reporting obligations on costs towards the client are already imposed by MiFID II (ex. Art. 59(4) m) of the MiFID II Delegated Regulation states that the notice sent to the client which confirms the execution of the order shall include information on "*a total sum of the commissions and expenses charged and, where the client so requests, an itemised breakdown including, where relevant, the amount of any mark-up or mark-down imposed where the transaction was executed by an investment firm when dealing on own account, and the investment firm owes a duty of best execution to the client;*"). The proposal to draw on the model of the U.S. Rule and strengthen the obligation to regularly inform the public about the nature of the PFOF arrangements and associated payments is certainly interesting. However, we all know that information requirements fail to be effective on their own and should be supported by other investor protection rules. In this regard, we stress that MiFID II conflict of interest regime provides, as a general principle, for a preventive system (firms shall maintain and operate effective organisational and administrative arrangements with a view to taking <u>all reasonable steps</u> designed to <u>prevent</u> conflicts of interest from adversely affecting the interests of its clients. The PFOF scheme creates an inherent conflict of interest for the firm receiving PFOFs, which might be detrimental to clients and lead firms not to act fairly, honestly and in the best interest of their clients. This conflict could easily be avoided by executing the client order without receiving PFOFs, instead of relying on the best execution rule.

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	Finaly, the proposed compromise to be effective requires to have a consolidated tape in place that is as real-time as possible in order to have sufficient safeguards and this is not technically achievable in the short or medium term. NL (Comments):NL We believe it is important to address the negative aspects of PFOF, given the conflicts of interest between the client and broker. We therefore strongly support a PFOF ban as proposed by the Commission. We have seen broad support for such a ban in the Council working parties. Moreover, a Union wide PFOF ban is also supported by ESMA, for instance in their technical advice to the Commission on retail investment. We do not support the compromise as tabled by the Presidency. This compromise lacks proper safeguards for market integrity and investor protection. Firstly, we are hesitant regarding the proposed disclosure of PFOF arrangements. Disclosed information is not always understood, or even read by retail clients. We question whether detailed PFOF arrangement information is helpful for retail investor. If there remain real conflicts of interest, transparency is not the right direction.

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	Secondly, investment firms providing PFOF services on a cross-border basis, could offer their services via their European passport to residents of Member States that prohibit PFOF under their interpretation of European law. Therefore, local brokers in such Member States that are deprived of these PFOF-remunerations face unfair competition from brokers established in jurisdictions where PFOF is allowed. This issue should be resolved in any solution to the problem at hand. We are open to further discuss ways to better clarify the scope of the proposed PFOF ban. For example, by addressing the issue of multilateral trading, which cannot be complied with if there is only a single market maker active on a PFOF-platform that serves as the counterparty for all retail orders in a given instrument. LV (Comments):LV **Option B**: No, we still support ban of PFOF. *PFOF poses serious concerns about investor protection and conflicts of interest that are not resolved by the compromise proposal. Retail investors share this assessment.*

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	Disclosures on order routing practices, costs, and payments are necessary but not sufficient and the emergence of a European BBO would not solve the problem. Studies find that even under the US best execution regime with a national BBO, retail investors are not receiving the best execution. In fact, a European BBO would aggravate issues around arbitrage by sophisticated market participants with access to direct feeds at the expense of retail investors. Retail investors will not be able to access many of the quotes shown in a pre-trade CT as brokers do not offer connectivity to all venues in Europe and some execution venues do not offer access to all types of investors. *All things considered, PFOF should be banned. Under PFOF, the broker will always have an economic incentive to direct order flow to the execution venue that offers the highest payment and not the best execution. What's more, looking at countries where a ban on PFOF has already been in place for some years, studies show that the ban has not had detrimental effects on pricing but that retail investors benefit from a more competitive market. A second-best alternative, complemented by strengthened disclosures, would be limiting SI equity trading to above large in scale (LIS) via Article 1(8). This would protect retail investors and diminish the*

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	conflict of interest as it would preserve the competition of trading interests and price formation. SK (Comments):SK Option A. Yes. We support option A due the lack of evidence necessary for total ban of PFOF. BG (Comments):BG **BG:** Bulgaria cannot support the compromise proposal which introduces BBO and the use of pre-trade data. We have expressed our position that the CTP should be established only with post trade data. AT (Comments):AT **No.** We are especially not in favour of a link between PFOF and pre-trade data in the current compromise proposal. This solution would not solve the problems around PFOF and best execution. Although we recognise the efforts of the PRES to reach a compromise, if the compromise is to

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	result in even more information to be presented to the retail customer, the goal of reviewing and simplifying MiFIR might not be accomplished. Additionally, a pre-trade consolidated tape would become a flawed benchmark given the inherent geographical latency issues in Europe. A European best bid and offer produced by a pre-trade consolidated tape could create price slippage problems, give a distorted picture of liquidity, and increase latency arbitrage. Moreover, retail investors might not be able to access many of the quotes shown in a pre-trade CT as brokers do not offer connectivity to all venues in Europe and some execution venues do not offer access to all types of investors. LU (Comments):LU Option B. While we could generally support the creation of an EU-wide regulatory framework to regulate and supervise PFOF, as opposed to an outright abolition of this practice whose ultimate consequences for the end-user are not entirely clear, we remain reluctant to introduce a pre-trade date in the consolidated tape at this stage. The creation of a European Best Bid and Offer (EBBO) in the context of the CT, which to date remains a highly sensitive political issue, carries its own risks (e.g.

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	loss of revenue for regulated markets) and would in our view delay the whole process of launching the equity CT. IE (Comments):IE Ireland's position is to support a full ban on PFOF, but we can provide contingent support for the compromise proposal (Option A). Ireland strongly supports the inclusion of pre-trade data in the equities CT and the tape must be 'as close to real time' (as feasible). Without this pre-trade data in the equities CT our position reverts to favouring a total PFOF ban. It is important that retail investor protection remains a key element of this proposal; therefore, the inclusion of additional safeguards along with the requirement for total cost breakdown of each transaction is positive. The inclusion of annual reports by ESMA on the development and documentation of PFOF along with an assessment on the impact of PFOF on market structures is essential. We believe the 5 years assessment should take place within 2.5 years and then again within another 2.5 years.

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	Ireland believe this more regular review process is required as the interim solution of introducing an EBBO benchmark may lead to unintended consequences whereby any venue or counterparty that offers a tighter spread, (e.g. through competition on tick sizes or by use of midpoint matching services) will be able to attract order flow on the basis of beating the EBBO, thereby driving liquidity away from the venue that is supposed to underpin the price formation process in a particular instrument. From our above comments it is clear that putting in place a framework to manage PFOF's risks is difficult and complex and is a second best option to banning PFOF. If the status quo remains we will continue to have a level playing issue where PFOF is banned in some Member States but not others. It is notable that the recent UK Wholesale Markets Review proposals seek to reduce regulatory requirements in a number of areas in order to promote competitiveness but that a lifting of the PFOF ban is not included in the UK proposals.

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	ES (Comments):ES Our first and preferred option is a ban on PFOF. In light of the views expressed in the last Council meeting, we encourage the Presidency to reassess the majorities. For the sake of compromise, we would also be open for a solution that enables PFOF business models to continue, but preserving retail investor protection. A red line would be to not have a clear harmonized approach in the EU. SI (Comments):SI We generally support the compromise proposal on PFOF, as we believe it presents a sensible approach to regulating PFOF and contributes to increased transparency. However, we believe that reference to the best price available at the moment of execution on the most liquid market shall suffice and that emergence of a European BBO is not necessary. HU (Comments):HU

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	We support Option B. We don't find the additional guarantees sufficient enough, so we support the Commission's initial proposal. SE (Comments):SE Option B: No. SE still supports a ban on PFOF. We have understood that one of the motives for allowing the introduction of PFOF in Europe is the positive effects it may have on retail participation in stock markets. We share the view that increased retail participation in securities markets is beneficial for both investors, issuers and the markets. We support the ambition to increase retail participation. But we do not believe that the use of PFOF is an important driver for that development. In SE, where PFOF is not practiced, we have seen an almost 50 percent increase of natural persons owning Swedish shares over the last two years. This is a huge increase from an already high level of stock holdings among the Swedish population. We are worried about how the introduction of PFOF may affect market structure. Although we acknowledge that the presidency's proposal includes constructive efforts to address the issues of investor protection

Question	MS reply
	and conflicts of interest, we are still very concerned that the use of PFOF tends to reinforce the trend of order flow being directed away from price-forming order book trading on lit venues, a trend that the MiFIR review was intended to counter. An argument against a ban that has been repeated several times is that there is not enough evidence, not enough impact assessment, to take the step to ban PFOF. But for the majority of MS the reality is what we are actually facing is the *introduction* of PFOF, a business model that barely exists today, that will entail unknown consequences for our investors and the functioning of our stock markets. We believe that an impact assessment would indeed be necessary before PFOF is *introduced* on a large scale. SE considers a ban on PFOF necessary regardless of whether pre-trade data is included in a CT for equity or not. DE (Comments):DE **Option B: No**

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	We welcome the proposed deletion of the ban on payment for order flow (PFOF). However, we have concerns with introducing a European Best Bid and Offer (EBBO) based on a pre-trade quotation tape and are not convinced that the EBBO is the right answer to deal with PFOF. A real-time pre-trade consolidated tape, even in the form of a quotation tape, is not needed as a benchmark for ex-post verification of best execution. Whereas pre-trade data could contribute to assessing the cost of trade execution, this data is not needed on a real-time basis. A potential element for assessing the cost of trade execution to be further assessed could be the delayed pre-trade data of the most liquid market for the relevant share. We should be mindful that such data has to be made available under MiFIR within 15 min. after publication free-of-charge. In addition, best execution requirements currently do not apply on a trade-by-trade basis, but best execution is a broader concept, including not only the cost of trade execution but also access to trading venue fees (so called implicit and explicit costs) and other parameters. For investors, and for retail investors in particular, total cost information is key. For

Question	MS reply
	retail investors with small order sizes explicit costs typically outweigh implicit costs. Furthermore, moving towards an EBBO may have far-reaching implications on the European equity trading landscape which must be properly assessed before taking such a step. For example, the NBBO applied in the US allows sophisticated market participants with access to direct feeds to internalise order flow from retail investors. The benefit of the EBBO for retail investors is doubtful because investment firms will not be connected to all the venues represented in the tape and retail investors may therefore not be able to access the best possible price. Due to latency the best possible price will also not be available to be traded upon by retail investors and retail investors might be outplayed by professionals as described above. In more general terms, we would consider it most useful to conduct an in-depth analysis of the market structure impact of PFOF in Europe before embarking on any further regulatory measures. In the absence of

Question	MS reply
	regulatory measures, we would be open to further discuss the proposals made by the Presidency on • better information of costumers on the total costs of each transaction; • additional reporting obligations; • a mandate for ESMA to monitor the market structure developments with a view to PFOF; • a clarification regarding the application of the best execution obligation in cases where brokers direct client orders to specific execution venues as well as • the proposal that the broker should not transfer the choice of execution venue to its clients in order to avoid its best execution obligation. However, it should be clear, that the client has the freedom to choose the execution venue freely. LT (Comments):LT We are sceptical about the proposed compromise, especially about linking the PFOF with pre-trade data, we think it is premature as it might be detrimental for small trading venues. As a general remark, we think that PFOF poses serious concerns about investor protection and conflicts of

