EDMA
Electronic Debt Markets Association

ESMA CP2 on RTS on DRSP and CTP and CTP selection procedure

EDMA submission

EDMA submitted the following responses to ESMA in August 2024

Section 3 – RTS on input and output data of CTPs:

Q8: Do you agree with the proposed definition of “transmission of data as close to real time as technically possible”? If not, please explain.

EDMA believes the ‘one-size-fits-all’ approach proposed by ESMA for the 100 ms post-trade data transmission latency is inappropriate to reflect the different nature, scale and complexity of market data for non-equities. From para. 40 and 41 of the consultation paper, we understand that the current proposal is based on the APA statistics, so we would really appreciate a follow-up meeting with ESMA to explain the technical difficulty of fulfilling this proposed 100 ms transmission speed from fixed income trading venues to the selected bond CTP.

Further, we would like to highlight and reiterate the difference between RTS 1 and RTS 2 markets as it pertains to speed and latency requirements. Submissions of 100ms or 200ms that may be in line with the requirements of equity markets are not in line with non-equity. The cost of developing systems to guarantee delivery of messages within these time frames likely outweighs the benefits considering the frequency of trading instruments in the RTS 2 space. The latency requirements outlined in the Consultation Package are at odds with the definition of “as close to real time as technically possible”, which provides a different set of requirements for RTS 1 and RTS 2, seemingly recognising the differences in market structure between equities and non-equities.

More specifically, we would like to point out two technical difficulties caused by proposed Article 3(2) of the draft RTS on input and output data of CTPs :

- ‘*The timestamp of the execution of the relevant transaction*’ is not a proper stamp to define the transmission speed from data contributors to CTPs. Article 22b(3)(c) mandates ESMA to define ‘*what constitutes the transmission of data as close to real time as technically possible*’, so the proper timestamp to calculate the transmission speed should be based on the timestamp that trading venues transmit the post-trade input data to the CTP.
- ‘*100 milliseconds*’ is not in line with the market expectation in non-equity environment. It is worth highlighting that, as per Article 7(4)(b) of RTS 2, the market expects the difference between the execution timestamp and the publication timestamp in non-equity space is within 5 minutes, so we do not believe the proposed 100ms is necessary and will definitely result in unnecessary cost to the market. EDMA would suggest that in the context of non-equity markets the definition of real time would be best set at 5 minutes.

Q9: Should ESMA consider specific rules for real-time transmission of transactions subject to deferred publication?

Rules for transmission of data should be pragmatic and focused on how best to ensure data quality, as per the goal of Article 22. For this reason, rules should not require all

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data provision to be provided real-time. Deferred data is not time-sensitive and should therefore be subject to an appropriate time limit. We note Article 22 requires ESMA to specify measures and standards for data quality; and attempting to impose real time transmission risks reducing, not ensuring, data quality.

Q10: Do you agree with the baseline proposal of adopting JSON as standards and format of data to be transmitted to the CTPs, or do you prefer alternative proposals? Please justify your answer and, if needed, provide additional advantages and disadvantages related to each proposal.

EDMA urges ESMA to further distinguish pros and cons of different data formats in various occasions: (i) the newly designed input data transmission between trading venues and CTPs, which requires some interaction and amendment functionalities; (ii) the newly designed output data transmission between the CTPs and data users, which need a stable and faster streaming functionalities; and (iii) reference data submitted by trading venues to ESMA, which is already built based on XML in the existing RTS 23. We therefore do not believe JSON is a one-size-fits-all solution.

Q12: Do you find more suitable to prescribe one single format across the 3 CTPs (equity, derivatives, bonds) or to prescribe distinct formats according for different asset classes?

EDMA prefers one single data format across the 3 CTPs.

Q13: Do you support the proposals on core and regulatory data? In particular, are there other relevant fields to be added to the regulatory data? Furthermore, would you propose the inclusion of supplementary fields for input core market data beyond those intended for dissemination by the CTP?

No, EDMA does not fully support the proposals on regulatory data.

The aim of the dissemination of regulatory data, as outlined by Recital 13 of the MiFIR Review, is "to keep investors informed of the status of the system matching orders, for example in the event of a market outage, and of the status of the financial instrument, for example in the event of suspensions or trading halts."

