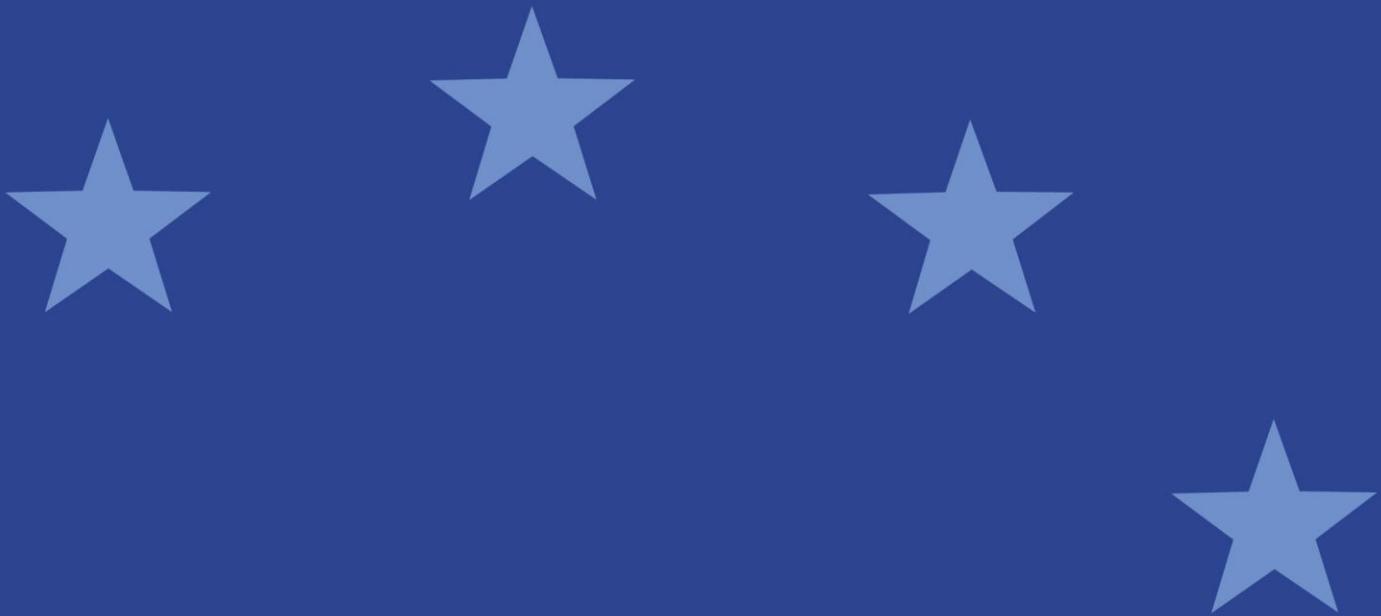




European Securities and
Markets Authority

Reply form for the Consultation Paper on Guidelines on the MiFID II/ MiFIR obligations on market data



Responding to this paper

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions summarised in Annex I. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **11 January 2021**.

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

Instructions

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

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_GOMD_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA_FOTF_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_GOMD_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open consultations" → "Consultation on the Guidelines on the MiFID II/MiFIR obligations on market data").

Publication of responses

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

Data protection

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

Who should read this paper

This consultation paper is interesting for you if you are a trading venue, an APA, an SI or a consumer of market data.

General information about respondent

Name of the company / organisation	Etrading Software Ltd
Activity	Other Financial service providers
Are you representing an association?	<input type="checkbox"/>
Country/Region	UK

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_GOMD_1>

Etrading Software welcomes the opportunity to comment on ESMA's Consultation Paper on Guidelines on the MiFID II/ MiFIR obligations on market data.

Etrading Software is the independent, global provider of technology-led solutions designed to assist capital markets institutions and industry initiatives to address complex and constantly evolving market and regulatory challenges. Etrading Software designs, builds and operates technology solutions for the capital markets, allowing clients to keep full governance and control using transparent and vendor-neutral solutions. Working with consortia through a mutualised approach, Etrading Software provides firms with the flexibility to not only meet new market and regulatory requirements but also continue to maintain and enhance such mutualised solutions while allowing stakeholders to retain control of the associated intellectual property and governance. Etrading Software has a European and Asian presence, with headquarters in London, United Kingdom.

In our response to this Consultation Paper, we have focused on technical and operational considerations without regard to the benefits or otherwise of the policy position. Wherever possible our reasoning has relied on objective data based on research we conducted in the summer of 2020. Please see <https://www.etradingsoftware.com/wp-content/uploads/2020/10/MiFID-II-Post-Trade-Data-Practical-Considerations-26-October-2020.pdf> for further details.

