# EACB response to the ESMA Consultation Paper on MiFID II/MiFIR

The European Association of Co-operative Banks (EACB) welcomes the opportunity to respond to the ESMA Consultation Paper on MiFID II/MiFIR.

The EACB has followed with great interest the MiFID review and has engaged with the EU-legislators throughout the legislative procedure. With MiFIDII/MiFIR now in the Level-2 phase, Euroepan co-operative banks are looking forward to further engage with ESMA in order to ensure strengthened investor protection; transparent and efficient financial markets; as well as a legislation which properly addresses the diversity of the banking industry.

With regard to the consultation timeframe, we understand that ESMA has deadlines to comply with. At the same time, we do have to make the point that, stakeholders should be given sufficient time to build up comprehensive and consistent responses. This will contribute to the work of ESMA and to the quality of the regulation.

Indeed, ESMA's consultation papers have been a considerable challenge for the EACB and its members in terms of complexity, number of questions and time frame. Market participants are still currently assessing how they will be affected, based upon the nature, size and coverage of their business activities. This is the reason why the EACB has prioritised and focused on a number questions of the Consultation Paper. However, this prioritisation exercise does not mean that questions not responded to are not important to the EACB and its members nor should it be regarded as an unconditional consent on ESMA's approach on such topics.

Of course, we are at your disposal to further discuss in detail our responses and to provide any additional information necessary in that regard.

**Contact:**

The EACB trusts that its comments will be taken into account.

For further information or questions on this paper, please contact:

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# Reply form for the ESMA MiFID II/MiFIR Consultation Paper

22 May 2014

European Securities and Markets Authority

Date: 22 May 2014

## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA MiFID II/MiFIR Consultation Paper, published on the ESMA website (here).

### *Instructions*

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, please follow the instructions described below:

i. use this form and send your responses in Word format;

ii. do not remove the tags of type <ESMA_QUESTION_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and

iii. if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

i. if they respond to the question stated;

ii. contain a clear rationale, including on any related costs and benefits; and

iii. describe any alternatives that ESMA should consider

Given the breadth of issues covered, ESMA expects and encourages respondents to specially answer those questions relevant to their business, interest and experience.

To help you navigate this document more easily, bookmarks are available in "Navigation Pane" for Word 2010 and in "Document Map" for Word 2007.

Responses must reach us by **1 August 2014**.

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

### *Publication of responses*

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that 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 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 'Disclaimer'.

# 1. Overview

# 2. Investor protection

## 2.1. Exemption from the applicability of MiFID for persons providing an investment service in an incidental manner

**Q1: Do you agree with the proposed cumulative conditions to be fulfilled in order for an investment service to be deemed to be provided in an incidental manner?**

<ESMA_QUESTION_1>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_1>

## 2.2. Investment advice and the use of distribution channels

**Q2: Do you agree that it is appropriate to clarify that the use of distribution channels does not exclude the possibility that investment advice is provided to investors?**

<ESMA_QUESTION_2>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_2>

## 2.3. Compliance function

**Q3: Do you agree that the existing compliance requirements included in Article 6 of the MiFID Implementing Directive should be expanded?**

<ESMA_QUESTION_3>
The European Association of Co-operative Banks (EACB)[1] does not see any need to amend Article 6 of the MiFID Implementing Directive. The current compliance function requirements have worked in practice and there are no deficiencies in this area. This is also evident from the fact that Art. 16 (2) of MiFID II is an identical recast of Art. 13 (2) of MiFID I.

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Moreover, we see no objective reason nor a necessity to "upgrade" published "ESMA Guidelines on certain aspects of the MiFID compliance function requirements" (compliance guidelines) to delegated acts/implementing measures.

The EACB would also like to make the following observations with regard to some specific points of the draft technical advice:

Contrary to what is provided in **draft technical advice No. 3.i** it is adequate that the compliance function performs monitoring regularly and, where necessary, on an ad hoc basis, but not "on a permanent basis".

Moreover, we consider that it is not the compliance function's task to "oversee the operations of the com-plaints-handling process" (contrary to **draft technical advice No. 3.iv**). For the compliance function's tasks also with regard to complaints management already Art. 6 (2) of the MiFID Implementing Directive is adequate.

We note that the monitoring programme in itself cannot ensure that "compliance risk is comprehensively monitored" (draft technical advice No. 4). It is appropriate that it is "designed to" ensure that compliance risk is comprehensively monitored.

The compliance officer is not responsible for "any reporting required by MiFID II" (**draft technical advice No. 5.ii**), but solely for compliance reporting (as also in Art. 6 (3b) of the MiFID Implementing Directive).

The EACB is also opposed to the approach of setting "special requirements" for the compliance function for some regulatory areas. There is the danger that such further specification on specific cases basis would be inconsistent with the general nature of the compliance function. Especially, the business units are responsible to comply with the MiFID requirements. In this context, we would also like to note that compliance is the second level control within the investment firm (contrary to the business units themselves which are the first level control). The following of the draft technical advice demonstrate the problem:

- Complaints from clients are information of relevance to the compliance function for performing its general tasks under Art. 6 (2a) of the MiFID Implementing Directive. But – contrary to **section 2.4. Complaints-handling – draft technical advice No. 7** – it is not the compliance function's task to "analyse complaints and complaints-handling data". This is instead the task of the unit responsible for handling complaints.

- We are against any requirement to monitor records of all transactions as proposed in **section 2.6 Re-cording of telephone conversations and electronic communications – draft technical advice No. 7**. It is recognised that monitoring by the compliance function should be risk-based and thus involve sample checks on the basis of a risk assessment (cf. General Guidelines 1 und 2 of the ESMA Compliance Guidelines).

- It is not the compliance function's task to put in place effective procedures to ensure compliance with the requirements (contrary to what is provided in **section 2.7 Product governance - para. 3 ii**). This is instead the task of the relevant business unit, which has to be monitored in its entirety (on a sampling basis). For the compliance function's tasks also with regard to product governance, Art. 6 (2) of the MiFID Implementing Directive is applicable.

The EACB is therefore expressly in favour of retaining the already existing requirements of the MiFID Implementing Directive and of refraining from any further specification. We see no need for the legislative measures to be more prescriptive.
<ESMA_QUESTION_3>

**Q4: Are there any other areas of the Level 2 requirements concerning the compliance function that you consider should be updated, improved or revised?**

<ESMA_QUESTION_4>
No, the EACB does not consider that any areas of the Level 2 requirements concerning the compliance function should be updated, improved or revised. For the reasons please see above our response to Q3.
<ESMA_QUESTION_4>

## 2.4. Complaints-handling

**Q5: Do you already have in place arrangements that comply with the requirements set out in the draft technical advice set out above?**

<ESMA_QUESTION_5>
The European Association of Co-operative Banks (EACB)[2], would like to point out that co-operative banks take their complaints-handling process very seriously; both as a way to continuously improve their level of services as well as a manner to best serve their clients, who are often also members and thus take a direct stake in the bank.

Indeed, as a showcase of their commitment on the subject, it should be noted that cooperative banks in many cases developed alternative dispute resolution mechanisms (and processes for complaints-handling that precede the ADR-stage) before it became a topic of regulatory debate.

Bearing this in mind, the EACB would like to express the following specific concerns with regard the draft technical advice concerning complaints-handling:

It is not the task of investment firms to "set out the client's or potential client's options, where relevant, to refer the complaint to an Alternative Dispute Resolution (ADR) entity or for the client to take civil action" (**draft technical advice No. 5**). This would establish an obligation for investment firms to provide legal advice. Such an obligation would go beyond the organisational requirements to have an effective and adequate complaints management function in place. In the interest of clients, legal services should be reserved for independent and appropriately qualified professionals like lawyers.

ESMA recommends that "investment firms should provide information on complaints and complaints-handling to the relevant NCA, or ADR entity where applicable under national law" (**draft technical advice No. 6).** We understand this requirement as an obligation for investment firms to actively report complaints. If this is the case, we question whether such an obligation for investment firms to proactively report/forward complaints is really necessary. In our view, the purpose of the provisions is also adequately satisfied by requiring investment firms to document all complaints and their handling internally. This requirement could be supplemented by a corresponding obligation to provide information to the NCAs on request, and not on a continuous basis.

[2] The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.
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Moreover, even if such a requirement is finally introduced, a requirement to report complaints should be restricted to investment advice. A general reporting requirement of complaints covering all obligations arising from MiFID II/MiFIR would be disproportionate. To keep the burden on investment firms and the flood of information at NCAs within reasonable limits, the reporting requirement for investment firms should, moreover, be restricted to only providing further information on complaints and complaints-handling to NCAs on request.

Any requirement to forward the entire complaint case to the NCA would, in any case, be excessive. The consequence would be information overkill at the NCAs, which would call a reporting requirement as a whole into question.
<ESMA_QUESTION_5>

## 2.5. Record-keeping (other than recording of telephone conversations or other electronic communications)

**Q6: Do you consider that additional records should be mentioned in the minimum list proposed in the table in the draft technical advice above? Please list any additional records that could be added to the minimum list for the purposes of MiFID II, MiFIR, MAD or MAR.**

<ESMA_QUESTION_6>
The European Association of Co-operative Banks (EACB)[3], stresses that proper records and their retrievability is to the interest of the firms. However, we see no need to supplement the proposed list of minimum records.

The proposal to require the electronic format of the records (**draft technical advice No 3**) would entail heavy implementing costs especially for smaller banks, without any objective reason for imposing such a strict requirement. It is important to allow investment firms to maintain the option to store information in any durable medium (cf. Article 51 (2) MiFID Implementing Directive). For example, records in paper form and scanned documents are currently permitted. This recognised forms of recording and storage should still be possible in the future.

Moreover, the term "in writing" (**draft technical advice No 2**) could be misinterpreted as a civil legal formality. Therefore, the EACB recommends to maintain Article 51 (2) MiFID Implementing Directive as it currently stands.

In addition, we consider that there is no legal basis for the relevant NCAs to require additional records (**draft technical advice No 5**). Gold-plating should be based on an explicit authorization at level 1, both in terms of "if" and the "conditions" under which this is permissible. Article 16 (6) MiFID II, which standardises the requirements for record keeping, does not contain such an empowerment.

The same stands for the empowerments of ESMA, who is responsible for the interpretation of MiFID II and MIFIR. We do not consider that ESMA is empowered to standardise the detailed content and the timing of the records or provide for additional records as stated in point 6.

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In addition, we would like to highlight that the table with the types of records investment firms should be obliged to keep **(draft technical advice No 7)** includes too many items. We propose to maintain in the list the information already recorded in a durable medium under MiFID Implementing Directive. Moreover, we note that:

- regarding "the basis and reason for any reallocation", it should be sufficient to record the transaction but not the reason for any reallocation;
- regarding the details to keep records for potential clients, these necessarily imply the provision of investment services, so these information could be stored only for actual clients;
- regarding "marketing communications" the proposal to require records of sample of each marketing does not seems reasonable;
- regarding "periodic statements to clients", it is sufficient to record the periodicity adopted to send these statements

<ESMA_QUESTION_6>

**Q7: What, if any, additional costs and/or benefits do you envisage arising from the proposed approach? Please quantify and provide details.**

<ESMA_QUESTION_7>
It is difficult to estimate the amount of the additional costs. If electronic format is to be required this requirement will significantly increase the costs since many firms fulfil their recordkeeping in other recognized forms of storage such as hard copy or scanned documents (for details refer to our response to Q6).<
<ESMA_QUESTION_7>

## 2.6. Recording of telephone conversations and electronic communications

**Q8: What additional measure(s) could firms implement to reduce the risk of non-compliance with the rules in relation to telephone recording and electronic communications?**

<ESMA_QUESTION_8>
The European Association of Co-operative Banks (EACB)[4], considers that no additional measures need to be implemented. To the contrary, ESMA should reconsider its draft technical advice with regard to the recording of telephone conversations and electronic communications requirements.

This is especially true for the requirement to also record an internal call when such call "relates to or is intended to result in transactions" in the provision of investment services subject to the telephone recording obligation.

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Verifying the compliance of customer orders with the execution does not require a voice recording, but can be performed in other ways. We fail to see why ESMA proposes a totally different approach than the one followed by CESR in its advice of 29 July 2010 (CESR/10-859, No. 33) and wishes to extend the record-keeping requirements. Market abuse concerns had already been taken into account in CESR's Advice on July 29, 2010 into account and there seem to be no actual case to justify an extension of the voice recording duties on (some) internal calls.

Apart from that, it is unclear to which telephone calls this obligation applies and how these would be distinguished from another internal phone calls. Such a distinction would be very difficult to apply in practice, not to mention data protection concerns.

With regard to the scope of the recording requirements in respect to telephone conversations and electronic communications, it results from article 16 (7) (1) MiFID II ("transactions concluded", "order services that relate to the reception, transmission and execution of client orders") that it is only the concrete order that has to be recorded. A broader scope would not be in line with the wording of article 16 (7) MiFID II. Also the formulation „…shall also include those that are intended to result in transactions concluded…" in article 16 (7) (2) MiFID II is not an obstacle to this understanding because from using the term "concluded" it follows clearly that the recording requirements only apply with regard to the concrete order but e. g. not with a view to an preceding investment advice. In our opinion the wording „… even if those conversations or communications do not result in the conclusion of such transactions or in the provision of client order services" in article 16 (7) (2) MiFID II has to be understood in the way that also pending orders fall within the recording requirements. Such orders are „intended to result in transactions concluded".

As to the recording requirements of face-to-face-conversations (article 16 (7) (7) MIFID II) we understand the formulation "may be recorded by using written minutes or notes" in the way that by providing a written order confirmation including the material order data the recording requirements are fulfilled.
<ESMA_QUESTION_8>

**Q9: Do you agree that firms should periodically monitor records to ensure compliance with the recording requirement and wider regulatory requirements?**

<ESMA_QUESTION_9>
Level 1 does not provide for periodic monitoring of all records. Thus, we consider necessary that a review of these records at periodic intervals should, if at all, only be prescribed by way of sample checks and , in any case, only if a specific reason exists. We note that if such an obligation were to be imposed its fulfilment would in practice require disproportionate costs and efforts from firms and be therefore unrealisable.
<ESMA_QUESTION_9>

**Q10: Should any additional items of information be included as a minimum in meeting minutes or notes where relevant face-to-face conversations take place with clients?**

<ESMA_QUESTION_10>
As a general remark, the EACB notes that the obligation of taking minutes or notes should only apply to those conversations which produce client orders without any other formalisations. It is not possible neither relevant to take notes of all conversations which take place.

On the specific items of information to be included in the meeting minutes or notes, we consider that a record of the location of the meeting ( **draft technical advice 9, point ii**) is unnecessary because this information does not have any benefit from an investor protection or market abuse perspective.

Also we consider that the term "other relevant information about the transaction **(draft technical advice point v**) is rather too vague and should be further specified.
<ESMA_QUESTION_10>

**Q11: Should clients be required to sign these minutes or notes?**

<ESMA_QUESTION_11>
The EACB considers that no statutory obligation for a signature of the records is required. It should be left to the organizational authority of each bank to decide whether the clients signature is to be obtained.
<ESMA_QUESTION_11>

**Q12: Do you agree with the proposals for storage and retention set out in the above draft technical advice?**

<ESMA_QUESTION_12>
Yes. However, again, with regard to the issue of internal calls we refer to our response in Q8. It should be clarified that the requirement to provide clients with recordings on request only applies to telephone conversation in which the client participates. Consequently, in case internal calls must be recorded, these records should not be provided to clients upon request. Internal calls would not relate to the client relationship and could include information subject to secrecy obligations, such as information relating to other clients transactions.
In addition, it should always be kept in mind that an investment firm cannot anticipate or always prevent IT technology errors or developments out of its sphere of responsibility that could permit the original records to be altered or deleted.
<ESMA_QUESTION_12>

**Q13: More generally, what additional costs, impacts and/or benefits do you envisage as a result of the requirements set out in the entire draft technical advice above?**

<ESMA_QUESTION_13>
We consider that the implementation of the draft technical advice would create a disproportionate operational burden and make the cost of reception of orders or investment advice through telephonic means prohibitive, thus making retail banks – especially those with a decentralised structure - unable to offer this service anymore.

We consider that the recording obligation would imply a huge cost for the banking industry especially for smaller banks and braches. Indicatively, only in Germany these costs can be estimated at Euro 632 mln for the initial purchase of the necessary equipment and Euro 323 mln for the subsequent annual maintenance and operation of the equipment in Member States not imposing telephone recording so far.

Because of this enormous cost there is a real danger that telephone services can not be offered national-wide basis. Indeed, if offering investment advice via telephone in all branches no longer makes sense in view of the likely costs, then there is a risk that the service of investment advice as a whole can no longer be offered. This applies particularly to decentralised branches. In any case, we consider that the offer of a nation-wide qualified investment advice will be severely affected. This is not the objective of MiFID II.

For many investors specialised "call centres" are not an adequate alternative to the telephone investment advice. Many investors, especially smaller ones, prefer to seek advice on their personally familiar face and to be able to directly and/or immediately give their orders to them.

Moreover, we want to point out that the recording requirements in respect to telephone conversations and electronic communications in article 16 (7) MiFID II are not in line with the data protection regulations, as to both the client´s and the advisor´s data. In this context we refer to the actual jurisdiction of the European Court of Justice with regard to data retention (inter alia Digital Rights Ireland (C-293-12) and Seitlinger (C-594/12)), the E-Privacy Directive 2002/58/EC and the Data Protection Directive 95/46/EC (particularly article 2h and 7a). Contrary to the statement in par. 15 of the ESMA Consultation Paper regarding privacy matters it would be impossible for investment firms to fulfil both, the data protection and the MiFID obligations. The recording of telephone conversations may harm directly the protection of individuals with regard to their personal data. Incidentally, in the opinion of the European Data Protection Supervisor (EDPS) - published 25 May 2012 – similar concerns were expressed. Until now, these concerns do not seem to have been addressed.
<ESMA_QUESTION_13>

## 2.7. Product governance

**Q14: Should the proposed distributor requirements apply in the case of distribution of products (e.g. shares and bonds as well as over-the-counter (OTC) products) available on the primary market or should they also apply to distribution of products on the secondary market (e.g. freely tradable shares and bonds)? Please state the reason for your answer.**

<ESMA_QUESTION_14>
Yes, the European Association of Co-operative Banks (EACB)[5] considers that the proposed distributor requirements should only apply on the primary market.

As a preliminary remark we would like to note that the term "investment product" is not defined. We advocate that the scope of the proposed product governance rules is limited to financial instruments. To our knowledge, EBA has competence over structured deposits and not ESMA.

In our point of view, the product governance requirements can only apply to financial instruments that are actively promoted by the distributor, i.e. only when the distributor is putting forward a financial instrument through a concrete activity with the purpose to persuade the client to order the financial instrument. On the one hand, this understanding results from the wording "for sale to clients" in Article 24 (2) MiFID II. If the Level 1 legislator would have intended to apply the product governance requirements to every form of enabling the client to order a financial instrument, the term "for sale to clients" would simply be unnecessary. On the contrary, we assume that by adding the term "for sale to clients" the Level 1 legislator wanted to express that not every form of enabling the client to order a financial instrument would fall within the product governance obligations. On the other hand, regarding article 16 (3) (6) MiFID II, limiting the scope of the financial instruments that can be ordered and providing the client with the technical and organisational means to order these financial instruments does not constitute an "offer" or a "recommendation".

Again, we consider that the product governance requirements should be limited to the primary market. An extension of the product governance responsibilities to the distribution in the secondary market would lead to higher costs and higher legal risks in the distribution of financial instruments. We understand that in most cases there are not direct distribution relationships and links between the plurality manufacturers and distributor in secondary capital markets. The construction of such a communication network is virtually impossible, given the enormous variety of products and distributors. To limit the effects of such a product governance obligation, the distribution would have to limit its product range significantly. The consequence would be that investors would no longer obtain from their financial institution a selection of financial instruments and the objective of open architecture would be undermined. This limitation of the available products would also be detrimental to investors, because (i) their portfolio would not be sufficiently diversified (ii) they could not sufficiently cover their risks, (iii) they would lose greater earnings potential and (iv) they would lose revenue opportunities. Having said that, we consider that an extension of the product governance obligations to the secondary market would run counter to the interest of investors.

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In addition the importance of the secondary market for companies should also be taken into account. The requirements should not be too stringent in order to allow market participants of all segments to participate and trade in these markets.
<ESMA_QUESTION_14>

**Q15: When products are manufactured by non-MiFID firms or third country firms and public information is not available, should there be a requirement for a written agreement under which the manufacturer must provide all relevant product information to the distributor?**

<ESMA_QUESTION_15>
No. There should be no obligation for a written agreement between the distributor and the non-MiFID or third country manufacturer. Such a commitment would result to a situation that the distributor works with less manufacturers and consequently would limit the bandwidth of financial instruments available to investors and again the objective of open architecture would be undermined.
<ESMA_QUESTION_15>

**Q16: Do you think it would be useful to require distributors to periodically inform the manufacturer about their experience with the product? If yes, in what circumstances and what specific information could be provided by the distributor?**

<ESMA_QUESTION_16>
No, we do not consider such a legal requirement necessary. The establishment of permanent communication channels to all manufacturers whose products are offered would be associated with considerable technical effort and costs. In order to keep such costs low, the distributor would limit its cooperation to as few manufacturers as possible. Consequently the range of selection of the financial instruments available to investors would be reduced significantly to their detriment. Indeed, a periodic information requirement of the distributor towards the manufacturer would run counter to the idea of an "open architecture".

Furthermore, such information obligation would have no added value, since the manufacturer is already obliged to monitor its financial instruments continuously. Because of his expertise, he can better monitor and assess the development of a financial instrument than the distributor. The distributor could potentially only report to the manufacturer its sales of certain financial instruments but these data are already known to the manufacturer.

Finally, it should be avoided that the distributor would be required to disclose to the manufacturer client related information, in order to protect the privacy of the clients and other commercial sensitive information the distributor may dispose of.
<ESMA_QUESTION_16>

**Q17: What appropriate action do you think manufacturers can take if they become aware that products are not sold as envisaged (e.g. if the product is being widely sold to clients outside of the product's target market)?**

<ESMA_QUESTION_17>
We do not consider that the manufacturer should be obliged to take specific measures, nor that any such measures should be specifically prescribed. The manufacturer designs a product having in mind a specific target market. However, depending on the case, there may be very good reasons that an investor buys a financial instrument which the manufacturer primarily assumes that it is not generally suitable for the target market to which the investor belongs. These reasons could for example relate to the portfolio composition of the investor, the knowledge and experience of the investor, the need for risk hedging etc. Otherwise, the purpose of the suitability assessment would be invalidated. The manufacturer cannot know the reasons and thus can not judge whether a particular financial instrument is suitable for an individual investor. For this reason, the manufacturer cannot assess and cannot be required to take certain measures in relation to the acquisition of a financial instrument.
<ESMA_QUESTION_17>

**Q18: What appropriate action do you think distributors can take, if they become aware of any event that could materially affect the potential risk to the identified target market (e.g. if the distributor has mis-judged the target market for a specific product)?**

<ESMA_QUESTION_18>
Again here, we do not consider that the distributor should be obliged to take specific actions, nor that any such actions should be specifically prescribed. It is the manufacturer who is responsible for determining a target market and not the distributor.

The distributor can only recommend its clients those products that are suitable for them, taking also into account the risks associated with the product. If the distributor judges that a product does not suit an investor due to the risks associated with it, the distribution can not recommend this product to investors. Further measures or obligations of the distributor are not required.

In case of execution-only the intermediary does not know the risk-bearing capacity/ risk willingness of the investor. The investor informs himself and makes his own decisions without involving the bank. Since, in this case, the distributor does not know and cannot evaluate the grounds of the investors decision it shall not be required to take any action. Moreover, in the case of execution- only the intermediary usually cannot evaluate which events could potentially impact the target market. The manufacturer alone can assess the risks arising from the product and according to the product governance requirements that apply to the manufacturer he is also obliged to do so.
<ESMA_QUESTION_18>

**Q19: Do you consider that there is sufficient clarity regarding the requirements of investment firms when acting as manufacturers, distributors or both? If not, please provide details of how such requirements should interact with each other.**

<ESMA_QUESTION_19>
With regard to the target market, we note that the manufacturer may establish abstract criteria for determining a potential target market, but he can not judge due to the lack of direct customer relationship, whether a particular product is suitable for an individual investor or not. Because of customer contact, this can only be judged by the distributor. Again, we note that suitability assessments demand that investment firms screen their clients, one-by-one, on an individual basis and relating to their individual circumstances and characteristics. The individual client situation (objectives, knowledge, experience and financial situation) is relevant to verify whether a financial instrument is suitable for him/her. A financial instrument may, for example, appear to be suitable for an investor due to the composition of his/hers portfolio even if the manufacturer does not in principle recommend the specific product for the target market to which the investor belongs. A different approach would lead – from the client's perspective – to unjustified restrictions in the products offered to him/her. Indeed, an investor - depending on which target group s/he has been identified with - would be systematically cut off from certain products, but which in a particular situation could very well be appropriate for him/her. Moreover, such a cutting off would not at all coincide with the principle of best advice. On the contrary, an individual offer of product, depending on the client's personal situation is, in our view, the only way leading towards the aim of best advice.

Also where no investment advice or portfolio management is provided, the individual client situation is also relevant, as the investment firm has to assess whether the envisaged investment order is appropriate for the client with respect to his knowledge and experience. In many cases the manufacturers do not even have contact with the investors and are therefore hardly in a position to establish target groups.

It is therefore very important that the distributor is not hindered by the potential target market the manufacturer has in mind to offer the product to an investor if such product is suitable for the client due to his/her individual situation. A clarification in the technical advice would be very helpful here.

Consequently, the obligation of the manufacturer to determine the groups of investors, not suitable for a product (**draft technical advice No 17**) should be omitted. A positive determination of potential target market is an adequate indication for which target market the product can be suitable.

