Section 1. General questions on the overall functioning of the regulatory framework

Question 1. To what extent are you satisfied with your overall experience with the implementation of the MiFID II/MiFIR framework?

2 – Unsatisfied

Question 1.1 Please explain your answer to question 1 and specify in which areas would you consider the opportunity (or need) for improvements:

From the perspective of trading venues and arrangers of transactions, the implementation of MiFID 2/R has been very costly to implement for both member firms and their customers. The returns to markets and regulators have not, we suggest, been commensurate with the investments made.

The clearest example of this is in the collection and publication of pre-trade transparency information for wholesale markets. The driver for pre-trade transparency was the hypothesis that increased transparency would lead to increased liquidity. In fact, the experience of our member firms is that there has been no measurable change in liquidity linked to the publication of pre-trade transparency data. Interest in the data has been reduced because of the liquidity thresholds means most of the data is either illiquid or deferred.

The existing framework should be thoroughly re-evaluated for proportionality, harmonised with global standards, and simplified in alignment with the objectives of CMU. These objectives should revisit the spirit and intent of the work to remove the Giovannini Barriers, open the EU capital markets to both domestic and international participants, increase linkages and reduce dependencies, reduce fragmentation, and improve efficiency. The benefits of a successful review will ultimately be demonstrated in higher productivity, greater resilience, and more choice for the end investor.

Wholesale markets regulation could positively contribute to economic growth by being an open and level playing field. Further work in the Union could improve the depth of liquidity available, as well as the certainty and transparency of outcomes achieved.

The review should aim at rebuilding a diverse ecosystem of financial infrastructures with choice and system resiliency at its heart. This will require the EU to retain competitiveness and connectivity in the global context by developing the international role of the Euro as a transactional and reserve currency in an open and flexible framework. This requires the removal of internal barriers to efficient markets and post-trade infrastructures, as well as external barriers to the flow of liquidity. Europe will best capture market share by providing the best transactional environment, rather than by building walls.

Question 2. Please specify to what extent you agree with the statements below regarding the overall experience with the implementation of the MiFID II /MiFIR framework?

	EVIA Answer
The EU intervention has been successful in achieving or progressing towards its MiFID II	2 (rather not agree)
/MiFIR objectives (fair, transparent, efficient, and integrated markets).	2 (rather not agree)
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	2 (rather not agree)
The different components of the framework operate well together to achieve the MiFID II/MiFIR objectives.	4 (rather agree)
The MiFID II/MiFIR objectives correspond with the needs and problems in EU financial markets.	2 (rather not agree)

Question 2.1 Please provide qualitative elements to explain your answers to question 2:

EVIA believes that many of the provisions of the regime need recalibration to encourage activity, transactions and investment within the perimeter of the regime, and to discourage the development of parallel but functionally equivalent markets outside of the scope of MiFID 2/R.

Market structure issues; particularly the establishment of the regulatory perimeter

MiFID 2/R requirements across the non-equities segments have generally been imposed from a pre-existing equities and designated-contract or retail-orientated set of templates. This approach has led to an ill-fitting set of implementation regulations, which have diminished choice and activity within the perimeter. MiFID 2/R has failed to sufficiently distinguish between service provision, products and facilities, and to apply a straightforward set of principles as to what each of these should deliver. This has been demonstrated by the unending search for definitions and use cases, which have either been circular, absent or created at odds with other EU regulations and at variance with other G20-agreed policy objectives.

Open Access to market infrastructures

Fair and open access to trading and clearing infrastructure is essential in a true single capital market: it is vital for maintaining integrated, safe, efficient, and continuous markets. Open access leads to lower costs, deeper pools of liquidity, improved service levels, greater capital efficiency, and innovation. Fragmentation often undermines the need to achieve economies of scale that bring benefits to users of capital markets. Open access to CCPs and CSDs asks that they are not able to use their quasi-monopolistic positions to prioritise maximising profits of group firms or those with close links over performance of their essential market functions. It has little or nothing to do with either "Portability" or "Interoperability" between FMIs.

Transparency and reporting

The reference data regime would better achieve its goal by enabling any participant to build product instrument identification using ISO, UPI and CFI standard blocks and demur from attempting to create EU gold standards, gate-keepers and systems which are not easily reconciled with global developments. The transparency regime is clearly not delivering value to market participants or regulators. Whilst many have commented on post-trade issues, we would highlight the lack of interests from market participants in the pre-trade transparency for non-equities (with the current Liquidity threshold provisions).

In the experience of EVIA members, market participants find that the commercial offerings of trading venues, quote vendors, investment firms and other technological newcomers creates far more useful, ingestible and wide-reaching dissemination of information.

Vertical Silos and Market data costs

MiFID 2/R requires trading platforms to make pre- and post-trade market data available on a "reasonable commercial basis". Notwithstanding this requirement, consumers of market data report significant price increases, most notably from the primary exchanges that lack the competition which typically drives down prices. This however must be caveated that the per unit cost for non-primary exchanges has not increased there is simply more data to consume which was not available previously.

Consolidated tape

EVIA members remain highly sceptical of any use-cases for a post-trade consolidated tape and wait to understand how such can help to build deeper and more open capital markets in Europe. We note that it is reserved to certain cash markets, for which data has become very expensive and for which certain "Best Execution" metrics are more meaningful to market participants than the price and volume reports of more wholesale and episodic products.

Commodity, Repo, Money Market and FX Markets

EVIA members have seen heighted challenges for trading in these products, arising from their positions in MiFID 2/R. They should each be closely reviewed with attention paid to the user base, pertaining definitions, perimeters and outcomes.

Question 3. Do you see impediments to the effective implementation of MiFID II/MiFIR arising from national legislation or existing market practices?

4 – Partially

Question 3.1 Please explain your answer to question 3:

EVIA members operate trading venues and hold other MiFID permissions –with a focus on the reception and transmission of orders, together with the arranging and bringing about of transactions— with clients or operations in many EU Member States. We observe that the application of rules and of supervision varies greatly; particularly with respect to the operation of trading venues.

Whilst a revision could offer the opportunity to harmonise understanding of the principles on which supervision rests, there remains substantial scope to clarify the regulatory perimeter and deal with boundary issues. Prima pares in this process is to ensure that operators of platforms or providers of trading services which are functionally equivalent to the operators and investment firms within MiFID 2/R are brought into the scope of the rules.

Question 4. Do you believe that MiFID II/MiFIR has increased pre- and post- trade transparency for financial instruments in the EU?

4 – Partially

Question 4.1 Please explain your answer to question 4:

EVIA emphasises that there has been no improvement of value for pre-trade transparency. In contrast, there has been better post-trade transparency for trades not subject to deferrals; however, there are a minimal number of trades across the non-equities space which are not eligible for deferrals.

Part of the problem arises from the way that reference data is being created and used. The concept of instrument by instrument reference data does not describe the price forming and trading activities for risk factors in core economic terms in non-equities markets, where trades are episodic and large in size. That the MiFID 2/R framework recognised that these are offered as Indications of Interest ["IOIs"], usually via packages, has been helpful; but the approach has failed to communicate how risk is transacted.

We note that, in the run-up to MiFIR 2/R, market participants and consumers were not appealing for any lack of transparency (but rather a lack of liquidity and high prices for data where open access was denied). They are not helped by the RTS23 and ISIN design, which was based upon individual securities and designated contract markets unique to the EU.

EVIA would recommend that pre-trade transparency provisions should be generally dropped from Articles 4, 5 of MiFID 2/R, unless the instruments are captured under the trading obligation ["DTO"] and traded autonomously. The concept of 'Addressable Liquidity' should run through the construction of transparency because the concept itself expands and contracts independently to any of the factors in the scope of MiFID 2/R as amply demonstrated throughout Q1 2020. Post-trade transparency should be reformed to apply only to those transactions arranged under the rules of multilateral systems [whose perimeter needs to be widened and redefined], and it should be refocused onto the relevant economic terms. Supervisory measures should be refocused on the quality of transparency data by a consideration of where activity occurs; and by an urgent transition to better, more open and global data standards, rather than the monopolistic attribution of ISINs to the ANNA-DSB.

Question 5. Do you believe that MiFID II/MiFIR has levelled the playing field between different categories of execution venues such as, in particular, trading venues and investment firms operating as systematic internalisers?

2 - Not really

Question 5.1 Please explain your answer to question 5:

In respect of the SI framework, we endorse the views of AFME and ISDA that these are functionally very different to trading venues.

MiFID 2/R has not achieved the objective of levelling the playing field between different categories of execution venues due to two discriminatory measures. Firstly, open access provisions have been preventing competition for products and post-trade services offered by the vertical silos. Secondly, and more fundamentally, the capital provisions for trades registered onto an RM are far less than those same trades on MTFs or OTFs which distorts the level playing field objectives.

