

Consultation Response

MiFIR Review - CP on the amendment of RTS 23

Date: 28 August 2024

Question Responses¹

No	Question
51	Do you agree with the proposal for a daily reporting of reference data for both transaction reporting and transparency purposes?
Response	
AFME note once a day reporting of both is already in place for bonds and is therefore supportive of maintaining this daily reporting frequency.	

No	Question
52	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.
Response	
In relation to equity and bonds only, AFME members agree with retaining the MIFIR identifier as its use is already deeply embedded in the industry.	

No	Question
53	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?
Response	
As noted on AFME response on Question 52, AFME members agree with the granularity level of the MiFIR identifier with respect to equity and bond cash instruments.	

No	Question
54	How do you expect the change in scope of instruments subject to transparency to impact transparency reference data? Would you agree to maintain the current whole set of reference data for non-equity instruments, currently in RTS 2, in RTS 23? If not, please specify which reference data should not be retained in the view of the revised scope.
Response	
AFME note that under the current MiFIR framework (Article 22(1) and (3)), only trading venues, APAs and CTPs have to report reference data for the purposes of transparency under RTS 2 while investment firms registered as DPEs are exempted from any such obligation. As per Article 27(1) MiFIR, DPEs should only provide identifying reference data only with regard to OTC derivatives not covered by the first subparagraph of Article 27(1). Therefore, the proposed move of the current whole set of reference data for non-equity instruments, currently in RTS 2 (Annex IV), to RTS 23 should apply only to TVs and DRSPs and should not lead to imposing any additional data reporting obligations to DPEs.	

¹ Numbering of questions follows the order as in the ESMA MiFIR Review Consultation Package.

AFME stress that the proposal by ESMA to merge into the revised RTS 23 the RTS 2 transparency reference data required pursuant to Article 22(1) and (3) MiFIR with the transparency reference data under Article 27(1) and (3) would lead to suboptimal results as different types of firms and instruments are subject to those obligations provided under those two distinct sets of MiFIR provisions. AFME further stress that in order for ESMA to effectively exercise its mandate under the revised Article 27(3) MiFIR, a cost benefit analysis should be performed before any changes are made addressing the unintended consequences of mixing the two separate set of obligations to provide identifying reference data into the revised RTS 23. Without such analysis, there is the risk that the calibration of the revised RTS 23 would bring into its scope non-transparency relevant instruments and introduce reporting obligations for DPEs that are not relevant. Furthermore, the transparency calculations have changed for bonds and thus it may not be relevant that all data fields currently available in RTS 2 for this purpose should be moved across to RTS 23. In view of the above, AFME would not support the movement of all RTS 2 fields until ESMA has completed careful analysis covering the issues highlighted above.

No	Question
55	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?
Response	
AFME are not responding to this question.	

No	Question
56	Do you agree with the proposed alignment between RTS 23 and RTS 2 as set out in this section? Please provide details on which alignment is (not) feasible and why, considering the impact in terms of comprehensiveness and consistency of the reported information.
Response	
As stressed in AFME's response to Question 54 above, the proposed alignment between RTS 23 and RTS 2 disregards the difference in scope of instruments and firms subject to reporting obligations between Article 22(1) and (3) and Article 27(1) and (3) MiFIR. Therefore, any changes to RTS 23 should not result in imposing additional obligations to investment firms registered as DPEs and SIs which do not currently exist. In this context, AFME members believe that SIs and DPEs should be exempt from reporting additional reference data for transparency purposes.	

No	Question
57	As it concerns "underlying type" classification, do you agree with the proposed reliance on CFI and other reporting fields? With specific regards to Field 27, do you have proposals on how that field may be streamlined?
Response	
AFME are not responding to this question.	

No	Question
58	Do you see additional room for simplification and/or alignment of reference data for transaction reporting and transparency purposes? What would be the impact in terms of one-off and ongoing costs, benefits and change management of such simplifications, in particular with respect to reducing and consolidating data flows to ESMA that exist currently?
Response	

AFME reiterate that no additional obligations should apply to SIs and DPEs, therefore no changes should be required and as a result no costs incurred by those types of firms. The second RTS 2 review for derivatives as well as the review of the scope of transaction reporting could also provide further opportunities for simplification and efficiencies. AFME will provide commentary on costs and benefits in the context of the relevant consultations that are expected to be published by ESMA on those issues.

No	Question
59	Do you have suggestions on how the fields mentioned above may be improved and streamlined?
Response	
AFME are not responding to this question.	

No	Question
60	Do you agree with the above assessment of the necessary adjustments to be made in the RTS 23 to accommodate for the identifying reference data?
Response	
AFME are not responding to this question.	