We insistently ask ESMA to include a clarification into its technical advice to the European Commission that by specifying the identified target market the manufacturers in no case are required to use those criteria that are criteria for the suitability test pursuant article 25 (2) MiFID II, i. e. (objectives, knowledge, experience and financial situation). The general responsibility assignments between the manufacturer and the distributor have to be accommodated. In this context, we explicitly welcome that with respect to the manufacturers 'requirements ESMA accepts an identification of the relevant type(s) of clients "on a theoretical basis" (footnote 34).

As already stated above, the determination of the potential target market should only be done in terms of a non-binding indication to the distributor by the manufacturer, and be made exclusively on the basis of mainly product-related criteria. With this in mind, we would like to point out that also in the European Parliament legislative resolution of 15 April 2014 on the proposal for a regulation of the European Parliament and of the Council on key information documents for packaged retail and insurance based investment products (PRIIPs) (COM(2012)0352 – C7-0179/2012 – 2012/0169(COD)) a requirement to indicate a target market is included.. Article 8 (3) (b) iii requires that the KID contains a description of the consumer type to whom the PRIIP is intended to be marketed, in particular in terms of the ability to bear investment loss and the investment horizon; article 8 (3) (c) (i) requires a brief description of the risk-reward profile. We are of the opinion that in respect to these duties of manufacturers a harmonized approach is mandatory. The regulatory purpose of the aforementioned MiFID and PRIIPs requirements is the same. Therefore differing implementations on Level 2 would not make any sense. To achieve a harmonized approach, we propose that in its advice to the European Commission, ESMA includes a statement that by fulfilling the aforementioned PRIIPs requirements also the MiFID requirements of manufacturers to define and indicate a target market are fulfilled.

Moreover, it is unclear how these requirements apply outside the EU (extra-territoriality) when one or both of the parties are not subject to these requirements. ESMA should clarify how the requirements would work with a non-EU distributor or manufacturer.
<ESMA_QUESTION_19>

**Q20: Are there any other product governance requirements not mentioned in this paper that you consider important and should be considered? If yes, please set out these additional requirements.**

<ESMA_QUESTION_20>
No, we do not consider that any additional product governance requirements are necessary. However, we would propose some clarifications:

It should be made clear that it is still possible for clients to order products outside a target market in the case of advice-free services. Admittedly, the MiFID provisions allow the possibility that also in the case an investment firm has assessed a financial instrument as not appropriate for a client and has warned the client accordingly, the client can nevertheless proceed with the transaction.

Moreover, we understand that draft technical advice No 2 means that if appropriate procedures and measures are in place (eg. appropriate Chinese Walls) to ensure the design of the product complies with the requirements relating to the proper management of conflicts of interest, there is not a conflicts of interest obstacle for the introduction of a product enabling the firm to mitigate and/or dispose of its own risks or exposure to the underlying assets of the product, where the investment firm already holds the underlying assets on own account.

On a general note, we are of the opinion that it may contribute to the efficiency of the product governance process and consequently help to mitigate the costs if the product manufacturers and distributors are authorized to review certain categories of financial instruments having a similar product design and product features in a bundled manner.
<ESMA_QUESTION_20>

**Q21: For investment firms responding to this consultation, what costs would you incur in order to meet these requirements, either as distributors or manufacturers?**

<ESMA_QUESTION_21>
It is necessary to reach a reasonable balance between the need to foster investor protection and the material costs generated by the adoption of the new measures.

With particular reference the obligations of manufacturers to undertake a scenario analysis of the product and to consider the structure of costs (points 9 and 10 of the draft technical advice), we would like to point out that this analysis is not required by Prospectus Directive. Therefore, we question whether it is appropriate to introduce this especially for instruments with no complex structures. Should ESMA con-firm an opposite approach, we suggests to clarify that these obligations should only apply in case of particular structured products with a high risk profile, as provided in the recent ESMA opinion on "Structured Retail Products – Good practices for product governance arrangements" .
<ESMA_QUESTION_21>

## 2.8. Safeguarding of client assets

**Q22: Do you agree with the proposal for investment firms to establish and maintain a client assets oversight function?**

<ESMA_QUESTION_22>
The European Association of Co-operative Banks (EACB)[6] would ask ESMA to clarify that it is not necessary for a "single officer" to assume this role nor to create an entirely new function. Every departmental or division manager is responsible for ensuring that the tasks entrusted to their business unit are carried out in a correct and orderly manner. And if custody services are outsourced to a specialist firm, it will be responsible for ensuring all obligations are met. This is sufficient to ensure that business is conducted in a correct and orderly way and thus that client assets are adequately protected.

We note that Article 16 of MiFID II stipulates that an investment firm should "make adequate arrangements to safeguard client rights". The text does not mandate an establishment of an entirely new function.

In the first place establishment of a new function would add regulatory burden and personnel costs especially for smaller firms In general the client asset protection regime is already robust and based on strong segregation arrangements. Taken into account the nature, scale and complexity requirement of a separate officer would be clearly disproportionate. On the other requiring only bigger firms to have this functionality might create unlevel playing field.

[6] The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.
For further details, please visit www.eacb.coop

As already noted above, we consider that this issue is in general already adequately handled by other departments of the investment firms, including compliance. It is very good, though, that point 2 in the draft technical advice allows investment firms to decide the arrangements with regards to proportionality. Otherwise the requirement to appoint a single officer would be too broad and costly. However, safeguarding of client assets in the proposed manner might prove difficult in third countries. Further, a possible improvement of point 2 would be to replace ”the compliance officer” with ”the relevant compliance officer(-s) (or the compliance function)” etc., thus taking into account that several persons may be involved, not least as back-up.

In addition, we note that there are extra safeguards already in place. We refer to the article 20 of the implementing directive MIFID (2006/73/ EC) which already requires annual reports of external auditors of the adequacy of the firm’s arrangements with regard to safeguard client assets.
<ESMA_QUESTION_22>

**Q23: What would be the cost implications of establishing and maintaining a function with specific responsibility for matters relating to the firm’s compliance with its obligations regarding the safeguarding of client instruments and funds?**

<ESMA_QUESTION_23>
Even in a small bank, where the tasks of this new “single officer” would be assumed by one person only, the average overall cost of establishing and maintaining a separate compliance function for the safeguarding of client assets could be estimated at around 100,000 and 150,000 euros per year. Given that the treatment of client assets is normally scrutinised during the audit of a firm’s annual accounts, we do not consider it necessary to have a separate compliance function or staff unit together, possibly, with support staff and infrastructure. For smaller financial institutions, in particular, a separate function along these lines would be disproportionately costly and resource-intensive. Please also refer to our response above in Q 24.
<ESMA_QUESTION_23>

**Q24: Do you think that the examples in this chapter constitute an inappropriate use of TTCA? If not, why not? Are there any other examples of inappropriate use of or features of inappropriate use of TTCA?**

<ESMA_QUESTION_24>
In general, the EACB agrees that the examples ESMA provides in its draft technical advice constitute an inappropriate use of TTCAs and would like to point out that such practices in many countries also constitute a breach of civil law.

We would, however, welcome clarification that appropriateness only needs to be considered and demonstrated in the context of loan collateralisation and that the draft technical advice will not apply to the use of standard master agreements (such as the Global Master Repurchase Agreement, European Master Agreements or German master agreements) because the protection of clients is already adequately ensured in these cases. The example described **in draft technical advice No. 3iii**, in particular, can only occur in cases referring to the client’s entire business relationship with the investment firm.

We would also like to point out that TTCAs are mainly used in transactions which are not typical loan agreements. In the Financial Collateral Directive (FCD), the term “title transfer collateral arrangement” is defined as explicitly including repos (Article 2(1)(b) of the FCD). In the money market, repos are concluded with the express purpose of avoiding high-risk, uncollateralised business and in the interests of financial stability. There is always a strong connection in transactions of this kind between the value of the instrument serving as financial collateral and the purchasing price paid for it (**draft technical advice No. 3i).** There is also a close connection between the value of the claims of the client and of the investment firm **(draft technical advice No. 3ii).** The situation with securities collateral under a securities lending transaction is comparable.

We note that, given regulatory developments in the areas of clearing obligations and haircuts on financial collateral, the possibility that the application of the draft technical advice may cause problems in the future cannot be ruled out. Future regulatory requirements could, for instance, impose haircuts on financial collateral, which would make it difficult to apply draft technical advice No. 3ii. Any resulting legal uncertainty would have disastrous consequences for liquidity management and the collateralisation of derivatives. For this reason too, the draft technical advice should not apply to TTCAs concluded in the context of repos or standardised credit support annexes for securities lending or derivatives transactions. This applies all the more since professional clients are invariably aware that, when transferring an asset, they receive a contractual claim to the delivery of an asset of the same type and quality and that this claim can be netted against other claims in the event of the counterparty's default (close-out netting). The transfer of title to the financial collateral is consciously intended to enable the counterparty to reuse the collateral (e.g. for funding purposes).

The concern underlying Article 16(10) of MiFID II, namely that the use of a TTCA can place clients at a disadvantage and wrongly leave their assets unprotected, is not relevant for repos or for fulfilling margin requirements.

Finally, we would like to note that, contrary to what is stated in para. 14, TTCAs are not used in the course of re-hypothecation in prime brokerage. Instead, a security financial collateral arrangement as defined in Article 2(1)(c) of the FCD will normally be concluded in such cases. By contrast, both EMIR and the clearing terms and conditions of central counterparties (CCPs) make it mandatory to use TTCAs when carrying out repos and posting collateral.
<ESMA_QUESTION_24>

**Q25: Do you agree with the proposal to clarify that the use of TTCA is not a freely available option for avoiding the protections required under MiFID? Do you agree with the proposal to place high-level requirements on firms to consider the appropriateness of TTCA? Should risk disclosures be required in this area? Please explain your answer. If not, why not?**

<ESMA_QUESTION_25>
The TTCA is an important instrument for efficient use of collateral and financing. Especially with regard to non-retail clients, the investment firm should be free to use a TTCA (contract freedom).

A typical situation with profession clients is normally the following: A TTCA, i.e. the transfer of financial collateral, is normally agreed in the course of a repo or when collateralising a derivatives or securities lending contract – that is to say in the direct context of collateralising a specific liability. It is essential that TTCAs remain a freely available option in such cases and uncertainty should by no means be generated about whether the provision of collateral will be legally effective. The same should apply if the parties to an agreement consciously choose a TTCA as the most appropriate mechanism for their particular purposes. Otherwise, an incalculable risk to financial stability will arise.

Furthermore, TTCAs are not always agreed only between a client and a custodian; they may be agreed with any counterparty. If the counterparty does not happen to be the custodian of the financial collateral, the custodian will merely receive an instruction to transfer the assets in question to another party. The custodian will not normally know that this instruction was triggered by a TTCA agreed between its client and a third party. In consequence, the custodian will not be in a position to consider the appropriateness of the underlying TTCA and ESMA's technical advice should not require it to do so. In addition, we consider it superfluous to highlight the risks involved since (professional) clients who consciously agree to a transfer of title are well aware that they will lose ownership of the assets and obtain a contractual claim to their return in exchange. A requirement to explain the risks involved would be an unnecessary formality; it would not deliver any additional benefit but only cause uncertainty as to the possible legal consequences of a violation.
<ESMA_QUESTION_25>

**Q26: Do you agree with the proposal to require a reasonable link between the client's obligation and the financial instruments or funds subject to TTCA?**

<ESMA_QUESTION_26>
TTCAs are usually used in connection with repos and credit support annexes for derivatives or securities lending contracts. In such cases, there is invariably a reasonable link between the client's obligation and the financial instruments or funds subject to the TTCA. If a TTCA is used as collateral for a loan, in most countries civil law requires a reasonable link between the collateral and the collateralised loan. We do not consider it necessary to introduce additional prudential restrictions.
<ESMA_QUESTION_26>

**Q27: Do you already make any assessment of the suitability of TTCAs? If not, would you need to change any processes to meet such a requirement, and if so, what would be the cost implications of doing so?**

<ESMA_QUESTION_27>
In general, the TTCAs used in the course of repos and derivatives or securities lending transactions may always be considered suitable for the client. This is because contractual provisions in the relevant standard master agreements are designed to protect the interests of all the contractual parties.

We would also like to point out that the use of TTCAs may also become necessary or be prescribed by the Eurosystem in the context of the TARGET2-Securities project.
<ESMA_QUESTION_27>

**Q28: Are any further measures needed to ensure that the transactions envisaged under Article 19 of the MiFID Implementing Directive remain possible in light of the ban on concluding TTCAs with retail clients in Article 16(10) of MiFID II?**

<ESMA_QUESTION_28>
No, no further measures are required. However, we would welcome clarification that securities financing transactions (SFTs) will not be affected by the ban in Article 16(10) of MiFID II if the transfer of the securities is the primary obligation under the agreement between the client and investment firm. This is the case with securities lending arrangements, in particular.

Contrary to what is stated in paras 22 and 23 of chapter 2.8, the execution of a securities lending arrangement in the EU always requires the transfer of title to the securities – not just "in certain jurisdictions". The purpose is to enable the borrower to use the securities, which it does not itself hold and has therefore borrowed, as if it were the owner – i.e. to exercise the associated rights or use the securities to meet its own delivery obligations.

The "alternative legal mechanism" referred to in para. 23 is strongly reminiscent of the US civil law system of securities entitlements, under which investors do not have ownership of their securities, but only a contractual claim vis-à-vis the investment firm. A transfer to title may naturally be dispensed with in a system of this kind. But under continental European law, the legal position of the client is stronger at the outset because clients can acquire ownership of a security and not just a contractual claim against the custodian. Prudential requirements based on the US legal system – even if limited to the handling of securities lending arrangements – would not be workable under continental European law. We do not agree with ESMA's conclusions in paras 22 and 23 and consider them totally unrealistic.

It should also continue to be possible to conclude securities lending arrangements with retail clients, especially when their purpose is not to collateralise a retail loan. In this case, they do not even constitute a TTCA. Securities lending arrangements are often concluded with existing shareholders in connection with underwriting and placement and these shareholders may sometimes by retail investors. More commonly known as greenshoe options, these arrangements are an indispensable element of the stabilisation strategies investment firms need to implement and are expressly endorsed by Regulation (EU) No. 596/2014 on market abuse (MAR) and Commission Regulation (EC) No 2273/2003 implementing Directive 2003/6/EC (Market Abuse Implementing Regulation).
<ESMA_QUESTION_28>

**Q29: Do you agree with the proposal to require firms to adopt specific arrangements to take appropriate collateral, monitor and maintain its appropriateness in respect of securities financing transactions?**

<ESMA_QUESTION_29>
We consider that it is essential to clarify that **draft technical advice No. 7** only applies where the investment firm is itself a party to, or is acting as an agent in, a securities financing transaction. Otherwise, investment firms will not be in a position to fulfil the proposed requirements: If the investment firm is neither a party nor an agent, but is merely processing a transaction agreed between the client and a third party, the firm will have no influence on the details of the transaction. In most cases it will not even be aware that such a transaction has been agreed, but will only receive an instruction to transfer the securities. Moreover, we consider that this requirement is not necessary for non-retail clients, since there are used to these transactions and are aware of the relevant risk.
<ESMA_QUESTION_29>

**Q30: Is it suitable to place collateral, monitoring and maintaining measures on firms in respect of retail clients only, or should these be extended to all classes of client?**

<ESMA_QUESTION_30>
Master agreements for securities financing transactions generally require collateral to be provided or a cash adjustment to be made. Exceptions to this rule should nevertheless remain possible in legitimate circumstances, e.g. if alternative measures have been taken or if the client expressly desires otherwise. The important point is that the protection of the client is ensured.
<ESMA_QUESTION_30>

**Q31: Do you already take collateral against securities financing transactions and monitor its appropriateness on an on-going basis? If not, what would be the cost of developing and maintaining such arrangements?**

<ESMA_QUESTION_31>
Please refer to our response to Q 30.
<ESMA_QUESTION_31>

**Q32: Do you agree that investment firms should evidence the express prior consent of non-retail clients to the use of their financial instruments as they are currently required to do so for retail clients clearly, in writing or in a legally equivalent alternative means, and affirmatively executed by the client? Are there any cost implications?**

<ESMA_QUESTION_32>
Securities financing transactions between professional and eligible counterparties are normally governed by the Master agreements which are commonly used. This includes the signing of such master agreements. There is no needed for extra regulation with regard to signing by professional and eligible counterparties.
Moreover, we would like to raise our concerns with regard to the expression "affirmatively executed by the client" which will be alien to a number of European legal regimes. We consider that most continental European legal systems are unfamiliar with the concept, which is rooted in the Anglo-Saxon legal tradition. Notwithstanding the fact that such additional requirement is not necessary in our view, member states could at most be given an option to require a declaration of consent in a form over and above "express prior consent … recorded in writing or in a legally equivalent alternative means."
<ESMA_QUESTION_32>

**Q33: Do you anticipate any additional costs in order to comply with the requirements proposed in relation to securities financing transactions and collateralisation? If yes, please provide details.**

<ESMA_QUESTION_33>

There will be extra costs and additional administrative burden, the exact amount of which can not be estimated for the moment. We consider that at least a cost/ benefit analysis should be made before these kind of requirements are introduced.
<ESMA_QUESTION_33>

**Q34: Do you think that it is proportionate to require investment firms to consider diversification of client funds as part of the due diligence requirements when depositing client funds? If not, why? What other measures could achieve a similar objective?**

<ESMA_QUESTION_34>
No. It is a basic and fundamental understanding that cash can be safely deposited with a bank. The (new) banking supervision and capital requirements must be adequate. This is touching upon the basic trust in our banking system and its core functioning.

We understand that the term "funds" refers only to cash, not to securities. This distinction is also reflected in Articles 17 and 18 of the MiFID Implementing Directive, which differentiates between "depositing client financial instruments" (Article 17) and "depositing client funds" (Article 18).

We note that, this proposed requirement of diversification of funds is limited to investment firms not being credit institutions. If this requirement were to be applicable on banks it would undermine the basic functioning of the banking system.
<ESMA_QUESTION_34>

**Q35: Are there any cost implications to investment firms when considering diversification as part of due diligence requirements?**

<ESMA_QUESTION_35>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_35>

**Q36: Where an investment firm deposits client funds at a third party that is within its own group, should an intra-group deposit limit be imposed? If yes, would imposing an intra-group deposit limit of 20% in respect of client funds be proportionate? If not, what other percentage could be proportionate? What other measures could achieve similar objectives? What is the rationale for this percentage?**

<ESMA_QUESTION_36>
No. Again, we stress that it is a basic and fundamental understanding that cash can be safely deposited with a bank. The (new) banking supervision and capital requirements must be adequate. Please refer to our response to Q34.
<ESMA_QUESTION_36>

**Q37: Are there any situations that would justify exempting an investment firm from such a rule restricting intra-group deposits in respect of client funds, for example, when other safeguards are in place?**

<ESMA_QUESTION_37>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_37>

**Q38: Do you place any client funds in a credit institution within your group? If so, what proportion of the total?**

<ESMA_QUESTION_38>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_38>

**Q39: What would be the cost implications for investment firms of diversifying holdings away from a group credit institution?**

<ESMA_QUESTION_39>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_39>

**Q40: What would be the impact of restricting investment firms in respect of the proportion of funds they could deposit at affiliated credit institutions? Could there be any unintended consequences?**

<ESMA_QUESTION_40>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_40>

**Q41: What would be the cost implications to credit institutions if investment firms were limited in respect of depositing client funds at credit institutions in the same group?**

<ESMA_QUESTION_41>
Again, we note that it is a basic and fundamental understanding that cash can be safely deposited with a bank.
In any case, if such a ratio was to be introduced, we note that depending on the agreed ratio and the ability to gain additional client funds from external investment firms, there might be a significant opportunity cost in terms of lost revenues for the credit institution and significant operational cost implications for the implementation and maintenance of the required monitoring process for the investment firm. Each investment firms client funds deposits with third parties decreases the benefit of the credit institution and hence the benefit for its clients (bid/ ask spread remains with the credit institution in case of intra-group client funds deposits).
<ESMA_QUESTION_41>

**Q42: Do you agree with the proposal to prevent firms from agreeing to liens that allow a third party to recover costs from client assets that do not relate to those clients, except where this is required in a particular jurisdiction?**

<ESMA_QUESTION_42>
The scope of the proposed requirement is not totally clear. Where it applies to custody relationships, we consider this requirement appropriate to protect the client.
This should not be confused with cases in which the client consents to grant third parties a lien or other right in respect of the assets although the third party has no claim on the client (the assets' owner). In other words, the lien is granted on the basis of an agreement outside the confines of custodianship. It would therefore be helpful to clarify that **draft technical advice No 13 to 15** refer to the agreements with intermediate custodians on which custodian services are based).Furthermore it is common practice that a lien for third party custody fees relates to all client assets that are held in custody and not specific to assets of a certain client. This is logical in case of omnibus client accounts and there is a relation to those clients, whose assets are held in the account.
<ESMA_QUESTION_42>

**Q43: Do you agree with the proposal to specify specific risk warnings where firms are obliged to agree to wide-ranging liens exposing their clients to the risk?**

<ESMA_QUESTION_43>
Yes, in the framework of a custody relationship. Please refer to our answer in question 42.
<ESMA_QUESTION_43>

**Q44: What would be the one off costs of reviewing third party agreements in the light of an explicit prohibition of such liens, and the on-going costs in respect of risk warnings to clients?**

<ESMA_QUESTION_44>
The initial costs of reviewing these third party agreements would be considerable, driven e.g. by the commissioning of legal advice specific to each jurisdiction. The question is also dependent on the custody structure and length of the custody chain. Some flexibility and a transitional period may be necessary in that regard.
<ESMA_QUESTION_44>

**Q45: Should firms be obliged to record the presence of security interests or other encumbrances over client assets in their own books and records? Are there any reasons why firms might not be able to meet such a requirement? Are there any cost implications of recording these?**

<ESMA_QUESTION_45>
This would only apply to liens and security interests granted to third parties, however. A bank's own liens are not recorded in its books. These liens in favour of the investment firm normally exist for all the firm's claims against the client arising from the banking business relationship. As a consequence, their composition and value are in a state of flux. Imposing such an obligation in this case would become unworkable and very costly.
<ESMA_QUESTION_45>

**Q46: Should the option of 'other equivalent measures' for segregation of client financial instruments only be available in third country jurisdictions where market practice or legal requirements make this necessary?**

<ESMA_QUESTION_46>
No. It would not be appropriate to place restrictions on the "other equivalent measures" option envisaged under Article 16(1)(d) of the MiFID Implementing Directive. Nor would it be appropriate to restrict the application of the option to third countries outside the EU internal market.

Article 16(1)(d) of the MiFID Implementing Directive requires investment firms to "take the necessary steps to ensure that any client financial instruments deposited with a third party [...] are identifiable separately from the financial instruments belonging to the investment firm and from financial instruments belonging to that third party [...]". There is no requirement for mandatory segregation of accounts. Segregation is mentioned only as an example of how to ensure instruments can be identified as belonging to a particular client.

The objective is to protect the instruments in the event of the custodian's insolvency and ensure that they can be returned. If this can be guaranteed through "other equivalent measures", there is no need for segregation. One example of a measure equivalent to segregation might be to allow client assets and the custodian's own assets to be held in the same account, but to instruct the custodian to treat that account as if all the assets held in it were client assets. Whether such a measure may be deemed "equivalent" naturally also depends on the individual circumstances involved and on the legal regime applicable in the place of custody.

The obligation to segregate accounts proposed by ESMA would be incompatible with the future UCITS V Directive and Article 38 of the future CSD Regulation, which expressly allow assets to be held in custody in omnibus accounts. In the case of the CSD Regulation, this applies not only at the level of the CSD itself, but also at the level of its participants and their clients. Further segregation is not prescribed. To avoid a conflict in European law, there should be no restrictions on the options permissible under Article 16(1)(d) of the MiFID Implementing Directive.

Having said that, it is also not necessary to specifically inform clients that "other equivalent measures" are in place because these measures have to "achieve the same level of protection" as that offered by segregated accounts.
<ESMA_QUESTION_46>

**Q47: Should firms be required to develop additional systems to mitigate the risks of 'other equivalent measures' and require specific risk disclosures to clients where a firm must rely on such 'other equivalent measures', where not already covered by the Article 32(4) of the MiFID Implementing Directive?**

<ESMA_QUESTION_47>
No, we do not consider it necessary for firms to have additional systems in place. Article 16(1)(d) of the MiFID Implementing Directive requires measures used as an alternative to segregating accounts to be "equivalent" and "achieve the same level of protection". If these conditions are met, there is no need for the investment firm to take further action. If these conditions are not met, the risk should be disclosed to the client.
<ESMA_QUESTION_47>

**Q48: What would be the on-going costs of making disclosures to clients when relying on 'other equivalent measures'?**

<ESMA_QUESTION_48>
The costs would be high and application cumbersome especially for smaller firms. This in comparison with a very limited added value for the clients. And in the end, the client will have to pay for these extra costs.
<ESMA_QUESTION_48>

**Q49: Should investment firms be required to maintain systems and controls to prevent shortfalls in client accounts and to prevent the use of one client's financial instruments to settle the transactions of another client, including:**

<ESMA_QUESTION_49>
As we understand it, ESMA is concerned that an investment firm might use securities belonging to one client to fulfil another client's delivery obligations vis-à-vis a third party by booking securities out of an omnibus account although the client with the delivery obligations does not have a sufficient number of securities available at the time.

We consider that the measures listed in **draft technical advice No. 18** will only be able to mitigate this concern.

The core obligation of an investment firm is to deliver financial instruments credited to an omnibus account only if there is at the time of delivery sufficient credit of the relevant financial instrument on the individual account of the respective client. For this purpose the account balance of that individual client account has to be checked before clearing the delivery (cf. „i. monitoring systems to ensure the ability to deliver on the settlement date"). If there are not sufficient securities on the individual account of the respective client a delivery may not be executed. Only this rule is relevant for the safeguarding of client assets.
<ESMA_QUESTION_49>

**Q50: Do you already have measures in place that address the proposals in this chapter? What would be the one-off and on-going cost implications of developing systems and controls to address these proposals?**

<ESMA_QUESTION_50>

Yes, adequate measures and close monitoring are already in place to verify whether a sufficient number of instruments is available both on the client's and on the omnibus account and also conduct reconciliations between omnibus and client accounts. Should not enough securities be available to settle a transaction, measures are in place either to ensure that the assets of one client are not used to settle the transaction of another client or to ensure that the shortfall is made up in time or that a cash adjustment is made. We therefore assume there would be no additional cost implications over and above the cost of these existing procedures and systems.