.<ESMA_COMMENT_GOMD_1>



Questions

Q1: What are your views on covering in the Guidelines also market data providers offering market data free of charge for the requirements not explicitly exempted in the Level 2 requirements?

<ESMA_QUESTION_GOMD_1>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_1>

Q2: Do you agree with Guideline 1? If not, please justify.

<ESMA_QUESTION_GOMD_2>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_2>

Q3: Do you think ESMA should clarify other aspects of the accounting methodologies for setting up the fees of market data? If yes, please explain.

<ESMA_QUESTION_GOMD_3>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_3>

Q4: With regard to Guideline 2, do you think placing the burden of proof, with respect to non-compliance with the terms of the market data agreement, on data providers can address the issue? Please provide any other comments you may have on Guideline 2.

<ESMA_QUESTION_GOMD_4>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_4>

Q5: Do you consider that auditing practices may contribute to higher costs of market data? Please explain and provide practical examples of auditing practices that you consider problematic in this context. Such examples can be provided on a confidential basis via a separate submission to ESMA.

<ESMA_QUESTION_GOMD_5>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_5>

Q6: Do you agree with Guideline 3? If not, please justify, by indicating which parts of the Guideline you do not agree with and the relevant reasons.

<ESMA_QUESTION_GOMD_6>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_6>

Q7: Do you agree with the approach taken in Guideline 4? If not, please justify, also by providing arguments for the adoption of a different approach.

<ESMA_QUESTION_GOMD_7>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_7>

Q8: Do you agree with Guideline 5? If not, please justify.

<ESMA_QUESTION_GOMD_8>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_8>

Q9: Do you think that ESMA should clarify other elements of the obligation to provide market data on a non-discriminatory basis? If yes, please explain.

<ESMA_QUESTION_GOMD_9>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_9>

Q10: Do you agree on the interpretation of the per user model provided by Guideline 6? If not, please justify and include in your answer any different interpretation you may have of the per user model and supporting grounds.

<ESMA_QUESTION_GOMD_10>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_10>

Q11: Do you agree with Guideline 7? If not, please justify. In your opinion, are there any other additional conditions that need to be met by the customer in order to permit the application of the per user model or do you consider the conditions listed in Guideline 7 sufficient to this aim? Please include in your answer the main obstacles you see in the adoption of the per user model, if any, and comments or suggestions you may have to encourage its application.

<ESMA_QUESTION_GOMD_11>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_11>

Q12: Do you agree with Guideline 8? If not, please justify also by indicating what are the elements making the adoption of the per user model disproportionate and the reasons hampering their disclosure.

<ESMA_QUESTION_GOMD_12>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_12>

Q13: Do you think ESMA should clarify other elements of the obligation to provide market data on a per user fees basis? If yes, please explain.

<ESMA_QUESTION_GOMD_13>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_13>

Q14: Do you agree with Guideline 9? If not, please justify.

<ESMA_QUESTION_GOMD_14>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_14>

Q15: Do you think ESMA should clarify other elements in relation to the obligation to keep data unbundled? If yes, please explain.

<ESMA_QUESTION_GOMD_15>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_15>

Q16: Do you agree with Guideline 10 that market data providers should use a standardised publication format to publish the RCB information? If not, please justify.

<ESMA_QUESTION_GOMD_16>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_16>

Q17: Do you agree with the standardised publication template set out in Annex I of the Guidelines and the accompanying instructions? Do you have any comments and suggestions to improve the standardised publication format and the accompanying instructions?

<ESMA_QUESTION_GOMD_17>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_17>

Q18: Do you agree with the proposed definitions in Guideline 11? In particular, do they capture all relevant market uses and market participants? If not, please explain.

<ESMA_QUESTION_GOMD_18>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_18>

Q19: Is there any other terminology used in market data policies that would need to be standardised? If yes, please give examples and suggestions of definitions.

<ESMA_QUESTION_GOMD_19>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_19>

Q20: Do you agree with Guideline 12? If not, please justify.

<ESMA_QUESTION_GOMD_20>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_20>

Q21: Do you think there is any other information that market data providers should disclose to improve the transparency on market data costs and how prices for market data are set? If yes, please provide suggestions.

<ESMA_QUESTION_GOMD_21>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_21>

Q22: Do you agree with Guideline 13? If not, please justify.

<ESMA_QUESTION_GOMD_22>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_22>

Q23: Which elements for post- and pre-trade data publication should be required? In particular, are flags a useful element of the publication? Should there be any differences between the different types of trading systems? Is the first best bid and offer sufficient for the purpose of delayed pre-trade data publication?

