

ESMA CP1 on RTS 2, RCB and RTS 23
EDMA Submission

EDMA submitted the following responses to ESMA in August 2024.

Consultation Paper on the amendment of RTS 2

Q1: Do you agree with the definition of CLOB trading systems proposed above? If not, please explain why.

Yes, EDMA agrees with the proposed definition of CLOB trading systems.

Q2: Do you consider that the definition should include other trading systems? Please elaborate.

No, EDMA does not think the definition should include other trading systems.

Q3: Do you agree that the description of periodic auction trading systems set out in Annex I of RTS 2 is relevant for specifying the characteristics of those trading systems in the revised RTS? If not, please elaborate.

Yes, EDMA agrees that the description of periodic auction systems set out in Annex 1 of RTS 2 is relevant for clarifying the characteristics of those trading systems in the revised RTS..

Q4: Do you agree to use ESA 2010 to classify bond issuers? If not, please explain and provide alternatives on how clarify how to classify sovereign, other public and corporate issuers.

EDMA does not agree with the proposal to use ESA 2010 to classify bond issues. The analysis is too complex and puts undue burden on entities under an obligation to submit data to FITRS.

We suggest instead remaining with the existing scope of issuers within the definition of Other Public Bond in RTS 2 Annex III Table 2.2:

Other Public Bond means a bond issued by any of the following public issuers:

- (a) in the case of a federal Member State, a member of that federation;
- (b) a special purpose vehicle for several Member States;
- (c) an international financial institution established by two or more Member States which have the purpose of mobilising funding and providing financial assistance to the benefit of its members that are experiencing or are threatened by severe financial problems;
- (d) the European Investment Bank;
- (e) a public entity which is not an issuer of a sovereign bond as specified in the previous row.

Q5: Do you agree with the proposed LiS pre-trade thresholds for bonds? In your answer, please also consider the analysis provided in sections 4.2.1.

EDMA agrees with the proposed LiS pre-trade thresholds for bonds. The suggested levels are not significantly deviating from the averages of the last five years' quantitative assessments.

Q7: Do you agree with the approach taken for the illiquid waiver for bonds, SFPs and EUA? If you disagree with how the liquidity threshold is determined, please include your comments in Q11 for bonds, Q14 for SFPs and/or Q17 for EUAs.

EDMA agrees with the approach to harmonise the definition of liquid bond for the purpose of pre- and post-trade transparency. A divergence in approach between pre- and post-trade transparency would instead increase the implementation cost without any clear benefits.

Q8: Do you agree with the changes to post-trade fields summarised in Table 5? Please identify the proposal ID in your response.

EDMA generally agrees with the proposals. However, we have the following specific comments:

Proposal 1: We disagree with the requirement to introduce a column naming convention. This is not practical for market data disseminated via technical protocols.

Proposal 4: We note that the type of venue of publication (RM, MTF, OTF, APA) is already available via ESMA's registers.

Q9: Do you agree not to change the concept of "as close to real-time as technically possible"? If not, what would be in your view the maximum permissible delay?

EDMA agrees with the proposal.

Q11: Do you agree with the liquidity thresholds set out in Table 7 above? If not, please provide an alternative approach.

EDMA is generally supportive of simplification and improvements to transparency. We agree with the use of a straightforward and static liquidity threshold.

Q12: Do you agree with the proposed thresholds specified in the above Tables? If not, please justify by providing qualitative data to your analysis and differentiating per asset class.

EDMA is generally supportive of simplification and improvements to transparency.

Q21: Do you agree with the pre- and post-trade thresholds? If not, please suggest an alternative methodology.

EDMA does not disagree with the thresholds. However, we would like to note that the objective of "keeping an alignment with ETFs" (as mentioned under points 143 and 144) may not be met by the proposal of a EUR 1,000,000 pre-trade LIS threshold for ETCs and ETNs – given that Commission Delegated Regulation (EU) 2023/944 of 17 January 2023 amending and correcting the regulatory technical standards laid down in Article 7 of Delegated Regulation (EU) 2017/587 as regards certain transparency requirements applicable to transactions in equity instruments states: "An order in respect of an ETF shall be considered to be large in scale where the order is equal to or larger than EUR 3,000,000." We are not aware of any threshold change proposed in ESMA's Consultation Paper CP3 (ESMA74-2134169708-7011) either.

Q22: What is your view in relation to the implementation of the supplementary deferral regime for sovereign bonds?

EDMA agrees with ESMA that the aggregation regime is overly complex, difficult to implement, and would be difficult for data users to understand.

In order to reduce complexity and increase transparency, ESMA should make available a central repository where NCAs must upload and update their decisions with respect to supplementary deferrals under Article 11(3)(a) quarterly, which must be easily accessible (website) and machine-readable.