Question 6. Have you identified barriers that would prevent investors from accessing the widest possible range of financial instruments meeting their investment needs?

4 – Partially

Question 6.1 If you have identified such barriers, please explain what they would be:

EVIA notes that the absence or the poor application of perimeter and instrument definitions within MiFID 2/R has led to transactions taking place outside of the multilateral venue regime. In particular we would draw attention to those transactions which are, by themselves, neither investments nor derivatives, as especially problematic. Participants in transactions involving commodities, repo, money market and FX markets products often involve non-financial and non-EU counterparties who do not consider themselves to be making investments.

Question 6.1 Please explain your answer to question 6:

Any review of the MiFID 2/R requires a fundamental restating of perimeter definitions in order to ensure that multilateral trading is properly captured, subject to market abuse provisions, and so that appropriate reporting to take place. MiFID 2/R currently acts as a barrier to all these most desirable outcomes, and we urge the EC to consider a process or taskforce similar to the EPTF or other high-level expert groups to examine the issue closely.

Section 2. Specific questions on the existing regulatory framework

PART ONE: PRIORITY AREAS FOR REVIEW

The establishment of an EU consolidated tape

1. Current state of play

Question 7. What are in your view the reasons why an EU consolidated tape has not yet emerged?

	EVIA Answer
Lack of financial incentives for the running a CT	5 (Fully Agree)
Overly strict regulatory requirements for providing a CT	3 (Neutral)
Competition by non-regulated entities such as data vendors	3 (Neutral)
Lack of sufficient data quality, in particular for OTC transactions and transactions on systematic internalisers	4 (Rather Agree)
Other	4 (Rather Agree)

Please specify what are the other reasons why an EU consolidated tape has not yet emerged?

EVIA member firms who provide post-trade services in addition to Trading Venues have noted that the absence of tan EU consolidated tape ["EUCT"] is likely due to the absence of a business delivery model, use cases, or any viable commercial framework. These factors have remained the case over the last five years and have been clearly communicated to the EC.

Question 7.1 Please explain your answers to question 7:

EVIA emphasises the continuing lack of consensus across EU market stakeholders as to the utility and purpose what any or several EUCTs should be. Topics raised often relate to: complaints around RM data costs and related "IPR" claims; data quality; and the scope of available data. A tape, as currently legislated for in MIFID, will not contribute to solving any of these complaints, because the ISIN-led approach will remain fundamentally flawed and the lack of end-user demand will drive higher pricing given the costs of implementation. With regards to the possible use case, we make two comments: (1) the EUCT should be limited to liquid products under a trading obligation; and (2)

delivery of stale transaction information that has been aggregated from different sources at ISIN level is unlikely to be of value to wholesale market participants.

At a minimum, data quality should be improved first through improved industry standards. A tape, on its own, is unlikely to solve data quality issues that stem from more fundamental design flaws; but, if data quality issues are improved, then this would at least be a step forward.

We would ask Regulators to encourage the work of industry standard-setters to review the required formats. For example, uniformity in time-stamping of trades is a necessity, but it remains a large technological challenge. We believe that industry formats, such as the CFI coding and FIX protocol, need to be recognised and adopted into technical standards. The ESAs and the national competent authorities can help to drive consensus by supporting this process.

Any commercial model for the application of an EUCT needs close consideration; most especially should a utility model be employed. It is most likely that legislative changes should be made so that utilities could be created in an institutional sense, rather than the private sector oligopolies that have characterised both MiFID 2/R and EMIR to date.

The US equities consolidated tape (in operation since the Seventies) operates like a utility, which imposes a price structure and subsequently redistributes revenues back to the contributing venues. This puts some limit on the costs (at whatever level prices are set by the utility), while fairly recognising the costs to venue operators of sending their data to the tape.

Without consensus on which problems a tape is meant to solve for and what product it will deliver, it remains questionable whether end users would find the data of sufficient value to actually use it and pay for it. Noting that history is littered with examples of poor public/private compromises, we believe that overall the most efficient models would be either to let commercial entities compete, in certain product areas, or to fund an EUCT as a utility institution from central funding.

Question 8. Should an EU consolidated tape be mandated under a new dedicated legal framework, what parts of the current consolidated tape framework (Article 65 of MiFID II and the relevant technical standards (Regulation (EU) 2017/571)) would you consider appropriate to incorporate in the future consolidated tape framework? Please explain your answer:

EVIA strongly recommends that any EUCT is built within MiFID 2/R.

Question 9. Do you agree with the above targeted amendments recommended by ESMA to address market data concerns? Please explain your answer:

Referring to our stringent reply to the ESMA CP on market data in Q3 2019, EVIA again underscores that none of the MiFID 2/R trading venues operated by its members across the non-equities sector have significant take up of their MiFID2/MiFIR transparency data due to lack of real time data available across the asset classes in scope.

This situation stands in contrast to the often very significant costs charged by exchanges operating vertical silos across the RM sector. RMs often operate in a more monopolistic environment for listed products, based upon expensive data bundles.

Competition within the listed equities and the listed derivatives sector exchanges will lead to lower data costs for certain data. EVIA therefore champions MiFID2/MiFIR's provisions on Open Access to Market Infrastructures (article 35/36 MIFIR), and our members are looking forward to the expected

benefits which open access for exchange traded derivatives will bring from the legislative application date of June 2020 onwards.

Whilst EVIA does see some merits with ESMA's recommendation to include Level 1 text to standardise RCB information and share information on the actual costs of producing and disseminating the prescribed market data, we caution that this may be classed under the categorisation of "more red tape." Coordination with global standards and protocols is vital. The EU would be better to create a competitive, level, playing field and put paid to the system of "national champions", which are often the source of concerns expressed about data pricing.

For the avoidance of doubt, we note that MTFs/OTFs do charge for 'derived data' as opposed to the 'MIFID pre/post trade data' that are the subject of this consultation. However, we would note that these segments are remote form any MiFID2/MiFIR requirements for execution metrics and form only a very minor proportion of any non-equity trading venue revenue, as a consequence of competition (open access),open intellectual property and in stark contrast to the consolidated vertical exchange sector.

Question 10. What do you consider to be the use cases for an EU consolidated tape?

	EVIA Answer
Transaction cost analysis (TCA)	4 (Rather Agree)
Ensuring best execution	4 (Rather Agree)
Documenting best execution	4 (Rather Agree)
Better control of order & execution management	3 (Neutral)
Regulatory reporting requirements	Not Applicable
Market surveillance	4 (Rather Agree)
Liquidity risk management	Not Applicable
Making market data accessible at a reasonable cost	Not Applicable
Identify available liquidity	Not Applicable
Portfolio valuation	Not Applicable
Other	Not Applicable

Please specify what are the other use cases for an EU consolidated tape that you identified?

Regarding those products that might be in scope of the EUCT (i.e., equities, bonds and ETFs), EVIA considers that there are some other areas where the CT potentially could be useful. Firstly, the assessment of market size is a simple data need that remains unfulfilled. Secondly, it will assist with the assessment of market risks within GARCH based models ["c-VAR"] and stress tests, and capital commitments via the calibration of Operational Risk models. The data will also have significant value for best execution. Lastly, for brokers and trading venues, there may also be some value for reconciling errors and fat-finger trades by the application of position corrections via post-trade transaction analytics.

Question 10.1 Please explain your answers to question 10 and also indicate to what extent the use cases would benefit from a CT:

EVIA recognises that trading venues, arrangers and brokers are not the intended beneficiaries of an EUCT. That said, we have noted in the prior answers that there currently seems to be a lack of consensus across market stakeholders as to what the purpose is for any EUCT. Complaints often heard relate to RM data costs from vertical silos, data quality, and the scope of available data. On its

own, we do not believe that any EUCT created under the MiFID2/MiFIR could contribute to solving any of these complaints.

Nevertheless, if policymakers could identify a purpose that would satisfy a specific need in the market, venues could use an EUCT for cash instruments for the following purposes:

- Assessment of market size and opportunity
- Harmonised data feed delivery i.e. the introduction of FIX or similar standardisation of delivery
- Market surveillance by our compliance teams
- Risk management by our mid office.
- As input for the Best Execution metrics which we send to our clients
- As input for development of our commercial enhanced data products
- To develop pricing models for use by trading venue professionals, such that they can improve the market colour they provide to their clients. (This applies to OTFs only).

2. General features of the consolidated tape

Question 11. Which of the following features, as described above, do you consider important for the creation of an EU consolidated tape?

	EVIA Answer
High level of data quality	5 (Fully Agree)
Mandatory contributions	5 (Fully Agree)
Mandatory consumption	1 (Disagree)
Full coverage	2 (Rather Not Agree)
Very high coverage (not lower than 90% of the market)	5 (Fully Agree)
Real-time (minimum standards on latency)	2 (Rather Not Agree)
The existence of an order protection rule	1 (Disagree)
Single provider per asset class	3 (Neutral)
Strong governance framework	5 (Fully Agree)
Other	Not Applicable

Please specify what other feature(s) you consider important for the creation of an EU consolidated tape?