<ESMA_QUESTION_GOMD_23>

For post-trade data, flags should indeed be published because they are a necessary data element for performing data quality validation. For example, the Quantity field may be left blank if the deferral flag is present, but not otherwise. Without the publication of the flag, it will not be possible to determine if an empty Quantity field is related to such a use case or is a result of poor quality data.

Additionally, meaningful aggregation of the post-trade data becomes impossible if the flags are not available, as the flags provide critical information to determine the context of the price. For example, whether the trade was part of a package transaction or a benchmark transaction. Without such context, the usefulness of any aggregation is severely diminished.

<ESMA_QUESTION_GOMD_23>

Q24: Which use cases of post- and pre-trade delayed data are relevant to you as a data user? What format of data provision is necessary for these use cases, and especially for pre-trade delayed data?

<ESMA_QUESTION_GOMD_24>

For post-trade data, our research highlighted that some APAs claim that access to their data can be automated, but upon analysis, automation is either difficult or impossible. In order to address this issue, we recommend that publishers be mandated to provide clear instructions on how to automate access to their data, using a vendor-neutral example.

For raw post-trade data, we note that publishers have the flexibility to choose their own syntax and format. This lack of standardisation results in additional complexity for subscribers to the data, as well as increased risk of breaking production systems:

1. Additional complexity because subscribers now need to implement individual custom feeds for each publisher, noting that many publishers do not provide any notes or instructions on the meaning or syntax of their files
2. Increased risk of breaking production systems, because the publisher is under no obligation to keep their format consistent, or even to notify the subscriber that the format or syntax will change / has changed. This lack of notice means a subscriber to the data cannot have any confidence that their data feed will be operational at any given moment in time.

In order to address these issues, we recommend that all publishers should provide their data in a single standard syntax. We appreciate that the transport mechanism may differ between publishers, depending on the technology used, but this should not stop standardisation of the syntax of the content that is transported. Alternatively, publishers should be mandated to

document their syntax and format and be required to provide advanced notice of any changes to ensure subscribers of the data have the opportunity to plan their upgrade cycles without loss of service.

Regarding the availability of the data for a period of time, we agree that 24 hours is sufficient to allow automated access. However, consideration should be given to the case where the publisher's systems are unavailable for part or all of this time. In such circumstances, the data should be made available for a longer elapsed period to ensure subscribers have a reasonable opportunity to download the data.

<ESMA_QUESTION_GOMD_24>

Q25: Do you agree with the definitions of data-distribution and value-added services provided in Guideline 16? Please explain.

<ESMA_QUESTION_GOMD_25>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_25>

Q26: Do you have any further comment or suggestion on the draft Guidelines? Please explain.

<ESMA_QUESTION_GOMD_26>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_26>

Q27: What level of resources (financial and other) would be required to implement and comply with the Guidelines and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale and complexity of the activities of your organisation, where relevant.

<ESMA_QUESTION_GOMD_27>

We have restricted the scope of our resource estimates to that of building a feed to subscribe to the data. These estimates assume the core system already exists for storage and analysis of the data and therefore the incremental effort is in the integration effort to a new data publisher.

Assuming differing formats and syntaxes per data publisher, we estimate an effort of 2 man-weeks to implement subscribing to a single feed in production. This effort includes analysis, design, implementation, testing, documentation and training of support staff.

Assuming a single standard format, we estimate an effort of 1-2 man-days to implement a single feed in production, with the first feed taking 2 man-weeks as per above.

In terms of on-going costs, the effort will be very much dependent on whether advanced notice is provided by publishers, providing clear unambiguous information of the proposed changes, alongside test environments to validate any changes before production roll-out.

Assuming publishers do provide the above, we estimate 2 man-days for any changes to syntax and format. However, our research has highlighted that publishers have not been operating such a model. In which case, up to 2 man-weeks may be required per feed.

Please note that a critical issue for data subscribers, apart from effort/cost, is reliability of the data feed. This will depend on publishers providing advance notice of any change and availability of a high quality test environment to validate any change before the change is deployed into production. Otherwise, it will not be possible to provide a reliable data feed.

Such unreliability could be compounded if remediation were to take longer than 24 hours. In this scenario, given the obligation of the publisher to keep the data for 24 hours only, the subscriber risks losing this data permanently, even after they have implemented the necessary changes to their system.

This lack of reliability may well mean that such data feeds are not implemented for production use.

<ESMA_QUESTION_GOMD_27>