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	interest that might not be resolved by the compromise proposal, therefore, we support the initial COM's proposal for introducing a full ban. HR (Comments):HR We agree that additional requirements should be considered that would further frame PFOF practices and introduce more transparency instead of a clear cut ban. We mostly agree with the presidency proposal, but we see some problems that could accrue form the presidency proposal which are: 1. Clients specific instruction *Where a financial intermediary receives a payment from a trading counterpart in exchange for ensuring the execution of client trades, it should be* ***incompatible with the principle of best execution that such financial intermediary accepts any specific instruction from its client which would prevent him from achieving the most favourable result for his client.*** *A financial intermediary should therefore not nudge its client to specify a given venue for the execution of its orders among a set of venues pre-selected by the financial intermediary. Likewise, the financial intermediary should not enter into a contractual relationship with a client under terms whereby some or all orders received from that client*

Question	MS reply
	will be deemed to be orders with a specific instruction regarding the venue where such orders shall be executed. As regulated by Article 27. of MiFID an investment firms shall take all sufficient steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. **Nevertheless, where there is a specific instruction from the client the investment firm shall execute the order following the specific instruction**. We are not in favour of the proposal to prevent clients to give specific instruction when a client has an option to route his order to a lit TV or a PFOF trading venue. The problem that would accrue is in the case where a client wishes to execute his order with a specific instruction for example FoK, place at a specific time, where a client will receive a better price at a PFOF venue but at a lit venue it will receive better speed of execution ect. Removing the specific instruction of a client would not benefit the lit venue or a PFOF venue. Although we agree the client should not be channelled towards a particular trading venue by the investment firm, he should still have the option of choosing the trading venue. Maybe the price on the PFOF TV would be better and the investment firm offers the

Question	MS reply
	client to execute the order at that venue, but the client prefers to trade at a lit venue. The client should be given a choice to choose the venue he wants to trade at from the set of venues the financial intermediary is able to trade at. While it is essential to regulate that investment firms do not direct a client order to the market intermediary that provides the best incentive rather than the best execution outcome for their client there are situations, which would be covered by the client specific instruction, that would comply with the MiFID requirements regarding the obligation to execute orders on terms most favourable to the client regardless of the price aspect taking into account the clients wish. We understand the intention of the presidency, but it is necessary to amend the wording in order not to completely rule out the client specific instruction and at the same time prevent order routing to the markets form which the investment firms receive the highest PFOF. We propose the following wording (this will require further technical work and is only meant to illustrate the intent): MiFID: An investment firm that routes client orders to a particular trading venue or execution venue in exchange of a payment from such venue shall not

Question	MS reply
	exempt itself from offering the best possible result to its clients. It shall not nudge its clients to specify a given venue for the execution of its orders among a set of venues that it has pre-selected other than when the client's specific instruction includes such an order where, given all the requirements/parameters the client has specified, it would not be possible for the investment firm to meet all the requirements given by the client by executing that order at the venue where the best price, including all the costs, would be most favourable for the client. MiFIR: (34) Where a financial intermediary receives a payment from a trading counterpart in exchange for ensuring the execution of client trades, it should be incompatible with the principle of best execution that such financial intermediary accepts any specific instruction from its client which would prevent him from achieving the most favourable result for his client other than when the client's specific instruction includes such an order where, given all the requirements/parameters the client has specified, it would not be possible for the investment firm to meet all the requirements given by the client by executing that order at the venue where the best price, including all the costs, would be most favourable for the client.

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	A financial intermediary should therefore not nudge its client to specify a given venue for the execution of its orders among a set of venues pre-selected by the financial intermediary o unless the conditions specified in the first subparagraph have been met. Likewise, the financial intermediary should not enter into a contractual relationship with a client under terms whereby some or all orders received from that client will be deemed to be orders with a specific instruction regarding the venue where such orders shall be executed. 2. European Best Bid and Offer While we consider it necessary to have a reference price that would be taken into account for the purpose of comparing prices in certain markets, and agree that the reference price would be the BBO of the reference (most liquid) market of the traded security i.e. Local BBO, we are very hesitant to support the Presidency proposal to incorporate real time CTP prices in the PFOF regulation, for several reasons. PFOF regulation should not depend on CTP data, for a very simple reason that we currently do not have a CTP and it is not a given that a commercial provider will be established or when. PFOF regulation is a problem that we should resolve now. To provide retail clients better

Question	MS reply
	regulation, protection and an opportunity to choose a venue that will provide them with best execution, lower fees ect. the PFOF should be regulated taking into consideration all the opportunities that it gives the client. It should be regulated in such a way that the client has a choice and that the investment firm does not take advantage of that choice. Unlike other situations in MiFIR, where we sometimes misguidedly assume that a problem will resolve itself with more transparency (instead of dealing with the problem itself), transparency here really is the key. While we wait to establish a CTP third county brokers are entering our markets and taking clients off the lit and also dark EU venues. Taking the financial opportunities from our investment firms and at the same time financial resources to third countries. An option that we are considering currently is that lit markets could be obligated to make available information on the last executed transaction with a certain delay. Also it would be favourable to let the lit markets to charge, at a reasonable price (reasonable commercial basis), for that information from the investment firms that are not their members. If the BBO would be used to monitor PFOF that information would be used only by the investment firm that needs that information. The lit markers would still be able to charge for the trading information used for regular

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	trading, and also benefit from PFOF brokers that want to trade against them. We are still considering this option, and we have sent a query to our stock exchange to see what issues may arise if this is the direction to go in. For us, the key question is, what do we do while we do not have a CTP? Options are: - Do nothing (which is suboptimal from the prospective of protecting retail investors) - Ban PFOF until we do have a CTP (which we do not support) - Use the data that we do have (which we think we should do). If a CTP is established after that and the data published by the CTP is close to real time, it would be reasonable to use CTP data, we do not disagree with that. However, more effort is still required to provide reasonable assurances that the requirements and consequences of establishing a CTP will not significantly disadvantage smaller stock exchanges. We recognise that the Presidency has made steps in the right direction in this context, however, the text is not there yet and we are still very hesitant to accept such a compromise. IT (Comments):IT

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	As we have already said, we believe that the proposal in option A could be a balanced solution to solve the PFOF issue at least until more evidence of negative effects will emerge by further market studies. Thus, on this base, we are supportive for option A, which avoids the ban of PFOF and is in line with our preference for regulating the PFOF more than banning it. It also contributes at increasing pre and post trade transparency in the market, by alleviating conflict of interest and fostering best execution (with the introduction of a EBBO benchmark on CT). PT (Comments):PT We have been critical of the Commission's proposal to ban PFOF, notably because its negative impact is currently undocumented (and some studies indicate that PFOF may facilitate the development of retail brokerage services). In addition, MiFID II already provides for rules to prevent conflicts of interest. Consequently, we are open to support the compromise proposal to create an EU-wide regulatory framework for framing and supervising PFOF, including through a close to real time pre-trade consolidated tape for equity and bonds. Moreover, we consider it achieves a balance

Question	MS reply
	between the benefits of PFOF and the necessary safeguards to the risks identified by Member States that propose to ban it. PL (Comments):PL Option B: No PFOF poses serious concerns about investor protection and conflicts of interest that are not resolved by the compromise proposal. We believe that disclosures on order routing practices, costs, and payments are necessary but not sufficient to solve the issues. Studies find that even under the US best execution regime with a national BBO, retail investors are not receiving the best execution. In fact, a European BBO would aggravate issues around arbitrage by sophisticated market participants with access to direct feeds at the expense of retail investors. Retail investors will not be able to access many of the quotes shown in a pre-trade CT as brokers do not offer connectivity to all venues in Europe and some execution venues do not offer access to all types of investors. In our opinion under PFOF, the broker will always have an economic incentive to direct order flow to the execution venue that offers the highest payment and not the best execution. A second-best alternative,

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	complemented by strengthened disclosures, could would be limiting SI equity trading to above large in scale (LIS) via Article 1(8).
II. Compromise proposal on the consolidated tape	
Q.1. Q1: Do you agree with the compromise proposal on the consolidated system for financial instruments other than shares? **Option A**: Yes; **Option B**: No (if so, why?).	FI (Comments):FI Yes, we can agree. BE (Comments):BE Belgium: Option B: No We believe there is a more urgent need for a CT for OTC derivatives and corporate bonds. Equity markets and government bonds offer already higher levels of transparency. NL (Comments):NL Yes, our preliminary view is that we can support these amendments. We strongly support the prioritization of the CTs for shares and bonds over the other two asset classes. In the spirit of compromise, we can support the removal of the ESMA fallback option to build and run the CT.

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	Please see our comments and drafting suggestions in the MiFIR compromise table for some more specific, technical aspects. LV (Comments):LV **Option B**: *A staggered approach for appointing the consolidated tape providers would help to manage the adjustment processes the relevant markets have to go through and to limit the impact on ESMA's resources. However, more opaque asset classes like bonds and derivatives should be given priority, shares and ETFs should come after the second selection procedure.* SK (Comments):SK Option A: Yes BG (Comments):BG **BG:** In our view the CTPs should be developed gradually starting with the asset classes for which there is less transparency. AT

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	(Comments):AT **No.** As stated in our comment above, the inclusion of pre-trade data would raise substantial issues and be in the end detrimental to our small market. In general, the compromise text does not change the essence of the problem. We still doubt the benefits of a real-time CT as it is more likely to threaten the funding especially of small exchanges like the AT stock exchange, which depends on market data revenues, to the detriment of issuers and investors. In contrast, a 15-minutes delayed CT would not create these issues. Most use cases like assessing best execution or analysing liquidity can be achieved by a 15-minutes delayed CT. This consolidated tape would build on the requirement for data providers to offer 15-minutes delayed data for free and therefore a revenue distribution would not be necessary anymore. LU (Comments):LU Option A. The compromise proposals on the CT for non-equity instruments are generally to be welcomed, in particular the deletion of the fall-back clause under which ESMA could be obliged to manage the

Question	MS reply
	consolidated tape, as well as the priority given to launching consolidated tapes for equities and bonds. IE (Comments):IE Option A - Support compromise proposal. We question the removal of the ESMA fall-back option as it opens the risk of no CT at all. ES (Comments):ES Option A. We agree with the compromise solution on the consolidated system for financial instruments other than shares. This agreement is conditional on overcoming the concerns we have on establishing a consolidated tape for derivatives. We support establishing in a recital that ESMA should prioritise the launch of the calls for tender and selection process for the consolidated tapes in shares and bonds. SI (Comments):SI

