



European Securities and
Markets Authority

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



30 September 2021

Internal

Responding to this paper

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

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

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

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

Instructions

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

4. Insert your responses to the consultation questions in this form.
5. Please do not remove tags of the type <ESMA_QUESTION_BEEEX_1>. Your response to each question has to be framed by the two tags corresponding to the question.
6. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
7. When you have drafted your response, name your response form according to the following convention: ESMA_BEEEX_Deutsche Börse Group_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_BEEEX_ABCD_RESPONSEFORM.
8. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading 'Your input – Open consultations' → 'Consultation on Review of the MiFID II framework on best execution reports').



Publication of responses

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

Data protection

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

Who should read this paper?

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



General information about respondent

Name of the company / organisation	Deutsche Börse Group (DBG)
Activity	Regulated Market, Exchange or Trading System
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_BEEX_1>

Deutsche Börse Group (DBG) appreciates the opportunity to respond to this ESMA consultation reviewing the MiFID II framework on the best execution reports. We had provided these reports in the past, before they were suspended.

Considering the lack of uptake from market participants including investment firms on the reports, we generally support ESMA's objective to simplify and streamline the reporting requirements by reducing the granularity, the volume of data to be reported as well as the result of having meaningful information in the disclosed reporting.

If the reporting under RTS 27 resumes after the suspension period, it shall be simplified. We believe that the following different aspects shall be considered by ESMA:

- Some requirements shall be aligned where possible between RTS 27 and RTS 28. This shall cover for example the liquidity classes which are defined based on the RTS 11 Annex in RTS 28, but also the frequency of publication of the reports (yearly vs monthly).
- The proposed metrics raise questions on their exact definition, but also their meaningfulness. Some metrics would prove complex with disproportionate implementation costs compared to their pertinence. For instance, the "cost for a median transaction" requires making assumptions diluting the relevance of the figures eventually provided.

Further, DBG believes that the reports published under RTS 28 provide useful and insightful information on investment firms' execution practices. We do appreciate that the information provided, is not published elsewhere and that a harmonised publication of the top five execution venues or third-party executing entities for the different class of instruments is a valuable and comparable information for all types of market participants, especially retail investors and regulators.

Given the political process which started with the European Commission's Proposal for the MiFIR Review ("for a regulation amending Regulation (EU) No 600/2014 as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders") as well with the European Commission's Proposal for the set-up of the European Single Access Point (ESAP) for financial and non-financial corporate information, we see interconnections with regard to the information provided in the best execution reports and will actively participate in these discussions.

We further have read the current proposal of the European Commission on the MiFID II Review "Amending Directive 2014/65/EU on markets in financial instruments", which proposes in Recital (7) to delete Article 27 (3). We would like to highlight the importance of streamlining the European Commission's work on the MiFID review and ESMA's work on the best execution reports.

<ESMA_COMMENT_BEEX_1>



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

<ESMA_QUESTION_BEEEX_1>

Under RTS 27, trading venues (OTFs, RMs and MTFs), systematic internalisers (SIs), including market makers and other liquidity providers in their role as execution venues produce best execution reports. The scope of instruments included all instruments, disregarding whether they are subject to the trading obligation and are not subject to the trading obligation.

Further, to ensure that no double reporting was taking place, trading venues shall not publish orders traded OTC and reported onto the trading venue; to the contrary market makers and liquidity providers were supposed to do the reporting themselves for instruments not subject to the trading obligation and executed OTC (see RTS 27 Recital (6)).

In the consultation paper ESMA suggests limiting the scope only to transactions executed on trading venues and on those OTC transactions where an SI or another liquidity provider is a party to the transaction. We do appreciate that ESMA wants to streamline the reporting and we would in that case suggest that the reporting is consistent both with the post trade transparency requirements as per amended RTS 1 and RTS 2 expected in future (our understanding is that the final report from ESMA shall be published in the course of first half 2022).

Looking also at the current requirements under RTS 27, as per Recital (5), “to ensure an accurate picture of the quality of execution that effectively occurred, trading venues should not publish among executed orders those traded over the counter and reported onto the trading venue.” We would ask ESMA to confirm this requirement.