As contributors to the tape, trading venues such as the EVIA membership should be able to participate in the governance of the EUCT operator. This includes various facets, from financials through to product, planning and technology. It is important to learn the experience of the ANA DSB, where failures in governance structures mean that those who pay do not have a say. Whilst much depends upon any model finally deployed, it may be learned from this case, together with many or any others, that oligopolies that are neither open and competitive, nor institutional utilities, usually create the most inefficient and ineffective outcomes. We would advocate that any entity operating a CT should be institutional with operational governance managed by ESMA with input from industry.

Whilst competing private sector solutions may be simpler and more effective in theory, we still foresee a requirement for legislative changes to make any commercial model for an EUCT viable and able to fairly reflect back to contributors the value of their submissions.

Finally, it is important that the creation of an EUCT and its distribution of MiFID 2/R transparency data does not impair the ability of contributing firms to commercialise their data separately which means that real time supply of this tape should not be considered.

Question 11.1 Please explain your answers to question 11 and provide if possible detailed suggestions on how the above success factors should be implemented (e.g. how data quality should be improved; what should be the optimal latency and coverage; what should the governance framework include the optimal number of providers):

EVIA understands that technological, commercial, practical and economic constraints should limit the application of an EUCT to liquid cash MiFID instruments only. Given the construction of periodic liquidity assessments, it would be simpler to apply the tape to trading obligation instruments only. Given the mechanics of post-trade deferral, this condition is clearly vital if any EUCT were to be published in a timely sense. In a similar vein, as we have noted, there is no merit in publishing collected, stale pre-trade data. For a EUCT there must be a harmonisation of delivery mechanisms and the end of proprietary feed protocol's offered by the RM today. Adoption of a common standard such as Fix plus more structured data contributions should be in place. As the cost of delivering this data is varied according to economies of scale and company infrastructure there must clear criteria when reporting this publicly. to allow sensible standardisation and comparison . As the venues cost would increase substantially to deliver this data, there must a clear differentiation between the CTP offering and the venues proprietary data offering. Ensuring there is a delay would help this cause.

It remains very important to note that EVIA proposes a change to the definition and perimeter of a MiFID2/R trading venue towards activity and away from a dependency on trade conclusion. Therefore it does not simply follow that trading venues would necessarily hold trade execution information, a legal application that may be more appropriately carried out in post-trade infrastructures. As is the case in the US, no EUCT should be thought of as mitigating high market data costs. We contend that market data costs should be dealt with, in their own right and as a first step, so that an appropriate CT could be built upon cost-effective market data.

It additionally stands to reason that any EUCT should not include transactions which are technical and not "price forming". It should only consider 'addressable liquidity' openly available to market participants. This constraint would additionally make widespread concerns around the timing and quality of contributing data much more addressable, given the validation engines within APAs and similar outsourced services offered by quote vendors and specialist reporting firms.

We note also that our answer in Question 11.0 remains relevant in respect of Question 11.1.

Question 12. If you support mandatory consumption of the tape, how would you recommend to structure such mandatory consumption?

EVIA does not consider mandatory consumption to be a relevant factor for the establishment of any EUCT. Furthermore, mandating consumption of a consolidated tape would remove a critical indicator as to whether an EUCT has value for market participants. Instead, the focus should be on creating the conditions that foster a cost effective and high-quality tape.

Please explain your answer and prove if possible detailed suggestions on which users should be mandated to consume the tape and how this should be organised:

Please see the answer to question 12 above.

Question 13. In your view, what link should there be between the CT and best execution obligations? Please explain your answer and provide if possible detailed suggestions (e.g. simplifying the best execution reporting through the use of an EBBO reference price benchmark):

EVIA considers that the principal and most relevant use case for any EUCT is in the data for best execution purposes. That is why we see no prospect of these proposals forming an EU Best Bid and Offer ["EBBO"].

For non-equities wholesale markets with no retail participation, quarterly best execution reporting requirements are widely considered to hold no value either to market participants or competent authorities. This lends weight to our suggestion that any EUCT could have value only for those markets with substantial or predominantly retail participation. Whilst we have established in prior answers that the potential scope is only that of cash settled MiFID products, the above dilemma questions whether there is any utility for an EUCT beyond European cash equities issues.

Question 14. Do you agree with the following features in relation to the provision, governance and funding of the consolidated tape?

	EVIA Answer
The CT should be funded on the basis of user fees	5 (Fully Agree)
Fees should be differentiated according to type of use	5 (Fully Agree))
Revenue should be redistributed among contributing venues	5 (Fully Agree)
In redistributing revenue, price- forming trades should be compensated at a higher rate than other trades	5 (Fully Agree)
The position of CTP should be put up for tender every 5-7 years	5 (Fully Agree)
Other	Not Applicable

Please specify what other important feature(s) for the funding and governance of the CT you did identify?

Further to the five categories listed, we reiterate that any commercial relationship between trading venues and any EUCT should address the scope and usage of any derived data created together with the ongoing data rights of contributing venues.

Question 14.1 Please explain your answers to question 14 and provide if possible detailed suggestions on how the above features should be implemented (e.g. according to which methodology the CT revenues should be redistributed; how price forming trades should be rewarded, alternative funding models):

User fees are likely to be essential features of either private or public sector models. We have noted that the ANNA-DSB model has caused controversy, because it combined a mandatory purchase scheme with an allocation of fees that did not fairly reflect usage. This model is seen by market users as a monopolistic solution that has no market discipline and is outside of the transparent institutional framework of accountability and governance. It should not be drawn upon here.

Trading data submission to any EUCT by trading venues and APAs should be under clear and concise commercial terms and agreements and at a price that reflects an incentive for operators to enter the CTP business. Whilst the price of data provided should reflect the broader price ["*reasonable*

commercial basis"] of market data, it needs to additionally consider the market shares of providers as measured by relative trading volumes underlying contribution to the tape.

As previously stated, either competing commercial models or an institutional framework would likely provide for appropriate governance to ensure the preservation of trust and good faith, whilst fees cannot be allowed to be simply the sum of all contributors commercial agendas.

3. The scope of the consolidated tape

Question 15. For which asset classes do you consider that an EU consolidated tape should be created?

	EVIA Answer
Shares pre-trade	Not Applicable
Shares post-trade	Not Applicable
ETFs pre-trade	Not Applicable
ETFs post-trade	Not Applicable
Corporate bonds pre- trade	1 (Disagree)
Corporate bonds post- trade	5 (Fully Agree)
Government bonds pre- trade	1 (Disagree)
Government bonds post- trade	5 (Fully Agree)
Interest rate swaps pre- trade	1 (Disagree)
Interest rate swaps post- trade	1 (Disagree)
Credit default swaps pre- trade	1 (Disagree)
Credit default swaps post- trade	1 (Disagree)
Other	1 (Disagree)

Please specify for which other asset classes you consider that an EU consolidated tape should be created?

EVIA does not foresee any other assets classes as candidates for an EUCT.

Question 15.1 Please explain your answers to question 15:

Any EUCT should apply to post-trade reports of transactions in cash instruments only; and, even then, we would suggest it be focused on instruments with significant retail market participation. Non-price forming trades should not form part of the scope of the tape, because they contain much less informational value to prospective users. We note the non-exhaustive list currently set out by the FIX WG including such types of transactions such as those resulting from credit or accounting requirements and those applying the activities of post trade risk reduction services.

Derivatives and forward trades are generally not traded by retail users, and so should not be included. Further, as has been widely previously stated, there are very few derivative and forward instruments that are either deemed liquid or come under the DTO scope, meaning that trade details are generally deferred. Beyond a set of relatively straightforward and liquid cash instruments, price formation becomes conditional on a great number of factors further diminishing any use cases; the danger being that any EUCT proposal would rapidly become overly complex, episodic and fragmented.

The concept of any pre-trade EUCT for all FI asset classes would appear to us to be beset by a number of additional difficulties. These include inappropriate reference data, bespoke terms, pricing differentiation, latency problems, and the prevalence of packages. We also remind the EC that current non-equity pre-trade transparency provisions are hardly used and technically difficult to meet. We also note that, whilst Article 65 of MIFID II and the relevant regulatory technical standards specify the

exact content of the post-trade information a CT should consolidate under the current framework, there is no such specification for pre-trade information.