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	We appreciate the work on the compromise proposal, and we support some positive improvements, for instance the removal of the fallback clause and prioritisation of the consolidated tapes in shares and bonds. HU (Comments):HU **We support Option A.** SE (Comments):SE Option A: Yes. DE (Comments):DE **Option B: No** While we generally agree to a staggered approach to prioritize a tape for bonds and shares and also support to remove the fallback clause according to which ESMA could find itself having to build and operate the consolidated tape, we have concerns related to the limited role of ESMA in setting data quality standards. We consider it appropriate that those standards be set in the form of RTS and not as delegated acts. LT (Comments):LT

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	We are sceptical about the proposed compromise. We agree with the creation of CTP, however, creating it step by step and prioritising post-trade CTP for shares and bonds. We hear other countries and their concerns about the near real time pre-trade CTP, we also consider whether the benefits are higher than the costs. We are especially concerned about the revenues of small trading venues. We would not oppose to the removal of the fallback clause according to which ESMA could find itself having to build and operate the consolidated tape. HR (Comments):HR As indicated in our previous comments, we are not in favour of setting up a real time CTP or a near real time CTP, especially for shares that are not cross listed. We find that the proposed model will have a significant negative impact on small stock exchanges due to the fact that a high percentage of their revenue is obtained from selling information. To mitigate this effect, we would advise that the post trade CTP, in particular for shares and ETF's should not be a "near real time" CTP and that the publication of post-trade data by the CTP be "time-delayed". We are also very sceptical towards setting up a pre-trade CTP for the following reasons: increase of business costs and general administrative

Question	MS reply
	requirements for a wide range of market participants and a negative impact on small stock exchanges. However, if this is a direction that the text goes in, and a pre-trade CTP is established we recommend that only the first best bid/ask be visible and also time delayed. Alternately, if more safeguards are introduced in the text to ensure that a near-to-real time CTP, but not measured in seconds, does not significantly disadvantage smaller stock exchanges, we could be open to such a compromise IT (Comments):IT Yes (option A), we are generally in favour of a CT system for equity and bonds developed simultaneously. Priority for a shares and bonds CT should be granted, in consideration of the challenges of the CT for derivatives that could delay the whole process. Thus, we agree with the proposal set out by the Commission to prioritize the selection procedure for bond and share asset classes over derivatives and ETFs, as it would allow to first better address data quality issues for both derivatives and ETFs, starting with the set-up of the CTP project for shares and bonds, characterized by a lower level of complexity in the implementation. Particularly, we could accept also a more gradual

Question	MS reply
	approach focusing on the consolidation of post-trade data in the case a pre -trade CTP could be not necessary for building the EBBO. Finally, as regards the revenue redistribution scheme for market data provision in case of asset classes other than shares, the purpose of rewarding the quality and timeliness of data contributions might foster the enhancement of data quality activities on data contributors' side, as well as inducing the latter to participate actively in the timely provision of data to the CTP. PT (Comments):PT **Q1 and Q2 - Option A**, since the compromise proposal does not affect neither the principle of having a close to real time tape nor the definition of core market data. In what regards shares and bonds, the compromise proposal is adding now (rather than in 5 years as it was suggested in the Commission's proposal), to the real-time post-trade Consolidated Tape, the top of the order book quotation tape. Therefore, providing for the consolidation and display in near-real time (as close to real time as technologically possible) of the best orders available on the European Union's order books (pre-trade), in addition to the data relating to the transactions.

Deadline: 1 June 2022 cob

Questionnaire following MiFIR/MiFID working party meeting on 24.05.2022

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MS : FI BE NL LV SK BG AT LU IE ES SI HU SE DE LT HR IT PT PL MT

Question	MS reply
	We do not have any evidence that including pre-trade data would lead to arbitrage opportunities or detriment of the retail investor, rather the opposite. We would like for MiFIR to establish, in a Recital, that the launch of the calls for tender and selection process for the consolidated tapes in shares and bonds will be prioritised (over those for derivatives and exchange-traded funds). We have no objection to the removal of the fallback clause, in light of ESMA's letter to the COM (ESMA70-156-5299) highlighting challenges of such a solution. PL (Comments):PL Option B: No See comments on Q.2. However, we welcome the removal of the "fall back clause" as we saw a number of significant risk factors associated with it. We also believe a staggered approach for appointing the consolidated tape providers would help to manage the adjustment processes the relevant markets have to go through and to limit the impact on ESMA's resources. And more opaque asset classes like bonds and derivatives

Question	MS reply
	should be given priority, shares and ETFs should come after the second selection procedure.
Q.2. Do you agree with the compromise proposal on the consolidated system for shares? **Option A: Yes;** **Option B: No (if so, why?).**	FI (Comments):FI Yes, we can agree. BE (Comments):BE Belgium: Option B: No In principle, we could be supportive of a near-to-real time tape but we should not forget that pre-trade data leads to a flawed de facto 'reference price' and due to geographical dispersion of trading venues and market participants in Europe, each trader has a specific view of the reference price depending on the physical location. It would lead to latency arbitrage and we should find a way to have non-discriminatory access to the information. Hence, it might be that entities using co-location get the information quicker. We would therefore welcome a 15-minute delayed post-trade CT. Also, it should be further clarified whether information on dark trading is included or not, taking into account its possible impact on the price formation process. NL (Comments):NL Our preliminary view is that we can support these amendments. We support the uptake of quotation or BBO for shares, that allows for more

Question	MS reply
	use cases and a better economic viability of the CT. Furthermore, this is also in line with the CMU objectives. We do not support the establishment of a 15-minute delay CT for shares. In our view, this would be a continuing the status quo. Since data are already free of charge after 15 minutes, anyone could already have set up such a CT. However, as extensively shown by the Commission’s impact analysis, to this day, no CT has emerged given the lack of economic viability. Therefore a 15-minute delayed (post-trade) CT will not be established on a viable commercial basis. The status-quo of no CT in the EU would remain. The absence in the EU of a well-functioning real time CT for shares would be a serious threat to the development of the EU capital markets and our achievements regarding the deepening of the Capital Markets Union. To increase the attractiveness of the EU capital markets for both issuers and investors, we should increase transparency and improve the access to market data. An as-close-to-real-time-as-possible post-trade CT with quotation data will in our view be a huge competitive advantage for the EU capital markets. Not only for the most developed financial

Question	MS reply
	markets, but also for lesser developed financial markets that can catch-up and improve their attractiveness by way of a higher visibility of these markets LV (Comments):LV **Option B**: *Under the current market structure, the possibility of a pre-trade consolidated tape (CT) is highly concerning, even if it's not used for the reference price waiver. At the same time, it wouldn't solve problems around PFOF and best execution. Retail investors will not be able to access many of the quotes shown in a pre-trade CT as brokers do not offer connectivity to all venues in Europe and some execution venues do not offer access to all types of investors.* *As regards investor protection and best execution, an offer to trade is only a local reality, true at one moment, for one specific location where the price originates. Hence, geographical spread and latency considerations will imply that two observers in two different locations can simultaneously observe two different best prices. This means that, for example, the use of a unique European best bid and offer (EBBO) as a benchmark to ensure*

Question	MS reply
	best execution would not work, especially not in the EU with its wide geographical footprint and numerous venues. *The emergence of a pre-trade CT promoting a visible EBBO or reference price would give market participants the illusion of achieving best execution, while creating an environment that is ripe for arbitrage. Some market participants with sophisticated network infrastructures will have knowledge of a better available price that has not been incorporated into the CT. Harmful forms of arbitrage become possible in such a scenario since these market participants may guarantee execution for retail investors at the CT reference price while they themselves will trade at a better price at the expense of retail investors. A pre-trade CT could also create systemic price slippage issues and a false sense of liquidity, possibly increasing latency arbitrage and front-running practices. This risk of arbitrage cannot be avoided since a CT would show a picture of the market delayed in comparison to direct market connections, as it would be slower than the various feeds that it would consolidate. Therefore, consolidated pre-trade data provided by a CT will always be inferior to direct connections of traders to the venues, misleading retail investors to the detriment of investor protection.*

Deadline: 1 June 2022 cob

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Question	MS reply
	In addition, whilst removing the ESMA fallback clause is a step in the right direction, starting with bonds and derivatives would better reflect market reality. These more opaque asset classes should be given priority, shares and ETFs should come after the second selection procedure. *All in all, a 15-minute delayed CT is the most pragmatic approach to delivering a tape that meets the goals of all investors. The use cases fulfilled by both a 15-minutes and real-time CT are remarkably similar and under the 15-minutes CT investors would have easy and low-cost access to a consolidated view of the market without any undue impact on small venues. This CT would draw on the requirement to make available data free of charge 15-minute delayed and remove entirely the issue of distribution models as there would be no need to redistribute revenue. Importantly, this solution will allow for an incremental approach, shortening the delay in the future once the tape has proven its value. Under this future scenario, the revenue model should remunerate data contributors that provide price formation and listings. The 15-minutes delayed CT would be established by amending Recital 20 and Art. 1(2), (10), 1(15), and 1(16) to establish a 15-minutes delayed post-trade CT, focusing first on bonds and derivatives.* SK

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Question	MS reply
	(Comments):SK Option A: Yes. BG (Comments):BG **BG:** We do not agree with the compromise proposal which in our view is a step back. We do not support the inclusion of pre-trade data in the CTP and the Presidency compromise goes even further than the Commission proposal in this regard. AT (Comments):AT **No.** We generally doubt the benefits of a real time CT and are not in favour of the establishment of a pre-trade CT for the reasons outlined in our comment above. An approach with a delayed CT by minutes would be welcomed from our side but not a CT with a delay of only seconds. LU (Comments):LU

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Question	MS reply
	Option B. As we remain reluctant at this stage to include pre-trade data in the CT for the reasons mentioned in section I, we are not in a position to agree with the compromise proposal on the consolidated system for shares at this stage. IE (Comments):IE Option A – Ireland strongly supports the compromise proposal Ireland see's the inclusion of some pre-trade data as critical to the commercial viability and long term success of the equities CT. Furthermore the CT must be 'as close to real time' (as feasible), as set out by the Commission in its impact assessment. A delay of 15min for an equities CT feed would risk undermining the success of the tape as it would offer only marginal improvement on the current unsatisfactory and fragmented view of the market, which is already free after 15 min. The utility of any tape with a built in 15 min delay is highly questionable and therefore it would also raise serious doubts as to its commercially viability.

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Question	MS reply
	Users of a CT have been very clear in what they want and only in providing a useful and usable product for consumers is there any chance a CT can be commercially viable. This means there must be some pre-trade data and there cannot be an artificial delay of 15 minutes or similar. If it cannot be agreed to include some pre-trade data from the outset Ireland supports pre-trade data being included on a phased basis with more data brought in over intervals. This should be set out in Level 1 to ensure pre-trade data is rolled out on a timely basis (within 2-3 years of the equities CT being in operation, not some undefined or long term phasing in). We note that the ESMA fall-back option has been removed. Although having ESMA as a CTP would be sub-optimal for various reasons, this would still be preferable to not having any CTP. ES (Comments):ES Option A. We agree the compromise proposal, but subject to technical amendments in any case. We also support removing the ESMA fallback clause.