No	Question
61	Do you see a need to specify the 'date by which the reference data are to be reported' different from the date of application or have other comments with regards to the proposed timeline? If so, please specify.
Response	
As per our comments on Question 58 above, AFME reiterate that SIs and DPEs should not be captured under the scope of any changes proposed in this section. Moreover, in view of the overall changes to reference data reporting, AFME suggest the date of application of those changes to be set sufficiently in the future to allow for an adequate lead-in time for the market participants and regulators to implement the new requirements. In this respect AFME would support a 18-month implementation timeframe after the publication of the draft technical standards.	

No	Question
62	Are there any other international developments or standards agreed at Union or international level that should be considered for the purpose of the development of the RTS on reference data?
Response	
AFME support the use of the Unique Product Identifier (UPI) as the basis for OTC derivatives identification for different MiFIR purposes as further explained on a joint trade association statement dated 9 April 2014 (available here).	

No	Question
63	Do you agree with the changes proposed in the tables above? Should any other changes be considered to align the MiFIR reporting specifications with the international standards, EMIR and / or SFTR?
Response	
AFME are not responding to this question.	

No	Question
64	Do you foresee any challenges with the proposed approach under which the CSDR publications would be integrated in FIRDS?
Response	

AFME strongly oppose this proposal and believe that the use of FIRDS to identify the trading venue with highest turnover / the most relevant market is moving away from true instrument reference data (which is the key purpose of FIRDS). Therefore, AFME recommend keeping both datasets separate to prevent future interdependencies and complications with the two regulations.

No	Question
65	Do you have any comments with regards to the inclusion of additional fields in the instrument reference data published by ESMA to indicate whether the instrument is in the scope of CSDR and to specify which MIC corresponds to a venue with the highest turnover or the most relevant market in terms of liquidity?
Response	
AFME reiterate the strong opposition raised as per Q64 given that the proposed inclusion of additional fields appears to be aimed at extending and leveraging FIRDS for other means which if not well thought through will lead to significant implementation costs and proliferation of entries in FIRDS.	

No	Question
66	Do you support inclusion of the new fields listed above?
Response	
Regarding the proposed Field 4 (LEI of DPE), AFME note that the DPE LEI should not be made available publicly in FIRDS as this may de-anonymise MiFID post-trade transparency reporting.	

No	Question
67	Do you agree with the amendment listed above for the existing fields?
Response	
AFME note that for Field 2 & 3, the Action Type 'Modify' should be utilised instead of allowing multiple submissions with various date values as this will overcomplicate the output of the reference data reporting obligation.	

No	Question
68	With regards to monitoring of de-listing and re-admission, which option is preferable in your view: (i) reporting by the trading venue of all previous trading periods in the repeatable fields 10, 11 and 12 or (ii) implementing adequate reporting logic of events impacting the instrument (new, modification, termination etc) in order to enable ESMA to reconstruct all trading periods?
Response	
AFME are not responding to this question.	

No	Question
69	Do you support suppressing the reporting of the fields listed above?
Response	
AFME are not responding to this question.	

No	Question
70	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.
Response	

AFME notes that it will probably be challenging for firms of a smaller size to adopt to the use of JSON format. With that in mind, AFME would be supportive of the use of JSON format for submission purposes but would argue that the data should be available in both JSON and XML formats for users of the data. In any case, there should be legal certainty about the implementation timeframes and any changes to data formats so that firms are not exposed to the risk of being required to amend their reporting format set-up regularly, as that would lead to increased compliance costs.

No	Question
71	In addition to including a field to identify the DPE, are there any other adjustments needed to enable comprehensive and accurate reporting of reference data by the DPEs?
Response	
AFME agree with the use of a LEI code as a field to identify the DPEs submitting the reference data. However, the LEI of the DPE should not be made public, the DPE information should be anonymised on the public view.	

No	Question
72	With regards to the categorisation of classes of financial instruments for the purpose of the DPE register, how such classes should be designated in the register? Is there any further information that should be included in the register to ensure its usability and interoperability with other relevant systems? Do you foresee any practical implementation challenges, and if so, how they could be mitigated?
Response	
AFME would support the asset classes being designated in the register as per the MiFIR identifier for most classes, as that will ensure alignment with the classes of financial instruments included in ESMA's public statement on the "The transition to the new regime for post-trade transparency of OTC-transactions" dated 22 July 2024. However AFME note that there is not currently a solution that enables a consistent application of MiFIR identifier across all asset classes. Furthermore, there needs to be certainty and clarity on the RTS 2 required data.	
In addition, AFME stresses that the implementation of the DPE regime would require adequate time for investment firms and data vendors to establish connectivity to the register to extract data on a daily basis which is also expected to represent one of the main challenges of the new regime. Finally, AFME note that NCAs should follow a co-ordinated pan-European approach and avoid gold-plating with regard to any registration requirements.	

No	Question
73	Are any other adjustments needed to enable comprehensive and accurate reporting of Article 8a(2) derivatives under RTS 23?
Response	
AFME are not responding to this question.	