Question 16. In your view, what information published under the MiFID II/MiFIR pre- and post-trade transparency should be consolidated in the tape (all information or a subset, any additional information)? Please explain your answer, distinguishing if necessary, by asset class and pre- and post-trade. Please also explain, if relevant, how you would identify the relevant types of transactions or trading interests to be consolidated by a CT:

As previously set out, EVIA believes that any post-trade data eligible for inclusion into any EUCT should clearly represent transactions which took place entirely with addressable liquidity, such that any similarly-situated market participant could have participated in those activities. There is scope for different categories of CT for different types of liquidity, based upon the characteristics of particular markets.

We concur that flags on transactions reported to any EUCT, either directly or via APAs, should be granular enough to allow market participants to distinguish addressable versus non-addressable liquidity. We note that market stakeholders have been addressing these issues in industry working groups such as the FIX Protocol.

3.2. The Official List of financial instruments in scope of the CT

Question 17. What shares should in your view be included in the Official List of shares defining the scope of the EU consolidated tape?

	EVIA Answer
Shares admitted to trading on a RM	4 (Rather Agree)
Shares admitted to trading on an MTF with a prospectus approved in an EU Member State	4 (Rather Agree)
Other	Not Applicable

Please specify what other shares should in your view be included in the Official List of shares defining the scope of the EU consolidated tape?

EVIA is not responding to this question.

Question 17.1 Please explain your answers to question 17:

EVIA is not responding to this question.

Question 18. In your view, should the Official List take into account any additional criteria (e.g. liquidity filter to capture only sufficiently liquid shares) to capture the relevant subset of shares traded in the EU for inclusion (in the consolidated tape?) Please explain your answer:

EVIA is not responding to this question.

Question 19. What flexibility should be provided to permit the inclusion in the EU consolidated tape of shares not (or not only) admitted to an EU regulated market or EU MFT? Please explain your answer:

EVIA is not responding to this question.

Question 20. What do you consider to be the most appropriate way of determining the Official List of ETFs, bonds and derivatives defining the scope of the EU consolidated tape? Please explain your answer and provide details by asset class:

EVIA recommends that the data used for any EUCT should be drawn from FIRDS and therefore aligned with the post-trade reporting provisions of the MiFID 2/R framework.

4. Other MiFID II/MiFIR provisions with a link to the consolidated tape

Question 21. What is your appraisal of the impact of the share trading obligation on the transparency of share trading and the competitiveness of EU exchanges and market participants? Please explain your answer:

EVIA is not responding to this question.

Question 22. Do you believe there is sufficient clarity on the scope of the trades included or exempted from the STO, in particular having regards to shares not (or not only) admitted to an EU regulated market or EU MTF?

EVIA Answer: 6. Don't know / no opinion / not relevant

Question 22.1 Please explain your answer to question 22:

EVIA is not responding to this question.

Question 23. What is your evaluation of the general policy options listed below as regards the future of the STO?

	EVIA Answer
Maintain the STO (status quo)	1 (Disagree)
Maintain the STO with adjustments (please specify)	2 (Rather Not Agree)
Repeal the STO altogether	5 (Fully Agree)

Question 23.1 Please explain your answers to question 23:

EVIA believes the share trading obligation should be removed from MiFID II. It adds very little value for end-users and increases complexity in market structure. Should the STO be maintained with adjustments, we believe that the scope of the share trading obligation should be adjusted and ensure

that third country shares are excluded from the STO scope. In addition, the extraterritorial application of the STO should be revisited to allow for compliance with local rules.

Question 24. Do you consider that the status of systematic internalisers, which are eligible venues for compliance with the STO, should be revisited and how?

	EVIA Answer
SIs should keep the same current status under the STO	5 (Fully Agree)
SIs should no longer be eligible execution venues under the STO	1 (Disagree)
Other	Not Applicable

Please explain in what other way(s) the status of systematic internalisers, which are eligible venues for compliance with the STO, should be revisited:

EVIA is not responding to this question.

Question 24.1 Please explain your answers to question 24:

EVIA is not responding to this question.

Question 25. Do you consider that other aspects of the regulatory framework applying to systematic internalisers should be revisited and how? Please explain your answer:

EVIA is not responding to this question.

Question 26. What would you consider to be appropriate steps to ensure a level-playing field between trading venues and systematic internalisers? Please explain your answer:

EVIA is not responding to this question.

Question 27. In your view, what would merit attention to further promote the price discovery process in equity trading? Please explain your answer:

EVIA is not responding to this question.

4.2. Aligning the scope of the STO and of the transparency regime with the scope of the consolidated tape

Question 28. Do you believe that the scope of the STO should be aligned with the scope of the consolidated tape?

EVIA Answer: Don't know / no opinion / not relevant

Question 28.1 Please explain your answer to question 28:

EVIA is not responding to this question.

Question 29. Do you consider, for asset classes where a consolidated tape would be mandated, that the scope of financial instruments subject to pre- and post-trade requirements should be aligned with the list of instruments in scope of the consolidated tape?

EVIA Answer: 6. Don't know / no opinion / not relevant

Question 29.1 Please explain your answer to question 29:

EVIA is not responding to this question.

4.3. Post-trade transparency regime for non-equities

Question 30. Which of the following measures could in your view be appropriate to ensure the availability of data of sufficient value and quality to create a consolidated tape for bonds and derivatives?

	EVIA Answer
Abolition of post-trade transparency deferrals	1 (Disagree)
Shortening of the 2-day deferral period for the price information	1 (Disagree)
Shortening of the 4-week deferral period for the volume information	1 (Disagree)
Harmonisation of national deferral regimes	5 (Fully Agree)
Keeping the current regime	4 (Rather Not Agree)
Other	Not Applicable

Please specify what other measures could in your view be appropriate to ensure the availability of data of sufficient value and quality to create a consolidated tape for bonds and derivatives?

EVIA considers that any EUCT should only apply to cash settled bonds deemed liquid under the transparency framework.

Question 30.1 Please explain your answer to question 30:

Given our assessment of appropriate scope in prior responses, the availability and quality relating to data issues are limited to those market segments which operate fairly effectively under the MiFID2/R regime.

Data quality and consolidation for MIFID2/R transparency regime is a different issue and should be addressed separately. We note that the assembly of any EUCT should not compromise the functioning of the marketplace.

II. Investor protection

Question 31. Please specify to what extent you agree with the statements below regarding the experience with the implementation of the investor protection rules?

	EVIA Answer
The EU intervention has been successful in achieving or progressing towards more investor protection.	Not Applicable
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	Not Applicable
The different components of the framework operate well together to achieve more investor protection.	Not Applicable
More investor protection corresponds with the needs and problems in EU financial markets.	Not Applicable
The investor protection rules in MiFID II/MiFIR have provided EU added value.	Not Applicable
Other	Not Applicable

Question 31.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

EVIA is not responding to this question.

Quantitative elements for question 31.1:

EVIA is not responding to this question.

Question 32. Which MiFID II/MiFIR requirements should be amended in order to ensure that simple investment products are more easily accessible to retail clients?

	EVIA Answer
Product and governance requirements	Yes
Costs and charges requirements	Not Applicable
Conduct requirements	Not Applicable
Other	Not Applicable

Please specify which other MiFID II/MiFIR requirements should be amended:

EVIA is not responding to this question.

Question 32.1 Please explain your answer to question 32:

EVIA is not responding to this question.

Question 33. Do you agree that the MiFID II/MiFIR requirements provide adequate protection for retail investors regarding complex products?

EVIA Answer: 6. Don't know / no opinion / not relevant

Question 33.1 Please explain your answer to question 33:

EVIA is not responding to this question.

2. Relevance and accessibility of adequate information

Question 34. Should all clients, namely retail, professional clients per se and on request and ECPs be allowed to opt-out unilaterally from ex-ante cost information obligations, and if so, under which conditions?

	EVIA Answer
Professional clients and ECPs should be exempted without specific conditions.	Yes
Only ECPs should be able to opt-out unilaterally.	No
Professional clients and ECPs should be able to opt-out if specific conditions are met.	No
All client categories should be able to opt out if specific conditions are met.	No
Other	Not Applicable

Please specify what is your other view on whether all clients, namely retail, professional clients per se and on request and ECPs should be allowed to opt-out unilaterally from ex-ante cost information obligations?

EVIA is not responding to this question.

Question 35. Would you generally support a phase-out of paper-based information?

EVIA Answer: 5. Support completely

Question 35.1 Please explain your answer to question 35:

EVIA can confirm that the majority of customers prefer receiving information in non-paper format.

Question 36. How could a phase-out of paper-based information be implemented?

	EVIA Answer
General phase-out within the next 5 years	Yes
General phase out within the next 10 years	No
For retail clients, an explicit opt-out of the client shall be required.	Not Applicable
For retail clients, a general phase out shall apply only if the retail client did not expressively require paper-based information	Not Applicable
Other	Not Applicable

Please specify in which other way could a phase-out of paper-based information be implemented?

EVIA is not responding to this question.