Regarding derivatives, Paragraph 5 of the Consultation Package states that “in order to ensure a consistent approach of the transparency regimes in each asset-class”, ESMA will consult separately on changes addressing the transparency mandate for derivatives. However, amendments to Article 11 of the proposed draft RTS 2 remove derivatives from the scope of supplemental deferrals and instead the Article would apply only to Sovereign Bonds. We do not believe it is the intention to remove supplementary deferrals for derivatives prior to the review, consultation and implementation of the new transparency regime for derivatives and wish for confirmation of such from ESMA.

Q24: Do you have any further comment or suggestion on the draft RTS? Please elaborate your answer.

We noticed that ESMA currently has not yet decided the ‘implementation period’ for the amended RTS 2 (it is shown as ‘TBC’ at P. 177 of the CP). Considering the complexity of the changes and the connection between RTS 23 and RTS2, we would like to propose the same implementation period as proposed by ESMA for the amended RTS 23 (i.e., 18 months after the date of entry into force). In addition, we would also like to highlight that the delegated act of OTC derivative identifier and the new derivative transparency regime have another impact on RTS 2 and RTS 23, so we urge ESMA further align all related changes in a broader time plan to prevent those unnecessary costs caused by the ‘high-frequency’ changes.

ESCB members that are not part of the Eurosystem: Require clarification on how the changes to Article 1(6) MiFIR apply where they have been extended to third-country central banks under Article 1(9) MiFIR (see https://finance.ec.europa.eu/system/files/2023-11/overview-table-equivalence-decisions_en.pdf). Do the current provisions in RTS 2 apply until new level 2 is applied, in an equivalent manner to ESCB members that are not part of the Eurosystem?

Q25: What level of resources (financial and other) would be required to implement and comply with the draft amended RTS 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.

Significant resource from EDMA member firms, both one-off and on-going, will be required to implement the changes proposed in this RTS. As there will be material impact on both trading venues to adapt their systems and on data users to consume transparency data in the new format, EDMA would recommend an 18 months’ implementation period in line with RTS 23.

CP on the RTS on reasonable commercial basis

Q26: Do you agree to the general approach used to specify the costs and margin attributable to the production and distribution of market data? Please elaborate.

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Q27: Do you agree with the proposed approach to cost calculation based on the identification of different cost categories attributable to the production and dissemination of market data (i.e. (i) infrastructure costs; (ii) connectivity costs; (iii) personnel costs; (iv) financial costs; (v) administrative costs)? Please elaborate.

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- Q28: Do you agree with the proposal of apportioning costs based on the use of resources (i.e., infrastructure, personnel, software...) for each service provided? Do you think the methodology to be used to apportion costs should be further specified? Please elaborate.

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- Q29: Do you agree that the net profit as defined in Article 3 of the draft RTS can be a representative proxy of the margin applicable to data fees and would you include additional principles to define when a margin can be considered reasonable? Please elaborate.

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- Q30: Do you agree with the proposed template for the purpose of information reporting to NCAs on the cost of producing and disseminating data and on the margin applied to data? Please elaborate, including if further information should in your view be added to the template.

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- Q31: What are in your view the obstacles to non-discriminatory access to data taking into consideration the current data market data policies and agreements?

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- Q32: What are the elements which could affect prices in data provision (e.g. connectivity, volume)? Do they vary according to the use of data made by the user or the type of user? Please elaborate.

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- Q33: Do you agree with ESMA's proposal on how to set up fee categories. Please justify your answer.

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- Q34: Regarding redistribution of market data, do you agree with the analysis of ESMA? If not, please elaborate on the possible risks you identify and possible venues to mitigate these. In your response please elaborate on actual redistribution models.

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- Q35: Are there any other terms and conditions in market data agreements beyond the ones listed in this section which you perceive to be biased and/or unfair? If yes, please list them and elaborate your answer.

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- Q36: Please provide your view on ESMA's proposal in respect to (i) the obligation to provide pre-contractual information, (ii) general principle on fair terms, (iii) the language of the market data agreement, (iv) the market data agreement conformity with published policies and (v) the provision on fees and additional costs.

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- Q37: According to your experience, has the per-user model been inserted in the market data agreements as an option for billing? If yes, do you have experience in the usage of this option? Is the proposed wording of this option in the draft RTS useful? What are in your views the obstacles to its use?

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- Q38: Do you agree with ESMA's proposal on penalties? Please elaborate your answer.

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- Q39: Do you agree with ESMA's proposal on audits? Please elaborate your answer.