Question	MS reply
	We recommend revising who should contribute and how the best bid and offer will be formed. Systematic internalisers and RFQs should not be part of the best bit and offer, since their quotations are not available for everyone. Only central limit order books and periodic auction systems should be part. We suggest revisiting the definition of market data contributor. Sis and investment firms already have an obligation to report OTC trades data to APAs. In order to avoid duplications only APAs and trading venues should report. This would enable to reduce the number of connections that the CTP must establish. SI (Comments):SI We do not agree with the compromise proposal, as we believe that a 15-minute delayed CT would be a better solution at this stage and without any undesired impact on small venues. HU (Comments):HU **Our answer is option B, because we do not support an equity tape containing pre-trade data. Only post-trade data should be included at the first stage.**

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Question	MS reply
	SE (Comments):SE Option B: No. Near real-time pre-trade data should not be included in the first version of the CT for shares. Pre-trade data with a 15 minute delay could be included. DE (Comments):DE **Option B: No** We have concerns related to the inclusion of real-time pre-trade data in a consolidated tape on equities for the reasons outline above under I. The proposed inclusion of pre-trade data in the consolidated tape on shares should be deleted. LT (Comments):LT We are sceptical about the proposed compromise. We agree with the creation of CTP, however, creating it step by step and prioritising post-trade CTP for shares and bonds. We hear other countries and their concerns about the near real time pre-trade CTP, we also consider whether the benefits are higher than the costs. We are especially concerned about the revenues of small trading venues. We would not oppose to the removal of

Question	MS reply
	the fallback clause according to which ESMA could find itself having to build and operate the consolidated tape. HR (Comments):HR As indicated in our previous comments, we are not in favour of setting up a real time CTP or a near real time CTP, especially for shares that are not cross listed. We find that the proposed model will have a significant negative impact on small stock exchanges due to the fact that a high percentage of their revenue is obtained from selling information. To mitigate this effect, we would advise that the post trade CTP, in particular for shares and ETF's should not be a "near real time" CTP and that the publication of post-trade data by the CTP be "time-delayed". We are also very sceptical towards setting up a pre-trade CTP for the following reasons: increase of business costs and general administrative requirements for a wide range of market participants and a negative impact on small stock exchanges. However, if this is a direction that the text goes in, and a pre-trade CTP is established we recommend that only the first best bid/ask be visible and also time delayed. Alternately, if more safeguards are introduced in the text to ensure that a near-to-real time CTP, but not measured in seconds, does not

Question	MS reply
	significantly disadvantage smaller stock exchanges, we could be open to such a compromise IT (Comments):IT While we would agree with the proposal of including pre-trade data within the scope of the Consolidate Tape for equities, as it would represent a way to set up a future approach to a pre-trade CTP also for other classes of financial instruments, as well as to contribute to EBBO, and - most importantly - it would represent a relevant business case for candidates to participate in the ESMA selection procedure for equities, we however would suggest also in this case moving with a cautious and gradual approach to the CTP, where the scope refers to post-trade data at a first stage, allowing a "pilot" project for pre-trade information based on a voluntary contribution. This latter approach would enable to better address the potential data quality and technological issues related to the consolidation of pre-trade data, prior to their incorporation into the legislative framework. PT (Comments):PT Please take into consideration the comments presented above.

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Question	MS reply
	PL (Comments):PL Option B: No We do not support the presidency proposal on extending the CTP to quotations (orders). Since no CTP has emerged in Europe so far even for “post-trade” data, we do not see this extension appropriate at the current stage. We reiterate the view that CT should first prove itself as timely and reliable service in relation to “post-trade” data. Under the current market structure, the possibility of a pre-trade consolidated tape (CT) is highly concerning, even if it’s not used for the reference price waiver. At the same time, it wouldn’t solve problems around PFOF and best execution. As regards investor protection and best execution, an offer to trade is only a local reality, true at one moment, for one specific location where the price originates. Hence, geographical spread and latency considerations will imply that two observers in two different locations can simultaneously observe two different best prices. This means that, for example, the use of a unique European best bid and offer (EBBO) as a benchmark to ensure best execution would not work, especially not in the EU with its wide geographical footprint and numerous venues.

Question	MS reply
	The emergence of a pre-trade CT promoting a visible EBBO or reference price would give market participants the illusion of achieving best execution, while creating an environment that is ripe for arbitrage. Some market participants with sophisticated network infrastructures will have knowledge of a better available price that has not been incorporated into the CT. A pre-trade CT could also create systemic price slippage issues and a false sense of liquidity, possibly increasing latency arbitrage and front-running practices. This risk of arbitrage cannot be avoided since a CT would show a picture of the market delayed in comparison to direct market connections, as it would be slower than the various feeds that it would consolidate. Therefore, consolidated pre-trade data provided by a CT will always be inferior to direct connections of traders to the venues, misleading retail investors to the detriment of investor protection. All in all, a 15-minute delayed CT is the most pragmatic approach to delivering a tape that meets the goals of all investors. The use cases fulfilled by both a 15-minutes and real-time CT are remarkably similar and under the 15-minutes CT investors would have easy and low-cost access to a consolidated view of the market without any undue impact on small venues. This CT would draw on the requirement to make available data free of charge 15-minute delayed and remove entirely the issue of

Question	MS reply
	distribution models as there would be no need to redistribute revenue. Importantly, this solution will allow for an incremental approach, shortening the delay in the future once the tape has proven its value. Under this future scenario, the revenue model should remunerate data contributors that provide price formation and listings.
II.2 Data provider compensation mechanism	
Q.1. Do you agree with the compromise proposal on the compensation mechanism for data providers? **Option A:** Yes; **Option B:** No (if so, why?).	FI (Comments):FI Yes, we can agree. BE (Comments):BE Belgium - Option A: Yes We can support a remuneration mechanism for shares based on the informational value (i.e. on the contribution of the price formation process of the transmitted data) as a step in the right direction. NL (Comments):NL Yes, we are of the opinion that the compromise proposal regarding the compensation mechanism for market data providers of the CT, is an improvement compared to the Commission's proposal.

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MS : FI BE NL LV SK BG AT LU IE ES SI HU SE DE LT HR IT PT PL MT

Question	MS reply
	We strongly support to base renumeration on the contribution to the price formation process of the data submitted, rather than on the regulatory status of the provider. Allocation weights should be determined based on high-level principles in the level 1 text. This should allow for the required flexibility. Furthermore, we support the removal of the maximum revenue sharing criterium from the CTP selection criteria to be used by ESMA. This will reduce the cost of market data accessible via the CT and could increase the participation of retail investors the access to capital markets and empowering them to participate. We support the inclusion of a voluntary principle of renumeration for the CTs for asset classes other than shares. We cannot support a renumeration scheme that would (for political reasons) more than proportionately renumerate smaller trading venues. This would introduce an unlevel playing field We are of the opinion that a CT will make our capital markets more attractive, allowing for more

Question	MS reply
	revenue from the sales of market data for all exchanges and market data contributors, rather than redistribute those revenues. The CT renumeration scheme should rather refer to the listing aspect of trading venues than focusing on smaller venues per se. This would align with the broader CMU-goals, by crediting the listing function of primary markets, also those operated by EU-wide firms. It would also ensure that venues in local markets, as well as SME Growth Markets, will become more visible and have a sufficient share in the renumeration of the CT-revenue, given that locally listed shares where most trading takes place in the home market, will generate most revenue for the local data provider. The allocation weights could allow for higher renumeration for data of shares that are traded on the lit order book of the venue that they are listed on. LV (Comments):LV **Option B:** *A revenue model unduly complicates the architecture of a CT at this early stage.*

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MS : FI BE NL LV SK BG AT LU IE ES SI HU SE DE LT HR IT PT PL MT

Question	MS reply
	There are some good decisions in the compromise proposal like compensating price forming trades, small venues, and the voluntary extension of the mechanism to non-equity CTs. However, given the realities of market data demand, the most likely scenario is that of a low revenue base insufficient to redistribute gains. This is clear when looking at the proposal to limit costs to 1 euro per year for retail investors. *In contrast, a 15-minute delayed CT would meet the goals of all investors and draw on the requirement to make available data free of charge 15-minute delayed, removing entirely the issue of distribution models as there would be no need to redistribute revenue.* SK (Comments):SK Option B: No. From our point of view the necessary details are needed. General principles related to the compensation mechanism shall be at L1. BG (Comments):BG **BG:** We can support the clarification as regards the symbolic fee for retail investors and we can support the principle to redistribute revenues taking

Question	MS reply
	into account the informational value of the transmitted data. However, in our view the redistribution model remains vague and unclear. The compromise in this regard presents a step back as the choice of provider should no longer be conditional on maximising the revenue redistributed to data providers. We are seriously concerned by this proposal which in our view would be detrimental for national regulated markets, especially for the small markets, for which the establishment of the CTP would bring mainly loss of revenues and additional costs for providing data with no significant benefits for investors. We reiterate our position that the data should not be provided in real time but preferably with 15-minutes delay and there would be no need of redistribution model. AT (Comments):AT **No.** In our view, the principle of a mandatory revenue sharing mechanism is vital to secure smaller exchanges' profitability and viability. From an AT perspective it is essential to establish a revenue allocation key biased in favour of smaller data contributors. The principles of this allocation key should be outlined in the level 1 text.

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Question	MS reply
	However, we would like to note that given the realities of market data demand, the most likely scenario would be that of a low revenue base which is insufficient to redistribute gains and cover the costs of a real-time CT. This is made worse with the proposal to limit costs to 1 euro per year for retail investors. With a 15 minutes delayed-post trade CT there would not be a need for the establishment of a compensation scheme since that kind of tape would meet the goals of all investors and draw on the requirement to make available data free of charge 15-minute delayed, removing entirely the issue of distribution models as there would be no need to redistribute revenue. LU (Comments):LU In general, the proposed remuneration model can be supported. However, while we welcome the fact that a remuneration mechanism is possible for all asset classes, we question how a voluntary remuneration system could gain favour with potential providers (what would be the interest of the tape provider to provide such a mechanism?) IE (Comments):IE

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Question	MS reply
	Option A - Support compromise proposal Supporting lit trading and the price formation process should be the goal of any remuneration model, and it must include SME GMs. We also support the approach of selecting a CTP that will provide the best tape in terms of service offering etc. The move away from selecting a CTP based mainly on its remuneration model is welcome. Ireland also notes that remuneration is an outcome but not the objective of the CT. Furthermore, supporting the remuneration of relevant contributors, particularly those from smaller markets, strengthens the arguments for pre-trade data in the tape. The more commercially viable the tape the more payments can be made to contributors. We welcome the inclusion in the L1 text of a price cap of €1 per year for retail investors. ES (Comments):ES Option A. We agree with the compromise proposal. It is specific enough and leaves enough flexibility to specify the details at level 2.