This requirement should only be relevant for shares, where price discovery is typically derived from the primary exchange and where trading activity is therefore very much linked to the availability of the instrument for trading on the primary exchange.

This is not relevant for bonds where trading activity is instead distributed widely across several trading venues and OTC. The status of financial instruments or matching systems is not linked in the same way to trading activity.

In addition, the universe of bonds is very large when compared to shares, which would mean:

- Data providers would have to submit and manage a very large dataset of instrument statuses; and
- The CTP would have to consume, manage and publish a very large dataset of regulatory data for bonds.

This would come with no value to investors but would involve significant resources for data providers and the CTP to develop and maintain this flow of information, which would likely detract from the core aim of the CTP to consolidate market data.

The regulatory data as proposed is also likely to be misleading in certain instances. For example, some trading venues may admit both bonds and equities to trading under the same segment MIC but sit on different trading platforms that may have different statuses during the trading day. It would be better for trading venues to manage communications about the availability of financial instruments and system statuses with their participants.

We also note that regulatory data is defined as '*data related to the status of systems matching orders in financial instruments and data related to the trading status of individual financial instruments*' in Article 2(1)(36c) of MiFIR level, so the field '*Trading system type*' proposed by ESMA in RTS 2 might be beyond the level 1 mandate.

Q14: Do you support the proposal of machine-readable and human-readable formats outlined in this section?

EDMA understands that a "Graphical User Interface" (GUI) is related to providing access to the CT data by retail investors. This GUI should be limited to the audience for which it is required, i.e. retail and non-professional users. It should not provide any additional value added services beyond the provision of core and regulatory data and should not be available to professional clients.

Q15: Do you agree with the proposal of data quality measures and enforcement standards for input data?

EDMA agrees that the CTP is not responsible, nor allowed (unless under "exceptional circumstances" and for technical reasons" to correct data itself. The CTP should publish the data as received and work with data contributors as it pertains to discussions on data quality.

Q16: Do you agree with the proposal of data quality measures for output data?

Yes, EDMA agrees with the proposal of data quality measures for output data.

Section 5 – RTS on the synchronisation of business clocks

Q38: Do you support a timestamp granularity of 0.1 microseconds for operators of trading venues whose gateway-to-gateway latency is smaller than 1 millisecond? If not, please explain. Would you argue for an even smaller granularity? If yes, please explain.

No, EDMA does not support a timestamp granularity of 0.1 microseconds for operators of trading venues whose gateway-to-gateway latency is smaller than 1 millisecond. We believe a timestamp granularity of 1 microsecond is the right level for this type of traffic. This is reflected by the timestamp granularity for post-trade transparency being limited to the microsecond. Changing the level of granularity to 0.1 microseconds would require significant changes for trading venues to manage and distribute the new granularity and for participants to consume and manage the new timestamps, without any clear benefit.

Section 6 – RTS/ITS on the authorisation and organisational requirements for DRSPs

Q46: Do you agree with the approach proposed by ESMA?

Yes EDMA broadly agrees with the points and observations made by ESMA. We would like to particularly highlight the reference to DORA, given the importance of the CTP to financial markets it is imperative that the CTP is operationally resilient and in compliance with the requirements laid out in DORA.

Q47: Do you foresee specific conflicts of interests that may arise between (i) CTP and data contributors and (ii) CTP and clients and users?

EDMA would like to highlight that Article 27b(2) of MiFIR level 1 leaves room for the selected CTP to offer trading venue services via the same legal entity. Given the obvious conflict of interest between the CTP and data contributors, we believe this situation (if any) should be properly verified by ESMA during the authorisation process.

Q48: What other elements, if any, should be included in the RTS on authorisation of CTPs?

EDMA understands that ESMA is planning to create a new RTS on CTP authorisation with an aim to cover those CTP-related requirements that are currently under RTS 13 (para. 222 of the CP). We therefore really appreciate Recital 3 of the draft RTS (P. 179 of the consultation package) which secures the existing Article 13 of RTS 13 regarding ‘Other services provided by CTPs’. We believe any other services offered by the selected CTPs should be properly controlled due to the monopoly position.