We would nevertheless like to point out that these procedures and systems are designed very differently, first for technical reasons, and second, due to the different specifics involved (trading, custody business, intermediate custodianship, outsourcing, etc.). Should these procedures and systems have to be changed, the cost implications would depend on the sometimes highly complex technical details.
<ESMA_QUESTION_50>

**Q51: Do you agree that requiring firms to hold necessary information in an easily accessible way would reduce uncertainty regarding ownership and delays in returning client financial instruments and funds in the event of an insolvency?**

<ESMA_QUESTION_51>
We believe that the existing recording and record-keeping requirements are sufficient and that additional requirements, such as those listed in **draft technical advice No 19 and 20**, would merely generate legal uncertainty about what additional obligations they might entail. These existing recording and record-keeping requirements fulfil their purpose of ensuring that the staff responsible for safeguarding client assets always have an adequate overview and that all obligations towards clients are satisfied. By virtue of their office, insolvency administrators, national competent authorities and resolution authorities already have full access to all the books and systems of an investment firm as well as the authority to issue binding instructions to the firm's staff. If the investment firm has met its existing recording and record-keeping obligations, insolvency administrators and the relevant authorities will therefore also be in a position to obtain an overview of the situation and satisfy the clients' claims. There is no need for any additional requirements in this area.
<ESMA_QUESTION_51>

**Q52: Do you think the information detailed in the draft technical advice section of this chapter is suitable for including in such a requirement?**

<ESMA_QUESTION_52>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_52>

**Q53: Do you already maintain the information listed in a way that would be easily accessible on request by a competent person, either before or after insolvency? What would be the cost of maintaining such information in a way that is easily accessible to an insolvency practitioner in the event of firm failure?**

<ESMA_QUESTION_53>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_53>

## 2.9. Conflicts of interest

**Q54: Should investment firms be required to assess and periodically review - at least annually - the conflicts of interest policy established, taking all appropriate measures to address any deficiencies? Please also state the reason for your answer.**

<ESMA_QUESTION_54>
The European Association of Co-operative Banks (EACB)[7] notes that a similar requirement already exists today and refers to Article 6 (2) MiFID Implementing Directive. The compliance function is responsible to monitor and regularly assess the adequacy and effectiveness of the measures and procedures put in place by the firm under MiFID. This includes monitoring and assessing the conflicts of interest policy established. Moreover, ESMA itself notes that this is the normal business practice (par. 10). The EACB therefore sees no need for further regulation or formalisation.
<ESMA_QUESTION_54>

**Q55: Do you consider that additional situations to those identified in Article 21 of the MiFID Implementing Directive should be mentioned in the measures implementing MiFID II? Please explain your rationale for any additional suggestions.**

<ESMA_QUESTION_55>
Under Article 22 (2) MiFID Implementing Directive, investment firms must identify all circumstances which constitute or may give rise to a conflict of interest. Whilst the examples in Article 21 MiFID Implementing Directive provide a flavour on circumstances in which a conflict may be potentially detrimental to a client, to include further additional situations may lead investment firms to place too much reliance on the situations described and not force them to consider further circumstances where conflicts may arise.
Therefore, the EACB would not favour complementing the list.

If, however, ESMA decides to enrich the list of situations, we suggest to delete the following points from **draft technical advice No. 3**:

- the disclosure shall clearly state that the organisational and administrative arrangements established by the investment firm to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the client will be prevented;
- investment firms to include within the disclosure a description of the risks to the client that arise as a result of the conflict.

This information is not required by MiFID II and would make it difficult to provide a clear, comprehensible and brief document.
<ESMA_QUESTION_55>

**Q56: Do you consider that the distinction between investment research and marketing communications drawn in Article 24 of the MiFID Implementing Directive is sufficient and sufficiently clear? If not, please suggest any improvements to the existing framework and the rationale for your proposals.**

<ESMA_QUESTION_56>
The EACB would propose to maintain Article 24 of the MiFID implementing Directive un-changed
<ESMA_QUESTION_56>

[7] The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.
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**Q57: Do you consider that the additional organisational requirements listed in Article 25 of the MiFID Implementing Directive and addressed to firms producing and disseminating investment research are sufficient to properly regulate the specificities of these activities and to protect the objectivity and independence of financial analysts and of the investment research they produce? If not, please suggest any improvements to the existing framework and the rationale for your proposals.**

<ESMA_QUESTION_57>
The EACB considers the existing regulations and therefore Article 25 of the MiFID Implementing Directive effective and appropriate. Shortcomings in this area do not exist. Article 25 of the MiFID Implementing Directive should therefore be maintained unchanged.
<ESMA_QUESTION_57>

## 2.10. Underwriting and placing – conflicts of interest and provision of information to clients

**Q58: Are there additional details or requirements you believe should be included?**

<ESMA_QUESTION_58>
The European Association of Co-operative Banks (EACB)[8] believes that no additional requirements should be included, rather we deem too stringent and even redundant the provisions defined on **draft technical advice Nos 3.i), 5.i), 9 and 10,** because MiFID II already imposes several arrangements for investor protection. These points seem to be disproportionate and we propose to delete them.

Please find below some more detailed comments with regard to different points of the draft technical advice:

- The requirement to identify and explain possible financing alternatives to the client issuer before accepting a placement (point 3.i) would make an advice by the firm mandatory. This is not covered by the Level 1. Such a requirement would not be appropriate since issuers should choose the advisors they want. The client issuer should not be obliged to take an additional, cost-incurring advice by the investment firm to complete a placement. At the same time investment firms cannot be expected to offer such an advice for free. Therefore, investment firms should have the possibility to offer advice-free placements/ financing.

Furthermore, it is not possible to explain to the issuer all potential financing alternatives. This is only possible with a view to financing alternatives offered by the investment firm itself. A clarification on the different financing alternatives offered by the investment firm is carried out by the latter in their own interest.

[8] The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.
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Moreover, the requirement to indicate the transaction costs is also not appropriate. It would be more appropriate to consider the total cost. An indication of this is – even with regard to alternative financing possibilities the investment firm offers – not always possible (due to the prohibition of market abuse and the subsequent prohibition on disclosure of sensitive information) or only after an extensive, to be paid by the issuer, investigation (eg credit analysis to determine a risk-adjusted interest rate).
Therefore, we consider that point 3.i of the draft technical advice should be deleted.

- With regard to **draft technical advice No 3.iv** we consider that the level of disclosure of details of the potential investors before obtaining the mandate should not be stipulated for competitive reasons. In addition, data protection rules would be observed.

- With regard to **draft technical advice No 5** we are concerned that the expression "determines the price" may lead to the wrong assumption that it were the investment firm and not the market that arranges the offering price. We would suggest that ESMA finds a better wording for the relevant point.

- With regard to **draft technical advice No 6** "Investment firms should have in place internal arrangements that prevent placing recommendations from being inappropriately influenced by any existing or future relationships", the reference to "relationships" appears too wide. Therefore, we would propose that ESMA finds a better wording for the relevant point and that the word "future" is deleted.

- With regard to both **draft technical advice No. 12 and No. 14** we are of the opinion that in case adequate Chinese Walls and/or procedures and/or arrangements exist and are maintained it would not be necessary to refrain from so-called self-placements to existing clients. Therefore, we see the necessity for a clarification in draft technical advice No. 14 that an non-engagement is to be understood as a last resort (such as the clarification already included in draft technical advice No. 12).

- With regard **to draft technical advice No 16** , we consider that it does not seem to take into account the legal framework for lending business. It is market practice to agree on the non-disclosure of the information received in the course of the lending mandate and to use it only for the purpose it has been provided for (i.e. granting a loan), making it impossible to simply share sensitive information about a client with other business units or group entities. Last but not least, sharing sensitive information may constitute a breach of market abuse provisions.

- With regard to **draft technical advice No 19** we see the necessity for clarification that an non-engagement in an operation is to be understood as a means of last resort, only to be considered if all other measures are insufficient to manage the conflicts of interest appropriately (such as the clarification included in point 12 of the draft technical advice).

<ESMA_QUESTION_58>

**Q59: Do you consider that investment firms should be required to discuss with the issuer client any hedging strategies they plan to undertake with respect to the offering, including how these strategies may impact the issuer client's interest? If not, please provide your views on possible alternative arrangements. In addition to stabilisation, what other trading strategies might the firm take in connection with the offering that would impact the issuer?**

<ESMA_QUESTION_59>
We don not consider investment firms should be required to discuss with the issuer client any hedging strategies, rather this should be left to the discretion of the investment firm to decide.
<ESMA_QUESTION_59>

**Q60: Have you already put in place organisational arrangements that comply with these requirements?**

<ESMA_QUESTION_60>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_60>

**Q61: How would you need to change your processes to meet the requirements?**

<ESMA_QUESTION_61>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_61>

**Q62: What costs would you incur in order to meet these requirements?**

<ESMA_QUESTION_62>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_62>

## 2.11. Remuneration

**Q63: Do you agree with the definition of the scope of the requirements as proposed? If not, why not?**

<ESMA_QUESTION_63>
The European Association of Co-operative Banks (EACB)[9] does not agree with the definition of the scope of the requirements as proposed.

First of all, we would like to comment on par. 6 Analysis and **draft technical advice No. 1**, which seem to show that ESMA intends to propose further implementing measures on the basis of the ESMA Guidelines on Remuneration policies and practices, only recently published on 3 June 2013. Upgrading ESMA Guidelines to further implementing measures would not be helpful from our point of view, as this would give the impression of a substantive change. We reject a constant adjustment of provisions or guidelines without any factual need.

Concerning the term of "relevant persons" as used in draft technical advice No. 2 we would like to clarify that the definition of "relevant person" under Art. 2 (3) Directive 2006/73/EC – MiFID Implementing Directive is a term of general importance for different provisions of Securities Law and well established (e.g. employee transactions, management of conflicts of interests). For reasons of legal certainty, we prefer this clear definition to the definition used in No. 2 Draft technical advice, which consists of a number of undefined legal concepts, such as "material impact", "directly and indirectly", "that the remuneration of such persons and related incentives may create a conflict of interests of the clients". Furthermore, it mixes up the personal and material scope and is, therefore, not adequate as a definition.
<ESMA_QUESTION_63>

[9] The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.
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**Q64: Do you agree with the proposal with respect to variable remuneration and similar incentives? If not, why not?**

<ESMA_QUESTION_64>
We do not agree with this proposal mainly for two different reasons.

**Draft technical advice No. 6** contrasts with the recently published ESMA Guidelines on Remuneration policies and practices, only recently published 3 June 2013 (in the following: ESMA Guidelines). As far as draft technical advice No. 6 says that "Remuneration and similar incentives may be partly based on commercial criteria, but should be principally based on criteria reflecting compliance with the applicable regulations, the fair treatment of clients and the quality of services provided to clients [...]" the term "principally" could be understood as if quantitative criteria should define less than 50% of the amount of variable remuneration. This would not take adequate account of the commercial necessity of performance-related remuneration. Profitability considerations demand that it be possible to structure staff remuneration flexibly, since wages and salaries have to be paid for out of the profits earned by the firm. These revenue streams do not remain at a constant level. Hence, there is a need for an instrument that allows investment firms to link the remuneration to changes in the revenue situation. Variable remuneration constitutes such an instrument. Generally speaking, investment firms don not differ from other business enterprises. At this juncture, the ESMA proposals "stigmatise" on quite legitimate economic interests i.e. the need for financially viable management.

Furthermore, there is an exclusive focus on the clients' interests. This dilutes the boundary necessary between the work of business enterprises on the one hand (to which investment firms belong) and non-profit organisations/charities on the other hand. The recently published ESMA Guidelines to not require a certain relationship of quantitative and qualitative criteria, but only say that „firms should not only take sales volumes into account" (Annex I para. 18) and "firms should consider qualitative criteria that encourages the relevant persons to act in the best interests of the client" (Annex I para. 19). This is why it is possible to take into account the aforementioned need for a – at least partially – flexible design of employee remuneration when implementing the ESMA Guidelines. To provide a solution and to promote a consistent rule of law we advocate for a wording that does not indicate a certain relationship between quantitative and qualitative criteria.

Finally, the last part of draft technical advice No. 6, which says that „in any event the remuneration structure does not favour the interests of the firm or its staff against the interests of any clients" is misleading. The remuneration structure may reflect a potential conflict of interest but is not itself a suitable instrument for taking client interests into account This is one of the tasks of the remuneration policy(cf. ESMA Guidelines, Annex I para. 7: " On the one hand, remuneration policies and practices should ensure compliance with the conflicts of interest requirements set out in Articles 13(3) and 18 of MiFID; and on the other hand they should also ensure compliance with the conduct of business rules set out in Article 19 of MiFID.". Against this background, we support the last part of draft technical advice No. 6 to be deleted
<ESMA_QUESTION_64>

## 2.12. Fair, clear and not misleading information

**Q65: Do you agree that the information to retail clients should be up-to-date, consistently presented in the same language, and in the same font size in order to be fair, clear and not misleading?**

<ESMA_QUESTION_65>

From the perspective of the European Association of Co-operative Banks (EACB)[10], it does not make sense, for the disclosure requirements to be highly formalised and standardised in level 2 measures for example with regard to use of the common language and the font size of risk disclosure. We note that the implementing measures of Art. 24 (3) MiFID II will cover all kinds of information regardless of the context of the disclosure. Level 2 should draw some substantial lines but their detailed implementation should be allowed to be based on the specificities of each case. It is of great importance that not too excessive requirements are put on investment firms and that the information requirements are proportionately calibrated both in relation to how disclosures shall be made (generic vs. personalized information), their content and to whom ( retail/ non-retail clients) such are addressed.

In connection with point 10 and **draft technical advice No. 2.iv** we agree that there are different standards for print-media and online documents pertaining to the "up-to-date" requirements. But even in online information a differentiation is necessary: While information that is made available via online databases should , in principle, be up to date when it comes to online ready provided information materials to download (e.g. pdf documents) the time-frame for making the necessary adjustments is more flexible. Otherwise, if the care requirements for on-line information are too excessive online information could be significantly reduced in future. Again, for print documents lower requirements are set in order to take adequately into account the time between edition and the provision of the document.

Moreover, the requirement of being up-to-date should not cover an indefinite period of time. For example, such a requirement would not be fit-for-purpose for old products, whose marketing has ceased

Overall, we are against too detailed and extensive provisions in that regard. Too much information could generate an information overload for the clients to their detriment.
<ESMA_QUESTION_65>

**Q66: Do you agree that the information about future performance should be provided under different performance scenarios in order to illustrate the potential functioning of financial instruments?**

<ESMA_QUESTION_66>
We consider that the requirement in point 3 of the **draft technical advice No.3** is not feasible in all cases and should be deleted. Otherwise, it should be clearly stated that it only concerns structured products. There are products, such as certain fixed rate bonds, which are created to be held to maturity and whose value and yield on maturity are independent of the further market development. In these cases, only a single scenario makes sense, namely, the presentation of the fixed repayable amount and the total return until the expiration date of the product. Since this income is independent of the intermediate market developments, the requirement to provide different scenarios for different market developments does not make any sense.

To the extend that performance scenarios are relevant, it should be clarified that the only aim is to illustrate the operation of the product. Exemplary illustrations are a simple and understandable way to serve the information needs of investors. Formalised requirements for their representation are not necessary in that regard.
<ESMA_QUESTION_66>

[10] The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.
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**Q67: Do you agree that the information to professional clients should comply with the proposed conditions in order to be fair, clear and not misleading? Do you consider that the information to professional clients should meet any of the other conditions proposed for retail clients?**

<ESMA_QUESTION_67>
We are not in favor of the proposed schematic extension of -the originally developed for- retail customers requirements to professional clients / eligible counterparties. Such requirements are not appropriate for professional clients / eligible counterparties. Rather, the investment firm should be able to decide on the content, format and frequency of information to professional clients / eligible counterparties on the basis of the individual case, in order to meet the requirement of a fair, clear and not misleading information
<ESMA_QUESTION_67>

## 2.13. Information to clients about investment advice and financial instruments

**Q68: Do you agree with the objective of the above proposals to clarify the distinction between independent and non-independent advice for investors?**

<ESMA_QUESTION_68>
The proposed approach might overload the already extensive information delivered to clients without any added value. In particular the European Association of Co-operative Banks (EACB)[11] would like to put forward the following considerations:

**Draft technical advice No 1** according to which investment firms should explain, "whether and why investment advice could qualify as independent or not and the type and nature of the restrictions that apply" goes to far. On the basis of Level 1 it is sufficient to inform the client whether or not the advice is provided on an independent basis. Moreover, we note that in the case of inducement–based investment advice the disclosure obligations already foresee that the investment firm has to inform the client about "the existence, nature and amount of the payment or benefit (...), or, where the amount can not be ascertained, the method of calculating the amount". We consider that no further information is necessary, especially in the case that the investment firm provides only one kind of investment advice. It cannot be a general obligation for investment firms to explain to each individual client the differences between the basic features of each type of service prior to the provision of any service.

This approach is also supported by **draft technical advice No 2**, which states that "where both types of advice are intended to be proposed or provided to the same client, investment firms should (i) explain the scope of both services to allow investors to understand the differences between them". In this case where the investment firm provides or intends to provide both types of advice to the same client, an explanation of the basic features of the each kind of investment advice makes sense.

[11] The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.
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Furthermore, the requirement to describe "the types of financial instruments considered, the total number of financial instruments and providers analysed per each type of instrument according to the scope of the service " (draft technical advice No 4) goes beyond the requirements at Level 1 and consequently should be deleted.

The same stands for the requirement provided for in **draft technical advice No 5** whereby, in case the range of financial instruments assessed by the investment firm includes the investment firm's own financial instruments or those issued or provided by entities having close links or any other close legal or economic relationship with the investment firm and other issuers or providers, the investment firm should distinguish "for each type of financial instrument, the proportion of the financial instruments issued or provided by entities not having any links with the investment firm". The above information does not allow any conclusion on the quality of the offer or the investment advice and would be not only superfluous but possibly even misleading for the client.

Moreover, we consider that the selection process used by the investment firm is also redundant information for the clients (**draft technical advice No 4).** In any case, It would be adequate that the basis of the selection process is only indicated, providing clients with the opportunity to ask for more in-depth information.
<ESMA_QUESTION_68>

**Q69: Do you agree with the proposal to further specify information provided to clients about financial instruments and their risks?**

<ESMA_QUESTION_69>
No. The implementation of such additional requirements would be possible only by creation of product information sheets. In many cases the client already has available documents, such as in the case of Prospectus, the KID for UCITS and AIF or the soon to be introduced in the context of PRIIPs KID. There-fore, we consider that no additional information requirements should be created.

In particular, the **draft technical advice No.8** obligation laid down to performance data under different market conditions is not feasible in all cases and should at least be limited to structured products. Again as noted in our answer to Q63 is not feasible in all cases and should be deleted. Otherwise, it should be clearly stated that it only concerns structured products. There are products, such as certain fixed rate bonds, which are created to be held to maturity and whose value and yield on maturity are independent of the further market development. In these cases, only a single scenario makes sense, namely, the presentation of the fixed repayable amount and the total return until the expiration date of the product. Since this income is independent of the intermediate market developments, the requirement to provide different scenarios for different market developments does not make any sense.

In general it should be made clear that performance scenarios only aim to illustrate the operation of the product. Exemplary illustrations are a simple and understandable way to serve the information and comprehension needs of investors. Formalised requirements for their representation are not necessary in that regard.
<ESMA_QUESTION_69>

**Q70: Do you consider that, in addition to the information requirements suggested in this CP (including information on investment advice, financial instruments, costs and charges and safeguarding of client assets), further improvements to the information requirements in other areas should be proposed? If yes, please specify, by making reference to existing requirements in the MiFID Implementing directive.**

<ESMA_QUESTION_70>
No. The EACB considers that the existing provisions of the MiFID Implementing Directive are sufficient to ensure appropriate information of clients. In this connection it should also be borne in mind that customers are protected not only by regulatory constraints, but also by civil laws.
<ESMA_QUESTION_70>

## 2.14. Information to clients on costs and charges

**Q71: Do you agree with the proposal to fully apply requirements on information to clients on costs and charges to professional clients and eligible counterparties and to allow these clients to opt-out from the application of these requirements in certain circumstances?**

<ESMA_QUESTION_71>
No. The European Association of Co-operative Banks (EACB)[12] does not agree with this proposal. In our view, the requirements on information to clients on costs and charges should be fully applied to professional clients and eligible counterparties by way of an opt-in clause. Only on specific request by client, an investment firm should be obliged to provide information on costs and charges. This would avoid an overload of information. It should take into account that professional clients and eligible counterparties have the experience, knowledge and expertise to make informed and knowledgeable decisions regarding investments and to properly assess the risks they assume.

Compared to retail clients, professional clients and eligible counterparties have a minor need of protection. The general expansion of the information requirements applicable for retail clients to professional clients and eligible counterparties foreseen in the Consultation Paper would be too far reaching and also would not be in line with the European Commission´s mandate given to ESMA („appropriate modalities to provide such information to professional clients and eligible counterparties“). The general full application of the information requirements applicable for retail clients to professional clients and eligible counterparties would lead to a dilution of the different levels of protection of the different client groups envisaged in Level 1.
<ESMA_QUESTION_71>

**Q72: Do you agree with the scope of the point of sale information requirements?**

<ESMA_QUESTION_72>
No, The EACB does not agree with the scope of the point of sale information requirements. Such a requirement goes beyond Level 1 and is difficult to implement in practice.

Article 24(4)(c) MiFID II requires that the client has to be informed about “the cost of the financial instrument recommended or marketed to the client”. The interpretation proposed by ESMA, which includes a „general recommendation“ and „promoting certain financial instruments” (par. 18) would lead to the consequence that nearly all situations would be covered by this provision. However, from the wording of article 24(4)(c) MiFID II it derives that higher information requirements concerning the costs of financial instruments shall only apply in certain cases. The EACB considers that the words “recommended or marketed” on Level 1 constitute a restrictive criterion that ESMA overlooks in its interpretation going far beyond Level 1.

From article 24(4)(c) MiFID II it derives that that the term “recommended” is to be understood in the sense of the “personal recommendation” as defined in article Art. 4 (para 4) MiFID II. The term “general recommendation” as used in Chapter 2.14, par. 18 is not appropriate to define the scope of application. It should be only used in its original context, which is Annex I, Section B (5).

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[12] The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks’ business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.
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The interpretation of the term “marketed” is also too broad. From the EACB perspective, the scope of application should only cover only cases in which a financial instrument is actively promoted by the distributing investment firm, which means, that the investment firm promotes a financial instrument with concrete means, which primarily aim at persuading customers to purchase a financial instrument (promotional objective). In all other cases the investment firm “passively provides execution of orders services” , namely it does not recommend or market certain financial instruments to the client (par. 20). Otherwise, de facto there would be no situation not covered by the scope of application of this requirement and the restricting criteria “marketed” and recommended would become meaningless.

A reasonable limitation of the scope of application would also be relevant for the clients themselves. Collecting and preparing the necessary information about cost and charges in the manner requested by ESMA would be very burdensome and cost intensive in the global market. Some of the information requirements would be impossible to meet, as the information required by the European legislator concerning e.g. issuers, trading partners and trading venues in case of non-EU-parties would not be accessible/delivered or only in different formats. Consequently, a significant limitation of products and services offered could be the negative consequences to the detriment of clients.

According to par. 22, the costs associated to the provision by other firms of other investment or ancillary services (on top of the costs associated to the services provided by itself) should be disclosed if the investment firm „has directed the client to these firms”. However, such a distinction would be very difficult in practice since in cases in which more than one firm is involved the required information about the costs cannot always be received on time and with an adequate reliability. Investment firms can inform about the costs for the investment and/or ancillary services they provide. On the contrary, third party costs, e.g. custody costs, costs of exchanges or of central securities depositaries and costs regarding financial instruments manufacturers that do not belong to the distributor´s group can only be disclosed by the distributor if there exists a legal basis or if the third parties inform the investment firm about these costs. Only in this case it would be possible for the investment firm to inform the client about the third party costs. A further information duty would impede the offer of financial instruments in the European Market essentially. Through this the investment possibilities for the client would be limited and/ or made more expensive with the respective negative consequences for the client.

Furthermore, the EACB stresses that third-party inducements are not costs. It seems as if ESMA wants to justify the excessive “ex-post”- and “on-going”-disclosure requirement proposed in the CP, by subsuming inducements under the regulations on information to clients on costs and charges (where such disclosure requirements are expressly regulated in the Level 1-Directive). Thus, ESMA advises the Commission (page 104 “2. 14. Information to clients on costs and charges”, para 26) that third party payments received by investment firms should be regarded as part of the cost of the service. This has to be rejected, as there is no indication in the Level 1-Directive that could justify such an assumption. Having provided two different sets of provisions with regard to disclosure requirements (Article 24 para 4 with regard to costs and charges and Article 24 para 9 with regard to inducements (fees, commissions and other monetary benefits), it seems clear, that the Level 1-Directive clearly distinguishes in this point between costs and charges on the one hand and inducements on the other hand. Furthermore, if inducements were to be considered as part of the cost of the service, the Level 1-Directive could have implemented this by either mentioning this instance in article 24 (4) MiFID II or by inserting a cross-reference to article 24 (4) MiFID II in article 24 (9) MiFID II. Therefore, mixing both circumstances would go beyond the text of the MiFID II. Notwithstanding the above, concerning the requirement that „third party payments received by investment firms“ under article 24 (9) MiFID II in future should be regarded as being costs of the service (par. 24-27, cf.51, Draft technical advice No. 6), the EACB also wants to raise its concerns with regard to the wording of par. 51, according to which „...the investment firm should also provide an explanation about the nature of this amount in a comprehensive, accurate and understandable manner“. This wording leads to excessive requirements concerning the presentation and should therefore be deleted. Especially, it would create the misleading impression that the distributing investment firm would be obliged to a separate “cost advice” along with the real service. The EACB suggests to clarify that it is sufficient that the amount is indicated as a third party payment.