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Question	MS reply
	As a technical comment, we suggest improving the text and correcting the references made to regulated markets to trading venues. SI (Comments):SI As indicated in the previous answer, we support a 15-minute delayed CT that would remove entirely the issue of distribution models as there would be no need to redistribute revenue (available data would be free of charge 15-minute delayed). HU (Comments):HU **Our priority is that the compensation mechanism shall be preferential towards smaller exchanges.** DE (Comments):DE **Option A: Yes** We generally agree to base the compensation mechanism in the tape for shares on the informational value, i.e. on the contribution to the price formation process - of the transmitted data. We are also open for a compensation mechanism in a tape for bonds on a voluntary basis. LT

Question	MS reply
	(Comments):LT We support the proposal that smaller trading venues benefit from a preferential treatment when it comes to redistribute part of the revenue generated by the consolidated tape for shares. However, we would like more details to be set in first-level legal acts in order to ensure legal certainty and to assess the principle of proportionality. HR (Comments):HR We are in favour with the principle of a revenue allocation key biased in favour of smaller data contributors (e.g. smaller exchanges). As stated in the proposal "the formula used to distribute a portion of the revenues generated by the consolidated tape to data providers should more than proportionally benefit the smallest trading venues" we still do not know how that formula would look like, and what happens if there is no revenue surplus to share? In a situation where especially small stock exchanges loose profit due to a near real time CPT (pre or post trade) there is no certainty they will compensate those losses from CTP. We are not in favour of the voluntary compensation mechanism regarding the CTP for bonds, derivates and ETF's. Given all the requirements that all contributors must fulfil and taking into account the impact it will have

Question	MS reply
	on their business, especially for APA's, why should they even try to meet those requirements taking into consideration all the costs that arise from them if they will be discriminated and not be able to participate in the revenue sharing scheme. Our concern is that the interest for providing this service will be limited, and that therefore the CTP applicant will not be overly pressed to propose a fair and equitable revenue participation scheme. And if there is no counter-offer on the table, then ESMA may have little choice in approving a revenue participation scheme as proposed by the applicant, even though the scheme may not be beneficial to trading venues. Additionally, if the revenues of the CTP are strained, and there is a lack of industry players that are ready to offer this as a commercial service, then this will also provide incentives not to push CTPs in a more equitable direction. In our view there should be revenue distribution among contributors, however it is still questionable if the proposed model can make a CTP commercially sustainable on its own. Regarding revenue sharing i.e. the lack of form the bond, derivate and ETF CTP, a trading venue will be obligated to have links to all 4 CTPs but receive remuneration just from the "share "CTP we find this unacceptable. IT

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Question	MS reply
	(Comments):IT Option A. Yes, we are supportive of a compensation mechanism founded on the nature of data providers and not on their regulatory status. We also welcome the proposal of remunerating TVs with respect to their effective contribution to price discovery, as it would also allow to fairly remunerate smaller trading venues contributing to the consolidated data flow, to reward the role of order book trading in the price formation process, in light of the inclusion of pre-trade data within the consolidated tape for shares too, as well as to enhance data quality with respect to the flow submitted to the CTP. Finally, we share the view that the CTP should be chosen on the comprehensive quality of the services provided (not only on the compensation mechanism it introduces). PT (Comments):PT We support the proposal regarding the compensation of all trading venues providing relevant information to the Consolidated Tape, since this approach allows to: (i) increase market transparency and (ii)

Question	MS reply
	improve the price formation process, while ensuring particular benefits for smaller trading venues. However, we consider that the maximisation of the revenue redistributed to data providers should be kept as a criterion. Since such trading venues will be obliged to provide the required information, the revenue lost due to this process should be adequately compensated. For the aforementioned reasons, the revenue sharing mechanisms should also be mandatory in relation to the CT for other financial instruments other than shares, such as bonds, derivatives and ETFs. PL (Comments):PL Option B: No There are some good solutions in the compromise proposal like compensating price forming trades, small venues, and the voluntary extension of the mechanism to non-equity CTs. However, given the realities of market data demand, the most likely scenario is that of a low revenue base insufficient to redistribute gains. In contrast, a 15-minute delayed CT would meet the goals of all investors and draw on the requirement to make available data free of charge 15-

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Question	MS reply
	minute delayed, removing entirely the issue of distribution models as there would be no need to redistribute revenue.
III.1 Transparency regime for shares	
Q.1. Do you agree with the compromise proposal on the transparency regime for shares? **Option A**: Yes; **Option B**: No (if so, why?).	FI (Comments):FI Yes, we can agree. BE (Comments):BE Belgium – Option A: Yes NL (Comments):NL Yes, overall, we can support the proposed transparency regime for shares, including the thresholds to be set by ESMA after running an experiment. LV (Comments):LV **Option B:** *Without knowing the exact thresholds, no, we do not agree. The proposal would worsen the unlevel playing field between execution venues (e.g in terms of midpoint matching) and would not contribute to increasing liquidity and price formation in EU markets.*

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MS : FI BE NL LV SK BG AT LU IE ES SI HU SE DE LT HR IT PT PL MT

Question	MS reply
	Trading venues and SIs should fully comply with the tick size regime (which should apply to all sizes) and midpoint trading should be allowed only under waivers and above LIS in order to allow for a sound price formation process. Sub-tick midpoint executions should not be allowed in order to foster the level playing field. *Regarding SIs, providing public quotes up to twice the standard market size (from the current provisions at up to the standard market size) is not sufficient to truly increase transparency. SIs are regulated under MiFID II as bilateral trading providing less transparency than on-exchange trading and being able to discriminate with whom they choose to do business. It has been observed that broker crossing networks trading volumes under MiFID I have mostly shifted to SI-reported trading instead of moving to multilateral trading venues. Whereas SIs were designed to execute large orders, the reality is different. Looking at the average trade size of SIs and at the fact that LIS trades only represent around half of SI volumes, it seems that SIs have been used to execute small orders and that the majority of SI trades are not subject to pre-trade transparency.* *Limiting SIs trading to sizes above LIS would boost transparency and the level playing field. Trading below large in scale would benefit from increased pre-trade transparency and fairer prices. Opaque trading above*

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Question	MS reply
	LIS should be allowed to lower price impact and would thereby constitute a legitimate dark space in which trades across bilateral execution venues and multilateral trading venues are not subject to pre-trade transparency. Regarding the proposed size determination by ESMA, it is clear that only allowing for considering at maximum twice the SMS would not grant ESMA enough flexibility and appears to be an arbitrary restriction. Additionally, concerns about a liquidity flight seem to be unfounded given recent trends in trading flows towards the EU, taking into account as well the requirements under the STO. SK (Comments):SK Option A: Yes. We support the empowerment of ESMA with task to set the limits. AT (Comments):AT **No.** We prefer the Commission's proposal to set thresholds in Level I than a delegation of this issue to ESMA as proposed by the compromise text. LU (Comments):LU

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Question	MS reply
	Option A. In the interests of compromise, the Presidency's proposal can be supported. IE (Comments):IE Option A – Support Compromise Proposal We support the alignment of requirements between trading venues and systematic internalisers via the proposal to apply a minimum SI quoting size that corresponds with the RPW floor. A recital should be included that emphasises that ESMA should recalibrate thresholds that is the minimum required to fulfil the Level 1 objective. The proposal for ESMA to conduct a controlled experiment is welcomed but may be difficult to implement in practice so further information would be needed before providing full support for this proposal. It is reasonably foreseeable that the issuers selected in the control group may object to their inclusion for this purpose and therefore a strong legal mandate will be required to underpin this proposal. ES (Comments):ES

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Question	MS reply
	Option A. We agree with the compromise proposal on the transparency regime for shares. Nevertheless, we don't agree with establishing an experiment so that ESMA can establish the optimal size limit. We support evidence-based policy making, but we doubt that meaningful results can be obtained. Besides, it would be difficult to choose criteria that are necessary to make meaningful comparisons. Moreover, it would create an uneven treatment that is difficult to justify and might lead to legal problems. We would prefer to set a generic reference to allow ESMA to establish the optimal size limit and use past data to establish the adequate size. SI (Comments):SI We agree with the compromise proposal (Option A). HU (Comments):HU **We support Option A.** SE (Comments):SE Option A: Yes. DE

Question	MS reply
	(Comments):DE **Option B: No** While we principally agree to delegate to ESMA the task of defining the threshold below which (i) trading venues will no longer be able to offer midpoint trading services and (ii) the transparency requirements for systematic internalisers apply; and (iii) the minimum quoting size for systematic internalisers below which trading venues will no longer be able to offer midpoint trading, appropriate guidance at level-1 is needed to strengthen lit trading and to ensure a level-playing field with other forms of trading. We therefore think that instead of maximum sizes minimum sizes should be set at level-1 at two times standard market size, respectively. In addition, the tick-size related constraint on midpoint trading below the large-in-scale size proposed by the Commission should be maintained. LT (Comments):LT Option A: Yes. HR (Comments):HR

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Question	MS reply
	Yes, we agree with the compromise proposal on the transparency regime for shares. IT (Comments):IT As reflected under our previous comments, we believe that the introduction of a minimum size for reference price waivers might impact the execution strategies of EU market participants, taking also into account that third countries (such as the UK) may continue making this waiver available without size conditions, with consequent, competitive advantages in the case of equity/equity-like financial instruments not subject to the trading obligation in the EU or traded on equivalent third country venues. In any case, we are open to compromise on this point, supporting an ESMA empowerment for any potential calibration. PT (Comments):PT We are flexible on this regard. We have no objections to the proposal in what refers to setting the maximum size limit and specifying the method and criteria that ESMA will have to take into account. It makes sense for ESMA to be tasked with undertaking an assessment to define the maximum size limit (for the use of the RPW and the threshold for

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Question	MS reply
	publication of SI quotes), and we also support the general method to be used by ESMA as proposed. As we referred in the past, we have no strong views in relation to the tick size regime, but we recognize it should be reviewed, in light of the need to: (i) Strengthen the level playing field between TVs and SIs; (ii) Simplify the current transparency regime; and (iii) Maintain the competitiveness of European markets in a context of UK regulatory divergence. Nevertheless, we consider that the proposal on SIs should be more ambitious (considering that SIs may be used to execute small orders and that the majority of SI trades are not subject to pre-trade transparency), notably the proposals to increase the threshold for publication of SI quotes and on the protection and enhancement of SI's price formation process. PL (Comments):PL Option B: No The proposal would possibly worsen, in our opinion, the unlevel playing field between execution venues (e.g in terms of midpoint matching) and

Question	MS reply
	would not contribute to increasing liquidity and price formation in EU markets. Trading venues and SIs should fully comply with the tick size regime (which should apply to all sizes) and midpoint trading should be allowed only under waivers and above LIS in order to allow for a sound price formation process. Sub-tick midpoint executions should not be allowed in order to foster the level playing field. Regarding SIs, providing public quotes up to twice the standard market size (from the current provisions at up to the standard market size) is not sufficient to truly increase transparency. SIs are regulated under MiFID II as bilateral trading providing less transparency than on-exchange trading and being able to discriminate with whom they choose to do business. It has been observed that broker crossing networks trading volumes under MiFID I have mostly shifted to SI-reported trading instead of moving to multilateral trading venues. Whereas SIs were designed to execute large orders, the reality is different. Looking at the average trade size of SIs and at the fact that LIS trades only represent around half of SI volumes, it seems that SIs have been used to execute small orders and that the majority of SI trades are not subject to pre-trade transparency. Limiting SIs trading to sizes above LIS would boost transparency and the level playing field. Trading below large in scale would benefit from