Regarding the proposal from ESMA to keep reporting from market makers, ESMA suggests introducing a new concept, the one of market makers on non-anonymous trading systems. While we do not object to reporting on behalf of market makers, we would like ESMA to clarify that in the case of non-anonymous trading systems such as RFQ systems, it is expected that the trading venue publishes a report for the whole MIC as well as one report per market maker. It is unclear in the second case what is the reporting format, as the Table 2 in the proposed legal text does not allow for an entry with the name of the market maker. It shall also be made clear that some metrics in that case do not apply like the “number of designated market makers”.

<ESMA_QUESTION_BEEEX_1>

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

<ESMA_QUESTION_BEEEX_2>

DBG supports ESMA’s objective to simplify the RTS 27 best execution reports to aggregate results, where possible. Referring to our response to Q1 we would recommend that the aggregation proposed (per instrument type, per liquidity profile) could relate to any parameter or similar level of aggregation as per



RTS1 and RTS 2 (for example is the MIFIR identifier available in post trade transparency reporting). Alternatively, we would question why the classification proposed in RTS 28 regarding the liquidity as determined under the tick size regime shall not be considered. Additionally, the question arises why the different classes of instruments in new RTS 28 Annex 1 are not apparently based on the MiFIR identifier – since the reference to the MIFIR identifier is not explicitly mentioned in the proposed text.

In general, the RTS 27 reports and the RTS 28 reports would benefit from alignment regarding classification in order to make comparisons easier.

We would not approve that the category of bonds includes both ETCs and ETNs. Because these products are very different, we think both categories shall be distinguished beyond the MIFIR identifier.

<ESMA_QUESTION_BEEX_2>

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

Q4

<ESMA_QUESTION_BEEX_3>

DBG does welcome that ESMA aims at reducing the number of metrics and tables for the new RTS 27, as some metrics might have proven redundant or irrelevant. We do also understand that ESMA is bound by Level 1 text, requesting that trading venues and SIs provide “data relating to the quality of execution of transactions on that venue” and that “periodic reports shall include details about price, costs, speed and likelihood of execution for individual financial instruments”. We would, however question, if some metrics are meaningful, when calculations are not published on individual instrument level. In particular, the metrics related to costs (costs for a median transaction and variable costs for a median transaction) shall be deleted from Level 1 as they require each venue to make assumptions and approximations to derive those figures. Overall, the complexity of the requirements and necessary corresponding implementation efforts (apart from the fact that in some cases implementation, would not result in meaningful figures) are disproportionate to the benefits for the market. We question, especially the introduction of a so-called "costs for a median transaction".

Please see below our comments for each metric:

- **Total nominal or monetary value of all transactions:** we do not have comments on the metric.
- **The median monetary transaction value:** no objection, however maybe the average shall be published as well to provide an idea of the dispersion of the transactions. We do have reservations given the level of aggregation proposed by ESMA. Indeed, it seems odd to provide a median calculated across the same instrument type, but with different liquidity profile (besides the distinction between liquid and non-liquid).
- **The costs for a median transaction** defined as “*all execution costs applied by the execution venue for a median transaction and before any rebate or discounts are applied.*” Although this requirement is based on Level 1 requirement, we do question the relevance of this metric - such statistic is not requested in RTS 28 for example. Under the current RTS 27, those costs are published on an instrument basis according to a logic which proved complex and subject to a range of assumptions and approximations. The calculation of costs on an instrument basis requested to follow a logic, which is totally different from the one exchanges currently apply: as fees are

invoiced to our members, those are collected in our systems on a member basis; RTS 27 logic requires to change the logic and adjust calculations to an instrument logic. For connectivity fees, all fees collected from members are summed up and redistributed equally between all listed instruments to estimate the fees on an instrument level. It is, however, not possible to distinguish between the same instrument which is traded on the different MICs of the trading venue. This is because venues invoice connectivity fees on a platform basis (in the case of DBAG, Xetra would invoice on the basis to the access to all its cash platforms, namely Xetra, Boerse Frankfurt and its RFQ platform) even if one ISIN can be traded on different platforms. Pushing the logic further by counting three times the ISIN traded on three MICs would increase fees artificially: de facto members do not see their connectivity fees increase, because they trade the same ISIN on different markets operated by the same venue. The approximation has a limit relating to figures emptied of any economical relevance and meaning. Moreover, it is not possible to consider those costs “for a median transaction”: as per the approximation aforementioned, the size of the transaction cannot be accounted for.