Also non-monetary inducements are no costs – contrary to par. 52 – and, therefore, should not be indicated as such in the costs information with respect to the financial instrument, regardless of whether they are of a significant value or not. Non-monetary benefits should only be treated as inducements in the context of a potential conflict of interest. From the perspective of the overall cost burden they are not relevant to the client.

Concerning **draft technical advice No 13** „in good time before the provision of the investment and/or ancillary service" it needs to be clarified that in the case of an investment advice, the disclosure of the information has to be done before the placing of the order an not, as provided in draft technical advice 13, before delivery of the investment and/or ancillary service. Regarding the costs of the financial instrument recommended, the requirement foreseen in draft technical advice 13 would not be feasible because the selection and the recommendation of the financial instrument suitable for the client takes place during the provision of the service.
<ESMA_QUESTION_72>

**Q73: Do you agree that post-sale information should be provided where the investment firm has established a continuing relationship with the client?**

<ESMA_QUESTION_73>
No. The term „continuing relationship" is too vague with the consequence that hardly any „one-off" investment services would be identified as such. In the EACB´s view, a „continuing relationship" would only be appropriate in the case of a special contractual agreement between the investment firm and the client including a permanent investment service relationship. This contractual agreement must explicitly include an obligation to give post-sale information. In particular, the EACB would like to point out that in its view, a continuing relationship relating to investment advice does not exist when the client is keeping a custody account and a bank account at the investment firm that is giving investment advice to him or when the client is opening an actively used trading account. Otherwise, any „one-off" investment advice to the client could be erroneously be interpreted as an „continuing relationship".

The proposal that an on-going payment by a third party should automatically lead to an on-going, at least once a year information requirement on an individual basis (par. 34) is too far-reaching. In our view, such a requirement neither derives from the Level 1 text nor from the mandate given to ESMA by the European Commission. Also a post-sale information requirement for the case that the investment firm was unable to ascertain on an ex-ante basis the amount of the payments or benefits it was to receive (par. 34) is from our point of view too far-reaching
<ESMA_QUESTION_73>

**Q74: Do you agree with the proposed costs and charges to be disclosed to clients, as listed in the Annex to this chapter? If not please state your reasons, including describing any other cost or charges that should be included.**

<ESMA_QUESTION_74>
The EACB would recommend that the disclosure of the costs of the product should only be regulated in the context of the regulation of the European Parliament and of the Council on key information documents for packaged retail and insurance based investment products (PRIIPs) (COM(2012)0352 – C7-0179/2012 – 2012/0169(COD)) and not in the context of MiFID Level 2, because in PRIIPs the manufacturers´ duties will be regulated and for systematic and practical reasons MiFID and PRIIPs may not diverge. A harmonized approach is necessary. This way, a clear and for the client comprehensible separation between the costs for the product on the one hand and the costs fort he transaction on the other hand will be achieved.

Investment firms can inform about their costs for their investment and/or ancillary services. On the contrary, third party costs, e.g. costs of exchanges or of central securities depositories and costs regarding financial instruments manufacturers that do not belong to the distributor´s group can only be disclosed by the distributor if there exists a respective legally basis or if the third parties inform the investment firm about these costs.

Only in this case it would be possible for the investment firm to inform the client about the third party costs. A further information duty would impede the offer of financial instruments in the European Market essentially. Through this the investment possibilities for the client would be limited and/ or made more expensive with the respective negative consequences for the client.
<ESMA_QUESTION_74>

**Q75: Do you agree that the point of sale information on costs and charges could be provided on a generic basis? If not, please explain your response.**

<ESMA_QUESTION_75>
Yes, we agree that this information can be provided on a generic basis.
The concept of a provision of the information on a generic basis is an important means in making a proper implementation possible. It derives from the Level 1 text and in particular from article 24 (4) MiFID which explicitly states that „appropriate information" shall be provided.
<ESMA_QUESTION_75>

**Q76: Do you have any other comments on the methodology for calculating the point of sale figures?**

<ESMA_QUESTION_76>
At first, the EACB wants to point to its explicit agreement in its comments on Q75 to the concept of an disclosure on a generic basis. The possibility to do the disclosure on a generic basis should not be invalidated by a requirement to express the real costs and charges in one single figure, which includes the costs of the financial instrument and of the investment and/or ancillary service (par. 39, **draft technical advice No 12**). An addition of the two cost is not necessary. Also, the EACB insistently opposes the requirement in draft technical advice 12/ par. 39 that the real costs should be disclosed in one single figure, both, as a cash amount and as a percentage.

Giving the information in a standardized manner should also be expressly permitted because it increases the comparability and the comprehensibility oft he information.

The draft advice states that "The methodology for calculating ex-ante cost figures should be based on the principle that the investment firm should use actually incurred costs as a proxy for the expected costs and charges. If actual costs are not available, the investment firm should make reasonable estimations of these costs" . This proposal could generate a very high impact for small banks, because it wouldn't be able to calculate/estimate case by case the impact of the aggregated costs and charges and they would be forced to resort to third parties.
<ESMA_QUESTION_76>

**Q77: Do you have any comments on the requirements around illustrating the cumulative effect of costs and charges?**

<ESMA_QUESTION_77>
In the view of EACB it is very important that working with exemplary calculations on the basis of assumptions regarding the client's behavior and the composition of the client´s portfolio is permitted. Otherwise, an implementation would only be possible with a very significant technical effort and with an even more increasing standardization of the business pro-cesses. Furthermore, to achieve the goal pursued by the information according to MiFID, an information in an exemplary manner is sufficient. Giving the information in a standardized manner should also be expressly permitted because it increases the comparability and the comprehensibility oft he information. Generally, the return achieved with the financial instrument is not known ex ante because it depends on the uncertain future performance. Moreover, the costs may depend on developments in future. Hence, an information how costs can affect the return, is only possible in an abstract manner.

The EACB asks ESMA to abstain from the requirement to illustrate „anticipated spikes or fluctuations" because such a requirement would lead to an increase of the complexity of the information and would boost the necessary technical effort even more.

Furthermore, the EACB cannot understand why and in which way an ex-post illustration of the cost scenario should be made (par. 59). The wording of the requirements on Level 1 shows undoubtedly that it is an ex-ante illustration at the point of sale which has to be done and that an ex-post illustration should only be done in exceptional cases (see. „...where applicable" within the meaning of article 24 (4) (c) SUB-PARA 2 of MiFID)."

This proposal could have a significant impact for small banks, because they wouldn't be able to calculate/estimate case by case the impact of the aggregated costs and charges and they would be forced to resort to third parties. We believe that cumulative effect should be provided only when investment firm has recommended financial instruments and it has a continuing relationship with the client meaning that the investment firm provides an ongoing assessment.
<ESMA_QUESTION_77>

**Q78: What costs would you incur in order to meet these requirements?**

<ESMA_QUESTION_78>
Today, appropriate cost estimates are not yet possible because the numerous requirements with respect to the implementation are still unclear and the costs will depend on the scope and the level of detail of the relevant requirements. At large, we estimate that the amount of costs will be very significant.
<ESMA_QUESTION_78>

## 2.15. The legitimacy of inducements to be paid to/by a third person

**Q79: Do you agree with the proposed exhaustive list of minor non-monetary benefits that are acceptable? Should any other benefits be included on the list? If so, please explain.**

<ESMA_QUESTION_79>
The European Association of Co-operative Banks (EACB)[13] disagrees both with the concept of elaborating an exhaustive list of minor non-monetary benefits as well as with extending this list to all kind of investment and ancillary services as proposed by ESMA.

With the basis of an exhaustive list it would be impossible to respond to the changing needs of the economic and business environment, as well as to changing customer requirements (e.g. different new financial products). It might very well be that there will be a future need of other non-monetary benefits. Technical and technological support, such as specialized software, could be an example to explain that the possibilities and needs in the market concerning minor non-monetary benefits are changing all the time. Therefore, we would prefer the more flexible concept of using or abstract criteria or examples which meet the conditions for acceptable minor non-monetary benefits.

[13] The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.
For further details, please visit www.eacb.coop

We further stress that there is no legal basis on Level 1 for ESMA to extend any kind of list of minor non-monetary benefits to all kind of investment and ancillary services. Art. 24(7)(b) and 24(8) MiFID II state that minor non-monetary benefits under certain circumstances are exempted from the ban of receiving inducements for investment advice on an independent basis and for portfolio management. There is no such exemption for all other investment and ancillary services, as for this kind of investment service MiFID II provides no ban on inducements[14]. This is why the basic situation of investment advice on an independent basis and of portfolio management on the one hand already differs from the one hand and all other investment and ancillary services ( including inducement-based investment advice, execution-only etc.) on the other hand. Therefore, from two exceptions it cannot be assumed that there should be a general rule for all kind of investment services and ancillary services. An extension on all kinds of investment and ancillary services would lead to the assumption that these minor non-monetary benefits that are not on the list are not acceptable. This would mean a restriction that is not foreseen on Level 1 for other kinds of investment and ancillary services but only for independent advice and for portfolio management.

Concerning the second part of the question whether other benefits should be included in the list, we would like to repeat that we disagree with the elaboration of an exhaustive list. However, in any case, we believe that besides the possibility to offer food and beverages in the context of business meetings, conferences, seminars or other trainings, also accommodation costs and travel costs – where appropriate and proportionate - should also be seen as permissible non-monetary benefits. In practice, investment instruments are distributed on a geographically broad basis and thus investment firms – in general – are set up accordingly with local branches. However, the founder of investment products will generally hold business meetings, conferences, seminars or other trainings at its registered seat. Therefore, the acceptance of accommodation and travel costs should be seen as non-monetary benefit.
<ESMA_QUESTION_79>

**Q80: Do you agree with the proposed approach for the disclosure of monetary and non-monetary benefits, in relation to investment services other than portfolio management and advice on an independent basis?**

<ESMA_QUESTION_80>
ESMA proposes that investment firms should disclose certain information ex-post to the provision of services, ex- ante and on an on-going basis. However, with regard to the proposed requirement of ex-post and an on-going disclosure, the CP goes beyond the Level 1-Directive. Such an „ex-post "- and "on-going"-disclosure can by no means be derived from the wording of Article 24 para. 9 ("[…] must be clearly disclosed to the client […] prior to the provision of the relevant investment or ancillary service.").

Furthermore, we cannot see that there is any advantage for the client if he is informed at least once a year about the precise amount of on-going inducements, as the percentage basis had already been communicated to him. To identify a potential conflict of interest it is sufficient to know about the approximate amount that is paid to the intermediary. A yearly information consisting of a to the nearest cent precise amount would mean only additional costs to the intermediary, but no additional value to the client. Finally, providing such a high level of detail for every product / service could lead to a limitation of the range of products and services offered to the client, as well as to raising costs for the client.
<ESMA_QUESTION_80>

[14] The EACB is aware that some Member States have decided to introduce investment service on a national level paid only through fees. Neither EACB nor any of its members in those Member States challenges these national decisions nor their efforts to make these measures legally binding for all investment firms offering or providing investment services in that member state. However, the EACB wants to underline the importance of choice for investment services on a pan-European level.

**Q81: Do you agree with the non-exhaustive list of circumstances and situations that NCAs should consider in determining when the quality enhancement test is not met? If not, please explain and provide examples of circumstances and situations where you believe the enhancement test is met. Should any other circumstances and/or situations be included in the list? If so, please explain.**

<ESMA_QUESTION_81>
The EACB fully disagrees with the elaboration of a non-exhaustive list of circumstances and situations that NCAs should consider in determining when the quality enhancement test is not met.

In particular, the EACB would like to emphasise that the technical advice of ESMA on the circumstances and situations that should be considered with regards to the quality enhancement tests go beyond the Level 1 Directive. The Level 1 Directive does not provide for a general prohibition on accepting and retaining fees, commissions or other monetary benefits with regard to investment services other than independent investment advice or portfolio management[15].

The draft technical advice by ESMA translates into a “de-facto”-ban of inducements, as the criteria proposed are too strict and, therefore, makes it almost impossible to justify inducements received respectively paid in connection with the provision of an investment or ancillary service as being quality enhancing.

This may have a big impact on the 'banking distributing' business model of co-operative banks, and not only in some 'niche' activities such as portfolio management and/ or 'independent' advice. This possible impact on the distributing activities could be bigger for cooperative networks whose costs, service to customers, and structure is different from other European banking models.

Indeed, co-operative banks have a dense network of small regional and local banks and branches that allow physical proximity and local presence in rural and remote areas. Indicatively, the EACB refers to the EU structural financial indicators published on the ECB website[16] (see Annex No1- table 1) which provide an overview of the branches and employees of domestic credit institutions. When comparing these figures with the corresponding data for only co-operative banks (Annex No2- also available at EACB website under “key statistics”[17]) it becomes obvious that co-operative banks typically have a higher branch density than other banks. Using 2012 as the reference year, we want to highlight that the total number of the branches in the EU amounts to 217.699, whereas the total number of branches for co-operative banks amounts to 70.967. Out of the total number of 38.359 branches of credit institutions in France, 25.621 are branches of co-operative banks. In Germany, the total number of branches of credit institutions amounts to 36.239, while the number of branches of the co-operative banks corresponds to 13.211. In Austria, the total number of branches of credit institutions amounts to 4.460, while the number of branches of co-operative banks corresponds to 2.283. This indicates that more than 30% of the total number of branches belongs to a co-operative banking network. The above also apply to regional and local independent cooperative banks. Indicatively, using again 2012 as reference year, we note that in Austria the number of local banks amounts to more than 500, while in Germany there are 1101 local banks and in Italy 494 (see Annex No2 above). The situation is similar when comparing the number of employees. At the same time, the average market share of co-operative banks is around 20 %. This reflects the fact that cooperative banks serve small and local communities.

[15] Again, the EACB notes that it is aware that some Member States have decided to introduce investment service on a national level paid only through fees. Neither EACB nor any of its members in those Member States challenges these national decisions nor their efforts to make these measures legally binding for all investment firms offering or providing investment services in that member state. However, the EACB wants to underline the importance of choice for investment services on a pan-European level.

[16] Available at ECB: http://sdw.ecb.europa.eu/reports.do?node=1000002869

[17] http://www.eacb.coop/en/cooperative_banks/key_figures/last_key_figures.html

The existence of such networks, that allows co-operative banks to be (more) accessible to their clients even in remote and less populated areas and to spend more time in person with them, is of added value to the clients and increases the quality of investment services. Having said that, it is clear that in many cases these inducements are important for certain banks to be able to provide investment services to their clients and without receiving such inducements they would not be incentivised to and maintain such networks and provide such investment services.

At the same time, due to fact that maximisation of profit is not the primary goal for co-operative banks and the fact that in most cases clients being members of the bank are also owners of the bank, the risk of conflicts of interest is minimised if not annulled.

Having said that, we wish to make the following observations:

- <u>It was the legislator's choice that both inducement based investment advice and independent advice can be offered to clients and to impose a ban on inducements only for independent advice and portfolio management and not on all other investment and ancillary services (such as inducement-based investment advice, execution-only etc.):</u>

  Even if ESMA's interpretation might be covered by the mandate of the European Commission, it is not covered by the choice of the European legislator not to impose a total ban on inducements, but to allow inducements under certain circumstances to be paid for any kind of investment and ancillary services apart from portfolio management and independent advice. In this context, the legislator decided that customers should themselves decide which kind of investment advice they prefer (inducement-based advice or independent advice). There is no competence for ESMA and / or the European Commission to put a question on this recent legislative choice.

  Furthermore, the legislator's choice was a result of deep discussions, in particular in the European Parliament, so the legislator had been aware also of the critics raised, especially against inducement-based investment advice. Nevertheless, the legislator did not give rise to strengthen the current MiFID requirements for inducement-based advice. Recital 74 states to strengthen the protection of investors, but is referring only to investment advice on an independent basis and on portfolio management, but not to other kinds of investment and ancillary services. This is why the Consultation Paper is just reflecting ESMA's opinion, when ESMA states that the current rules should be improved in order to enhance investor protection .

- <u>Inducement-based investment advice vs. independent advice / economic advantages of inducement-based investment advice:</u>

  The approach followed by ESMA would in practice create two classes of citizens: those that can afford to take advice on how to invest and therefore, for example, effectively provide for their retirement savings; and those who cannot. In this context, it is useful to have a look on the development in UK, where a (national) ban on inducements is in force since 2013. A simple research on the website of a number of British banks shows that advise is not available below a certain threshold (for investments below £25.000 or £100.000). As a consequence, many banks have withdrawn from advising all kinds of retail clients and do focus on wealthy clients. Furthermore, it can be read that the number of advisors has decreased of 40%.

  Financial instruments constitute a very significant building block in balanced asset growth. Inducement-based investment advice offered to all social classes can - scientifically recognised - claim to convince even the less well-off of the necessity of saving and financial foresight. This point of view is of fundamental economic significance.

  Furthermore, investment advice based on inducements guarantees the provision of qualified investment advice on a country-wide basis, hence in addition to urban also to rural areas. It is of fundamental economic importance, particularly in times of demographic change, to maintain the provision of qualified advice for all groups of investors everywhere.

Finally, the type of payment is no indication of the quality of investment advice. Contrary to what is often conveyed to the public, fee-based investment advice (introduced by MiFID II as "independent investment advice"), too, is open to possible conflicts of interest: above all to advise someone as long and as often as possible in order to achieve as high a fee as possible. Irrespective of the type of payment for investment advice, current law already requires that client interests be respected when giving investment advice (Art. 19 para. 4 MiFID I). The recommendation given to the client must therefore already now be in line with investment objectives, attitude to risk, knowledge and experience and financial situation of the individual client.

A limitation of the range of products to some standard products would be a very possible consequence of ESMA's approach, which might would be to the detriment of clients.

- Limitation of the quality enhancement test is not objectively justified

The quality enhancement requirement does not lead to strengthen the potential conflict of interest underlying inducement-based investment services, but reduces it. Because the quality enhancement requirement significates that the inducements the intermediary receives are bound to a certain purpose, which is enhancing the quality of investment services, so that the intermediary cannot freely dispose of them. As profit-orientated enterprises necessarily do have less interest in such kind of revenue, the conflict of interest potentiality is, in the end, reduced by the quality enhancement requirement. This is why the quality enhancement test was not at all subject of the discussions concerning the fundamental revision of MiFID I.

**Concerning the second part of Q81**, instead of a list of circumstances and situations in which the quality enhancement test is not met (negative list), we advocate for a non-exhaustive list of examples which meet the quality enhancement test (positive list). Indicatively, we refer to the example of Germany. Since 2013 the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin) provides a positive list for inducements that meet the quality enhancement test (AT 8.2 Circular 4/2010 (WA) - Minimum Requirements for the Compliance Function and Additional Requirements Governing Rules of Conduct, Organisation and Transparency pursuant to Sections 31 et seq. of the Securities Trading Act (Wertpapierhandelsgesetz - WpHG) for Investment Services Enterprises), which we see as a good example . The national experience shows, that the current quality enhancement test is a suitable instrument of investor protection.

Concerning **draft technical advice No. 10 (i) and (ii)** we would like to note that inducements under the current MiFID regime already are designed to maintain and further develop high-quality investment services, which only favours investors. The provision that inducements have to be designed to maintain and to further develop high-quality investment services also means that measures that, for example, secure the high-quality of investment advice are quality-enhancing. This is why securing high-quality from our point of view should be recognised explicitly as a form of quality-enhancement.

With regards to **draft technical advice No. 10 (ii)** the proposal of ESMA that a fee, commission or non-monetary benefit that does not provide for an additional or higher quality service above the regulatory requirements does not meet the quality enhancement test, is also contradictory: it would mean that the fulfilment of disclosure provisions could, on the one hand, under certain circumstances be an acceptable minor non-monetary benefit, but on the other hand would not meet the quality enhancement test.

**Draft Technical advice No. 10 (iv)** creates an additional requirement for on-going inducements, which would in practice mean a ban on on-going inducements, which goes beyond Level 1. We would like to point out that a fee structure that is to a significant extent based on on-going payments may in particular be beneficial for investors who have limited funds to invest. This is demonstrated in the case of inducement based investment advice: Since this group of investors, especially in markets where such fee schemes are well established, will generally be unable and/or unwilling to pay a high direct up-front fee for investment advice, fees based on on-going payments, that are in effect paid out of revenue generated by the investment itself, will provide them with the possibility of receiving quality investment advice and making suitable investments. Also, the total amount of fees based on on-going payments that is charged to an investor during the term of his investment is not necessarily higher than one-off fees since its calculation is based on the average (and recommended) term of an investment in the respective product. Finally, an investment firm that receives part of its fees based on ongoing payments has no incentive to churn the portfolio of the investor in order to receive additional up-front fees but is rather incentivized to build a long-term, loyal relationship with its client, since a significant portion of its fees will only be received over time and based on the performance of the portfolio and hence on investor satisfaction. Therefore, such a fee system generally has a stabilizing effect on the markets. The assumption that ongoing payments are more lucrative cannot be approved. Many financial products are generally purchased with a long-term investment horizon. If the investor is informed of this type of payment and accepts it, he has made an informed decision. Consequently, the risk compared to one-off payments is not higher. The fees paid up front are no longer available for the investment and thus play no role in any value development in favour of the client. In contrast to this, the ongoing fee elements are only successively withdrawn from the investment volume invested for the investor, so that these amounts can play a role in the value development, at least until the point of withdrawal.

Moreover, as a general remark we would like to note the following:

**A "de facto"-ban would lead to a pure fee-based advice and would limit the existence of dense network of small regional banks and branches that offer investment services.This is (i) not in the interest of the clients and (ii) a barrier for competitive und dynamic markets for the following reasons:**

- **Investment decision is complex:** The decision for the appropriate investment is very complex, investment advice is vital especially for retail clients. However, a "de-facto"-ban may lead to a two-class-investor-system: Those investors being able to afford investment advice and those not being able to afford investment advice.
- **Inducements favour small investors:** In the case of provision-based advice the client does not pay ex-ante fees. Therefore, it is much more likely that the investor will seek for advice (even from different advisors) and the probability of suitable investment decisions is much higher compared to situations where the investor pays an advisory fee (fee-based system).
- **Less invested money:** A fee-based system focus on wealthy investors and exclude retail investors (in particular small investors or savers) from access to any level of assistance in their search for an appropriate investment product. Thus, retail investors would – if at all – invest less. In the current low interest rate environment such development would be particularly disadvantageous for clients.
- **Importance of intermediaries:** Another area of concern with the "de-facto"-ban of inducements is that it completely ignores the value of financial intermediaries for both, the client receiving investment advice and the investment firm taking advantage of a wider distribution. Inducements are vital for financial intermediaries.
- **Distortion of competition:** A ban of monetary inducements would favour large investment firms with their own in-house distribution units, because it is not necessary for them to pay inducements. **For the decentralized banking sector the flow of payments between banks is even more important than for centrally organized financial institutions.**
- **Level playing field:** A "de-facto"-ban of inducements would result in grave competitive disadvantages for investment products compared to the distribution of insurance products and saving accounts.

<ESMA_QUESTION_81>

**Q82: Do you anticipate any additional costs in order to comply with the requirements proposed in this chapter? If yes, please provide details.**

<ESMA_QUESTION_82>
The costs depend on the concrete measures that have to be taken to comply with the proposed requirements. On the current basis, it is not possible to anticipate any costs in a reliable manner.
<ESMA_QUESTION_82>

## 2.16. Investment advice on independent basis

**Q83: Do you agree with the approach proposed in the technical advice above in order to ensure investment firm's compliance with the obligation to assess a sufficient range of financial instruments available on the market? If not, please explain your reasons and provide for alternative or additional criteria.**

<ESMA_QUESTION_83>
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<ESMA_QUESTION_83>

**Q84: What type of organisational requirements should firms have in place (e.g. degree of separation, procedures, controls) when they provide both independent and non-independent advice?**

<ESMA_QUESTION_84>
The European Association of Co-operative Banks (EACB)[18] welcomes the objective of permitting investment firms to offer both inducement-based investment advice and independent investment advice. However, we have reservations concerning draft technical advice No. 4iii, which provides that both services and advisers should be strictly separated from one another. The strict separation of advisers who provide one or the other type of advice( "… not [to] allow a relevant person to provide both independent and non-independent advice" ) would be very difficult to implement especially for small and medium-sized firms. Indeed, small and medium-sized firms which do not have the resources to satisfy this requirement, would be forced into an "either/or" decision.

We note that all investment advisors irrespective of the type of advice that offer will need to have the same skills and knowledge. At the same time and depending on the advice offered advisers will need to comply with the relevant requirements. The client will be informed whether the advice is provided 1) on an independent basis or not and 2) "whether the advice is based on a broad or more restricted analysis of different types of financial instruments" (Article 24(4) of MiFID II). Article Article 24(7) of MiFID II provides further requirements in case investment advice is provided on an independent basis including specific information obligations and a ban on inducements. Based on the above, we consider that information requirements are the key elements and organisational requirements should be limited to procedures and internal control.

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[18] The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.
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At least, we would propose the introduction of a *de minimis* rule which would permit advisers (natural persons) at small and medium-sized investment firms to offer both types of investment advice provided that arrangements are in place to ensure that all parties are perfectly aware of the type of investment advice provided (independent or non-independent) and that all the regulatory requirements relating to this type of advice are complied with. The same *de minimis* rule should apply to small branches of investment firms. We consider that it is of high importance to allow independent investment advice to be offered in remote rural areas and to all social classes. A *de minimis* rule would by no means undermine the purpose or objective of the proposed requirements since it would always have to be made absolutely clear to the client what type of investment advice he/she is offered.