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Question	MS reply
	increased pre-trade transparency and fairer prices. Opaque trading above LIS should be allowed to lower price impact and would thereby constitute a legitimate dark space in which trades across bilateral execution venues and multilateral trading venues are not subject to pre-trade transparency. Regarding the proposed size determination by ESMA, it is clear that only allowing for considering at maximum twice the SMS would not grant ESMA enough flexibility and appears to be an arbitrary restriction. Additionally, concerns about a liquidity flight seem to be unfounded given recent trends in trading flows towards the EU, taking into account as well the requirements under the STO.
Q.2: Regarding the mechanism for capping dark trading volumes in the European Union, which of these options do you prefer? **Option A:** Sticking with the Commission's initial proposal (transformation of the double volume cap into a single volume cap**);** **Option B:** Suspending the volume cap mechanism for an initial period of three years before removing it following an evaluation by ESMA;	FI (Comments):FI We would support option A. However, we would also be open to discuss on the possibility to remove the volume cap mechanism. BE (Comments):BE Belgium – Option A NL (Comments):NL

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Question	MS reply
	We are not convinced that we should suspend the volume cap mechanism for a limited time period, given competition concerns regarding the UK Wholesale Market Review. In our view, the main goals of MiFID, and of the MiFIR review are to (i) improve transparency, (ii) increase lit trading and (iii) support the competitiveness of the EU capital markets and infrastructure. We deem it risky that the alternative option would lead to more dark trading. And therefore, we would opt to go forward with the Commission's initial proposal. LV (Comments):LV **Option A:** Sticking with the Commission's initial proposal (transformation of the double volume cap into a single volume cap**).** SK (Comments):SK Option B: AT (Comments):AT We would prefer the Commission's initial proposal (**Option A**) LU (Comments):LU

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Question	MS reply
	Option A. We remain cautious about removing a cap altogether and would consequently support the initial Commission proposal of simplifying the DVC scheme by replacing it with a single volume cap. IE (Comments):IE Option A – Support Compromise Proposal We support the initial proposal to transform the DVC into a single cap of 7% as the compromise proposal to suspend the DVC on a temporary basis. Abolishing it altogether may lead to an unchecked growth in dark trading which is counter to the MiFID objectives regarding transparency. ES (Comments):ES Option A. We prefer sticking with the single volume cap for capping dark trading volumes in the EU. SI (Comments):SI We support Option A. HU (Comments):HU

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Question	MS reply
	We support Option B. SE (Comments):SE SE is open for both options. DE (Comments):DE **Option A:** In line with the Commission's initial proposal the double volume cap should be transformed into a single volume cap. LT (Comments):LT Option A. HR (Comments):HR We support the Commission initial proposal, however, we would be open to explore option B as suggested by the presidency and we would propose to explore also the following additions: - It could be worth exploring if ESMA could be empowered with a mandate to determine trend indicators on the level of "dark trading" in the EU market where the continued use of this suspension may be

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Question	MS reply
	detrimental to retail client protection and detrimental to the integrity of the EU markets (data on this could be included in the bi-yearly reports). - It could also be worth exploring which legal mechanism in the EU could provide us with a quick fix solution where we can "pull the break" on this suspension if we see a deterioration in market behaviour (i.e. as evidenced by ESMA reports). While it wold not be possible to provide ESMA with the power to end the suspension, there may be other options available: a) Member States could decide to have a quick-fix discussion to alter or discontinue the suspension (before the suspension expires) in case that major issues emerge. This type of legislative procedure could be slightly quicker than a comprehensive procedure but still requires a time-consuming discussion in the Council; b) granting the power to the Commission to end the suspension period prematurely, in case that major issues emerge (the legal vehicle for this would need to be discussed further). IT (Comments):IT While we understand the arguments by the Presidency, we still support the objective of the DVC regime to limit dark trading, as it also applies not only to the RPW but also to other types of waivers under Article 4. In fact,

Question	MS reply
	the proposed introduction of a minimum threshold for the reference price waiver would not counterbalance the suspension of the DVC for the other types of waivers captured by such mechanism. That said, we would support the performance by ESMA of a monitoring exercise in order to analyse the impacts of the review on the use of pre-trade waivers for equity instruments (including the potential introduction of a threshold for the RPW), in order to reassess the functioning of the DVC after a pre-defined period of time. PT (Comments):PT We support **Option A** (*i.e.*, the initial proposal of the COM of replacing the double cap volume by a single cap), which is in line with ESMA's recommendations on this regard. PL (Comments):PL Option A: Sticking with the Commission's initial proposal A volume cap on dark trading is necessary given the negative effects of dark trading on price formation and the Commission's initial proposal is a step in the right direction. The cap does not cover only midpoint trading under the reference price waiver but also other types of dark trading

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Question	MS reply
	under the negotiated transaction waiver, for example transactions bilaterally negotiated at the volume-weighted average price (VWAP). At the same time, the mechanism faces important limitations as it does not cover non-pre-trade transparent SI trades and alternative execution mechanisms which both currently circumvent transparency rules like frequent batch auctions. Therefore, the volume cap should be extended to limit the total volume of non-pre-trade transparent trading, not only under both waivers but also including other non-price forming transactions below LIS and subject to the share trading obligation. The order management facility waiver would not be included in this cap, as orders under the waiver ultimately become transparent.
III.2 Transparency regime for bonds and derivatives	
Q.1. Do you agree with the compromise proposal on the transparency regime for bonds and derivatives? **Option A: Yes;** **Option B: No (if so, why?).** **Q.1 bis**. Following the discussions on the Swedish non paper, the Presidency is seeking MS views on the following points: (i) What are your views on extending the simultaneous publication of price and volume (already foreseen in the compromise proposal for	FI (Comments):FI ○ : **No** (if so, why?). We cannot yet agree on the compromise presented. We would support to include in the PCY compromise proposal elements from the **alternative Swedish proposal.**

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Question	MS reply
medium sizes, i.e. categories 1 and 2) to large sizes (i.e. categories 3 and 4, but not category 5). Would you prefer a deferral of T+1 or T+2? (ii) In your view, regarding the additional deferral options according to MIFIR Art. 11(3), should the deferral regime for a specific sovereign debt instrument stem from a decision by the NCA of the relevant MS? (this would imply a harmonised EU regime for each sovereign debt instrument, with the specificities of the regime decided by the MS of the relevant sovereign debt)	We support greater post trade transparency compared to the Commission's proposal. We appreciate particularly simplicity when considering the Swedish alternative solution presented in the non-paper. It is important to distinguish between small, large and very large institutional trades. The SE proposal does not hamper with large positions. The Swedish proposal acknowledges also the connection with price and volume, introducing an alternative solution with deferral of both price & volume max T+2 and with the waiver of transactions of very large in scale volume max 2 weeks. Our market structure in Finland is similar to that in Sweden, and regarding illiquid instruments also, we have only few active (and quite large intermediaries enough) market players. If you envisage a combination of a bond market with on one hand illiquid instruments (transactions may take place for example only once a month) combined with only few active intermediaries in the market having the ability to defer the volume, you can understand that the volume deferral doesn't actually make any difference.

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Question	MS reply
	Regarding other than very large trades, a two-week deferral is much too long. So we would welcome to apply T+2 maximum deferral time for both price and volume with the exception of very large trades, where we can accept volume to be deferred maximum of 2 weeks. We consider these changes to improve significantly the overall market transparency, and consequently improve its integrity and investor protection from the point of view of the investors. Regarding MiFIR art.11(3) we would welcome the decision by the NCA of the relevant MS to be applied also in other MSs (this would imply a harmonised EU regime for each sovereign debt instrument, with the specificities of the regime decided by the MS of the relevant sovereign debt) BE (Comments):BE Belgium Q1: Option A. Belgium Q1 bis: We are still reflecting on this additional question.

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Question	MS reply
	NL (Comments):NL Yes, in general we are supportive of the newly drafted transparency regime for non-equities. It is unfortunate that the reference to credit rating is removed, as we have been told that investment grade and high yield categorization are part of the common market practice and therefore widely used. Regarding Q1.bis, (i) we see no merit in extending the simultaneous publication of price and volume to large sizes (cat. 3 and 4), with a deferral of maximum T+2. (ii) We do not consider it necessary to create a specific regime for deferrals of sovereign debt instruments. We prefer to continue the status quo. LV (Comments):LV **Option B:**

Question	MS reply
	The new proposed methodology risks further increasing complexity instead of making the regime more coherent for the market and reduce information asymmetries. To simplify the current framework, we suggest allowing only one timeframe for deferred publication, no matter which waiver was used. Deferral periods of up to four weeks immensely decrease the value of the respective data for market participants, as this will be outdated and thus irrelevant. The full post-trade information should be published on t+2 at the latest. SK (Comments):SK Q1: Option A: Yes. Q.1 bis – Simultaneous publication of price and volume may be extended in specific cases. 5) We are of view that deferred publication of transaction with financial instruments has as consequence that there is no real-time information on such trade. Deferred price and volume therefore are not able to change real-time market conditions, and can serve only as historical information.

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Question	MS reply
	Specific deferral regime for sovereign debt instrument should be allowed by decision of relevant NCA. We support harmonisation of deferrals regime for sovereign debt instruments across EU. AT (Comments):AT **Yes,** we agree with the compromise proposal (**Option A**). We are still analysing the SE non-paper. LU (Comments):LU Option A. The compromise proposal on the transparency regime for bonds and derivatives can be supported. We have not formulated a final opinion on the specific proposals laid out in the Swedish non-paper. IE (Comments):IE Option A – Support Compromise Proposal We support the compromise proposals to align deferral periods with liquidity and transaction sizes and the use of multiple different tiers for this purpose.