The transaction fees for the median transaction can only be determined based on our price lists. We can provide the average execution fee for a certain size across the different packages available on our platforms. This calculation could however not be based on actual fees collected from members. We do not believe it makes sense to screen all transactions executed on our platforms, extract those only strictly equal to the median transaction and then average all fees across all instruments.

The costs for a median transaction would then result from summing up connectivity fees based on approximations and transaction fees based on actual fees however “theoretical” as based on a price list and average across different packages and liquidity profiles in the case of Xetra for examples. We cannot see, how relevant those costs might appear to market participants and regulators as they would remain ultimately not comparable from one platform to the other which we believe is one of the main objectives of the RTS 27 reports: assess and understand the quality of execution achieved on the venue and allow for comparisons for best execution matters.

We would also underline that under the current RTS27 a full article (Article 5) is dedicated to costs and in recital (11) is it mentioned that “*The relevant costs may also include clearing or settlement fees or any other fees paid to third parties involved in the execution of the order when they are part of the services provided by the execution venue.*” This was guaranteeing that post trading costs could only be included, if invoiced by the execution venue itself. In the new RTS 27 this mentioning is not present anymore; we would like to mention that it is not possible for execution venues which do not provide post trade services or where one or more other legal entities in the company with a different P&L provide those services to report on the costs for obvious reasons. We would then urge ESMA to consider all limitations linked to the provision of specific data to the report to account for them and reflect them in the legal text.

- **The variable costs for a median transaction** is the bid-ask spread related to the median transaction. The major problem with this measure is that the median transaction is defined per market on instrument type level. However, even for all liquid shares for example, the median for a blue chip is not comparable to the median for a less liquid share. Costs are hence not comparable and shall not be averaged.

Understanding that the metric is based on historical data over the past three months, we have two interpretations of it:

1. For all median transactions observed on the market, the bid-ask spread is identified meaning the bid-ask spread which was available right before the transaction takes place. Then all bid ask spreads are averaged across all instruments and all trading days over three months. The main issues with this metric are
 - That a certain logic needs to be implemented to identify the orders at the best limits before a transaction is executed and it implies a certain margin error;
 - Averaging absolute spreads across instruments with very different price levels, hence tick sizes hence spreads does not make any sense. At least absolute spreads (expressed as a percentage of the transaction price) make more sense.
 2. Once the median transaction is defined across all instruments and all trading days, trading venues shall rebuild the order book to simulate on a minute or 5-min basis what would be the round trip cost for that size. This requires excessive calculation capacities from trading venues for a result which does not make much sense. First because again absolute spreads are not comparable across instruments, and second because the median transaction is also not representative of a market with different liquidity profiles considered (a blue chip is not comparable to a medium size instrument).
- **The description of costs:** We do not have comments on the metrics.
 - **The speed of execution:** defined as the median time elapsed between an aggressive order or quote acceptance and the subsequent execution. We would recall that aggressive orders might also have an execution condition like FOK or that for blue chips aggressive orders like market orders or executable limit orders are immediately executed thanks to the liquidity available. Hence as it is currently reported in our RTS 27 reports, the speed of execution is currently zero milliseconds as it only takes nanoseconds for the order to enter our systems and be executed – note the order does not even enter the order book. It might take some milliseconds for the orders to be executed for less liquid stocks but averaging the different speeds does not make sense.
 - **The total number of market makers:** could ESMA confirm that by designated market makers the MiFID II definition applies or would it be a concept at the discretion of the trading venue? Is it about MiFID II market makers or only those in non-anonymous trading systems?

Finally, it is unclear how ESMA would like to receive information on market makers for non-anonymous trading systems. ESMA indicates that table 2 shall be published for each market maker. Some metrics could, however not be published like for instance the variable costs for a median transaction.

DBG insists on the necessity for ESMA to provide as much information as possible regarding the different metrics to publish. It appears from the legal proposal in the consultation paper that explanations are rather short and unprecise. DBG has done a thorough review of the regulation to understand the requirements as well as respect the spirit of the regulation where interpretation of the texts was uneasy. We are well aware that major discrepancies arose between interpretations of statistics hence figures provided by trading venues, rendering the reports not comparable from one to the other. We request regulators to provide all the necessary guidance through more precise definitions and descriptions in order to get meaningful reports.