Moreover, we consider that draft technical advice No. 4i which requires clients to be provided with information "in a durable medium" is excessive. The objective of this information requirement would also be fulfilled by verbally advising the clients in advance of the type of investment advice provided and documenting this fact in the minutes which are later made available to them.
<ESMA_QUESTION_84>

**Q85: Do you anticipate any additional costs in order to comply with the requirements proposed in this chapter? If yes, please provide details.**

<ESMA_QUESTION_85>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_85>

## 2.17. Suitability

**Q86: Do you agree that the existing suitability requirements included in Article 35 of the MiFID Implementing Directive should be expanded to cover points discussed in the draft technical advice of this chapter?**

<ESMA_QUESTION_86>
No, the European Association of Co-operative Banks (EACB)[19] does not agree. Two of the requirements introduced in the draft technical advice namely (a)"... and that they assess whether alternative financial instruments, less complex or with lower costs, could meet their client's profile " in draft technical advice point 1 (iii) and (b) "when recommending a financial instrument to a client, investment firms should assess whether an alternative instrument, less complex and with lower costs, would better meet the client's profile" in draft technical advice point 1 (ix), imply that investment form should not simply provide the customer with a suitable product but rather with the most suitable financial instrument for him. Of course this requirement goes well beyond the requirements at Level 1, according to an investment f firm should recommended the client not with the most suitable product, but rather a suitable product (Art. 25 (2) MiFID II). We strictly reject such a requirement should.

[19] The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.
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Notwithstanding the fact that it would be virtually impossible for an investment firm to identify the most suitable financial instrument for the client, we would like to note that the greater complexity and the higher cost of a product cannot preclude the suitability of a product, since the suitability is determined also on the basis of additional criteria to cost and complexity. If the customer is not able to understand the complexity of a product, this product is not suitable for him/her. However, if he/she can he understand the complexity, then a comparable less complex product fulfil his/hers profile to the same extent, but not better. The same applies to the cost structure.

"Less complex" is also a vague term. Whether a product is "less complex" than another, whether the costs at the end of the term are higher or not can ultimately be seen at the end of the term. However, in the context of the suitability test only an ex- ante approach is appropriate and feasible.

An "explanation of the disadvantage of the recommended course of action" (**draft technical advice No 2(iii)**) does not have an added- value or sense for the customer. The risk does not derive from the investment advice and the respective recommended course of action, but rather from the financial instrument itself, the risk resides not stop investment advice, but rather the financial instrument. The obligation under draft technical advice No 2 (iii) should be rejected.

With regard to the **draft technical advice No 3**, we do not see a reason to impose such a generalised obligation, especially since this could imply that the originally given investment advice has not been suitable for the customer.
<ESMA_QUESTION_86>

**Q87: Are there any other areas where MiFID Implementing Directive requirements covering the suitability assessment should be updated, improved or revised based on your experiences under MiFID since it was originally implemented?**

<ESMA_QUESTION_87>
No.
<ESMA_QUESTION_87>

**Q88: What is your view on the proposals for the content of suitability reports? Are there additional details or requirements you believe should be included, especially to ensure suitability reports are sufficiently 'personalised' to have added value for the client, drawing on any initiatives in national markets?**

<ESMA_QUESTION_88>
We do not consider that further details and requirements are necessary.
We would like to note that the "ability to bear losses" is already part of the "financial situation", while the "risk tolerance" is inherently part of the "investment objectives". The scope and content of the suitability reports should be limited to what is necessary. More information does not mean better information. To the contrary, the more information the customer receives , the less attention he is able to devote to them.
<ESMA_QUESTION_88>

**Q89: Do you agree that periodic suitability reports would only need to cover any changes in the instruments and/or circumstances of the client rather than repeating information which is unchanged from the first suitability report?**

<ESMA_QUESTION_89>
Yes, again, we should observe the principle that information to the customer is only relevant if it covers new material aspects or changes. A repeated provision of the same information will only have the unintended effect that the client does not take any note of the information.
<ESMA_QUESTION_89>

## 2.18. Appropriateness

**Q90: Do you agree the existing criteria included in Article 38 of the Implementing Directive should be expanded to incorporate the above points, and that an instrument not included explicitly in Article 25(4)(a) of MiFID II would need to meet to be considered non-complex?**

<ESMA_QUESTION_90>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_90>

**Q91: Are there any other areas where the MiFID Implementing Directive requirements covering the appropriateness assessment and conditions for an instrument to be considered non-complex should be updated, improved or revised based on your experiences under MiFID I?**

<ESMA_QUESTION_91>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_91>

## 2.19. Client agreement

**Q92: Do you agree that investment firms should be required to enter into a written (or equivalent) agreement with their professional clients, at least for certain services? If yes, in which circumstances? If no, please state your reason.**

<ESMA_QUESTION_92>
Even though a written agreement pursuant to Art. 39 of the MiFID Implementing Directive may well be standard practice for professional clients, the European Association of Co-operative Banks (EACB)[20] does not see any reason to extend the requirements under Art. 39 of the MiFID Implementing Directive to professional clients. There are no deficiencies in this area. For our fundamental reservations about the planned extension of Article 39 of the MiFID Implementing Directive, please refer to our response to Q93.
<ESMA_QUESTION_92>

**Q93: Do you agree that investment firms should be required to enter into a written (or equivalent) agreement for the provision of investment advice to any client, at least where the investment firm and the client have a continuing business relationship? If not, why not?**

<ESMA_QUESTION_93>

[20] The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.
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First of all, Art. 25 (5) of MiFID II does not set any requirement to enter into contractual agreements, but only a requirement to record such documents. The empowerment in Art. 25 (8) of MiFID II to further specify Art. 25 (5) of MiFID I cannot be used as a means to introduce new obligations since as Level 2 cannot go further than Level 1 (see also Art. 25 (8) of MiFID II in that regard: “The Commission shall be empowered to adopt delegated acts ... to ensure that investment firms comply with the principles set out in paragraphs 2 to 6 of this Article ...”).

Moreover, there are no deficiencies in the area of contractual agreements. This is also evident from the fact that Art. 25 (5) of MiFID II has remained unchanged compared with Art. 19 (7) of MiFID. Changes to the requirements for the provision of investment advice as a result of MiFID II do not justify imposing an obligation to enter into a written agreement for the provision of investment advice.

A requirement to enter into a written (or equivalent) agreement for the provision of investment advice would in fact constitute interference in national civil law. Furthermore, there isn’t any need for contractual arrangements concerning the provision of investment advice, since the duties of investment firms when providing investment advice are specified comprehensively by binding securities supervision law.

The EACB does not support any requirement to enter into a written (or equivalent) agreement for the provision of investment advice.
<ESMA_QUESTION_93>

**Q94: Do you agree that investment firms should be required to enter into a written (or equivalent) agreement for the provision of custody services (safekeeping of financial instruments) to any client? If not, why not?**

<ESMA_QUESTION_94>
For the same reason set above in our response to Q93, the EACB does not support any requirement to enter into a written (or equivalent) agreement for the provision of custody services (safekeeping of financial instruments) to any client.
<ESMA_QUESTION_94>

**Q95: Do you agree that investment firms should be required to describe in the client agreement any advice services, portfolio management services and custody services to be provided? If not, why not?**

<ESMA_QUESTION_95>
We refer to our response to Q93. In our view Art. 39 of the MiFID Implementing Directive should be retained unchanged.
<ESMA_QUESTION_95>

**2.20.**

## 2.20. Reporting to clients

**Q96: Do you agree that the content of reports for professional clients, both for portfolio management and execution of orders, should be aligned to the content applicable for retail clients?**

<ESMA_QUESTION_96>
No. The European Association of Co-operative Banks (EACB)[21] is not of the opinion that the content of reports for professional clients, both for portfolio management and execution of orders, should be generally aligned to the content applicable for retail clients. The majority of the professional clients would not accept that regarding the content of records their individual circumstances would not be respected. With respect to professional clients and eligible counterparties (**draft technical advice No 2**) the individual agreement must be crucial. An alignment of the content of reports for professional clients should only take place when the investment firm and the client agree upon this ("opt-in").
<ESMA_QUESTION_96>

**Q97: Should investment firms providing portfolio management or operating a retail client account that includes leveraged financial instruments or other contingent liability transactions be required to agree on a threshold with retail clients that should at least be equal to 10% (and relevant multiples) of the initial investments (or the value of the investment at the beginning of each year)?**

<ESMA_QUESTION_97>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_97>

**Q98: Do you agree that Article 43 of the MiFID Implementing Directive should be updated to specify that the content of statements is to include the market or estimated value of the financial instruments included in the statement with a clear indication of the fact that the absence of a market price is likely to be indicative of a lack of liquidity?**

<ESMA_QUESTION_98>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_98>

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**Q99: Do you consider that it would be beneficial to clients to not only provide details of those financial instruments that are subject to TTCA at the point in time of the statement, but also details of those financial instruments that have been subject to TTCA during the reporting period?**

<ESMA_QUESTION_99>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_99>

**Q100: What other changes to the MiFID Implementing Directive in relation to reporting to clients should ESMA consider advising the Commission on?**

<ESMA_QUESTION_100>
The EACB strictly opposes an obligation of quarterly reports. In contrary to the statement in the ESMA Consultation Paper, as far as our experience goes quarterly reports are not in line with the clients´ wishes and needs. Clients are less interested in periodic reports than in information about the actual value of the financial instruments they are holding. By visiting the branch of the investment firm or via internet the clients at any time have the possibility to get these information and they make use of it.

Particularly the example given in par. 23 of the ESMA Consultation Paper, the Lehman Brothers collapse, is showing evidently that also a higher frequency of periodic reports would not have been sufficient to inform the clients in an adequate way. Even an immediate information of all clients affected would not have prevented the price loss of the bonds or the insolvency of Lehman Brothers.

A quarterly reporting is not only unnecessary in practice, it would also lead to a needless increase of the costs of the investment service which would have to be born by the clients.

If on request of the clients more frequently reports should be provided „at reasonable commercial cost" (draft technical advice point 7), it is important to point out that this may not affect the investment firm´s pricing right, e.g. by a limitation to the cost price. This should be clarified in the technical ad-vice
<ESMA_QUESTION_100>

## 2.21. Best execution

**Q101: Do you have any additional suggestions to provide clarity of the best execution obligations in MiFID II captured in this section or to further ESMA's objective of facilitating clear disclosures to clients?**

<ESMA_QUESTION_101>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_101>

**Q102: Do your policies and your review procedures already the details proposed in this chapter? If they do not, what would be the implementation and recurring cost of modifying them and distributing the revised policies to your existing clients? Where possible please provide examples of the costs involved.**

<ESMA_QUESTION_102>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_102>

## 2.22. Client order-handling

**Q103: Are you aware of any issues that have emerged with regard to the application of Articles 47, 48 and 49 of the MiFID Implementing Directive? If yes, please specify.**

<ESMA_QUESTION_103>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_103>

## 2.23. Transactions executed with eligible counterparties

**Q104: Do you agree with the proposal not to allow undertakings classified as professional clients on request to be recognised as eligible counterparties?**

<ESMA_QUESTION_104>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_104>

**Q105: For investment firms responding to this consultation, how many clients have you already classified as eligible counterparties using the following approaches under Article 50 of the MiFID Implementing Directive:**

<ESMA_QUESTION_105>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_105>

**Q106: For investment firms responding to this consultation, what costs would you incur in order to meet these requirements?**

<ESMA_QUESTION_106>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_106>

## 2.24. Product intervention

**Q107: Do you agree with the criteria proposed?**

<ESMA_QUESTION_107>
From the viewpoint of the European Association of Co-operative Banks (EACB)[22] compliance function of an investment firm, suitability and appropriateness testing, as well as the new product governance rules should suffice in avoiding dangerous products entering markets. Thus the responsibility of creating a product should lie with the industry and not the regulators. Regulators would oversee these processes in the course of their normal supervisory process. If irregularities are detected, appropriate enforcement action should take place. In this process product intervention powers should be used only as a measure of a very last resort. When the intervention powers are already introduced in other legislative initiatives (benchmarks, MAR, etc.), they should not give rise to additional enforcement actions.
<ESMA_QUESTION_107>

**Q108: Are there any additional criteria that you would suggest adding?**

<ESMA_QUESTION_108>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_108>

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# 3. Transparency

## 3.1. Liquid market for equity and equity-like instruments

**Q109: Do you agree with the liquidity thresholds ESMA proposes for equities? Would you calibrate the thresholds differently? Please provide reasons for your answers.**

<ESMA_QUESTION_109>
No, the European Association of Co-operative Banks (EACB)[23] considers that ESMA approach in setting the liquidity thresholds is wrong. ESMA defines the thresholds with an aim to have a specific percentage of each asset class qualifying as liquid. We understand that ESMA follows this approach in order "to ensure that the policy objective of greater transparency is met" (point 7, page 175 Consultation Paper). We consider that this approach is fundamentally wrong. It is true that increased transparency is a key objective of MiFID 2 and MIFIR. At the same time MiFID 2 and MIFIR foresee that the transparency requirements in non-liquid markets should be lower. This distinction was made because full transparency in illiquid markets entails risks for individual market participants and the market as a whole. In this context MiFID 2 and MIFIR balance market transparency with the risks involved.

Achieving the highest possible level transparency cannot be the sole criterion in assessing and defining whether an asset class is liquid. The decisive question is whether the benefits of transparency outweigh the associated risks for individual market participants or the market as a whole. These risks include in particular the risk that platforms that qualify as SI must continuously provide binding quotes for all customers (Art. 14 (1) MIFIR) and must publish such(Art. 15 (1) MIFIR) without being able to conclude hedging transactions under appropriate circumstances.

The proposed approach contradicts the idea of a balance between the goal of increasing market transparency and the protection of market participants against the associated risks as envisaged in MiFID 2 and MIFIR. We stress that MiFID 2 MIFIR does not assume that a certain percentage of instruments qualifies as liquid in the relevant asset.

This is particularly evident in the setting of thresholds for ETFs. Here ESMA proposes a free float (number of units issued for trading) of only 100 units, a daily number of only 20 transactions and a daily trading volume of only EUR 500,000 for defining the liquid market. In such a market the systematic internalisation would be confronted with unacceptable risks.
<ESMA_QUESTION_109>

**Q110: Do you agree that the free float for depositary receipts should be determined by the number of shares issued in the issuer's home market? Please provide reasons for your answer.**

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<ESMA_QUESTION_110>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_110>

**Q111: Do you agree with the proposal to set the liquidity threshold for depositary receipts at the same level as for shares? Please provide reasons for your answer.**

<ESMA_QUESTION_111>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_111>

**Q112: Do you agree with the liquidity thresholds ESMA proposes for depositary receipts? Would you calibrate the thresholds differently? Please provide reasons for your answers.**

<ESMA_QUESTION_112>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_112>

**Q113: Do you agree that the criterion of free float could be addressed through the number of units issued for trading? If yes, what *de minimis* number of units would you suggest? Is there any other more appropriate measure in your view? Please provide reasons for your answer.**

<ESMA_QUESTION_113>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_113>

**Q114: Based on your experience, do you agree with the preliminary results related to the trading patterns of ETFs? Please provide reasons for your answer.**

<ESMA_QUESTION_114>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_114>

**Q115: Do you agree with the liquidity thresholds ESMA proposes for ETFs? Would you calibrate the thresholds differently? Please provide reasons for your answers, including describing your own role in the market (e.g. market-maker, issuer etc).**

<ESMA_QUESTION_115>
No, as already stated above in Q109, the EACB considers that the approach of ESMA in setting the liquidity thresholds is wrong, since these thresholds seem to be defined with the sole aim to have a specific percentage of financial instruments qualifying as liquid for each asset class, without taking into account the associated risks for individual market participants and the market as a whole. In this context MiFID 2 and MIFIR balance market transparency with the risks involved.

This is especially true for ETFs, where ESMA proposes a free float (number of units issued for trading) of only 100 units, a daily number of only 20 transactions and a daily trading volume of only EUR 500,000 for defining the liquid market. In such a market the systematic internalisation would be associated with unacceptable risks.
<ESMA_QUESTION_115>

**Q116: Can you identify any additional instruments that could be caught by the definition of certificates under Article 2(1)(27) of MiFIR?**

<ESMA_QUESTION_116>

The term "certificates" as envisaged in MIFIR (see reference C.P, page 183 point 28) captures securities whose repayment features (i.e. liability in case of insolvency) lies in between shares and unsecured bonds. Thus -among others- participation certificates, German Genussscheine, subordinated bonds, Tier- 1 bonds, CoCo-Bonds, could potentially be captured under the term "certificates". With respect to the liability of the investor and the dependence of the coupons from the net income of the issuer, these papers are correctly classified as equity-related securities. However, the secondary market for these securities is similar to the secondary market for bonds. Investors hold the papers usually to maturity. There are considerably fewer papers in the secondary market in circulation than in equity. There are no exchange-traded options for these papers, that dealers could employ to carry out arbitrage strategies. Also, this results in a lower degree of liquidity in the secondary market. The price of the securities will not be listed in units, but as a percentage of the notional amount. In most institutions trade books for these securities are devoted to fixed income products rather than shares.
<ESMA_QUESTION_116>

**Q117: Based on your experience, do you agree with the preliminary results related to the trading patterns of certificates? Please provide reasons for your answer.**

<ESMA_QUESTION_117>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_117>

**Q118: Do you agree with the liquidity thresholds ESMA proposes for certificates? Would you calibrate the thresholds differently? Please provide reasons for your answer.**

<ESMA_QUESTION_118>
No, the EACB does not agree. Certificates achieve in corporate finance a quasi-equity function. However, trading in these instruments rather resembles trading in bonds. Therefore, the definition of a liquid market in certificates should follow the methods that are used for the definition of a liquid market in non-equity securities. Although certificates are already allocated to the equity-related instruments in MiFID 2 and MIFIR, but this does not exclude that similar methods do apply in determining the liquidity thresholds as in non-equity securities.

Indeed, as already explained above in Q116, the secondary market for these securities is similar the secondary market for bonds. Investors hold the papers usually to maturity. There are considerably fewer papers in the secondary market in circulation than in equity. There are no exchange-traded options for these papers, that dealers could employ to carry out arbitrage strategies. Also, this results in a lower degree of liquidity in the secondary market. The price of the securities will not be set in units, but as a percentage of the notional amount. In most institutions trade books for these securities are devoted to fixed income products rather than shares.

Therefore, the definition of a liquid market in certificates should follow the methods that are used for the definition of a liquid market in other non-equity securities. Although certificates are already allocated to the equity-related instruments in MiFID 2 and MIFIR, this does not mean that applying similar methods in determining the liquidity thresholds as in non-equity securities are excluded. We would suggest that the rules for these instruments should be based on the rules applicable to non- equity. Having said that the liquidity of such financial instruments to derive the criteria are not from the list of criteria for stocks, but from the list of bonds. Likewise, it is probably more useful in determining whether an investment firm is a SI to follow for “certificates” the same the approach followed for bonds. Similarly, this applies to the thresholds that are set for the exemptions regarding the transparency obligations.
<ESMA_QUESTION_118>

**Q119: Do you agree that the criterion of free float could be addressed through the issuance size? If yes, what *de minimis* issuance size would you suggest? Is there any other more appropriate measure in your view? Please provide reasons for your answer.**

<ESMA_QUESTION_119>

No, we do not agree. As already explained above in Q116, the nature of “Certificates” mainly resembles that of bonds.
Again we stress that, it would be sensible for measuring the liquidity of such financial instruments to derive the criteria are not from the list of criteria for stocks, but from the list of bonds. Likewise, it is probably more useful in determining whether an investment firm is a SI to follow for “certificates” the same approach followed for bonds. Similarly, this applies to the thresholds that are set for the exemptions regarding the transparency obligations.
<ESMA_QUESTION_119>

**Q120: Do you think the discretion permitted to Member States under Article 22(2) of the Commission Regulation to specify additional instruments up to a limit as being liquid should be retained under MiFID II?**

<ESMA_QUESTION_120>
No, this rule should be abolished. It is not apparent what purpose it serves. In particular, the wish of individual states to have a certain number of liquid assets, can not be a reason to deviate from the generally applicable criteria for determining a liquid instrument.
<ESMA_QUESTION_120>

## 3.2. Delineation between bonds, structured finance products and money market instruments

**Q121: Do you agree with ESMA’s assessment concerning financial instruments outside the scope of the MiFIR non-equity transparency obligations?**

<ESMA_QUESTION_121>
In general, yes. The European Association of Co-operative Banks (EACB)[24] agrees that the amortized cost basis and the reference to the short term yield are appropriate methods in determining the value of the money market instruments. The same stands for the criterion of maximum maturity of 397 days. However, even if we consider that the criterion of maxi-mum maturity of 397 days should be the rule, exceptional cases should also be considered. By way of example we refer to repos which represent a market-oriented money market instrument in exceptional cases for a term of up to 2 years. Moreover, we are rather critical against the explicit labelling criterion ("expressly stated as ..."). The lack of such designation cannot result to a disqualification of the instrument as money market instrument despite its unquestionable tradability on the money market.

We do not have any objection against the qualification of asset-backed commercial papers as structured finance products.
<ESMA_QUESTION_121>

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## 3.3. The definition of systematic internaliser

**Q122: For the systematic and frequent criterion, ESMA proposes setting the percentage for the calculation between 0.25% and 0.5%. Within this range, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the threshold should be set at a level outside this range, please specify at what level this should be with justifications.**

<ESMA_QUESTION_122>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_122>

**Q123: Do you support calibrating the threshold for the systematic and frequent criterion on the liquidity of the financial instrument as measured by the number of daily transactions?**

<ESMA_QUESTION_123>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_123>

**Q124: For the substantial criterion, ESMA proposes setting the percentage for the calculation between 15% and 25% of the total turnover in that financial instrument executed by the investment firm on own account or on behalf of clients and between 0.25% and 0.5% of the total turnover in that financial instrument in the Union. Within these ranges, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the thresholds should be set at levels outside these ranges, please specify at what levels these should be with justifications.**

<ESMA_QUESTION_124>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_124>

**Q125: Do you support thresholds based on the turnover (quantity multiplied by price) as opposed to the volume (quantity) of shares traded? Do you agree with the definition of total trading by the investment firm? If not please provide alternatives and reasons for your answer.**

<ESMA_QUESTION_125>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_125>

**Q126: ESMA has calibrated the initial thresholds proposed based on systematic internaliser activity in shares. Do you consider those thresholds adequate for:**

<ESMA_QUESTION_126>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_126>

**Q127: Do you consider a quarterly assessment of systematic internaliser activity as adequate? If not, which assessment period would you propose? Do you consider that one month provides sufficient time for investment firms to establish all the necessary arrangements in order to comply with the systematic internaliser regime?**

<ESMA_QUESTION_127>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_127>

**Q128: For the systematic and frequent criterion, do you agree that the thresholds should be set per asset class? Please provide reasons for your answer. If you consider the thresholds should be set at a more granular level (sub-categories) please provide further detail and justification.**

<ESMA_QUESTION_128>
No, the European Association of Co-operative Banks (EACB)[25] does not agree that the thresholds should be set per asset class. It considers that the best way to assess the thresholds for the systematic and frequent criterion is per ISIN for bonds, structured bonds and securitised securities and per class for derivatives.

As a preliminary remark, we would like to make the following general observations which are also valid for Q128 to 136:

- The design of the pre-and post trade transparency in MiFIR would mean that an investment firm that currently performs OTC transactions with clients in bond and derivative products will in the future have to be classified as SI for a single financial instrument or for a sub-category of financial instruments. This firm runs the risk that other market participants, especially hedge funds and/ or other SI, will be in position to arbitrage on their position, as these will be known due to the transparency requirements. This would produce significantly higher risks for the SI. Firms will not be in position to carry out large scale client order in market-friendly conditions, as it would be known which bonds and risks it has to buy and/ or place on the market. For these additional risks an investment firm may not even have the appropriate risk management processes and the required risk-bearing capacity.

- Taking into account the challenges posed by the classification as SI, we consider that:

  - The criteria should ensure that no investment firm which is not in a position to manage and control the risks involved, is classified as SI. Therefore, a *de minimis* rule should be introduced below which an investment firm shall not be categorised as SI.
  - In addition, an investment firm must be able to manage its trades in certain financial instruments so that it can reliably determine in advance whether it will be categorised as SI in certain financial instruments in a certain period. This implies that the figures for the investment firm shall be sufficiently predictable for the current period.

- Regarding the question whether the thresholds should be defined per asset class or at a more granular level, we would like to note the following:

  - For securitised derivatives the thresholds should be based on the thresholds for bonds. This is mandated by the different characteristics of the secondary market between securitised and non- securitised derivatives. The column derivatives apparently includes securitised title and non-securitised contracts, as suggested by the nomenclature shown in figure 1 on page 107 of the DP. Here a division is absolutely necessary, as contracts and securities can not be compared.

[25] The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.
For further details, please visit www.eacb.coop

- The determination of the thresholds for the systematic and frequent criterion per asset class is fundamentally problematic since the classification as SI takes place per ISIN (see recital 19 MiFIR) and differences between the liquidity of an individual financial instrument and the asset class may be observed. More granularity is therefore necessary to prevent the erroneous classification as SI.

- The criterion of client trading is missing from article 4 (1) (20) MiFID II. Therefore, proprietary trading is to be excluded.

<ESMA_QUESTION_128>

**Q129: With regard to the 'substantial basis' criterion, do you support thresholds based on the turnover (quantity multiplied by price) as opposed to the volume (quantity) of instruments traded. Do you agree with the definition of total trading by the investment firm? If not please provide alternatives and reasons for your answer.**

<ESMA_QUESTION_129>
The proposed criteria for the determination of SI status regarding bonds, SFP, certificates and securitised derivatives the following effects should be considered:

• All four proposed indicators are calculated on the basis of the total number of all OTC transactions concluded by an investment firm in a given period. This would mean that even an investment firm that buys and sells bonds only for own account, for its collateral position or its cash reserve, but does not carry out client orders in bonds, can still be classified as an SI. Similarly, an investment firm could be classified as SI due to its hedge and/or its derivatives operations which it carries in order to manage its liquidity positions. The ratios with regard to the minimum trading frequency should therefore be calculated only on the basis of OTC transactions with the customer. This should also be applied in non-securitised derivative. The limitation to OTC transactions with customers derives from Level 1 (Art. 4 (1) (20) MiFID II).