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Question	MS reply
	Ireland's welcomes the inclusion of a category for extra-large bonds. The deferral beyond 2 weeks is positive for this category and Ireland is open to supporting longer deferral periods for this category. Clarification – our understanding of standard market terminology is that "T" refers to the day of a trade. Therefore "T+1" is transaction day plus one working day, T+2 is two days after the trade etc. If such terminology is to be incorporated into the legislative regime, then these terms should be unambiguously defined. ES (Comments):ES Option A. We agree with the compromise proposal on the transparency regime for bonds and derivatives. We are not in favour of temporary suspension of the transparency regime at the level of NCA. Otherwise this EU-wide, well calibrated regime is undermined. We also understand that if LIS is deleted from post-trade deferrals, it makes sense to eliminate it from the text and make reference to the same terminology for pre and post-trade. Current levels of pre-trade LIS are

Question	MS reply
	lower than post-trade LIS. Therefore we propose to choose the "medium size transaction threshold", which will be the lower band for post-trade. Regarding the specific questions on the Swedish non paper: i) We have a favourable view on extending the simultaneous publication of price and volume. At the current stage we have no assessment of whether this should also be extended to categories 3 and 4. We would prefer a maximum deferral of T+2. This doesn't mean that the deferral should always be this long. ii) Regarding sovereign debt, we suggest having a harmonised EU regime where NCAs play no role in deciding the deferral regime. Otherwise, differences between Member States could emerge and there is no technical reason that justifies this differential treatment. SI (Comments):SI We generally agree with the compromise proposal (Option A). Taking into account Swedish non paper, we are also open to the idea of extending the simultaneous publication of price and volume to large sizes (and for

Question	MS reply
	very large transactions there could be additional volume deferral). We are also open to the idea that deferral regime for a specific sovereign debt instrument stem from a decision by the NCA of the relevant MS. HU (Comments):HU **Q1: We support Option A.** **Q1 bis:** ***(i)*** **We agree with the proposal regarding the additional deferral.** ***(ii)*** **We agree with the proposal regarding the additional deferral.** SE (Comments):SE SE can accept the removal of the 15 minutes deferral for illiquid instruments (making the EOD deferral the “first bucket” for illiquid instruments) and the introduction of a 4 week volume deferral for very large transactions in both liquid and illiquid instruments, as presented in the presidency’s compromise proposal. However, both for liquid and illiquid instruments one more deferral “bucket” or “window” with

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Question	MS reply
	simultaneous publication of price and volume should be added, compared to the compromise proposal. For liquid instruments the "EOD/EOD" deferral should be added. Hence the deferrals for liquid instruments could be price/volume 15 min/15 min EOD/EOD EOD/1 (or 2) week(s) EOD/4 weeks For illiquid instruments the "T+2/T+2" deferral should be added. Hence the deferrals for illiquid instruments could be price/volume EOD/EOD T+2/T+2 T+2/2 weeks T+2/4 weeks Furthermore, it would be better not to define transaction categories based on the assumption that a medium or a large transaction means the same

Question	MS reply
	for liquid and illiquid instruments. In reality, a medium sized transaction on a liquid market is normally larger than a medium sized transaction on an illiquid market. If deferrals for liquid and illiquid instruments are defined in the level one text (see above) there is no need to define transaction categories. If it would be deemed necessary to clarify that transactions should be qualified for larger deferrals the larger the transactions are, this could be mentioned in a recital. If, however, transaction categories are defined, there will be a need for more categories in order to match the deferrals as described above. DE (Comments):DE **Q.1 Option B: No** While we welcome the new deferral category for very large trades, in order not to expose liquidity providers to undue risk, ESMA should be empowered to set longer deferral periods than t+2 for price and other transaction information. It should be noted in that respect that for very large trades price information may be an indication for large volumes. For very large trades price deferrals of up to four weeks should therefore remain possible.

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Question	MS reply
	Q.1 bis. (i) We do not agree to the Swedish proposal because this would expose liquidity providers to undue risk, thereby reducing liquidity in bond markets. (ii) We would be open to consider the Swedish proposal to leave the relevant deferrals on sovereign bonds to the NCA of the MS of issuance. LT (Comments):LT Option A: Yes. HR (Comments):HR We agree with the compromise proposal on the transparency regime for bonds and derivatives as it is proposed by the Presidency. We agree with the Swedish non paper proposal that the deferral regime for a specific sovereign debt instrument stem from a decision by the NCA of the relevant MS. IT (Comments):IT

Question	MS reply
	In general, we could support option A, considering the alignment of price and volumes for the small/medium size trades and the maintenance of a maximum 4 weeks deferrals for major trades. We welcome the proposal of extending the simultaneous publication of price and volumes to large sizes, with a deferral of t+2, to maintain the current wider European framework (Q1.bis.i Option A). And we welcome the deletion of the reference to credit ratings and the redrafting concerning the possibility to simultaneously defer the publication of both price and volume in most cases. Nevertheless, for larger transactions for which a volume-only deferral would apply, we would observe that the publication of these type of information only – particularly where the size of a transaction is unusual, and the price might be set in consideration of the size - might provide incorrect information to the market. We would suggest that in such case, a deferral per aggregation of price/volume might be envisaged such as in the current regime. We also reiterate the need for NCAs to still be involved in the process of application of deferrals, at least requiring TVs and investment firms to notify their decision to implement deferrals. Moreover, we would be cautious on defining an instrument "liquid" or "illiquid" only according to its issuance size and not on the evidence that it is effectively daily traded. Even jumbo issuance size proposed by the

Question	MS reply
	COM (more than 50 bln) seems to be excessive (or with an excessive gap with respect to other buckets) and maybe its effectiveness should be reconsidered. As regards the deferral regime for sovereign debt instruments, we deem important that a whatsoever regime be respected and evenly implemented in all jurisdictions to simplify transparency management by the EU TV and to avoid regulatory arbitrage and fragmentation. Anyway, we welcome the decision to keep an NCA involvement in the application in practice of the deferral regime. We welcome the deletion of the reference to credit ratings and the redrafting concerning the possibility to simultaneously defer the publication of both price and volume in most cases. Nevertheless, for larger transactions for which a volume-only deferral would apply, we would observe that the publication of these type of information only – particularly where the size of a transaction is unusual, and the price might be set in consideration of the size - might provide incorrect information to the

Question	MS reply
	market. We would suggest that in such case, a deferral per aggregation of price/volume might be envisaged such as in the current regime. We also reiterate the need for NCAs to still be involved in the process of application of deferrals, at least requiring TVs and investment firms to notify their decision to implement deferrals. As for sovereign debts, we welcome the decision to keep an NCA involvement in the application in practice of the deferral regime. PT (Comments):PT **Q.1**: We deem both the Presidency and the Swedish delegation compromise proposals acceptable. As we see it, the most important aspect regarding the review of the transparency regime is the need to introduce simplification, since the current framework is overly complex. In this context, the Presidency compromise proposal seems a clear improvement, in comparison to the provisions currently applicable. In addition, it seems that the SE non-paper introduces further clarification, by making the transparency regime even simpler, hence we would also support this approach as long as it does not impact materially the current market practise.

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Question	MS reply
	Q.1bis: (i) While we support the lowering of the LIS threshold and deletion of the SSTI, we would prefer that the price deferral ends on the trading day. We also consider that a 4 weeks deferral for very large transactions may be excessive. Moreover, we would favour an alignment of the NCA role, in this regard, with similar procedures established under MiFIR. We are flexible towards an approach that allows for simultaneous publication of price and volume. In addition, we could also favour a publication deferral of T+1 as we consider that the publication of post-trade information for transactions above the LIS threshold and in illiquid instruments should be required as close to real time as possible. (ii) In relation to the deferral regime for specific sovereign debt instruments (Article 11(3)), we do not have a strong position on this regard both on what concerns the Presidency proposal and the SE non-paper. Indeed, we are not aware of situations of lack of harmonisation concerning deferrals of sovereign debt. Notwithstanding, we are open to further discuss this issue and would appreciate if MS are able to provide further information or specific examples of such lack of harmonisation. It is important to understand what implications would

Question	MS reply
	the change in the regime have in practise and how market players would be impacted. PL (Comments):PL Option B: No (with exceptions) In general the proposed methodology risks further increasing complexity instead of making the regime more coherent for the market and reduce information asymmetries. First of all, deferral periods of up to four weeks immensely decrease the value of the respective data for market participants, as this will be outdated and thus irrelevant. The full post-trade information should be published on t+2 at the latest. We also support extending the simultaneous publication of price and volume to large sizes.
Q.2. Regarding the pre-trade transparency regime, which of these options do you prefer? **Option A**: Sticking with the Commission's initial proposal, i.e. deleting the SSTI and lowering of the LIS thresholds but otherwise maintaining the current pre-trade transparency requirements; **Option B**: Removing the pre-trade transparency requirements for RfQ protocols and voice trading;	FI (Comments):FI We would support option A. Regarding the option B we see there a risk that market practicipants would transfer all trading to RfQ. BE (Comments):BE

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Question	MS reply
	Belgium – We tend to favour Option A. NL (Comments):NL We are open to remove the pre-trade transparency requirements for request for quote and voice trading protocols. We understand the rational, as explained by the Commission that in these instances, there is no informative value of the pre-trade transparency. LV (Comments):LV **Option A**: Sticking with the Commission's initial proposal, i.e. deleting the SSTI and lowering of the LIS thresholds but otherwise maintaining the current pre-trade transparency requirements. SK (Comments):SK We prefer Option B. AT (Comments):AT We would prefer **Option A** and therefore to stick with the Commission's initial proposal. LU

Deadline: 1 June 2022 cob

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The new questions in red were added after the working party.

MS : FI BE NL LV SK BG AT LU IE ES SI HU SE DE LT HR IT PT PL MT

Question	MS reply
	(Comments):LU As stated in our previous comments, we would like to highlight the importance of striking the right balance between transparency and protection of liquidity providers in order to avoid exposing the latter to undue risks (and thus increasing hedging costs for the end user). Therefore, we consider that the abolition of the SSTI waiver should be accompanied by a lowering of the LIS threshold to a level that takes into account these risks (based on empirical evidence). We remain open to proposals that aim to ensure the international competitiveness of European market players. IE (Comments):IE Option A – Support Compromise Proposal but we are also supportive of removing the pre-trade transparency requirements for RfQ protocols and voice trading. ES (Comments):ES

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Question	MS reply
	Option B. We favour removing the pre-trade transparency requirements for RfQ protocols and voice trading. We also support applying this for systematic internalisers. We suggest technical amendments on article 18. SI (Comments):SI We support Option A. HU (Comments):HU **We support Option B.** SE (Comments):SE SE is open for both options. DE (Comments):DE **Option B:** While we agree to delete the SSTI waiver in Art. 9 provided that ESMA is mandated to lower the large-in-scale-waiver, in order not to expose liquidity providers to undue risk the reference to SSTI for systematic internalisers should be maintained. As an alternative, we would be open

Question	MS reply
	to further assess the removal of the pre-trade transparency requirements for RfQ protocols and voice trading systems. LT (Comments):LT Option A: Yes. HR (Comments):HR We support the proposal to remove the size specific to the instrument and concomitantly lowering the large in scale size to have only one threshold left at an adequate level. We also consider that there is room to explore if RFQ and voice trading systems really should be subject to pre-trade transparency obligations. Alternately, pre-trade transparency obligations for these systems could be suspended, pending an ESMA report and a (shorter) review clause – i.e. 3 years. IT (Comments):IT While we still consider that pre-trade transparency for non-equity instruments is beneficial for market participants specifically when volatility is high, regarding the SSTI waiver, we would like to point out

Question	MS reply
	that the solution reached under MiFIR already represents a functioning balance of the various interests at stake and therefore we would be cautious about the proposed deletion, given the potential impacts on the execution strategies of EU market participants, with potential, consequent competitive disadvantages for EU operators in the case of financial instruments not subject to the trading obligation in the EU or traded on equivalent third country venues Moreover, we would observe that the potential decrease of the LIS threshold to compensate the deletion of the SSTI may bring unintended effects in terms of transparency, in the end losing pre-trade transparency for orders above the current LIS threshold. That said, as a second best, in the case of deletion of this type of waiver, we share the view that the LIS would need to be recalibrated, further to ESMA assessment, to limit any possible impact on market operators' trading strategy and access to liquidity. PT (Comments):PT We prefer **Option A**. In our view, the removal of the SSTI should be accompanied by a lowering of the LIS threshold, as recommended by ESMA.