<ESMA_QUESTION_BEEX_3>



Q5 : Have you observed good or bad practices of reporting by execution venues under the current RTS 27 that can be relevant for the elaboration of proposals to enhance access and user-friendliness of this information? Please provide specific examples if possible.

<ESMA_QUESTION_BEEEX_4>

DBG has been publishing best execution reports on a daily basis for its cash markets (Xetra and Boerse Frankfurt) and its derivatives market (Eurex) for almost four years. Reports are available for free and without access limitations on our website and are published in text format. We believe that best execution reports under RTS 27 shall be easily available and free of charge and the suggested format seems appropriate as well. We do support a shortened time lead for the publication of the reports.

As ESMA mentioned, it is important that new RTS27 is aligned with RTS 1 and RTS 2 where relevant, but as well with some requirements to the establishment of the consolidated tape also where relevant and even more importantly with new RTS 28 (see our responses to Q1 and Q2).

<ESMA_QUESTION_BEEEX_4>

Q6 : Have you observed good or bad practices of reporting by investment firms under the current RTS 28 that can be relevant for the elaboration of proposals to enhance access and user-friendliness of this information? Please provide specific examples if possible.

<ESMA_QUESTION_BEEEX_5>

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<ESMA_QUESTION_BEEEX_5>

Q7 : Do you agree with the classification for reporting proposed in Annex I of the possible new RTS 28, especially with regard to the suggested methodology for the reporting on equity instruments? If not, what alternative categorisations would you propose?

<ESMA_QUESTION_BEEEX_6>

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<ESMA_QUESTION_BEEEX_6>

Q8 : Do you agree with the proposals for a possible review of RTS 28?

<ESMA_QUESTION_BEEEX_7>

DBG believes that the reports published under RTS 28 provide useful and insightful information on investment firms' execution practices. We do appreciate that the information provided is not published elsewhere and that a harmonised publication of the top five execution venues or third-party executing entities for the different class of instruments is a valuable and comparable information for all types of market participants, especially retail investors.

Having noticed that ESMA does not require anymore the distinction between aggressive and passive orders, we would suggest to adopt the classification under the SEC Rule 606 between market orders, non-

marketable limit orders and marketable limit orders. Such information could prove useful and less prone to interpretation by investment firms than the distinction between aggressive and passive orders.

We also believe that more detailed information could be provided by investment firms especially regarding the 'summary of the analysis and conclusions they draw from their detailed monitoring of the quality of execution obtained on the execution venues where they executed all client orders in the previous year.' A list of items is provided where investments firms have to provide information on and Article 3 paragraph 3 point d refers to *'a description of any specific arrangements with any execution venues regarding payments made or received, discounts rebates or non-monetary benefits received including for each venue identified according to Article 3(1), the aggregate amount of any payment for order flow received, transaction fees paid, transaction rebates received, both as a total amount in Euro and on average per financial instrument.'* DBG considers this information of upmost importance especially for retail investors and regulators and believes that this aspect shall be linked to point c about conflicts of interests. We have seen that this topic will also be discussed in the upcoming MiFIR Review process.

Linked to this aspect, we would suggest that all flows where conflict of interest might arise are published in a separate table, independently from their inclusion to the top 5 ranking. Those flows would include flows where the investment firm routes orders to their own systematic internaliser, to an MTF they operate or to venues they receive payment for order flow from. In each case, the traded volume would be mentioned and the payments received if applicable.

DBG is also surprised that the reports are published on a yearly basis and that there is no alignment with the reports published under RTS 27. We would be in favour of more harmonisation there, and a publication on a quarterly basis would be more adequate, along with a shorter timeline (like one month after the end of the calculation period).

<ESMA_QUESTION_BEEX_7>

Q9 : Do you agree with the cost benefit analysis as it has been described in Annex II?

<ESMA_QUESTION_BEEX_8>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_BEEX_8>

Q10: Are there any additional comments that you would like to raise and/or information that you would like to provide?

<ESMA_QUESTION_BEEX_9>

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<ESMA_QUESTION_BEEX_9>