Question 36.1 Please explain your answer to question 36 and indicate the timing for such phase-out, the cost savings potentially generated within your firm and whether operational conditions should be attached to it:

EVIA is not responding to this question.

Question 37. Would you support the development of an EU-wide database (e.g. administered by ESMA) allowing for the comparison between different types of investment products accessible across the EU?

EVIA is not responding to this question.

EVIA Answer: 6. Don't know / no opinion / not relevant

Question 37.1 Please explain your answer to question 37:

EVIA is not responding to this question.

Question 38. In your view, which products should be prioritised to be included in an EU-wide database?

EVIA is not responding to this question.

	EVIA Answer
All transferable securities	Not Applicable
All products that have a PRIIPs KID/ UICTS KIID	Not Applicable
Only PRIIPs	Not Applicable
All transferable securities	Not Applicable
Other	Not Applicable

Please specify what other products should be prioritised?

EVIA is not responding to this question.

Question 38.1 Please explain your answer to question 38:

EVIA is not responding to this question.

Question 39. Do you agree that ESMA would be well placed to develop such a tool?

EVIA is not responding to this question.

EVIA Answer: 6. Don't know / no opinion / not relevant

Question 39.1 Please explain your answer to question 39:

EVIA is not responding to this question.

3. Client profiling and classification

Question 40. Do you consider that MiFID II/MiFIR can be overly protective for retail clients who have sufficient experience with financial markets and who could find themselves constrained by existing client classification rules?

EVIA is not responding to this question.

EVIA Answer: 6. Don't know / no opinion / not relevant

Question 41. With regards to professional clients on request, should the threshold for the client's instrument portfolio of EUR 500 000 (See Annex II of MiFID II) be lowered?

EVIA is not responding to this question.

EVIA Answer: 6. Don't know / no opinion / not relevant

Question 41.1 Please explain your answer to question 41:

EVIA is not responding to this question.

Question 42. Would you see benefits in the creation of a new category of semi-professionals clients that would be subject to lighter rules?

EVIA Answer: 4. Rather agree

Question 42.1 Please explain your answer to question 42:

EVIA has consistently advocated for a simpler and more straightforward approach to client classification with only two categories of retail or wholesale. That said, it follows that four categories is more logical than only three as this effectively creates two divisions, each being sub-divided. The analogy is one of a dual carriageway compared to a three-lane road where the middle lane is used for both directions.

If the practical impact of an additional category is to increase the capability of more users to trade directly onto wholesale trading venues, that is category '3' are no longer solely retail, then clearly this move will result in a positive feedback response from the efficiencies gained.

Question 43. What investor protection rules should be mitigated or adjusted for semi-professionals clients?

	EVIA Answer
Suitability or appropriateness test	Not Applicable

Information provided on costs and charges	Not Applicable
Product governance	Not Applicable
Suitability or appropriateness test	Not Applicable
Other	Not Applicable

Please specify what other investor protection rules should be mitigated or adjusted for semi-professionals clients?

EVIA is not responding to this question.

Question 43.1 Please explain your answer to question 43:

EVIA is not responding to this question.

Question 44. How would your answer to question 43 change your current operations, both in terms of time and resources allocated to the distribution process? Please specify which changes are one-off and which changes are recurrent.

EVIA is not responding to this question.

Question 45. What should be the applicable criteria to classify a client as a semi-professional client?

	EVIA Answer
Semi-professional clients should possess a minimum investable portfolio of a certain amount (please specify and justify below).	Not Applicable
Semi-professional clients should be identified by a	Not Applicable
stricter financial knowledge test.	Not Applicable
Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise.	Not Applicable
Other	Not Applicable

Please specify what other criteria should be the one applicable to classify a client as a semi-professional client:

EVIA is not responding to this question.

Question 45.1 Please explain your answer to question 45 and in particular the minimum amount that a retail client should hold and any other applicable criteria you would find relevant to delineate between retail and semi- professional investors:

EVIA is not responding to this question.

4. Product Oversight, Governance and Inducements

Question 46. Do you consider that the product governance requirements prevent retail clients from accessing products that would in principle be appropriate or suitable for them?

EVIA Answer: 6. Don't know / no opinion / not relevant

Question 46.1 Please explain your answer to question 46:

EVIA is not responding to this question.

Question 47. Should the product governance rules under MiFID II/MiFIR be simplified?

	EVIA Answer
It should only apply to products to which retail clients can have access (i.e. not for non-equities securities that are only eligible for qualified investors or that have a minimum denomination of EUR 100.000).	Yes
It should apply only to complex products.	Yes
Other changes should be envisaged – please specify below.	Not Applicable
Simplification means that MiFID II/MiFIR product governance rules should be extended to other products.	Not Applicable
Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.	No
The regime is adequately calibrated and overall, correctly applied.	No

Question 47.1 Please explain your answer to question 47:

EVIA concurs that the MiFID2/R product governance regime would benefit from simplification by restricting its application solely to retail markets.

The concepts of manufacturing and distribution are not appropriate to trading venues, and the lack of definitions has forced firms acting as intermediaries and venue operators in the wholesale markets to apply product governance requirements where there is no practical benefit for their clients. Where instruments and products are typically traded between sophisticated institutional counterparties who have a high degree of knowledge and experience, and are willing and able to bear losses beyond the initial capital invested, the process of product governance appears to have been only a formalistic exercise in our collective experience to date.

Question 48. In your view, should an investment firm continue to be allowed to sell a product to a negative target market if the client insists?

EVIA Answer: 4. Don't know / no opinion / not relevant

Question 48.1 Please explain your answer to question 48:

EVIA is not responding to this question.

Question 49. Do you believe that the current rules on inducements are adequately calibrated to ensure that investment firms act in the best interest of their clients?

EVIA Answer: 3. Neutral

Question 49.1 Please explain your answer to question 49:

EVIA is not responding to this question.

Question 50. Would you see merits in establishing an outright ban on inducements to improve access to independent investment advice?

EVIA Answer: 6. Don't know / no opinion / not relevant

Question 50.1 Please explain your answer to question 50:

EVIA is not responding to this question.

Question 51. Would you see merit in setting-up a certification requirement for staff providing investment advice and other relevant information?

EVIA Answer: 6. Don't know / no opinion / not relevant

Question 51.1 Please explain your answer to question 51:

EVIA is not responding to this question.

Question 52. Would you see merit in setting out an EU-wide framework for such a certification based on an exam?

EVIA is not responding to this question.

EVIA Answer: 6. Don't know / no opinion / not relevant

Question 52.1 Please explain your answer to question 52:

EVIA is not responding to this question.

5. Distance communication

Question 53. To reduce execution delays, should it be stipulated that in case of distant communication (phone in particular) the cost information can also be provided after the transaction is executed?

EVIA is not responding to this question.

EVIA Answer: 6. Don't know / no opinion / not relevant

Question 53.1 Please explain your answer to question 53:

EVIA is not responding to this question.

Question 54. Are taping and record-keeping requirements necessary tools to reduce the risk of products mis-selling over the phone?

EVIA Answer: 6. Don't know / no opinion / not relevant

Question 54.1 Please explain your answer to question 54:

The MiFID II requirements in relation to taping and record keeping systems were complex and costly to install in preparation for MiFID2/R implementation and therefore a wholesale revision at this time would be disruptive, costly and premature. EVIA does also note that the primary purpose of the taping and record-keeping requirements is not to reduce the risk of mis-selling but rather to counter market abuse which is clearly a core competency for trading venues and brokers alike.

6. Reporting on best execution

Question 55. Do you believe that the best execution reports are of sufficiently good quality to provide investors with useful information on the quality of execution of their transactions?

EVIA Answer: 1. Disagree

Question 55.1 Please explain your answer to question 55:

In our experience of MiFID2/R to date, the best execution reporting regime as implemented in RTS 27 and 28 reporting requirements has been of minimal value for trading venue clients or end investors, who rarely cite RTS27 reports as being useful or influential in making trading decisions. In our experience, the reports are downloaded from our websites only rarely; and, given the format of the reports, this is not surprising.

The current reports are at once both unspecific and over-engineered with regards to the subject of the requirements and the quantity of unhelpful data contained therein. The RTS27 process loses sense when the investment firm itself is additionally a top five venue.

56. What could be done to improve the quality of the best execution reports issued by investment firms?

	EVIA Answer
Comprehensiveness	3 (Neutral)
Format of the data	3 (Neutral)
Quality of data	4 (Rather relevant)
Other	3 (Neutral)

Please specify what else could be done to improve the quality of the best execution reports issued by investment firms:

EVIA supports restricting these reports to liquid instruments only, but these should be granularly published by both CFI grouping and per ISIN.

Question 56.1 Please explain your answer to question 56:

Those already deployed and significant investments in the technologies and processes required to generate and deliver RTS 27 reports that are published quarterly by trading venues are material; therefore whilst we hesitate to advocate for a removal of the best execution reporting regime for wholesale markets in general and for eligible counterparties ["ECPs"] specifically, that is indeed our underlying opinion.