• The total number of transactions and the total turnover in the EU can only be determined after the introduction of the transaction register. The task of aggregating the transaction register messages would be undertaken either by ESMA or a designated central institution. It is expected that due to the volume of transactions, the number of reporting financial institutions and required quality assurance only a significantly delayed provision of data will be possible. In addition, the total number of transactions and volumes in individual instruments (ISIN) or groups of instruments at EU level is practically unpredictable. Therefore, an investment firm is not in position to assess, on the basis of their turnover, whether it should be classified in the next period as SI or not. This problem would also occur in non-securitized derivatives. This problem could be solved either by allowing waived with respect to total turnover in the EU criterion or by allowing the calculation on the basis of already known total turnover of the previous period.

• The two proposed metrics to determine the frequent and systematic basis are based on the number of transactions. This way, retail transactions with a small volume will be treated the same as wholesale transactions. Since retail transactions are completed on bonds in greater numbers than wholesale transactions, an investment firm could be classified as SI only because of their retail transactions. However, this investment firm would also need to fulfil the SI requirements for its wholesale business.

• The proposed criterion (i) for the "substantial basis", namely the size of the internalisation activity compared to the firm's total trading in a particular financial instrument does not reflect whether an investment firm is an internaliser on "substantial basis". The criterion would not depend on the specification of a threshold and the covers all trades of the investment firm in all financial instruments (almost) exclusively OTC traded. The criterion would be independently of the specification of a threshold and the height of the sales volume surely at all finance instruments fulfils the investment the (almost) exclusively OTC are traded. In addition, the completion of only one OTC transaction in a financial instrument would mean that the criterion would be met. For this reason, we consider this criterion to be inappropriate.

• The use of a market volume (nominal x% price or item x unit price) is to be preferred over the use of a nominal volume, since the market volume better reflects the economic value of the transaction while there is no nominal value of certain derivatives.
<ESMA_QUESTION_129>

**Q130: Do you agree with ESMA's proposal to apply the systematic internaliser thresholds for bonds and structured finance products at an ISIN code level? If not please provide alternatives and reasons for your answer.**

<ESMA_QUESTION_130>

- As a general note, the EACB derives from recital 18 MiFIR, that an investment firm does not qualify as a Systematic Internaliser (SI) or at least that it does not have to apply the relevant pre-trade transparency requirements in the case of own issue of bonds which are not traded on a trading venue, i.e. in the case that the financial institution is the only distributor/dealer of their securities and makes 100% of the market/non listed financial instruments.

- With regard to the Systematic Internaliser thresholds we would like to point out that co-operative banks are usually non-listed entities and they do not have access to wholesale market, therefore they use bonds (typically "plain vanilla") as main funding instruments in order to sustain and finance the local communities in which they operate and to grant credit to SMEs and households.

In many cases, co-operative banks trade on own account the bonds issued in order to ensure the selling of securities, on the secondary market, for their customers. Because these securities are addressed to retail client, such bonds are traded with no significant size and are not widespread on the market. We consider that due to their volume, these transactions do not jeopardise efficient price discovery nor distort the level playing field between means of trading. Should such issue be ignored, small banks would be discouraged to issue and to trade bonds on own account, with great prejudice to their funding activity and to financing of local communities.

The thresholds presented by ESMA, for both liquid and illiquid bonds entail de facto the obligation for co-operative local banks to become Systematic Internalisers and to apply organisational and transparency requirements (in particular the publication of irrevocable firm quotes or the communication of quotes on request).

Such situation will create liquidity problems in smaller regional markets which are characterised by (1) a very limited number of liquidity providers, (2) limited number of end-clients, (3) small issue sizes and (4) infrequent trading. Thus, it is important to consider the differences between pan-European bond markets and local markets.

ESMA should adequately take into account that the new rules will have a significant effect on the liquidity, e.g. on the frequency of trades. If the SI-obligations or post trade transparency rules make it more difficult for liquidity providers/SIs to hedge/unwind positions, they will no longer be willing to trade with the frequency or large sizes that they do today. Hence, as a result of the regulation, liquidity will deteriorate which will have a negative effect for both issuers and investors. Costs and risks will increase for investors as it will be more difficult to dispose of their assets in short timeframes. At the same time, it is possible that bigger markets will become more liquid while smaller markets will become less liquid.

ESMA should define better criteria taking into account the peculiarities outlined above and the principle of proportionality. Therefore, we would invite ESMA to specify a *de minimis rule* to reflect regional bottlenecks of liquidity systems by setting a threshold for each financial institution based on absolute figures taking into account parameters such as liquidity, the size (of the transaction or of the issuance) and the type of financial instruments. The threshold should be high enough to avoid unintended consequences. (Please also refer to our response in Q135).

In case it is difficult for ESMA to assess an appropriate threshold at the moment we would propose that ESMA draws inspiration from the prospectus directive which provides the total exemption for non-equity securities issued by credit institutions where the total consideration of the offer is less than EUR 75 000 000 over a period of 12 months (Article 1 para 2 lit. j Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC). We note from the outset, that we consider that this threshold is far too low to address the concerns as described above and that it is imperative that such threshold is set higher. However, only in case ESMA does not have at the moment adequate data to establish the appropriate level of such a de *minimis* rule and as a means of last resort, the threshold provided for in the Prospectus Directive could potentially work as a basis for an initial calculation of such a threshold which will be reviewed at a later stage.

In the same spirit, we suggest to change the parameters of frequency/systematic basis, for illiquid bonds, considering more suitable measures. We note that as regards illiquid instruments an "at least once a week" threshold is too low. Even in case an investment firm makes a transaction in a certain instrument once a day in average this cannot be considered frequent and systematic.

- Concerning the question whether the systematic internaliser thresholds should apply at an ISIN code level for certain financial instruments we consider the threshold for bonds, SFP, certificates and securitized derivatives should generally be applied to ISIN level already stated in our responses to Q128-129. The EACB would like to note that in the bonds market the application of thresholds on a subcategory level would in practice mean that an investment firm, due to the calibration between the subcategories, would also be SI for ISINs in which it performs no active trading with customers. If an individual customer of the investment firm, e.g. for the simplicity of recording, wanted a one-off buy or sell of a bond on best-efforts basis, the investment firm would still need to fulfil the SI requirements, even if it only trades the ISIN once for its customer.

- The SI regime in general would be particularly burdensome for institutions such as cooperative banks that are organised in groups or networks and where execution of an order very often involves a chain of fixed-price transactions. Such a chain runs, for example, from a central institution to a local institution and from it to the client, which would trigger the SI's obligations at least twice. Thus, when applying the SI's requirements, the structure of the cooperative banking groups should be taken into consideration. In case of chains of fixed-price transactions within the group or network, it is sufficient that the SI requirements are fulfilled adequately by a single institution within the group or network.

At the same time the classification as SI at ISIN- code level means that all investment firms have to set up a monitoring system with which the limit border- crossing in each respective ISIN must be checked in the fixed-price transaction at any time, since it cannot be excluded that limits may at least temporarily be exceeded in individual cases- especially in illiquid securities. The thus resulting continuous real-time verification effort is not justified under the principle of proportionality.
<ESMA_QUESTION_130>

**Q131: For derivatives, do you agree that some aggregation should be established in order to properly apply the systematic internaliser definition? If yes, do you consider that the tables presented in Annex 3.6.1 of the DP could be used as a basis for applying the systematic internaliser thresholds to derivatives products? Please provide reasons, and when necessary alternatives, to your answer.**

<ESMA_QUESTION_131>
Yes, provided that an aggregation of the SI classification for derivatives cannot result in a situation where the SI is bound to pre- trade transparency obligations for derivatives, for which it does not offer services to clients.
<ESMA_QUESTION_131>

**Q132: Do you agree with ESMA's proposal to set a threshold for liquid derivatives? Do you consider any scenarios could arise where systematic internalisers would be required to meet pre-trade transparency requirements for liquid derivatives where the trading obligation does not apply?**

<ESMA_QUESTION_132>
The EACB sees two possible scenarios for liquid derivatives in which these instruments will be traded also through a systematic internaliser:

1. The derivative is indeed liquid, but there is no CCP, which would offer a clearing of the product. One reason for this could, for example, be that a clearing by a CCP is not worth for (all) the parties involved, including the CCP. That would presumably be the case of currency swaps, in which most of the completed contracts have such short maturity period that a clearing through a CCP makes no sense. For currency swaps, the majority of the transactions concluded will be Tom/Next and the postings follow CLS (Continuous Linked Settlement), so that the relevant settlement procedure does not entail counterparty risk.
2. The clearing and trading obligation exist only for derivative transactions between financial institutions and NFC +. For transactions with NFC- investment firms do not have clearing and trading obligations. When there is an appropriate volume of business with NFC- an investment firm could be classified as SI in liquid derivatives products.

The pre-trade transparency would not be meaningful in SI-traded derivatives. In OTC trading, the Bank takes into account for the rate of the derivative also the individual creditworthiness of the counterparty. These price components for the default risk of the counterparty have a very high impact on the price, which has already increased with the introduction of the CVA- charge under Basel III again. If an investment firm did not price the risk of default, it could not cover its equity cost and the expected counterparty defaults with the quoted prices. The SI-trade price offered to a client, is due to the default risk-price component not a price that would be applicable to any other customer, because customers have different creditworthiness rates. In addition, customers in OTC trading typically do not enter standardised transactions, but rather request and conclude individual maturities , coordinated by their Hedge Accounting.
<ESMA_QUESTION_132>

**Q133: Do you consider a quarterly assessment by investment firms in respect of their systematic internaliser activity is adequate? If not, what assessment period would you propose?**

<ESMA_QUESTION_133>
No, the EACB considers that a quarterly period is fairly short for assessing the trading activity in relation to the overall market. It is possible that in a quarter exceptional trade peaks are noticed, so that the acting institute would still be regarded as SI despite very low trades being the rule because of exceptional activity in the previous quarter.

This is particularly true for the bonds markets, where the transactions per ISIN fluctuate seasonally to a considerable degree. Indeed, there are typically short periods with degrees and after long periods without any trade.

As ESMA itself acknowledges (page 197, point 23 of the CP) the calculation frequency should be long enough to avoid capturing episodic internalisation and to give legal certainty to investment firms and the market.

An annual calculation period would also eliminate seasonal effects. Therefore, we would propose for a longer calculation period of one year to be used. The calculation could be yearly or quarterly, on a rolling basis each cycle for the past four quarters.
<ESMA_QUESTION_133>

**Q134: Within the ranges proposed by ESMA, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the threshold should be set at a level outside this range, please specify at what level this should be with justifications and where possible data to support them.**

<ESMA_QUESTION_134>
As already stated above, investment firms are currently not in position to test and assess the proposed metrics. The classification as SI has a significant impact on the risk, the processes and resources of an investment firm. Besides, the impact on the market is difficult to predict. We, therefore, recommend that the thresholds are set relatively high, at least initially. If practice shows that its is necessary these threshold can be then reviewed at a later stage when the market has already implement the new regime and can better assess the results.

Moreover, to avoid any unintended effects, we would propose the establishment de *minimis* rule based on absolute figures. Such a *de minimis* rule, would allow especially smaller banks and investment firms with typically lower volumes and transactions and lower revenues to avoid the considerable and disproportionate effort and cost otherwise required. Below a certain volume or a certain number of transactions in a financial instrument or a group of financial instruments can be assumed that no systematic internalisation which is characterized by the criteria "frequent and systematic" exists (Please refer to our response in Q130).
<ESMA_QUESTION_134>

**Q135: Do you consider that thresholds should be set as absolute numbers rather than percentages for some specific categories? Please provide reasons for your answer.**

<ESMA_QUESTION_135>
We consider that a mixed approach is preferred. In particular, an initial threshold should be set in absolute numbers. Once this initial threshold is crossed the calculation will be made on the basis of percentages. The specification of an initial threshold in absolute values would have the advantage that an investment firm would only use its own data to perform the required calculation. The not easily forecasted number of transaction and trade figures "in the EU" would not enter into the calculation, so it would be easier for the firm to control, whether it classifies as SI or not. This will make the calculation for smaller firms easier. On the other hand, the use of percentages in the calculation above a specific threshold (ongoing thresholds) will ensure that market developments can be taken into account. As a side note we consider that if an absolute threshold is used per subcategory, the level of the threshold should take into account how many ISINs or instruments are included in the subcategory. (Please also refer to our response to Q130.

**In any case, a *de minimis* rule should be introduced in absolute numbers, above which the relative thresholds would be calculated**. Investment firms that remain under the limit of the de minimis rule would not perform the calculations and would in principle be no SI. See also comments in Q128, Q130 and Q 134.
<ESMA_QUESTION_135>

**Q136: What thresholds would you consider as adequate for the emission allowance market?**

<ESMA_QUESTION_136>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_136>

## 3.4. Transactions in several securities and orders subject to conditions other than the current market price

**Q137: Do you agree with the definition of portfolio trade and of orders subject to conditions other than the current market price? Please give reasons for your answer?**

<ESMA_QUESTION_137>
The European Association of Co-operative Banks (EACB)[26] believes that the inclusion of SFT in the SI regime is generally not appropriate. It is rightly pointed out by ESMA that the pricing of such transactions is not based on current market price. However, the exemption only applies to equity repos and not for repos in debt instruments. However, these types of transactions should also not be subject to the SI requirements for the same reasons.
<ESMA_QUESTION_137>

## 3.5. Exceptional market circumstances and conditions for updating quotes

**Q138: Do you agree with the list of exceptional circumstances? Please give reasons for your answer. Do you agree with ESMA's view on the conditions for updating the quotes? Please give reasons for your answer.**

<ESMA_QUESTION_138>
Yes, the European Association of Co-operative Banks (EACB)[27] agrees provided that the list is not exhaustive .
<ESMA_QUESTION_138>

## 3.6. Orders considerably exceeding the norm

**Q139: Do you agree that each systematic internaliser should determine when the number and/or volume of orders sought by clients considerably exceed the norm? Please give reasons for your answer?**

<ESMA_QUESTION_139>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_139>

[26] The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.
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[27] The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.
For further details, please visit www.eacb.coop

## 3.7. Prices falling within a public range close to market conditions

**Q140: Do you agree that any price within the bid and offer spread quoted by the systematic internaliser would fall within a public range close to market conditions? Please give reasons for your answer.**

<ESMA_QUESTION_140>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_140>

## 3.8. Pre-trade transparency for systematic internalisers in non-equity instruments

**Q141: Do you agree that the risks a systematic internaliser faces is similar to that of an liquidity provider? If not, how do they differ?**

<ESMA_QUESTION_141>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_141>

**Q142: Do you agree that the sizes established for liquidity providers and systematic internalisers should be identical? If not, how should they differ?**

<ESMA_QUESTION_142>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_142>

# 4. Data publication

## 4.1. Access to systematic internalisers' quotes

**Q143: Do you agree with the proposed definition of "regular and continuous" publication of quotes? If not, what would definition you suggest?**

<ESMA_QUESTION_143>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_143>

**Q144: Do you agree with the proposed definition of "normal trading hours"? Should the publication time be extended?**

<ESMA_QUESTION_144>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_144>

**Q145: Do you agree with the proposal regarding the means of publication of quotes?**

<ESMA_QUESTION_145>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_145>

**Q146: Do you agree that a systematic internaliser should identify itself when publishing its quotes through a trading venue or a data reporting service?**

<ESMA_QUESTION_146>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_146>

**Q147: Is there any other mean of communication that should be considered by ESMA?**

<ESMA_QUESTION_147>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_147>

**Q148: Do you agree with the importance of ensuring that quotes published by investment firms are consistent across all the publication arrangements?**

<ESMA_QUESTION_148>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_148>

**Q149: Do you agree with the compulsory use of data standards, formats and technical arrangements in development of Article 66(5) of MiFID II?**

<ESMA_QUESTION_149>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_149>

**Q150: Do you agree with the imposing the publication on a 'machine-readable' and 'human readable' to investment firms publishing their quotes only through their own website?**

<ESMA_QUESTION_150>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_150>

**Q151: Do you agree with the requirements to consider that the publication is 'easily accessible'?**

<ESMA_QUESTION_151>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_151>

## 4.2. Publication of unexecuted client limit orders on shares traded on a venue

**Q152: Do you think that publication of unexecuted orders through a data reporting service or through an investment firm's website would effectively facilitate execution?**

<ESMA_QUESTION_152>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_152>

**Q153: Do you agree with this proposal. If not, what would you suggest?**

<ESMA_QUESTION_153>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_153>

## 4.3. Reasonable commercial basis (RCB)

**Q154: Would these disclosure requirements be a meaningful instrument to ensure that prices are on a reasonable commercial basis?**

<ESMA_QUESTION_154>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_154>

**Q155: Are there any other possible requirements in the context of transparency/disclosure to ensure a reasonable price level?**

<ESMA_QUESTION_155>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_155>

**Q156: To what extent do you think that comprehensive transparency requirements would be enough in terms of desired regulatory intervention?**

<ESMA_QUESTION_156>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_156>

**Q157: What are you views on controlling charges by fixing a limit on the share of revenue that market data services can represent?**

<ESMA_QUESTION_157>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_157>

**Q158: Which percentage range for a revenue limit would you consider reasonable?**

<ESMA_QUESTION_158>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_158>

**Q159: If the definition of "*reasonable commercial basis*" is to be based on costs, do you agree that LRIC+ is the most appropriate measure? If not what measure do you think should be used?**

<ESMA_QUESTION_159>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_159>

**Q160: Do you agree that suppliers should be required to maintain a cost model as the basis of setting prices against LRIC+? If not how do you think the definition should be implemented?**

<ESMA_QUESTION_160>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_160>

**Q161: Do you believe that if there are excessive prices in any of the other markets, the same definition of "*reasonable commercial basis*" would be appropriate, or that they should be treated differently? If the latter, what definition should be used?**

<ESMA_QUESTION_161>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_161>

**Q162: Within the options A, B and C, do you favour one of them, a combination of A+B or A+C or A+B+C? Please explain your reasons.**

<ESMA_QUESTION_162>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_162>

**Q163: What are your views on the costs of the different approaches?**

<ESMA_QUESTION_163>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_163>

**Q164: Is there some other approach you believe would be better? Why?**

<ESMA_QUESTION_164>
TYPE YOUR TEXT HERE

<ESMA_QUESTION_164>

**Q165: Do you think that the offering of a 'per-user' pricing model designed to prevent multiple charging for the same information should be mandatory?**

<ESMA_QUESTION_165>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_165>

**Q166: If yes, in which circumstances?**

<ESMA_QUESTION_166>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_166>

# 5. Micro-structural issues

## 5.1. Algorithmic and high frequency trading (HFT)

**Q167: Which would be your preferred option? Why?**

<ESMA_QUESTION_167>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_167>

**Q168: Can you identify any other advantages or disadvantages of the options put forward?**

<ESMA_QUESTION_168>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_168>

**Q169: How would you reduce the impact of the disadvantages identified in your preferred option?**

<ESMA_QUESTION_169>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_169>

**Q170: If you prefer Option 2, please advise ESMA whether for the calculation of the median daily lifetime of the orders of the member/participant, you would take into account only the orders sent for liquid instruments or all the activity in the trading venue.**

<ESMA_QUESTION_170>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_170>

**Q171: Do you agree with the above assessment? If not, please elaborate.**

<ESMA_QUESTION_171>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_171>

## 5.2. Direct electronic access (DEA)

**Q172: Do you consider it necessary to clarify the definitions of DEA, DMA and SA provided in MiFID? In what area would further clarification be required and how would you clarify that?**

<ESMA_QUESTION_172>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_172>

**Q173: Is there any other activity that should be covered by the term "DEA", other than DMA and SA? In particular, should AOR be considered within the DEA definition?**

<ESMA_QUESTION_173>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_173>

**Q174: Do you consider that electronic order transmission systems through shared connectivity arrangements should be included within the scope of DEA?**

<ESMA_QUESTION_174>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_174>

**Q175: Are you aware of any order transmission systems through shared arrangements which would provide an equivalent type of access as the one provided by DEA arrangements?**

<ESMA_QUESTION_175>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_175>

# 6. Requirements applying on and to trading venues

## 6.1. SME Growth Markets

**Q176: Do you support assessing the percentage of issuers on the basis of number of issuers only? If not, what approach would you suggest?**

<ESMA_QUESTION_176>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_176>

**Q177: Which of the three different options described in the draft technical advice box above for assessing whether an SME-GM meets the criterion of having at least fifty per cent of SME issuers would you prefer?**

<ESMA_QUESTION_177>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_177>

**Q178: Do you agree with the approach described above (in the box** Error! Reference source not found.**), that only falling below the qualifying 50% threshold for a number of three consecutive years could lead to deregistration as a SME-GM or should the period be limited to two years?**

<ESMA_QUESTION_178>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_178>

**Q179: Should an SME-GM which falls below the 50% threshold in one calendar year be required to disclose that fact to the market?**

<ESMA_QUESTION_179>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_179>

**Q180: Which of the alternatives described above on how to deal with non-equity issuers for the purposes of the "*at least 50% criterion*" do you consider the most appropriate? Please give reasons for your answer.**

<ESMA_QUESTION_180>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_180>

**Q181: Do you agree that an SME-GM should be able to operate under the models described above, and that the choice of model should be left to the discretion of the operator (under the supervision of its NCA)?**

<ESMA_QUESTION_181>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_181>

**Q182: Do you agree that an SME-GM should establish and operate a regime which its NCA has assessed to be effective in ensuring that its issuers are "appropriate"?**

<ESMA_QUESTION_182>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_182>

**Q183: Do you agree with the factors to which a NCA should have regard when assessing if an SME-GM's regulatory regime is effective?**

<ESMA_QUESTION_183>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_183>

**Q184: Do you think that there should be an appropriateness test for an SME-GM issuer's management and board in order to confirm that they fulfil the responsibilities of a publicly quoted company?**

<ESMA_QUESTION_184>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_184>

**Q185: Do you think that there should be an appropriateness test for an SME-GM issuer's systems and controls in order to confirm that they provide a reasonable basis for it to comply with its continuing obligations under the rules of the market?**

<ESMA_QUESTION_185>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_185>

**Q186: Do you agree with** Error! Reference source not found., Error! Reference source not found. **or** Error! Reference source not found. Error! Reference source not found.**?**

<ESMA_QUESTION_186>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_186>

**Q187: Are there any other criteria that should be set for the initial and on-going admission of financial instruments of issuers to SME-GMs?**

<ESMA_QUESTION_187>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_187>

**Q188: Should the SME-GM regime apply a general principle that an admission document should contain sufficient information for an investor to make an informed assessment of the financial position and prospects of the issuer and the rights attaching to its securities?**

<ESMA_QUESTION_188>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_188>

**Q189: Do you agree that SME-GMs should be able to take either a 'top down' or a 'bottom up' approach to their admission documents where a Prospectus is not required?**

<ESMA_QUESTION_189>
TYPE YOUR TEXT HERE

<ESMA_QUESTION_189>

**Q190: Do you think that MiFID II should specify the detailed disclosures, or categories of disclosure, that the rules of a SME-GM would need to require, in order for admission documents prepared in accordance with those rules to comply with Article 33(3)(c) of MiFID II? Or do you think this should be the responsibility of the individual market, under the supervision of its NCA?**

<ESMA_QUESTION_190>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_190>

**Q191: If you consider that detailed disclosure requirements should be set at a MiFID level, which specific disclosures would be essential to the proper information of investors? Which elements (if any) of the proportionate schedules set out in Regulation 486/2012 should be dis-applied or modified, in order for an admission document to meet the objectives of the SME-GM framework (as long as there is no public offer requiring that a Prospectus will be drafted under the rules of the Prospectus Directive)?**

<ESMA_QUESTION_191>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_191>

**Q192: Should the future Level 2 Regulation require an SME-GM to make arrangements for an appropriate review of an admission document, designed to ensure that the information it contains is complete?**

<ESMA_QUESTION_192>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_192>

**Q193: Do you agree with this initial assessment by ESMA?**

<ESMA_QUESTION_193>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_193>

**Q194: In your view which reports should be included in the on-going periodic financial reporting by an issuer whose financial instruments are admitted to trading on an SME-GM?**

<ESMA_QUESTION_194>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_194>

**Q195: How and by which means should SME-GMs ensure that the reporting obligations are fulfilled by the issuers?**

<ESMA_QUESTION_195>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_195>

**Q196: Do you think that the more generous deadlines proposed for making reports public above (in the Box above, paragraph** Error! Reference source not found.**) are suitable, or should the deadlines imposed under the rules of the Transparency Directive also apply to issuers on SME-GMs?**

<ESMA_QUESTION_196>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_196>

**Q197: Do you agree with this assessment that the MiFID II framework should not impose any additional requirements/additional relief to those envisaged by MAR?**

<ESMA_QUESTION_197>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_197>

**Q198: What is your view on the possible requirements for the dissemination and storage of information?**

<ESMA_QUESTION_198>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_198>

**Q199: How and by which means should trading venues ensure that the dissemination and storage requirements are fulfilled by the issuers and which of the options described above do you prefer?**

<ESMA_QUESTION_199>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_199>

**Q200: How long should the information be stored from your point of view? Do you agree with the proposed period of 5 years or would you prefer a different one (e.g., 3 years)?**

<ESMA_QUESTION_200>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_200>

**Q201: Do you agree with this assessment that the MiFID II framework should not impose any additional requirements to those presented in MAR?**

<ESMA_QUESTION_201>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_201>

## 6.2. Suspension and removal of financial instruments from trading

**Q202: Do you agree that an approach based on a non-exhaustive list of examples provides an appropriate balance between facilitating a consistent application of the exception, while allowing appropriate judgements to be made on a case by case basis?**