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Question	MS reply
	As explained by ESMA (on the Final Report on Non-Equity Transparency), "*the SSTI waiver adds complexity, grant preferential treatment to a few trading systems (i.e. RFQ and voice trading) for no apparent reason and are overall burdensome for all involved parties*". Alongside, to accommodate a potential increase of a risk for liquidity providers, the deletion of SSTI should be compensated by lowering the post-trade LIS threshold. PL (Comments):PL Option A: Sticking with the Commission's initial proposal In order to ensure a level playing field across venues and increase transparency especially regarding SI trading - which remains very opaque – the standardisation of the pre-trade information should be applicable to all types of venues, including SIs. The suggested deletion of the SSTI concept should therefore be extended to the SIs quoting obligation and replaced by a reference to a high percentage of the LIS threshold.
III.3 Trading obligations	
Q.1. Do you agree with the compromise proposal on trading obligations?	FI (Comments):FI

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Question	MS reply
Option A: Yes; **Option B**: No (if so, why?).	Yes, we agree. BE (Comments):BE Belgium – Option A: Yes. We support the deletion of a list to be published by ESMA as such a list may be too often outdated or incomplete. NL (Comments):NL No, please refer to our comments in the MiFIR compromise table. LV (Comments):LV **Option B**: *We question the idea of establishing a standalone suspension of the DTO. The clearing obligation does not foresee such a discretionary suspension at entity level. Given that the clearing obligation and the DTO should be fully aligned, modification of the DTO should therefore be avoided.*

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Question	MS reply
	SK (Comments):SK Option A: Yes. BG (Comments):BG **BG:** We appreciate the inclusion of the text that we have suggested in the STO in Article 23. AT (Comments):AT LU (Comments):LU IE (Comments):IE

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Question	MS reply
	Option A – Support Compromise Proposal ES (Comments):ES Option B. We don't agree with the compromise proposal. As expressed in previous comments, through a EU-wide mechanism firms that are affected by a certain situation that justifies an exemption of the derivatives trading obligation could be identified and the mechanism applied without the intervention of any national competent authority. We agree with the compromise proposal on the share trading obligation. SI (Comments):SI We support Option A. HU (Comments):HU - SE (Comments):SE

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Question	MS reply
	Option A: Yes. DE (Comments):DE **Option A: Yes** We principally agree to the drafting on the trading obligations. On the stand-alone suspension of the DTO we can agree to open the procedure to other Member States. However, this possibility should be without prejudice to an expeditious assessment of submitted requests by the Commission. For further details see our written comments to the compromise proposal. LT (Comments):LT Option A: Yes. HR (Comments):HR We would prefer to use the wording “admitted to trading on a regulated market” as proposed and elaborated by the EC.

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Question	MS reply
	IT (Comments):IT On the STO review, we agree with the limitation of the scope which is aligned to the current text of Article 23. In addition, we would reiterate our preference for maintaining an element of flexibility in the regime (similar to what is currently ensured by the exception for trades that "are non-systematic, ad-hoc, irregular and infrequent") in order to cope with any potential future, unexpected issue related to the current approach. With reference to the amendments concerning DTO, As mentioned previously, we welcome the provision for a stand-alone EU suspension of the DTO, however we would suggest that a major involvement of ESMA is ensured. Indeed, the process proposed in the compromise text might not be suitable for timely reacting in case a suspension is needed urgently. We would rather suggest providing for a process mirroring the provisions in EMIR for suspending the CO, with a prominent role played by ESMA PT (Comments):PT

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Question	MS reply
	We deem the proposed wording of Articles 23(1) and 32a(1) and (2) acceptable. More specifically, in relation to the STO (Article 23(1)), we support to the current proposal, provided if the ISIN criterion is kept, as well as the deletion to the reference to "*non-systematic, ad-hoc, irregular and infrequent*" (currently established under Article 23(1)(a)). PL (Comments):PL Option B: No We question the idea of establishing a standalone suspension of the DTO. The clearing obligation does not foresee such a discretionary suspension at entity level. Given that the clearing obligation and the DTO should be fully aligned, modification of the DTO should therefore be avoided. MT (Comments):MT
III.4 Transaction reporting requirements	
Q.1. : Do you agree with the compromise proposal on transaction reporting requirements?	FI (Comments):FI

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Question	MS reply
Option A: Yes; **Option B**: No (if so, why?).	Yes, and regarding the management companies, we see the proposal to enhance level playing field in the market. BE (Comments):BE Belgium – Option B. We agree that transmission of information on trading practices of retail investors between NCAs is important but would favour to also have asset management companies included in the MiFIR reporting scope. NL (Comments):NL Yes. Please see our comments in the MiFIR compromise table. LV (Comments):LV **Option A**: Yes. SK (Comments):SK Option B: No. SK position: All transactions are currently collected by NCAs. New provisions do not bring additional value and may complicate this system. AT

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Question	MS reply
	(Comments):AT **Yes.** LU (Comments):LU Option B. No, regarding the routing of transaction reports between competent authorities, it should be noted that at present reports are exchanged according to rules, which are deduced on the basis of the competence over financial instruments, the shared competence with regard to the supervision of branches as well as the shared competence in case of transmission of information from one investment firm to another resulting in a single transaction report instead of two. The new proposal based on the country of residence of the client, information that currently does not exist in the reporting framework, goes beyond this framework and aims at a completely different type of supervision. If each NCA supervises its investment firms according to the same harmonized European rules, such an exchange of information based on the country of residence of clients makes little sense. This approach would furthermore undermine the European spirit of the Regulation. It should also be noted that the quality of the data exchanged (surnames, first names, dates of birth, national identifiers, etc.) should require a much

Question	MS reply
	more precise legal basis in order to regulate the exchange of such information with the required seriousness. Please refer to the MiFIR compromise table for our drafting suggestion in this respect. IE (Comments):IE Option A – Support compromise proposal however we have previously provided comments outlining potential concerns with the rationale for NCAs requesting details of trading practices of their citizens and note that this may be justifiable in certain circumstances. Accordingly, the extension of TREM in this manner should be restricted to certain use cases only ES (Comments):ES Option B. The exchange of information under art.26 (1) ii should be optional at the request of NCAs and not mandatory. We are in favour of including UCITS/AIFMD management companies in the reporting obligation. SI (Comments):SI We support Option A.

Question	MS reply
	HU (Comments):HU - SE (Comments):SE Option A: Yes. DE (Comments):DE **Option A: Yes** We agree to the drafting on the trading obligations. LT (Comments):LT Option A:Yes. HR (Comments):HR Yes, we suport the drafting proposal to: update the TREM mechanism to facilitate the transmission of information on trading practices of retail investors between national competent authorities;

Question	MS reply
	take up the proposals on reporting put forward in the partial compromise discussed at the previous working group meeting We are not in favour of AIFMs and UCITS management companies to be included in the MiFIR reporting proposal IT (Comments):IT We agree with the compromise proposal presented by the Commission. Furthermore, we would suggest the inclusion of portfolio management companies providing MiFID services and activities in the MiFIR transaction reporting scope, to ensure the levelling playing field with MiFID investment firms. PT (Comments):PT We support **Option A.** ESMA had already highlighted that MiFIR should allow a broad exchange of transaction data (resulting from this Regulation) among NCAs. The current MiFIR provisions establish that data can only be exchanged with the competent authority *"of the most relevant market in terms of liquidity"*.

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Question	MS reply
	As ESMA already concluded, this narrow reference does not allow for an exchange that adequately reflect NCAs' evolving supervisory needs to monitor the most recent market developments.
IV. AOB	
Q.1 Do you have any other comments on the compromise proposal? **Q.2** Would you support an extended date of application for the MIFID/MIFIR package? If so, what extension would you support?	FI (Comments):FI We would welcome to extend the date of application from the perspective of national regulatory timeframes as well as from the perspective of market participants, to allow them time enough to adopt the regulatory changes. We would support extension even to 24 months. Furthermore, we would advocate of the need to link the date of application to the finalisation of level 2 delegated acts in the same vein as in the PEPP regulation art 74. Article 74 (PEPP) Entry into force and application This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. This Regulation shall apply 12 months after the publication in the Official

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Question	MS reply
	Journal of the European Union of the delegated acts referred to in Articles 28(5), 30(2), 33(3), 36(2), 37(2), 45(3) and 46(3). BE (Comments):BE Q1 – Belgium: suggestion to make the use of a LEI mandatory for any type of issuers. Q2 – Belgium: Support a date that is 24 months after entry into force. Also include that entry into force only occurs when relevant L2 regulation is finalised. NL (Comments):NL Q1. Not for the moment. Q2. Yes. 24 months is the preferred option. At least 18 months is required given the duration of our national legislative process. LV (Comments):LV Q.2 We support an extended date of application for the MIFID/MIFIR package. SK (Comments):SK

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Question	MS reply
	Q1: No. Q2. SK supports extended date of application for MiFID/MiFIR package, at least 24 months are needed for preparation on the side of market subjects. BG (Comments):BG **BG:** We would prefer 24 months. AT (Comments):AT We support to extend the date of application from twelve to 24 months. LU (Comments):LU Q.2. Yes, we share the concerns expressed by other Member States and would support a 24-month implementation period. IE (Comments):IE **Q1** – While we support that there needs to be a phased approach to the development of a CT and that equities and bonds are the most obvious starting point, we would like to see some text included in Art 27 da which

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Question	MS reply
	would mandate the ESMA to examine the creation of an ETF CT no later than 9-12 months after the selection process for equities and bonds. The phasing of individual CTs is important but so is the overall development of a total market view and this should not be a drawn out process. Ireland would also be happy with references in a recital. **Q2** - Ireland supports an extended date of application for the MIFID/MIFIR package, within reason. Ireland's preference is for 18 months maximum. ES (Comments):ES We have no strong view on what the date of application should be. SI (Comments):SI We would support an extended date of application for the MIFID/MIFIR package (e.g., from 12 to 24 months). HU (Comments):HU

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Question	MS reply
	We support the extension of the application date, because IT developments can take up to 1-1.5 years, so a period like that would be ideal as an extension. SE (Comments):SE SE supports an extended time for application and for MS to bring into force the necessary laws, regulations and administrative provisions, until 24 months after the date of entry into force of the MiFID/MIFIR package. DE (Comments):DE **Q.2** We consider an implementation period of 12 months appropriate. LT (Comments):LT We can show flexibility on the application date. HR (Comments):HR Q.2. We would support an extension of the date of MiFIR application to 4 months in order for market participants to have sufficient time to comply to all the requirements. Transposition of MiFID should remain 12 months after the date of entry into force of the CTP Regulation

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Question	MS reply
	IT (Comments):IT We would be supportive of an extended application date01. PT (Comments):PT **Q.1:** We have no additional comments. **Q.2:** Yes. More specifically, we would support an approach similar to the one followed in PEPP Regulation, which establishes that its entry into force will start 12 months after the publication of the Level 2 legislation, given enough flexibility for market players to adjust to the new rules established under the MIFID/MIFIR review.
End	**End**