Question 57. Do you believe there is the right balance in terms of costs between generating these best execution reports and the benefits for investors?

EVIA Answer: 2. Rather not agree.

Question 57.1 Please explain your answer to question 57:

EVIA reiterates that the cost of generating best execution reports to far outweigh any benefits for market participants and their onward clients.

III. Research unbundling rules and SME research coverage

Question 58. What is your overall assessment of the effect of unbundling on the quantity, quality and pricing of research?

EVIA notes that the variation in members' size and operating models constrains our ability to express a single generalised view on the effect of unbundling on the quantity, the quality and the pricing of research.

1. Increase the production of research on SMEs

Question 59. How would you value the proposals listed below in order to increase the production of SME research?

	EVIA Answer
Introduce a specific definition of research in MiFID II level 1	1 (Irrelevant)
Authorise bundling for SME research exclusively	1 (Irrelevant)
Exclude independent research providers' research from Article 13 of delegated Directive 2017/593	1 (Irrelevant)
Prevent under-pricing in research	1 (Irrelevant)
Amend rules on free trial periods of research	1 (Irrelevant)
Other	1 (Irrelevant)

Please specify what other proposals you would have in order to increase the production of SME research:

EVIA is not responding to this question.

Question 59.1 Please explain your answer to question 59 and in particular if you believe preventing under-pricing in research and amending rules on free trial periods of research are relevant:

EVIA is not responding to this question.

Question 60. Do you consider that a program set up by a market operator to finance SME research would improve research coverage?

EVIA Answer: 6. Don't know / no opinion / not relevant

Question 60.1 If you do consider that a program set up by a market operator to finance SME research would improve research coverage, please specify under which conditions such a program could be implemented:

EVIA is not responding to this question.

Question 60.1 Please explain your answer to question 60:

EVIA is not responding to this question.

Question 61. If SME research were to be subsidised through a partially public funding program, can you please specify which market players (providers, SMEs, etc.) should benefit from such funding, under which form, and which criteria and conditions should apply to this program:

EVIA is not responding to this question.

Question 62. Do you agree that the use of artificial intelligence could help to foster the production of SME research?

EVIA Answer: 6. Don't know / no opinion / not relevant

Question 62.1 If you agree, which recommendations would you make on the form that such use of artificial intelligence could take and do you see risks associated to the development of AI-generated research? Please explain your answer to question 62:

EVIA is not responding to this question.

Question 63. Do you agree that the creation of a public EU-wide SME research database would facilitate access to research material on SMEs?

EVIA Answer: 6. Don't know / no opinion / not relevant

Question 63.1 If you do agree that the creation of a public EU-wide SME research database would facilitate access to research material on SMEs, please specify under which conditions this database should operate: Please explain your answer to question 63:

EVIA is not responding to this question.

Question 64. Do you agree that ESMA would be well placed to develop such a database?

EVIA Answer: 5. Don't know / no opinion / not relevant / No comments

Question 64.1 Please explain your answer to question 64:

EVIA is not responding to this question.

Question 65. In your opinion, does issuer-sponsored research qualify as acceptable minor non-monetary benefit as defined by Article 12 of Delegated Directive (EU) 2017/593?

EVIA Answer: 5. Don't know / no opinion / not relevant / No comments

Question 65.1 Please explain your answer to question 65:

EVIA is not responding to this question.

Question 66. In your opinion, does issuer-sponsored research qualify as investment research as defined in Article 36 of Delegated Regulation (EU)

EVIA Answer: 5. Don't know / no opinion / not relevant / No comments

Question 66.1 Please explain your answer to question 66:

EVIA is not responding to this question.

Question 67.1 If you do consider that rules applicable to issuer-sponsored research should be amended, please specify how:

EVIA is not responding to this question.

Question 67.1 Please explain your answer to question 67

EVIA is not responding to this question.

Question 68. Considering the various policy options tested in questions 59 to 67, which would be most effective and have most impact to foster SME research?

	EVIA Answer
Introduce a specific definition of research in MiFID level 1	6 (Not Applicable)
Authorise bundling for SME research exclusively	6 (Not Applicable)
Amend Article 13 of delegated Directive 2017/593 to exclude independent research providers' research from Article 13 of delegated Directive 2017/593	6 (Not Applicable)
Prevent under-pricing of research	6 (Not Applicable)
Amend rules on free trial periods of research	6 (Not Applicable)
Create a program to finance SME research set up by market operators	6 (Not Applicable)
Fund SME research partially with public money	6 (Not Applicable)
Promote research on SME produced by artificial intelligence	6 (Not Applicable)
Create an EU-wide database on SME research	6 (Not Applicable)
Amend rules on issuer- sponsored research	6 (Not Applicable)
Other	6 (Not Applicable)

Please specify which other policy option would be most needed and have most impact to foster SME research:

EVIA is not responding to this question.

Question 68.1 Please explain your answer to question 68:

EVIA is not responding to this question.

IV. Commodity markets

Question 69. Please specify to what extent you agree with the statements below regarding the experience with the implementation of the position limit framework and pre-trade transparency?

	EVIA/LEBA Answer
The EU intervention been successful in achieving or progressing towards improving the functioning and transparency of commodity markets and address excessive commodity price volatility.	1 (Disagree)
The MiFID II/MiFIR costs and benefits with regard to commodity markets are balanced (in particular regarding the regulatory burden).	1 (Disagree)
The different components of the framework operate well together to achieve the improvement of the functioning and transparency of commodity markets and address excessive commodity price volatility.	1 (Disagree)
The improvement of the functioning and transparency of commodity markets and address excessive commodity price	1 (Disagree)

volatility correspond with the needs and problems in EU financial markets.	
The position limit framework and pre- trade transparency regime for commodity markets has provided EU added value.	1 (Disagree)

Question 69.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

EVIA/LEBA firms arrange and execute a great deal of the EU commodity and commodity derivative markets through their systems, trading venues and personnel. We can identify no benefits accruing to this market segment from the application of the MiFID2/R regime but note a great deal of costs which remain unquantifiable. In essence, the commodity markets in scope are not dealing in investment products, as properly understood, and the forward trades in deliverable commodities should not be treated as "derivatives".

We refer to our recent submission to the ESMA consultation on commodity derivatives for a detailed and in-depth discussion of the MiFID2/R approach to commodities and its core reliance on the exemptions provided for under PERG/C6, which we note are not under discussion in this paper.

Most of the failings within the MiFID2/R framework with respect to commodities could be simply remedied by two measures. Firstly, the perimeter should be reshaped to declassify commodity forward trades as "derivatives". Secondly, the Byzantine three-legged approach to exemptions for non-financial market participants should be replaced with a simply applied commercial purposes exemption.

Quantitative elements for question 69.1:

EVIA/LEBA is not responding to this question.

1. Position limits for illiquid and nascent commodity markets

Question 70. Can you provide examples of the materiality of the above-mentioned problem?

EVIA/LEBA Answer: No, I cannot provide any example.

Please provide example(s) of (nascent) contracts where the position limit regime has constrained the growth of the contract:

Whilst EVIA/LEBA sees no validity in the statement conflating position limits with either the role of the euro or new instruments, we do not see any useful purpose being served by either the position limit regime or the phrasing of venue activity in terms of "lots". These, together with many other parts of the commodities framework, should be removed and reconsidered for a marketplace that does not particularly rely on designated futures markets and cash settlement.

The precept of Question 70 makes no sense, as natural gas markets are quoted and traded in euros.

Market share the nascent contract(s) is/are expected to gain (in %):

EVIA/LEBA does not recognise the constraint.

Contract(s) is/are euro denominated?

Natural gas markets are quoted and traded in euros.

Question 71. Please indicate the scope you consider most appropriate for the position limit regime:

EVIA/LEBA does see any use case for position limits imposed by legal statute. These are a risk and prudential matter for participants, trading venues, investors and supervisors.

	EVIA/LEBA Answer
Current scope	3 (Least Appropriate)
A designated list of 'critical' contracts similar to the US regime	2 (Neutral)
Other	1 (Most Appropriate)

Please specify what other scope you consider most appropriate for the position limit regime:

EVIA/LEBA does see any use case for position limits imposed by legal statute. These are a risk and prudential matter for participants, trading venues, investors, and supervisors., Position limits should be removed from MiFID entirely, given its role as a conduct ("flow" or "licencing") legislation and dealt with under either or both capital requirements and market abuse requirements.

Question 71.1 Please explain your answer to question 71:

Position limits are a risk and prudential matter for participants, trading venues, investors, and supervisors. These need to be considered in a global context and across all group entities. MiFID2/R requirements upon trading venues will never be able to provide the information nor investor protection envisaged.