Section 7 – Criteria to assess CTP applicants

Q51: What are in your view the most important elements that should be taken into account when defining the governance structure of the CTP?

As mentioned in Q48, we strongly support that the selected CTP should only be allowed to conduct the activities listed in Article 27h(1), with the following reasons:

(a) As the CTP will always have an unfair advantage given its dominant position in the financial markets (more specifically, the CTP will have contractual and business relationship with all financial market participants for the provision of CTP data), its remit to provide additional services beyond that of the regulated CTP should be heavily regulated to ensure fair competition.

(b) Since the sentence in the existing Article 27h(6) of MiFIR, ‘identifying additional services the CTP could perform which increase the efficiency of the market’, will be removed, we do need a more stringent governance framework to control the forthcoming CTPs (who will accordingly have a time-limited monopoly position granted by Regulation (EU) 2024/791, such as no requirement to provide 15 minute delayed data without charge, mandatory contribution by data providers to the CTP, etc).

Any other services that are not listed in Article 27h(1) can therefore only be offered by a separate legal entity.

The CTP should be separate and independent from any affiliate or group entities without the ability to cross sell or cross subsidise between entities within the same group as the CTP core service providing entity. The CTP's governance should be representative of the whole market with significant independent board representation.

The de facto monopoly position of the CTP (which means a lack of substitutability), given the importance of the CT towards the EU's CMU objective, requires a robust governance framework where any outsourcing arrangements planned by the CTP to be highly scrutinised by regulators during the tender process.

We agree that the advisory committee should consist of data providers (contributors to the tape) and consumers. However, we suggest that the requirements could go further to ensure that the CTP has wider independence from other intra group actions when setting fees for market data, license types, technical standards and data quality factors.

However, ESMA should go further than suggesting an advisory committee, by requiring the CTP's Board to consist of majority external, independent non-executive directors with the appropriate experience will ensure that the consolidated tape is delivered with a priority focus on the tape itself and not be subject to conflicts of interest that may arise with the CTP's wider group actions.

Q54: Which minimum requirements on identifying and addressing potential conflicts of interest would you consider relevant?

As explained in Q47 and Q51 respectively, we believe a proper legal separation is a practical solution to address potential conflicts of interest. Also the core CTP provider entity must have a majority of independent board representatives to appropriately address conflicts of interest that may arise between data contributors, the CTP and data consumers.

Q55: To score the applicants on their development expenditure and operating costs, ESMA intends to look at the costs the applicant will need to cover on an annual basis. Do you agree with this approach? If not, which alternative approach would you deem more appropriate?

ESMA should consider differentiating the costs for CTP applicants that have in-house development of infrastructure (which will be directly regulated by ESMA) versus development that is outsourced to a third party or to another group entity that is not regulated as a DRSP.

Q62: The proposed approach to resilience, business continuity and cyber risks is grounded in assessing mandatory DORA requirements applicable to CTPs as a first step (selection criterion), to then reward additional commitments and measures CTPs applicants intended to put in place to mitigate and address outages and cyber-risk . Do you agree with this approach? What additional commitments and measures would you consider appropriate?

Due to the key role played by the selected CTP, we would like to propose that the CTPs (in addition to the DORA framework) should be considered as 'Financial market infrastructures' in Annex of NIS 2 Directive (Directive (EU) 2022/2555) and CER Directive (Directive (EU) 2022/2557). Thus, both 'digital' resilience and 'physical' resilience of CTPs should be considered in the selection criteria. This is also in line with ESMA's final report on market outages (para. 65, ESMA70-156-6458).

Annex II – Cost Benefit Analysis

Q66: Do you expect the benefits from the proposed real time data transmission requirement for input data to outweigh the operational costs borne by data contributors?

EDMA would like to reemphasise our response to Q8. '100 milliseconds' is not in line with the market expectation in non-equity environment. It is worth highlighting that, as per Article 7(4)(b) of RTS 2, the market expects the difference between the execution timestamp and the publication timestamp in non-equity space is within 5 minutes, so we do not believe the proposed 100ms is necessary and will definitely result in unnecessary cost to the market.

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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