<ESMA_QUESTION_202>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_202>

**Q203: Do you agree that NCAs would also need to consider the criteria described in paragraph** Error! Reference source not found. Error! Reference source not found. **and** Error! Reference source not found.**, when making an assessment of relevant costs or risks?**

<ESMA_QUESTION_203>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_203>

**Q204: Which specific circumstances would you include in the list? Do you agree with the proposed examples?**

<ESMA_QUESTION_204>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_204>

## 6.3. Substantial importance of a trading venue in a host Member State

**Q205: Do you consider that the criteria established by Article 16 of MiFID Implementing Regulation remain appropriate for regulated markets?**

<ESMA_QUESTION_205>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_205>

**Q206: Do you agree with the additional criteria for establishing the substantial importance in the cases of MTFs and OTFs?**

<ESMA_QUESTION_206>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_206>

## 6.4. Monitoring of compliance – information requirements for trading venues

**Q207: Which circumstances would you include in this list? Do you agree with the circumstances described in the draft technical advice? What other circumstances do you think should be included in the list?**

<ESMA_QUESTION_207>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_207>

## 6.5. Monitoring of compliance with the rules of the trading venue - determining circumstances that trigger the requirement to inform about conduct that may indicate abusive behaviour

**Q208: Do you support the approach suggested by ESMA?**

<ESMA_QUESTION_208>
TYPE YOUR TEXT HERE

<ESMA_QUESTION_208>

**Q209: Is there any limitation to the ability of the operator of several trading venues to identify a potentially abusive conduct affecting related financial instruments?**

<ESMA_QUESTION_209>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_209>

**Q210: What can be the implications for trading venues to make use of all information publicly available to complement their internal analysis of the potential abusive conduct to report such as managers' dealings or major shareholders' notifications)? Are there other public sources of information that could be useful for this purpose?**

<ESMA_QUESTION_210>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_210>

**Q211: Do you agree that the signals listed in the Annex contained in the draft advice constitute appropriate indicators to be considered by operators of trading venues? Do you see other signals that could be relevant to include in the list?**

<ESMA_QUESTION_211>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_211>

**Q212: Do you consider that front running should be considered in relation to the duty for operators of trading venues to report possible abusive conduct? If so, what could be the possible signal(s) to include in the list?**

<ESMA_QUESTION_212>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_212>

# 7. Commodity derivatives

## 7.1. Financial instruments definition - specifying Section C 6, 7 and 10 of Annex I of MiFID II

**Q213: Do you agree with ESMA's approach on specifying contracts that "must" be physically settled and contracts that "can" be physically settled?**

<ESMA_QUESTION_213>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_213>

**Q214: Which oil products in your view should be caught by the definition of C6 energy derivatives contracts and therefore be within the scope of the exemption? Please give reasons for your view stating, in particular, any practical repercussions of including or excluding products from the scope.**

<ESMA_QUESTION_214>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_214>

**Q215: Do you agree with ESMA's approach on specifying contracts that must be physically settled?**

<ESMA_QUESTION_215>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_215>

**Q216: How do operational netting arrangements in power and gas markets work in practice? Please describe such arrangements in detail. In particular, please describe the type and timing of the actions taken by the various parties in the process, and the discretion over those actions that the parties have.**

<ESMA_QUESTION_216>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_216>

**Q217: Please provide concrete examples of contracts that must be physically settled for power, natural gas, coal and oil. Please describe the contracts in detail and identify on which platforms they are traded at the moment.**

<ESMA_QUESTION_217>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_217>

**Q218: How do you understand and how would you describe the concepts of "force majeure" and "other bona fide inability to settle" in this context?**

<ESMA_QUESTION_218>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_218>

**Q219: Do you agree that Article 38 of Regulation (EC) No 1287/2006 has worked well in practice and elements of it should be preserved? If not, which elements in your view require amendments?**

<ESMA_QUESTION_219>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_219>

**Q220: Do you agree that the definition of spot contract in paragraph 2 of Article 38 of Regulation (EC) 1287/2006 is still valid and should become part of the future implementing measures for MiFID II? If not, what changes would you propose?**

<ESMA_QUESTION_220>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_220>

**Q221: Do you agree that the definition of a contract for commercial purposes in paragraph 4 of Article 38 of Regulation (EC) 1287/2006 is still valid and should become part of the future implementing measures for MiFID II? If not, what changes would you propose? What other contracts, in your view, should be listed among those to be considered for commercial purposes?**

<ESMA_QUESTION_221>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_221>

**Q222: Do you agree that the future Delegated Act should not refer to clearing as a condition for determining whether an instrument qualifies as a commodity derivative under Section C 7 of Annex I?**

<ESMA_QUESTION_222>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_222>

**Q223: Do you agree that standardisation of a contract as expressed in Article 38(1) Letter c of Regulation (EC) No 1287/2006 remains an important indicator for classifying financial instruments and therefore should be maintained?**

<ESMA_QUESTION_223>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_223>

**Q224: Do you agree with the proposal to maintain the alternatives for trading contracts in Article 38(1)(a) of Regulation (EC) No 1287/2006 taking into account the emergence of the OTF as a MiFID trading venue in the future Delegated Act?**

<ESMA_QUESTION_224>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_224>

**Q225: Do you agree that the existing provision in Article 38(3) of Regulation (EC) No 1287/2006 for determining whether derivative contracts within the scope of Section C(10) of Annex I should be classified as financial instruments should be updated as necessary but overall be maintained? If not, which elements in your view require amendments?**

<ESMA_QUESTION_225>
TYPE YOUR TEXT HERE

<ESMA_QUESTION_225>

**Q226: Do you agree that the list of contracts in Article 39 of Regulation (EC) No 1287/2006 should be maintained? If not, which type of contracts should be added or which ones should be deleted?**

<ESMA_QUESTION_226>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_226>

**Q227: What is your view with regard to adding as an additional type of derivative contract those relating to actuarial statistics?**

<ESMA_QUESTION_227>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_227>

**Q228: What do you understand by the terms "reason of default or other termination event" and how does this differ from "except in the case of force majeure, default or other bona fide inability to perform"?**

<ESMA_QUESTION_228>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_228>

## 7.2. Position reporting thresholds

**Q229: Do you agree with the proposed threshold for the number of position holders? If not, please state your preferred thresholds and the reason why.**

<ESMA_QUESTION_229>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_229>

**Q230: Do you agree with the proposed minimum threshold level for the open interest criteria for the publication of reports? If not, please state your preferred alternative for the definition of this threshold and explain the reasons why this would be more appropriate.**

<ESMA_QUESTION_230>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_230>

**Q231: Do you agree with the proposed timeframes for publication once activity on a trading venue either reaches or no longer reaches the two thresholds?**

<ESMA_QUESTION_231>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_231>

## 7.3. Position management powers of ESMA

**Q232: Do you agree that the listed factors and criteria allow ESMA to determine the existence of a threat to the stability of the (whole or part of the) financial system in the EU?**

<ESMA_QUESTION_232>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_232>

**Q233: What other factors and criteria should be taken into account?**

<ESMA_QUESTION_233>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_233>

**Q234: Do you agree with ESMA's definition of a market fulfilling its economic function?**

<ESMA_QUESTION_234>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_234>

**Q235: Do you agree that the listed factors and criteria allow ESMA to adequately determine the existence of a threat to the orderly functioning and integrity of financial markets or commodity derivative market so as to justify position management intervention by ESMA?**

<ESMA_QUESTION_235>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_235>

**Q236: What other factors and criteria should be taken into account?**

<ESMA_QUESTION_236>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_236>

**Q237: Do you consider that the above factors sufficiently take account of "the degree to which positions are used to hedge positions in physical commodities or commodity contracts and the degree to which prices in underlying markets are set by reference to the prices of commodity derivatives"? If not, what further factors would you propose?**

<ESMA_QUESTION_237>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_237>

**Q238: Do you agree that the listed factors and criteria allow ESMA to determine the appropriate reduction of a position or exposure entered into via a derivative?**

<ESMA_QUESTION_238>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_238>

**Q239: What other factors and criteria should be taken into account?**

<ESMA_QUESTION_239>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_239>

**Q240: Do you agree that some factors are more important than others in determining what an "appropriate reduction of a position" is within a given market? If yes, which are the most important factors for ESMA to consider?**

<ESMA_QUESTION_240>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_240>

**Q241: Do you agree that the listed factors and criteria allow ESMA to adequately determine the situations where a risk of regulatory arbitrage could arise from the exercise of position management powers by ESMA?**

<ESMA_QUESTION_241>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_241>

**Q242: What other criteria and factors should be taken into account?**

<ESMA_QUESTION_242>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_242>

**Q243: If regulatory arbitrage may arise from inconsistent approaches to interrelated markets, what is the best way of identifying such links and correlations?**

<ESMA_QUESTION_243>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_243>

# 8. Portfolio compression

**Q244: What are your views on the proposed approach for legal documentation and portfolio compression criteria?**

<ESMA_QUESTION_244>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_244>

**Q245: What are your views on the approach proposed by ESMA with regard to information to be published by the compression service provider related to the volume of transactions and the timing when they were concluded?**

<ESMA_QUESTION_245>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_245>

# EU structural financial indicators 1), 2)

## Table 1 Credit institutions: Number of local units (branches) and employees of domestic credit institutions

| | Number of local units (branches) | | | | | Number of employees of domestic credit institutions | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2009 | 2010 | 2011 | 2012 | 2013 | 2009 | 2010 | 2011 | 2012 | 2013 |
| Belgium | 4,201 | 3,973 | 3,881 | 3,819 | 3,738 | 63,723 | 61,861 | 61,197 | 60,068 | 58,233 |
| Bulgaria | 5,916 | 5,849 | 3,777 | 3,833 | 3,770 | 34,290 | 34,133 | 33,897 | 33,527 | 32,756 |
| Czech Republic | 1,998 | 1,990 | 2,049 | 2,098 | 2,135 | 38,394 | 38,359 | 39,461 | 40,147 | 39,742 |
| Denmark | 1,996 | 1,654 | 1,557 | 1,405 | 1,256 | 50,101 | 47,739 | 47,224 | 44,900 | 36,367 |
| Germany | 38,851 | 39,494 | 37,853 | 36,239 | 36,155 | 673,500 | 667,900 | 663,800 | 659,100 | 651,250 |
| Estonia | 213 | 202 | 178 | 163 | 140 | 5,693 | 5,497 | 5,516 | 5,563 | 4,861 |
| Ireland | 1,228 | 1,162 | 1,099 | 1,064 | . | 38,178 | 36,438 | 35,612 | 31,776 | . |
| Greece | 4,078 | 4,005 | 3,847 | 3,629 | 3,109 | 65,673 | 63,408 | 59,958 | 57,006 | 51,242 |
| Croatia | . | . | . | . | 1,222 | . | . | . | . | 21,355 |
| Spain | 44,431 | 43,164 | 40,103 | 38,142 | 33,713 | 267,383 | 261,389 | 245,956 | 234,292 | 215,663 |
| France | 38,311 | 38,784 | 38,433 | 38,359 | 37,862 | 416,772 | 421,933 | 426,336 | 421,037 | 415,953 |
| Italy | 34,030 | 33,631 | 33,561 | 32,872 | 31,759 | 323,407 | 321,081 | 316,360 | 309,478 | 306,313 |
| Cyprus | 930 | 911 | 902 | 850 | 682 | 12,513 | 12,643 | 12,825 | 12,853 | 11,142 |
| Latvia | 624 | 587 | 549 | 400 | 343 | 12,365 | 11,534 | 11,188 | 10,565 | 10,029 |
| Lithuania | 972 | 951 | 676 | 689 | 656 | 10,902 | 9,993 | 8,707 | 8,671 | 8,392 |
| Luxembourg | 226 | 226 | 227 | 203 | 213 | 26,416 | 26,255 | 26,696 | 26,534 | 26,237 |
| Hungary | 3,560 | 3,493 | 3,449 | 3,330 | 3,246 | 42,609 | 41,526 | 41,305 | 41,103 | 40,750 |
| Malta | 114 | 113 | 107 | 107 | 110 | 3,836 | 3,914 | 4,026 | 4,007 | 4,197 |
| Netherlands | 3,137 | 2,864 | 2,653 | 2,466 | 2,165 | 110,000 | 108,000 | 105,408 | 103,447 | 96,423 |
| Austria | 4,167 | 4,171 | 4,431 | 4,460 | 4,352 | 77,246 | 78,098 | 78,085 | 77,424 | 75,980 |
| Poland | 13,292 | 13,518 | 14,592 | 15,170 | 15,479 | 183,064 | 184,858 | 186,331 | 181,991 | 179,385 |
| Portugal | 6,532 | 6,587 | 6,501 | 6,259 | 5,987 | 61,593 | 61,504 | 59,911 | 57,348 | 57,556 |
| Romania | 6,425 | 6,170 | 6,046 | 5,723 | 5,492 | 67,898 | 66,753 | 65,772 | 61,769 | 58,612 |
| Slovenia | 706 | 694 | 687 | 695 | 630 | 12,188 | 11,995 | 11,813 | 11,498 | 11,218 |
| Slovakia | 1,230 | 1,224 | 1,034 | 1,061 | 1,256 | 18,750 | 18,234 | 18,452 | 18,655 | 18,540 |
| Finland | 1,538 | 1,475 | 1,446 | 1,404 | 1,300 | 24,879 | 23,353 | 23,188 | 22,510 | 22,402 |
| Sweden | 1,950 | 1,937 | 1,857 | 1,878 | 1,974 | 49,256 | 49,799 | 49,784 | 52,186 | 53,594 |
| United Kingdom | 11,869 | 11,673 | 11,713 | 11,381 | . | 471,129 | 455,594 | 454,087 | 439,873 | 421,508 |
| **Euro area** | 183,710 | 182,478 | 176,943 | 171,792 | 163,171 | 2,196,057 | 2,178,006 | 2,155,139 | 2,112,596 | 2,027,210 |
| **EU** | 232,525 | 230,502 | 223,208 | 217,699 | 198,744 | 3,161,758 | 3,123,791 | 3,092,895 | 3,027,328 | 2,929,700 |

## Table 2 Herfindahl index 3) for credit institutions and share of total assets of five largest credit institutions

(index ranging from 0 to 10,000 and share of the five largest credit institutions in percent)

| | Herfindahl index for credit institutions | | | | | Share of total assets of five largest credit institutions | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2009 | 2010 | 2011 | 2012 | 2013 | 2009 | 2010 | 2011 | 2012 | 2013 |
| Belgium | 1,622 | 1,439 | 1,294 | 1,061 | 979 | 77.1 | 74.9 | 70.8 | 66.3 | 64.0 |
| Bulgaria | 846 | 789 | 766 | 738 | 730 | 58.3 | 55.2 | 52.6 | 50.4 | 49.9 |
| Czech Republic | 1,032 | 1,045 | 1,014 | 999 | 999 | 62.4 | 62.5 | 61.8 | 61.5 | 62.8 |
| Denmark | 1,042 | 1,077 | 1,192 | 1,130 | 1,160 | 64.0 | 64.4 | 66.3 | 65.6 | 68.4 |
| Germany | 206 | 298 | 317 | 307 | 266 | 25.0 | 32.6 | 33.5 | 33.0 | 30.6 |
| Estonia | 3,090 | 2,929 | 2,613 | 2,493 | 2,483 | 93.4 | 92.3 | 90.6 | 89.6 | 89.7 |
| Ireland | 714 | 700 | 647 | 632 | 674 | 52.6 | 49.9 | 46.7 | 46.4 | 47.8 |
| Greece | 1,184 | 1,214 | 1,278 | 1,487 | 2,136 | 69.2 | 70.6 | 72.0 | 79.5 | 94.0 |
| Croatia | . | . | . | . | 1,384 | . | . | . | 73.9 | 72.9 |
| Spain | 507 | 528 | 596 | 654 | 757 | 43.3 | 44.3 | 48.1 | 51.4 | 56.2 |
| France | 605 | 610 | 600 | 545 | 551 | 47.2 | 47.4 | 48.3 | 44.6 | 45.9 |
| Italy | 298 | 410 | 407 | 410 | 406 | 31.0 | 39.8 | 39.5 | 39.7 | 39.6 |
| Cyprus | 1,089 | 1,124 | 1,027 | 996 | 1,486 | 64.9 | 64.2 | 60.8 | 62.5 | 62.6 |
| Latvia | 1,181 | 1,005 | 929 | 1,027 | 1,037 | 69.3 | 60.4 | 59.6 | 64.1 | 64.1 |
| Lithuania | 1,693 | 1,545 | 1,871 | 1,749 | 1,892 | 80.5 | 78.8 | 84.7 | 83.6 | 87.1 |
| Luxembourg | 310 | 343 | 346 | 345 | 357 | 29.3 | 31.1 | 31.2 | 33.1 | 33.7 |
| Hungary | 864 | 828 | 848 | 873 | 836 | 55.2 | 54.6 | 54.6 | 54.0 | 51.9 |
| Malta | 1,250 | 1,181 | 1,203 | 1,313 | 1,458 | 72.8 | 71.3 | 72.0 | 74.4 | 76.5 |
| Netherlands | 2,034 | 2,049 | 2,067 | 2,026 | 2,104 | 85.1 | 84.2 | 83.6 | 82.1 | 83.8 |
| Austria | 414 | 383 | 423 | 395 | 405 | 37.2 | 35.9 | 38.4 | 36.5 | 36.7 |
| Poland | 574 | 559 | 563 | 568 | 586 | 43.9 | 43.4 | 43.7 | 44.4 | 45.2 |
| Portugal | 1,150 | 1,207 | 1,206 | 1,191 | 1,196 | 70.1 | 70.9 | 70.8 | 69.9 | 70.6 |
| Romania | 857 | 871 | 878 | 852 | 821 | 52.4 | 52.7 | 54.6 | 54.7 | 54.4 |
| Slovenia | 1,256 | 1,160 | 1,142 | 1,115 | 1,045 | 59.7 | 59.3 | 59.3 | 58.4 | 57.1 |
| Slovakia | 1,273 | 1,239 | 1,268 | 1,221 | 1,215 | 72.1 | 72.0 | 72.2 | 70.7 | 70.3 |
| Finland | 3,120 | 3,550 | 3,700 | 3,010 | 3,080 | 82.6 | 83.8 | 80.9 | 79.0 | 84.1 |
| Sweden | 899 | 860 | 863 | 853 | 876 | 60.7 | 57.8 | 57.8 | 57.4 | 58.3 |
| United Kingdom | 467 | 523 | 519 | 527 | 525 | 40.8 | 42.5 | 43.5 | 42.8 | 43.7 |

## Table 3 Number of branches of credit institutions from EU and non-EU countries

| | Number of branches of credit institutions from EU countries | | | | | Number of branches of credit institutions from non-EU countries | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2009 | 2010 | 2011 | 2012 | 2013 | 2009 | 2010 | 2011 | 2012 | 2013 |
| Belgium | 46 | 49 | 38 | 35 | 36 | 9 | 9 | 23 | 24 | 28 |
| Bulgaria | 4 | 4 | 4 | 4 | 3 | 2 | 2 | 3 | 3 | 3 |
| Czech Republic | 18 | 18 | 21 | 20 | 21 | 0 | 0 | 0 | 0 | 0 |
| Denmark | 17 | 20 | 21 | 19 | 19 | 2 | 3 | 3 | 3 | 3 |
| Germany | 85 | 89 | 91 | 88 | 88 | 19 | 19 | 19 | 20 | 21 |
| Estonia | 10 | 9 | 8 | 7 | 6 | 0 | 2 | 2 | 1 | 1 |
| Ireland | 32 | 33 | 37 | 35 | 33 | 1 | 1 | 1 | 1 | 1 |
| Greece | 24 | 21 | 19 | 18 | 16 | 5 | 5 | 4 | 4 | 4 |
| Croatia | . | . | . | . | . | . | . | . | . | . |
| Spain | 81 | 80 | 79 | 77 | 77 | 8 | 8 | 8 | 8 | 8 |
| France | 74 | 71 | 69 | 65 | 68 | 24 | 24 | 23 | 22 | 23 |
| Italy | 72 | 68 | 70 | 69 | 72 | 10 | 9 | 9 | 9 | 9 |
| Cyprus | 9 | 9 | 9 | 11 | 11 | 16 | 16 | 16 | 16 | 16 |
| Latvia | 6 | 8 | 8 | 8 | 8 | 0 | 0 | 0 | 1 | 1 |
| Lithuania | 7 | 9 | 8 | 8 | 7 | 0 | 0 | 1 | 0 | 0 |
| Luxembourg | 30 | 30 | 29 | 30 | 29 | 7 | 7 | 6 | 6 | 8 |
| Hungary | 11 | 10 | 11 | 10 | 9 | 0 | 0 | 0 | 0 | 0 |
| Malta | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 |
| Netherlands | 28 | 28 | 30 | 31 | 34 | 5 | 5 | 5 | 5 | 5 |
| Austria | 29 | 30 | 30 | 28 | 29 | 0 | 0 | 0 | 1 | 1 |
| Poland | 18 | 21 | 19 | 20 | 22 | 0 | 0 | 0 | 0 | 0 |
| Portugal | 25 | 24 | 22 | 21 | 22 | 2 | 2 | 2 | 2 | 2 |
| Romania | 10 | 9 | 8 | 8 | 9 | 0 | 0 | 0 | 0 | 0 |
| Slovenia | 3 | 3 | 3 | 3 | 3 | 0 | 0 | 0 | 0 | 0 |
| Slovakia | 11 | 14 | 17 | 14 | 15 | 0 | 0 | 0 | 0 | 0 |
| Finland | 21 | 22 | 22 | 20 | 20 | 1 | 2 | 2 | 2 | 2 |
| Sweden | 20 | 21 | 25 | 23 | 25 | 2 | 4 | 4 | 7 | 5 |
| United Kingdom | 77 | 71 | 68 | 66 | 62 | 91 | 91 | 90 | 91 | 90 |
| **Euro area** | 571 | 572 | 574 | 553 | 560 | 109 | 109 | 122 | 123 | 131 |
| **EU** | 769 | 772 | 767 | 739 | 745 | 206 | 211 | 223 | 228 | 233 |

## Table 4 Total assets of branches of credit institutions from EU and non-EU countries [4]

(EUR millions)

| | Total assets of branches of credit institutions from EU countries | | | | | Total assets of branches of credit institutions from non-EU countries | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2009 | 2010 | 2011 | 2012 | 2013 | 2009 | 2010 | 2011 | 2012 | 2013 |
| Belgium | 41,219 | 43,814 | 79,153 | 89,724 | 108,478 | 46,520 | 49,834 | 74,181 | 78,156 | 84,185 |
| Bulgaria | 1,668 | 1,615 | 1,558 | 2,659 | 2,532 | . | . | 312 | 309 | 364 |
| Czech Republic | 18,781 | 18,709 | 20,944 | 17,337 | 18,234 | 0 | 0 | 0 | 0 | 0 |
| Denmark | 39,365 | 33,665 | 28,976 | 38,695 | 39,156 | . | 1,359 | 1,816 | 12,076 | 12,400 |
| Germany | 153,089 | 166,559 | 192,340 | 260,222 | 187,080 | 29,136 | 37,480 | 47,602 | 50,719 | 43,193 |
| Estonia | 5,557 | 5,287 | 5,241 | 5,896 | 5,692 | 0 | . | . | . | . |
| Ireland | 125,237 | 120,097 | 124,088 | 124,083 | 97,905 | . | . | . | . | . |
| Greece | 37,409 | 36,155 | 51,460 | 38,537 | 10,253 | 851 | 722 | 570 | 587 | 551 |
| Croatia | . | . | . | . | . | . | . | . | . | . |
| Spain | 221,158 | 203,003 | 204,290 | 191,213 | 131,357 | 6,370 | 6,359 | 8,318 | 7,588 | 6,075 |
| France | 129,961 | 119,290 | 124,320 | 124,804 | 104,640 | 15,675 | 16,979 | 24,287 | 30,635 | 24,474 |
| Italy | 229,375 | 249,626 | 283,180 | 283,239 | 242,030 | 6,682 | 6,292 | 8,792 | 9,154 | 9,372 |
| Cyprus | 1,122 | 1,501 | 1,912 | 2,344 | 1,273 | 5,271 | 6,311 | 6,351 | 7,230 | 5,125 |
| Latvia | 3,671 | 3,746 | 3,635 | 3,897 | 3,437 | 0 | 0 | 0 | . | . |
| Lithuania | 4,603 | 4,637 | 4,670 | 4,802 | 4,383 | 0 | 0 | . | 0 | 0 |
| Luxembourg | 113,738 | 97,855 | 89,687 | 85,863 | 79,178 | 18,978 | 15,951 | 36,009 | 26,771 | 32,751 |
| Hungary | 7,435 | 8,580 | 8,804 | 6,595 | 7,610 | 0 | 0 | 0 | 0 | 0 |
| Malta | . | . | . | . | . | . | . | . | . | . |
| Netherlands | 63,583 | 73,237 | 100,029 | 133,083 | 83,975 | 1,345 | 2,174 | 2,771 | 5,269 | 2,699 |
| Austria | 10,874 | 11,108 | 11,591 | 11,657 | 12,731 | 0 | 0 | 0 | . | . |
| Poland | 13,050 | 14,376 | 7,329 | 7,043 | 8,038 | 0 | 0 | 0 | 0 | 0 |
| Portugal | 33,261 | 38,241 | 42,996 | 45,182 | 33,253 | . | . | . | . | . |
| Romania | 5,707 | 5,626 | 6,695 | 7,077 | 7,733 | 0 | 0 | 0 | 0 | 0 |
| Slovenia | 501 | 522 | 660 | 779 | 905 | 0 | 0 | 0 | 0 | 0 |
| Slovakia | 3,774 | 3,739 | 4,040 | 4,586 | 4,387 | 0 | 0 | 0 | 0 | 0 |
| Finland | 16,889 | 23,531 | 38,824 | 41,776 | 28,215 | . | . | . | . | . |
| Sweden | 59,633 | 74,193 | 81,521 | 83,743 | 89,499 | . | 9,542 | 12,061 | 12,462 | 11,278 |
| United Kingdom | 1,699,448 | 1,439,647 | 1,184,083 | 1,126,456 | 976,148 | 1,508,633 | 1,813,790 | 2,175,077 | 1,967,297 | 1,803,267 |
| **Euro area** | 1,182,407 | 1,189,160 | 1,354,575 | 1,443,578 | 1,131,883 | 148,316 | 164,227 | 258,407 | 274,459 | 245,060 |
| **EU** | 3,041,326 | 2,799,498 | 2,702,790 | 2,741,882 | 2,288,653 | 1,665,175 | 1,989,196 | 2,447,675 | 2,266,607 | 2,072,372 |