The effect of large positions on the orderly functioning of markets would in no way be limited to investment products traded within the EU, but clearly also to other instruments such as payments, funding or commodities on one hand and to those transactions done outside the MiFID perimeter on another. Therefore a very partial and piecemeal approach, such as dealing with transactions only within the scope of MiFID can quickly be seen to deliver unintended and destructive consequences where firmwide risks and netting sets fall only partially into scope, or activities are consequently removed from the MiFID perimeter with concomitant deleterious impacts on transparency and investor choice.

Question 72. If you believe there is a need to change the scope along a designated list of 'critical' contracts similar to the US regime, please specify which of the following criteria could be used.

EVIA/LEBA does see any use case for position limits imposed by legal statute either in the EU or in the US.

For each of these criteria, please specify the appropriate threshold and how many contracts would be designated 'critical'.

EVIA/LEBA Answer: Other criterion.

Denomination should be made in amounts of the underlying and not contracts, as these are commonly only used by futures markets and not by other organised trading venues. Therefore, since the amounts can be varied, the term "Contract size" does not hold any natural bearing as to the amount of commodity or related risk within any given trade.

Open interest:

Threshold for open interest:

EVIA/LEBA does see any use case for Open Interest. There is no concept of Open Interest in physical forward commodity markets.

Zero.

Number of affected contracts in the EU for open interest:

EVIA/LEBA does see any use case for Open Interest. There is no concept of Open Interest in physical forward commodity markets.

Please explain why you consider that the open interest is a criterion that could be used:

EVIA/LEBA does see any use case for Open Interest. There is no concept of Open Interest in physical forward commodity markets.

Type and variety of participants:

Threshold for the type and variety of participants:

EVIA/LEBA does see any use case for the type and variety of participants.

Number of affected contracts in the EU for the type and variety of participants:

EVIA/LEBA does see any use case for the type and variety of participants.

Please explain why you consider that the type and variety of participants is a criterion that could be used:

EVIA/LEBA does see any use case for the type and variety of participants.

Other criterion:

EVIA/LEBA is not responding to this question.

Please specify what other criterion could be used and explain your answer:

EVIA/LEBA is not responding to this question.

Threshold for this other criterion:

EVIA/LEBA is not responding to this question.

Number of affected contracts in the EU for this other criterion:

EVIA/LEBA is not responding to this question.

Question 72.1 Please explain your answer to question 72:

EVIA/LEBA is not responding to this question.

Question 73. Do you agree that there is a need to foster convergence in how position management controls are implemented?

EVIA/LEBA Answer: 1. Disagree.

Question 73.1 Please explain your answer to question 73:

EVIA/LEBA does not agree that position management controls should be relevant under MiFID2. We refer to the fact that, in practice, a trading venue cannot know any client's open risk and is unable to act on their behalf.

We also note our opinion for a revised perimeter to the trading venue definition.

Question 74. For which contracts would you consider a position limit exemption for a financial counterparty under mandatory liquidity provision obligations?

EVIA/LEBA does not agree that position management controls should be relevant under MiFID2/R.

This exemption would mirror the exclusion of the related transactions from the ancillary activity test.

EVIA/LEBA is not responding to this question.

	EVIA/LEBA Answer
Nascent	3 (Not Applicable)
Illiquid	3 (Not Applicable)
Other	3 (Not Applicable)

Please specify for which other contracts you would consider a position limit exemption for a financial counterparty under mandatory liquidity provision obligations:

Please see the EVIA/LEBA answer to question 74.

Question 74.1 Please explain your answer to question 74:

EVIA/LEBA does not agree that position management controls should be relevant under MiFID2/R. We refer to the fact that, in practice, a trading venue cannot know any client's open risk and is unable to act on their behalf.

We also note our opinion for a revised perimeter to the trading venue definition which would hold a significant bearing on the outcome.

Question 75. For which counterparty do you consider a hedging exemption appropriate in relation to positions which are objectively measurable as reducing risks?

	EVIA/LEBA Answer
A financial counterparty belonging to a predominantly commercial group that hedges positions held by a non-financial entity belonging to the same group	1 (Yes)
A financial counterparty	1 (Yes)
Other	1 (Yes)

Please specify for other which counterparties you consider a hedging exemption appropriate:

Non-financial Counterparties.

Question 75.1 Please explain your answer to question 75:

Hedging exemptions are appropriate in relation to investment products and financial instruments for all counterparties in relation to positions which are objectively measurable as reducing risks.

EVIA/LEBA would commend that the scope of MiFID2 as drafted which currently extends to forward contracts for physically delivered commodities that should not legally be considered to be investment products and financial instruments, and that this would normally be evidenced by an over reliance on certain exemptions. In these cases the commercial transactions should be regulated under other more appropriate legislation together with a wider application of market abuse and financial crime rules which themselves should extend well beyond the MiFID perimeter.

2. Pre-trade transparency

Question 76. Do you consider that pre-trade transparency for commodity derivatives functions well?

EVIA/LEBA answer: 1. Disagree.

If you do not consider that pre-trade transparency for commodity derivatives functions well, please (1) provide examples of markets where the pre-trade transparency regime has constrained the offering of niche instruments or the development of new and/or fast moving markets, and (2) present possible solutions including, where possible, quantitative elements:

EVIA/LEBA does not agree that the pre-trade transparency regime is a valid or useful concept for commodity derivatives. To a great degree, this is due to the transposition of concepts taken from exchange traded derivative models to MTF- and OTF-arranged transactions in commodities markets.

The consequences have been inappropriate and disproportional thresholds and the creation of artificial processes and concepts. Across energy markets, we note that competent authorities initiated the steps of circumventing recourse to the number and size of traded "lots." We would propose that MiFID removes all references to both the irrelevant concepts of "lots" and "open interest," as well as to that of a "primary market," for commodities markets. In essence, we recall that market participants have at no stage prior to MiFID2 complained about a lack of pre-trade transparency in commodities markets. The role of legislation should be to ensure the fair treatment of customers, standardisation,

orderly liquidity, open access and a level playing field, rather than reshaping markets to conform to inappropriate models.

EVIA recommends that, where forward contracts on physical commodities are not demonstratively investment products and for investment purposes, then these should not be considered to be either derivatives or financial instruments for MiFID 2/R purposes, and they should be expressly excluded from the scope of MiFID 2/R.

In principle, MiFID 2/R needs to uphold and promote competition and open access. Ties to clearing pools and the promotion of incumbent market dominance would appear to the operators of trading venues to be out of place in the regulation and present an obstacle to transparency. We consider the main failure in expanding liquidity and the associated pre-trade transparency data is a direct result of trading venues in the commodities markets being denied access to CCP clearing liquidity pools. Investment firms are therefore being limited to arranging "on exchange blocks" under permissions to receive and transmit orders. This also drives much of the trading interests deriving from EU market participants outside either the EU borders or the MiFID perimeter. As set out in other answers to this consultation, EVIA recommends a simple recasting of the trading venue definition and scope of activity to correct for the transparency concerns relating to commodity derivatives.

Question 76.1 Please explain your answer to question 76:

The transparency regime should be restricted solely to post trade transparency with trading venues offering a much more complete market picture, especially should the EVIA commendations for a wider trading venue perimeter come to pass.

PART TWO: AREAS IDENTIFIED AS NON-PRIORITY FOR THE REVIEW

V. Derivatives Trading Obligation

Question 77. To what extent do you agree with the statements below regarding the experience with the implementation of the derivatives trading obligation?

	EVIA Answer
The EU intervention been successful in achieving or progressing towards more transparency and competition in trading of instruments subject to the DTO.	2 (Rather not agree)
The MiFID II/MiFIR costs and benefits with regard to the DTO are balanced (in particular regarding the regulatory burden).	2 (Rather not agree)
The different components of the framework operate well together to achieve more transparency and competition in trading of instruments subject to the DTO.	2 (Rather not agree)
More transparency and competition in trading of instruments subject to the DTO corresponds with the needs	1 (Disagree)
The DTO has provided EU added value.	1 (Disagree)

Question 77.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

EVIA has not found any material benefits or costs arising specifically from the DTO.

Quantitative elements for question 77.1:

Estimate (in €)	EVIA Answer
Benefits	Zero
Costs	Zero

Qualitative elements for question 77.1:

Question 78. Do you believe that some adjustments to the DTO regime should be introduced, in particular having regards to EU and non-EU market making activities of investment firms?

EVIA answer: 4. Rather agree.

If you do believe that some adjustments to the DTO regime should be introduced, please explain which adjustments would be needed and with which degree of urgency:

In order to simplify the application of the DTO regime, EVIA recommends restricting the application of the regime to those liquid instruments that are traded on an EU venue where both counterparties are EU entities authorised as MiFID firms. This is in order to simplify the application of the DTO regime such that it can work in an internationally harmonised context.

