



European Securities and
Markets Authority

Response form for the Consultation Paper on Re- view of the MiFID II framework on best execution reports



Responding to this paper

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

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_nameofrespondent_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	European Association of Co-operative Banks
Activity	Non-governmental Organisation and Other Associations
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Belgium

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_BEEX_1>

The European Association of Co-operative Banks welcomes the opportunity to be able to provide its views on the ESMA consultation regarding the review of the MiFID best execution reporting regime. During the start of the COVID pandemic, the members of the EACB were actively engaged on the discussions surrounding the proposed amendments being made by the European Commission to MiFID II under the Capital Markets Recovery Package.

In fact, EACB members had supported the 'MiFID quick fix' as disclosed under Article 1 (6) of Directive (EU) 2021/338, which provides for a temporary suspension of RTS 27 of MiFID II until 28 February 2023. EACB had also supported a similar proposal for RTS 28, MiFID II – although this was never adopted – for similar reasons behind the temporary suspension of RTS 27, i.e. costliness of implementation of the reports in comparison to the low usage of such reports by investors, and the fact that the buy-side seems to receive its information on the orders from other means.

Following the publication on 25 November 2021 of the European Commission's proposal for a directive amending MiFID, the EACB would like to extend its support for the proposed abolition of RTS 27 best execution reports in lieu of the regulation setting up a consolidated tape published on the same date. We also believe that the above abolition should be extended to RTS 28 reports and that the proposed directive should be amended accordingly to reflect this proposal.

For further information, please read our answers to the following questions.

<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_BEEX_1>

The EACB notes that the crucial question for RTS 27 reports is whether these reports should be re-in-stated. Based on the evidence provided by our members, we do not think that the RTS 27 reports provide meaningful information which justifies the efforts in producing these reports. Neither have these reports been widely used by prospective recipients so far (measured by observed page views) nor are they helpful for investment firm's own decisions to determine suitable best execution venues. We do not expect that the proposed modifications of RTS 27 reports would change that.

In this context, we very much welcome the fact that the European Commission has proposed a deletion of Art. 27 (3) [RTS 27] as part of the Capital Markets Union package, and that this deletion will be covered by the establishment of the consolidated tape (of which proposal was published on the same date).

We do not agree however that reports shall be published via a planned EU Single Access Point (ESAP) according to Article 5 (3) of RTS 27 (new). This is an additional administrative burden which is not in proportion to the questionable benefit the report has for the recipients.

<ESMA_QUESTION_BEEX_1>

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

<ESMA_QUESTION_BEEX_2>

The EACB strongly supports a deletion of RTS 27 best execution reporting.<ESMA_QUESTION_BEEX_2>

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

<ESMA_QUESTION_BEEX_3>

The EACB strongly supports a deletion of RTS 27 best execution reporting.

<ESMA_QUESTION_BEEX_3>

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

<ESMA_QUESTION_BEEX_4>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_BEEX_4>



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

<ESMA_QUESTION_BEEX_5>

Our members have been publishing reports under RTS 28 MiFID over the last few years and have to-date experienced a document that is not achieving its objectives with respect to providing quantitative and qualitative information that is understandable for retail clients when it comes to the execution of orders by investment firms.

In reality, retail clients are not using the RTS 28 reports to choose their service providers since most of them contract with their current bank.

When it comes to professional clients, they might make use of the reports because they include information not communicated beforehand. However, the current format does not allow for real comparison between providers.

Furthermore, we note that passive and aggressive orders are not defined by regulation and are thus dependent on what the platforms and markets wish to transmit. As a result, these orders are impossible to calculate on a reliable basis and are thus not so useful since there are other ways investment firms can fill and calculate an order.

We thus strongly support deletion of RTS 28 best execution reports.

<ESMA_QUESTION_BEEX_5>

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

<ESMA_QUESTION_BEEX_6>

The EACB strongly supports the deletion of RTS 28 best execution reports.

<ESMA_QUESTION_BEEX_6>

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

<ESMA_QUESTION_BEEX_7>

Based on our members' evidence regarding RTS 28 reports, we do not think that they provide meaningful information which justifies the efforts in producing these reports. We could not observe any significant use by customers and therefore consider the market relevance of the reports very low. Relevance of the RTS 28 reports is apparently for regulatory purposes only. We do not think that modifications to the RTS 28 reports will significantly change this outcome. Therefore the RTS 28 reports should be abolished. As the UK (FCA) will delete RTS 27/28 (<https://www.fca.org.uk/publication/policy/ps21-20.pdf>), we believe that there will be a serious competitive disadvantage for EU institutions if this obligation is maintained.

<ESMA_QUESTION_BEEX_7>

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



<ESMA_QUESTION_BEEEX_8>

We strongly object to the cost benefit analysis in Annex II. Given the fact that there are significant doubts that the RTS 27 and 28 reports provide meaningful information to the public and market participants justifying the costs to the industry in the EEA we believe ESMA should have considered abolishing the obligation to provide both reports altogether. It had already been decided as part of the MiFID II quick fix to suspend the RTS 27 obligation. With this background, we believe that any cost benefit analysis on future obligations has to discuss in detail the pros and cons of abolishing both reports. But the existing cost benefit analysis does not cover this important topic at all.

It should be further noted that even the intended simplifications will cause significant initial costs in light of which the targeted positive effects are overall rather low. If the new regulation leaves any discrepancies in requirements resulting out of RTS 27 and RTS 28 this might even cause additional burdens which do not seem to be adequately taken into account.

<ESMA_QUESTION_BEEEX_8>

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

<ESMA_QUESTION_BEEEX_9>

We note that the European Commission rightly recognized the very low numbers of downloads from websites of the best execution reports. It is therefore assumed that investors cannot or do not make any meaningful comparisons between firms on the basis of this data (recital (9) DIRECTIVE (EU) 2021/338). We therefore strongly advocate the abolition of best execution reporting for both RTS 27 and 28 reports.

<ESMA_QUESTION_BEEEX_9>