## Table 5 Number of subsidiaries of credit institutions from EU and non-EU countries

| | Number of subsidiaries of credit institutions from EU countries | | | | | Number of subsidiaries of credit institutions from non-EU countries | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2009 | 2010 | 2011 | 2012 | 2013 | 2009 | 2010 | 2011 | 2012 | 2013 |
| Belgium | 21 | 21 | 20 | 21 | 19 | 7 | 7 | 8 | 6 | 5 |
| Bulgaria | 13 | 13 | 13 | 13 | 12 | 3 | 3 | 2 | 2 | 2 |
| Czech Republic | 16 | 16 | 17 | 16 | 16 | 2 | 2 | 2 | 2 | 2 |
| Denmark | 6 | 6 | 6 | 5 | 5 | 5 | 5 | 1 | 0 | 0 |
| Germany | 31 | 26 | 25 | 22 | 22 | 17 | 16 | 15 | 15 | 15 |
| Estonia | 4 | 4 | 3 | 2 | 2 | 0 | . | . | 3 | 3 |
| Ireland | 22 | 17 | 16 | 15 | 13 | 15 | 15 | 13 | 11 | 11 |
| Greece | 7 | 7 | 6 | 5 | 3 | 1 | 0 | 0 | 0 | 0 |
| Croatia | . | . | . | . | 1 | . | . | . | . | 3 |
| Spain | 33 | 33 | 33 | 33 | 31 | 10 | 9 | 10 | 10 | 12 |
| France | 76 | 64 | 60 | 56 | 51 | 60 | 63 | 61 | 61 | 56 |
| Italy | 16 | 16 | 17 | 17 | 16 | 6 | 7 | 7 | 7 | 6 |
| Cyprus | 8 | 6 | 5 | 5 | 5 | 1 | 2 | 3 | 3 | 3 |
| Latvia | 7 | 8 | 4 | 3 | 3 | 7 | 7 | 8 | 4 | 4 |
| Lithuania | 4 | 4 | 3 | 3 | 3 | 0 | 0 | 1 | 1 | 1 |
| Luxembourg | 75 | 71 | 68 | 66 | 69 | 30 | 32 | 33 | 34 | 36 |
| Hungary | 17 | 16 | 15 | 15 | 14 | 2 | 2 | 2 | 2 | 2 |
| Malta | 10 | 11 | 11 | 11 | 10 | 3 | 2 | 2 | 2 | 2 |
| Netherlands | 8 | 9 | 9 | 8 | 8 | 14 | 15 | 15 | 14 | 12 |
| Austria | 13 | 16 | 21 | 18 | 17 | 11 | 11 | 14 | 17 | 17 |
| Poland | 31 | 34 | 32 | 31 | 30 | 8 | 5 | 5 | 5 | 6 |
| Portugal | 11 | 8 | 7 | 7 | 7 | 4 | 4 | 4 | 4 | 3 |
| Romania | 22 | 22 | 22 | 21 | 19 | 1 | 1 | 1 | 1 | 1 |
| Slovenia | 8 | 8 | 8 | 7 | 7 | 0 | 0 | 0 | 0 | 0 |
| Slovakia | 13 | 13 | 12 | 12 | 12 | 0 | 0 | 0 | 0 | 0 |
| Finland | 7 | 6 | 5 | 4 | 3 | 0 | 0 | 0 | 0 | 0 |
| Sweden | 7 | 6 | 6 | 6 | 5 | 1 | 1 | 1 | 1 | 1 |
| United Kingdom | 16 | 16 | 16 | 16 | 15 | 78 | 81 | 81 | 84 | 85 |
| **Euro area** | 359 | 332 | 326 | 309 | 295 | 179 | 183 | 185 | 187 | 181 |
| **EU** | 502 | 477 | 460 | 438 | 418 | 286 | 290 | 289 | 289 | 288 |

## Table 6 Total assets of subsidiaries of credit institutions from EU and non-EU countries 4)

(EUR millions)

| | Total assets of subsidiaries of credit institutions from EU countries | | | | | Total assets of subsidiaries of credit institutions from non-EU countries | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2009 | 2010 | 2011 | 2012 | 2013 | 2009 | 2010 | 2011 | 2012 | 2013 |
| Belgium | 578,136 | 541,467 | 563,831 | 458,761 | 409,974 | 35,784 | 39,406 | 55,405 | 68,787 | 65,326 |
| Bulgaria | 29,277 | 29,750 | 29,731 | 30,185 | 30,099 | 820 | 908 | . | . | . |
| Czech Republic | 125,083 | 134,068 | 146,461 | 148,417 | 159,783 | . | . | . | . | . |
| Denmark | 157,806 | 160,805 | 140,817 | 141,154 | 149,182 | 22,720 | 21,566 | . | 0 | 0 |
| Germany | 563,202 | 634,020 | 677,032 | 630,915 | 550,655 | 53,062 | 66,668 | 50,074 | 59,212 | 59,155 |
| Estonia | 14,692 | 13,594 | 11,715 | . | . | 0 | 344 | . | 853 | 957 |
| Ireland | 445,123 | 315,758 | 264,909 | 204,270 | 181,355 | 90,368 | 80,720 | 102,410 | 89,544 | 83,042 |
| Greece | 65,162 | 65,864 | 38,566 | 33,205 | 839 | . | 0 | 0 | 0 | 0 |
| Croatia | . | . | . | . | 1,812 | . | . | . | . | 153 |
| Spain | 112,271 | 114,683 | 122,259 | 116,448 | 104,450 | 9,706 | 7,600 | 7,823 | 9,201 | 11,717 |
| France | 569,838 | 567,240 | 596,388 | 622,173 | 471,821 | 54,483 | 55,126 | 59,035 | 58,288 | 57,218 |
| Italy | 205,544 | 225,492 | 236,036 | 256,371 | 233,751 | 13,095 | 19,070 | 18,326 | 18,740 | 17,943 |
| Cyprus | 45,134 | 33,539 | 26,515 | 19,560 | 10,736 | . | . | 11,942 | 15,173 | 9,293 |
| Latvia | 15,237 | 14,557 | 10,385 | 9,636 | 9,751 | 1,811 | 2,503 | 4,764 | 4,132 | 4,271 |
| Lithuania | 17,227 | 15,784 | 13,470 | 12,779 | 13,101 | 0 | 0 | . | . | . |
| Luxembourg | 542,787 | 545,971 | 541,853 | 492,948 | 451,497 | 46,904 | 63,107 | 80,689 | 82,192 | 93,161 |
| Hungary | 60,771 | 60,944 | 60,292 | 51,513 | 46,082 | . | . | . | . | . |
| Malta | 13,434 | 17,504 | 17,012 | 16,545 | 12,233 | 1,541 | . | . | . | . |
| Netherlands | 13,322 | 233,387 | 174,171 | 94,006 | 57,463 | 39,515 | 40,429 | 41,119 | 40,930 | 37,285 |
| Austria | 141,601 | 132,301 | 144,469 | 144,365 | 139,901 | 48,665 | 47,183 | 55,509 | 60,367 | 58,796 |
| Poland | 140,177 | 168,833 | 187,978 | 191,336 | 204,992 | 22,430 | 20,784 | 21,251 | 20,466 | 24,379 |
| Portugal | 82,111 | 80,544 | 76,724 | 67,157 | 65,311 | 4,844 | 5,126 | 3,148 | 2,479 | 1,330 |
| Romania | 59,990 | 61,346 | 60,490 | 57,753 | 56,154 | . | . | . | . | . |
| Slovenia | 15,055 | 14,436 | 14,187 | 14,123 | 13,265 | 0 | 0 | 0 | 0 | 0 |
| Slovakia | 48,588 | 50,265 | 51,043 | 52,618 | 54,188 | 0 | 0 | 0 | 0 | 0 |
| Finland | 243,191 | 308,455 | 414,150 | 357,954 | 310,243 | 0 | 0 | 0 | 0 | 0 |
| Sweden | 4,228 | 4,502 | 4,729 | 5,265 | 5,568 | . | . | . | . | . |
| United Kingdom | 598,301 | 562,993 | 553,979 | 512,080 | 444,602 | 507,203 | 548,562 | 780,310 | 794,027 | 720,894 |
| **Euro area** | 3,684,499 | 3,880,926 | 3,970,860 | 3,593,221 | 3,079,853 | 495,110 | 433,255 | 488,589 | 508,223 | 497,242 |
| **EU** | 4,907,288 | 5,108,103 | 5,179,192 | 4,753,339 | 4,200,978 | 1,056,334 | 1,034,518 | 1,307,324 | 1,337,828 | 1,258,260 |

## Table 7 Total assets under management by insurance corporations and by pensions funds
(EUR millions)

| | Total assets under management by insurance corporations | | | | | Total assets under management by pensions funds | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2009 | 2010 | 2011 | 2012 | 2013 | 2009 | 2010 | 2011 | 2012 | 2013 |
| Belgium | . | . | . | . | . | . | . | . | . | . |
| Bulgaria | 1,910 | 2,298 | 2,329 | 2,584 | 2,555 | 1,622 | 2,043 | 2,351 | 2,919 | 3,488 |
| Czech Republic | 13,794 | 15,391 | 16,329 | 17,301 | 17,053 | 8,166 | 9,192 | 10,066 | 10,868 | 11,448 |
| Denmark | 183,905 | 204,067 | 246,219 | 246,449 | 248,555 | 142,539 | 166,908 | 185,142 | 185,315 | 168,971 |
| Germany | 1,163,714 | 1,160,318 | 1,244,931 | 1,185,764 | 1,237,478 | 875 | 1,043 | 1,192 | 1,372 | 1,602 |
| Estonia | 707 | 815 | 806 | 855 | 813 | 1,025 | 1,160 | 1,214 | 1,576 | 1,874 |
| Ireland | . | . | . | . | . | . | . | . | . | . |
| Greece | 15,484 | 15,704 | 14,895 | 15,555 | 16,200 | 0 | 0 | 0 | 0 | 0 |
| Croatia | . | . | . | . | . | . | . | . | . | . |
| Spain | 261,827 | 260,676 | 272,784 | 282,400 | 300,336 | 86,321 | 87,030 | 85,326 | 88,409 | 93,846 |
| France | 1,760,215 | 1,892,339 | 1,875,784 | 2,072,396 | 2,169,334 | 0 | 0 | 0 | 0 | 0 |
| Italy | 537,770 | 519,639 | 509,546 | 560,038 | 633,509 | 25,912 | 30,654 | 32,585 | 35,823 | 36,673 |
| Cyprus | 8,294 | 9,573 | 9,884 | 10,595 | 8,260 | . | . | . | . | . |
| Latvia | 497 | 497 | 490 | 542 | 500 | 137 | 161 | 173 | 208 | 239 |
| Lithuania | 973 | 851 | 894 | 1,002 | 843 | 989 | 1,145 | 1,209 | 1,424 | 1,551 |
| Luxembourg | 101,171 | 120,942 | 122,146 | 139,469 | 147,794 | 844 | 896 | 969 | 1,071 | 1,216 |
| Hungary | 8,243 | 8,440 | 8,062 | 7,722 | 7,667 | 13,091 | 14,854 | 4,119 | 4,202 | 4,337 |
| Malta | 1,581 | 1,803 | 1,829 | 1,977 | 2,144 | 0 | 0 | 0 | 0 | 0 |
| Netherlands | 384,843 | 413,500 | 436,874 | 464,992 | 458,882 | 744,738 | 801,842 | 874,742 | 1,005,685 | 1,021,697 |
| Austria | 97,520 | 103,320 | 103,750 | 108,374 | 110,391 | 13,808 | 14,976 | 14,798 | 16,335 | 17,299 |
| Poland | 29,266 | 32,800 | 31,599 | 34,992 | 35,458 | 41,585 | 55,776 | 54,914 | 64,876 | 71,788 |
| Portugal | 57,765 | 60,785 | 53,236 | 52,919 | 53,784 | 21,919 | 19,724 | 16,074 | 14,628 | 15,152 |
| Romania | 3,362 | 4,024 | 3,899 | 3,938 | 3,705 | 608 | 1,111 | 1,619 | 2,312 | 3,340 |
| Slovenia | 5,359 | 5,732 | 5,987 | 6,443 | 6,561 | 1,390 | 1,593 | 1,636 | 1,597 | 1,551 |
| Slovakia | 6,141 | 5,901 | 6,163 | 6,848 | 6,896 | 3,952 | 4,872 | 5,789 | 6,796 | 7,157 |
| Finland | 48,357 | 51,829 | 51,537 | 55,902 | 59,305 | 5,110 | 4,681 | 5,928 | 4,703 | 5,050 |
| Sweden | 250,565 | 302,298 | 318,168 | 355,518 | 385,451 | 27,121 | 32,294 | 35,316 | 38,603 | 38,183 |
| United Kingdom | 1,633,741 | 1,710,161 | 1,759,953 | 1,927,444 | 1,918,027 | 1,265,348 | 1,504,342 | 1,725,644 | 1,966,264 | 1,956,657 |
| **Euro area** | 4,886,526 | 5,092,072 | 5,175,963 | 5,442,163 | 5,427,618 | 989,196 | 1,057,376 | 1,126,798 | 1,274,622 | 1,285,987 |
| **EU** | 7,013,488 | 7,373,715 | 7,563,905 | 8,039,655 | 8,051,448 | 2,491,427 | 2,846,363 | 3,147,349 | 3,551,613 | 3,554,112 |

NOTES TO TABLES
1) The data in these tables represent amounts recorded at the end of period, with the exception of the number of employees of credit institutions in Table 1 in which the average number in the period is in question.
2) These data as well as EU and euro area aggregates are available in the Statistical Data Warehouse (http://sdw.ecb.europa.eu/browse.do?node=9484387).
3) The Herfindahl index (HI) refers to the concentration of banking business. The HI is obtained by summing the squares of the market shares of all the credit institutions in the banking sector. The exact formula according to which data must be transmitted to the ECB is reported in the ECB Guideline on monetary and financial statistics (recast), (ECB/2014/15).
4) Where the number of institutions is less than three, the underlying data are not disclosed for confidentiality reasons.

## KEY STATISTICS as on 31-12-12 (Financial Indicators)
### (When not specified figures refer to the Group)

| Full Member Organisations | Economic indicators: Total assets (EUROmio) | Total deposits (EUROmio) | Total loans (EUROmio) | Profitability indicators: ROA (%) | ROE (%) | Cost/Income (%) | Capital solidity indicators: Tier 1 capital ratio (%) | CET 1 capital ratio (%) | Total capital ratio (%) | Long term rating: S&P | Moodys | Fitch | Other indicators: Nb Employees | Nb Clients | Regional / Local Banks | Banking Outlets | Nb members | Market share: Market share deposits (%) | Market share credits (%) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Austria** | | | | | | | | | | | | | | | | | | | |
| Österreichische Raiffeisenbanken | 291,538 | 172,195 | 193,879 | 0.4 | 5.8 | 90.3 | 9.1 | 6.0 | 11.5 | A | A2 | A | 29,758 | 3,600,000 | 527 | 1,758 | 1,720,000 | 29.8 | 26.1 |
| Österreichischer Volksbanken (a) | 57,405 | 11,793 | 27,975 | -0.2 | -3.7 | 66.0 | 10.1 | n.a. | 14.2 | n.a. | Baa 3 | A | 5,595 | 900,000 | 64 | 525 | 687,902 | 7.2 | 6.4 |
| **Bulgaria** | | | | | | | | | | | | | | | | | | | |
| Central Co-operative Bank | 1,713 | 1,467 | 847 | 0.3 | 3.0 | 84.4 | 14.4 | n.a. | 15.1 | n.a. | n.a. | n.a. | 2,166 | 1,393,138 | 30 (a) | 271 | 6,958 | 2.9 | 5.0 |
| **Cyprus** | | | | | | | | | | | | | | | | | | | |
| Co-operative Central Bank | 21,169 | 15,165 | 13,923 | 0.3 | 5.8 | 51.8 | 10.7 | 10.7 | 5.6 | n.a. | n.a. | n.a. | 2,896 | 988,959 | 97 | 420 | 621,967 | 21.6 | 19.2 |
| **Denmark** | | | | | | | | | | | | | | | | | | | |
| Nykredit | 192,565 | 7,323 | 164,213 | 0.2 | 4.6 | 56.6 | 19.1 | 15.8 | 19.1 | A+ | n.a. | A | 4,115 | 1,092,000 | 1 | 1,483 | 291,000 | 4.4 | 31.0 |
| **Finland** | | | | | | | | | | | | | | | | | | | |
| OP-Pohjola Group | 99,769 | 49,650 | 65,161 | 0.5 | 7.0 | 63.0 | 14.1 | 14.1 | 14.1 | n.a. | n.a. | A+ | 12,028 | 4,210,335 | 197 | 519 | 1,371,347 | 34.1 | 33.4 |
| **France** | | | | | | | | | | | | | | | | | | | |
| Crédit Agricole | 2,008,152 | 812,100 | 876,100 | n.a. | n.a. | 65.8 | 12.9 | 9.3 | 14.0 | A | A2 | A+ | 150,000 | 51,000,000 | 39 | 11,300 | 7,000,000 | 23.4 | 20.6 |
| Crédit Mutuel | 645,216 | 640,048 | 343,216 | 0.3 | 5.8 | 61.7 | n.a. | n.a | 14.5 | A+ | Aa3 | A+ | 79,060 | 30,100,000 | 18 | 5,961 | 7,400,000 | 15.0 | 17.1 |
| BPCE (b) (c ) | 1,138,000 | 537,700 | 583,100 | n.a. | n.a. | n.a. | 10.5 | n.a. | n.a. | A | Aa3 | A+ | 117,000 | 36,000,000 | 36 | 8,000 | 8,100,000 | n.a. | n.a. |
| **Germany** | | | | | | | | | | | | | | | | | | | |
| BVR | 1,090,336 | 664,839 | 632,448 | 0.9 | 13.5 | 61.2 | 10.1 | n.a. | 14.7 | AA- | n.a. | A+ | 190,095 | 30,000,000 | 1,101 | 13,211 | 17,300,000 | 19.8 | 18.3 |
| **Greece** | | | | | | | | | | | | | | | | | | | |
| Association of Cooperative Banks of Greece | 3,610 | 2,933 | 3,259 | -0.7 | -6.1 | n.a. | n.a. | n.a. | 10.9 | n.a. | n.a. | n.a. | 1,133 | 396,173 | 13 | 162 | 189,232 | 1.8 | 1.3 |
| **Hungary** | | | | | | | | | | | | | | | | | | | |
| National Federation of Savings Co-operatives | 6,386.00 | 4,366.69 | 2,707.32 | 0.50 | 6.50 | 72.2 | 19.8 | 15.9 | 7.07 | n.a. | n.a. | n.a. | 7,326 | 1,150,000 | 105 | 1,484 | 84,000 | 8.7 | 4.4 |
| **Italy** | | | | | | | | | | | | | | | | | | | |
| Assoc. Nazionale fra le Banche Popolari (b) | 481,472 | 425,375 | 378,391 | 0,70 | 5,10 | 57,6 | 7,90 | n.a. | 11,2 | n.a. | n.a. | n.a. | 84,500 | 9,593,158 | 100 | 9,514 | 1,212,739 | 26,9 | 24,7 |
| FEDERCASSE | 201,503 | 139,356 | 153,743 | 0.2 | 2.4 | 60.3 | 14.1 | 14.1 | 15.0 | n.a. | n.a. | n.a. | 32,000 | 6,000,000 (a) | 394 | 4,448 | 1,135,096 | 7.4 | 7.1 |
| **Lithuania** | | | | | | | | | | | | | | | | | | | |
| Association of Lithuanian credit unions | 479.02 | 405.48 | 281.40 | 0.02 | 0.2 | 99.6 | 17.6 | n.a. | 20.2 | n.a. | n.a. | n.a. | 566 | 135,920 | 63 | 122 | 135,920 | 4.6 | 6.8 |
| **Luxembourg** | | | | | | | | | | | | | | | | | | | |
| Banque Raiffeisen | 6,291 | 5,654 | 4,455 | 0.7 | 15.4 | 61.6 | 8.26 | 8.26 | 9.6 | n.d. | n.d. | n.d. | 540 | 127,159 | 13 | 48 | 8,388 | n.a. | n.a. |
| **Netherlands** | | | | | | | | | | | | | | | | | | | |
| Rabobank Nederland | 752,410 | 334,271 | 458,091 | 0.30 | 5.6 | 65.6 | 17.2 | 13.2 | 19.0 | AA- | Aa2 | AA | 59,628 | 10,000,000 | 136 | 826 | 1,918,000 | 39.0 | 31.0 |
| **Poland** | | | | | | | | | | | | | | | | | | | |
| National Union of Co-operative Banks (KZBS) (d) | 115,800 | 101,800 | 59,5 | 1.4 | 12.8 | 63.5 | 13.0 | n.a. | 13.8 | n.a. | n.a. | n.a. | 32,966 | 10,000,000 (a) | 572 | 4,193 | 1,051,897 | 9.4 | 7.7 |
| **Portugal** | | | | | | | | | | | | | | | | | | | |
| Crédito Agrícola | 13,748 | 10,178 | 8,365 | 0.3 | 3.8 | 65.3 | 11.1 | 11.6 | 10.9 | n.a. | n.a. | n.a. | 4,243 | 1,138,122 | 84 | 686 | 389,295 | 4.5 | 3.7 |
| **Romania** | | | | | | | | | | | | | | | | | | | |
| Creditcoop | 192 | 127 | 124 | 0,6 | 2,8 | 97,2 | 37,8 | n.a. | 22,2 | n.a. | n.a. | n.a. | 2,248 | 1,097,830 | 47 | 779 | 667,815 | n.a. | n.a. |
| **Slovenia** | | | | | | | | | | | | | | | | | | | |
| Dezelna Banka Slovenije d.d.(b) | 893 | 806 | 504 | 1.0 | 11.6 | 82.9 | 10.9 | n.a. | 11.9 | n.a. | n.a. | n.a. | 362 | 84,358 | 1 | 85 | 260 | 2.8 | 1.6 |
| **Spain** | | | | | | | | | | | | | | | | | | | |
| Unión Nacional de Cooperativas de Crédito | 131,649 | 90,960 | 89,676 | -1.2 | -18.4 | 49.3 | n.a. | n.a. | n.a. | n.a. | n.a. | n.a. | 19,674 | 10,958,300 | 68 | 4,832 | 2,554,627 | 6.7 | 5.8 |
| **Sweden** | | | | | | | | | | | | | | | | | | | |
| Landshypotek (b) | 4,648 | n.a. | 4,123 | n.a. | n.a. | n.a. | n.a. | n.a. | n.a. | n.a. | A2 | n.a. | 100 | 69,216 | 10 | n.a. | 57,606 | n.a. | n.a. |
| **United Kingdom** | | | | | | | | | | | | | | | | | | | |
| The Co-operative Bank | 61,119 | 45,336 | 41,104 | 0.4 | 9.8 | 74.3 | 6.3 | n.a. | 3.4 | n.a. | A3 | BBB+ | 9,032 | 4,700,000 | n.a. | 340 | 2,000,000 | n.a. | 3.0 |
| **Total (EU 27)** | **7,326,063** | **4,073,848** | **4,045,686** | | | | | | | | | | **847,031** | **214,734,668** | **3,716** | **70,967** | **55,904,049** | | |

| Associate Member Organisations | Total assets (EUROmio) | Total deposits (EUROmio) | Total loans (EUROmio) | ROA (%) | ROE (%) | Cost/Income (%) | Tier 1 capital ratio (%) | CET 1 capital ratio (%) | Total capital ratio (%) | S&P | Moodys | Fitch | Nb Employees | Nb Clients | Regional / Local Banks | Banking Outlets | Nb members | Market share deposits (%) | Market share credits (%) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Canada** | | | | | | | | | | | | | | | | | | | |
| Desjardins Group | 144,672 | 93,315 | 96,185 | n.a. | 9.4 | 73.5 | 15.7 | 15.7 | 18.4 | A+ | Aa2 | AA- | 45,219 | 5,000,000 | 376 | 1,240 | 5,000,000 | 43.0 | 30.0 |
| **Japan** | | | | | | | | | | | | | | | | | | | |
| The Norinchukin Bank / JA Bank Group | 669,158 | 392,721 | 133,463 | 0.1 | 2.0 | 90.6 | n.a. | 15.98 | 23.8 | A+ | A1 | n.a. | 215,807 | n.a. | 708 | 8,435 | 4,669,000 | 10.5 | 7.0 |
| **Switzerland** | | | | | | | | | | | | | | | | | | | |
| Raiffeisen Schweiz | 141,032 | 111,614 | 120,598 | n.a. | 6.2 | 65.8 | 12.6 | n.a. | 12.9 | n.a. | AA2 | n.a. | 10,540 | 3,645,020 | 321 | 1,084 | 1,794,855 | 20.0 | 16.1 |
| **Total (Non EU 27)** | **954,862** | **597,650** | **350,246** | | | | | | | | | | **271,566** | **8,645,020** | **1,405** | **10,759** | **11,463,855** | | |

(a) All figures referred to the domestic/local banks only (b) 2011 Data ( c) After merger of Banques Populaires and Caisses d'Epargne (d) All figures expressed in PLN: 1 Euro - 4,08 PLN (as of 31/12/2012) *In Quebec