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Q40: Would you adopt any additional safeguards to ensure market data agreements terms and conditions are fair and unbiased? Please elaborate your answer.

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Q41: Do you agree with the standardised publication template set out in Annex I of the draft RTS? Do you have any comments and suggestions to improve the standardised publication format and the accompanying instructions? Please elaborate your answer.

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Q42: Do you agree with the proposed list of standard terminology and definitions? 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.

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Q43: Do you consider that the "user-id" and the "device" should still be considered as "unit of count" for the display and non-display data respectively? Do you think (an)other unit(s) of count can better identify the occurrence of costs in data provision and dissemination and if yes, which?

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Q44: Do you foresee other types of connectivity that should be defined beside "physical connection" to quantify the level of data consumption? Please elaborate your answer.

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Q45: 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.

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Q46: Do you agree with the approach on delayed data proposed by ESMA? Please elaborate your answer.

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Q47: Do you agree with the proposal not to require any type of registration to access delayed data? Please elaborate your answer.

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Q48: ESMA proposes the RTS to enter into force 3 months after publication in the OJ to allow for sufficient time for preparation and amendments to be made by the industry. Would you agree? Would you suggest a different or no preparation time? Please elaborate your answer.

Since Article 16 of the draft RTS requires at least two months' notice for any unilateral change to the terms and conditions of the market data agreement, a 3 month period means market data providers may only have 1 month to incorporate the new RCB requirement and communicate to their clients properly. Further considering that some fields in Annex I and Annex II of the draft RCB RTS are based on either a full calendar year or accounting year, a 12 month period should be a better preparation time.

Q49: Do you have any further comment or suggestion on the draft RTS? Please elaborate your answer.

We would like to emphasise that, as ESMA has acknowledged, *'it is important to take the different nature, scale and complexity of market data providers into account when specifying the expectations on the market data provisions'* (para. 22 of ESMA Final Guidelines on the MiFID II/MiFIR obligations on market data, ESMA70-156-4263), so the principle of proportionality should be properly taken into account when drafting this RTS. Based on this principle, we have noticed that no minimum revenue threshold for the application of the reasonable commercial basis has been considered in the draft RTS, so, for some market data providers, they may spend comparatively significant resources and costs to fulfil the newly proposed RCB requirements which eventually results in adding disproportionate costs of producing and disseminating market data.

Q50: What level of resources (financial and other) would be required to implement and comply with the RTS 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?

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CP on the amendment of RTS 23

Q51: Do you agree with the proposal for a daily reporting of reference data for both transaction reporting and transparency purposes?

Yes, EDMA agrees with the proposal for a daily reporting of reference data for both transaction reporting and transparency purposes.

Q52: For the purposes of both equity and non-equity transparency, do you prefer to retain the MiFIR identifier as currently defined or to rely on other fields for classification purposes? If latter, please outline the proposed solution.

Yes, EDMA agrees that the MiFIR ID should be retained. However, there is a need to recognise that the MiFIR ID does not always align with the CFI code and this does cause issues. Work should continue to improve the alignment between MiFIR ID and CFI code.

Q53: Is in your view, the granularity level of the MiFIR identifier adequate for the purposes of MiFIR transparency in the equity and non-equity space? If not, how should it be adjusted?

Yes, EDMA agrees that the MiFIR identifier is adequate for the purposes of MiFIR transparency in the non-equity space.

Q55: Do you agree with deleting Field 5 of RTS 2, Annex IV, and use the CFI code for the purposes of derivatives' contract type classification?

Yes, EDMA agrees with deleting Field 5 of RTS 2, Annex IV, and use the CFI code for the purposes of derivatives' contract type classification. However, ESMA and the NCAs should work more closely with the National Numbering Agencies to improve the reliability of CFI codes.

Q70: Do you foresee any challenges with the use of JSON format comparing to XML? Please provide estimates of the costs, timelines of implementation and benefits (short- and long term) related to potential transition to JSON.

A shift from XML to JSON format for both outbound and inbound messages will be a significant development effort for reporting firms. It is not clear that this would yield any benefits for either ESMA or reporting firms.

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About EDMA

Electronic Debt Markets Association represents the common interests of companies whose primary business is the operation of regulated electronic fixed income trading venues (multilateral trading facilities and regulated markets) in Europe. EDMA seeks to foster and promote liquid, transparent, safe and fair markets and act as the voice and a source of consultation between the members in their roles as operators of such venues. EDMA projects collective views on regulatory matters and market structure topics to governments, policy makers and regulators for the benefit of the electronic fixed income markets. Our 6 members are: BGC Fenics, Bloomberg, BrokerTec, MarketAxess, MTS and Tradeweb. More information at www.edmae.org