In this way, only a transaction where all counterparties are EU investment firms and all the trade legs are financial instruments should be liable for inclusion under the DTO. The DTO and the clearing obligation should be aligned on this basis. EVIA has written to ESMA and to the Commission at length on the imposition of the TO despite the evident fact that, from the perspective of a TV, everything is ToTV.

We have also drawn attention to the complications which have arisen under ESMA's initial attempts to consider guidance concerning packages and the contingent execution of multi-legged trades including derivatives on one hand, and the spilt execution of transaction legs between third country regimes on the other. In all, any notion of a public gain from a trading obligation has long since been buried under its impracticalities for fully globalised wholesale markets.

Question 79. Do you agree that the current scope of the DTO is appropriate?

EVIA answer: 2. Rather agree.

Question 79.1 Please explain your answer to question 79:

The current scope of the DTO is narrow, yet it fails to fulfil any systemic or conduct objective (other than collection of data). It remains, even in this application, a hugely obstructive and intrusive barrier to the effective operation of market liquidity. In order to simplify the application of the DTO regime, EVIA recommends restricting the application of the regime to those liquid instruments that are traded on an EU venue where both counterparties are MiFID-authorised firms.

We further recommend that the DTO should apply only to a single and simple derivative instrument which is subject to the clearing obligation, rather than to components of packages.

Together with ISDA, EVIA have written and presented our beliefs to ESMA that instruments should be admitted onto a trading venue as they are defined under RTS 2 and consequently the MiFIR approach

to ToTV should be defined not by ISIN, but by asset class to reflect individual asset class characteristics ["CFI"]; and would, consequently, be identified by the ISO Unique Product Identifier ["UPI"] to enable semantic tools and trade processing.

This instrument UPI data should be collated across the permitted trading venues and updated by ESMA as reference data at least daily. We note that the required change in creating instrument reference data from RTS23 to RTS2 most dramatically reduces the number of instruments and substantially negates the MiFID reliance on the Derivatives Service Bureau ["ANNA_DSB"].

Finally, whilst not under the exact scope of this answer, we note the complications which have arisen under ESMA's initial attempts to consider packages and contingent execution of multi-legged trades including derivatives. This again mitigates for a simplified approach to the DTO.

Question 80. Do you agree that there is a need to adjust the DTO regime to align it with the EMIR Refit changes with regard to the clearing obligation for small financial counterparties and non-financial counterparties?

EVIA answer: 4. Rather agree.

Question 80.1 Please explain your answer to question 80:

EVIA would concur with the Commission that changes should be made to MiFID2 to align and to harmonise with the impacts and scope of the EMIR Refit changes. Therefore SFCs and NFCs should, at a minimum, experience the same scope and threshold perimeters with respect to the DTO as they do with the CO. This is entirely in accordance to our answers in questions 78 and 79 that the two obligations should be both narrowed and effectively combined.

However, it follows from the above that the effectiveness of EU legislation would benefit from rather broader changes concerning both topics of the DTO and general harmonisation with the closely related market legislative files, especially concerning EMIR. That EMIR remains predicated upon the term and definition of "OTC Derivatives" when these include transactions on MTFs and OTFs shows the need to renovate the legislation.

VI. Multilateral systems

Question 81. Do you consider that the concept of multilateral system under MiFID II/MiFIR is uniformly understood (at EU or at national level) and ensures a level playing field between the different categories of market players?

EVIA answer: 1. Disagree.

Question 81.1 If your response to question 81 is rather positive, please also indicate if, in your opinion, the current definition of multilateral system is adequately reflecting the actual functioning of the market:

Question 81.1 If your response to question 81 is rather negative, please indicate which amendments you would suggest and why:

EVIA's response is "rather negative.". This reflects the members' collective experiences that MiFID 2/R has failed to deliver a level playing field with respect to the perimeter of a multilateral system.

We consider that there are two dimensions to the problem:

(1) There are trading platforms operating in the Union which, on a purposive interpretation, should be operated by regulated investment firms or trading venue operators, in the same manner as MTFs or OTFs; but which, because of literal interpretations, have been able to remain just outside of the perimeter of MiFID 2/R. The result is that a two-tier system has been created: (a) regulated trading venues, which contribute trade data and transaction reporting to the overall system and which are subject to defined governance and operating requirements in accordance with the MiFID II regime; and (b) unregulated trading systems or platforms, which operate in the dark and are not subject to any governance or operating requirements under the MiFID 2/R regime. The same wholesale market participants make use of both tiers.
(2) The use of the "multilateral" versus "bilateral" concepts has not been applied consistently, so that firms bringing together trading interests using the same methods and models have been subject to different requirements, depending on the Member State they are based in and the scale of their business operations. This has also resulted in a two-tier system: (a) larger firms based in certain Member States have been required to reorganise their activity as a trading venue; while (b) smaller firms in the same Member State, or firms in other Member States, have not.

The solution to the first problem is to clarify that bringing together trading interests related to financial instruments as an intermediary, whether using personnel or electronic trading systems, is a MiFID 2/R activity/investment service. The supply of electronic trading systems fits within the perimeter when it is for the purpose of bringing together trading interests involving multiple users of the same trading system (as opposed to being a consequence of multiple users independently making use of the same trading technology as part of their own operations).

The principle we would recommend is that:

> ***"Providing or making available a service, or operating or making available a system, to arrange, negotiate or match, trading interests in financial instruments constitutes an authorised activity in the Union."***

The solution to the second problem is to clarify that trading activity is "multilateral" when, taken as a whole and not with respect to a specific trading interest in isolation, there is the possibility for more than one person to engage with a trading interest.

Resolving the first problem will bring more firms clearly within the MiFID 2/R perimeter. Resolving the second issue will require more firms to organise their activity on the basis of being a trading venue. These are both desirable outcomes from the standpoint of harmonisation of the MiFID 2/R rules in the Union, ensuring consistency of regulation for cross-border investors and the appropriate capture of a greater level of information about market activity within the Union.

Question 81.1 Please explain your answer to question 81:

The EVIA answer to question 81 was rather negative due the substantial amount of activity and the number of facilities that carry out the arranging and other venue activities across the EU but outside the MiFID 2/R perimeter. These evasions range from the small firms who choose not to pay the price of financial supervision to the providers of technological systems and protocols who present themselves as "FinTech" or tool suppliers while acting in a way functionally similar to an investment firm or venue operator.

EVIA intends to set out a more thorough explanation of the current perimeter problem and the possible solutions to it in a forthcoming white paper.

VII. Double Volume Cap

Question 82. Please specify to what extent you agree with the statements below regarding the experience with the implementation of the Double Volume Cap?

	EVIA Answer
The EU intervention been successful in achieving or progressing towards the objective of more transparency in share trading.	2 (Rather not agree)
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	2 (Rather not agree)
The different components of the framework operate well together to achieve more transparency in share trading.	2 (Rather not agree)
More transparency in share trading correspond with the needs and problems in EU financial markets.	1 (Disagree)
The DVC has provided EU added value	1 (Disagree)

Question 82.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

EVIA is not responding to this question.

Quantitative elements for question 82.1:

Estimate (in €)	EVIA Answer
Benefits	Not applicable
Costs	Not applicable

VIII. Non-discriminatory access

Question 83. Do you see any particular operational or technical issues in applying open access requirements which should be addressed?

EVIA answer: 2. No.

Question 83.1 If you do see any particular operational or technical issues in applying open access requirements which should be addressed, please specify for which financial instrument(s) this would apply and explain your reasoning:

No. EVIA sees no operational or technical hurdles in applying open access requirements.

Question 83.1 Please explain your answer to question 83:

In respect of operational and technical hurdles that could be claimed to result in either liquidity fragmentation or comingling risks, we emphasise that these are not apparent to our member firms who offer a wide range of designated reference terms, describing sets of core economic risk factors across their liquidity pools right around the clock and around the globe each and every day. We observe that across non-equities products, the deployment of standard instrument identification protocols and the post trade risk management of consequent transactions by risk factors rather than by trademarks is now the normal practice across the industry and especially within CCPs.

We also note that the current Open Access provisions in the text were subject to extra scrutiny to identify potential financial stability risks that could warrant a special exemption for ETDs as a particular asset class technical subdivision of MiFIR. From 2016 onwards there has been an ESRB advice [ESRB response to ESMA on the temporary exclusion of exchange-traded derivatives from Articles 35 and 36 of MiFIR, 9 February 2016,] , followed by an ESMA advice [ESMA, Risk Assessment on the temporary exclusion of exchange-traded derivatives from Articles 35 and 36 MiFIR, 4 April 2016 , and finally an EC decision on the topic. All three institutions were of the same view that there were no grounds to exclude ETDs from Open Access.

Their assessments took account of the fact that the current rulebook already provides a long and well calibrated regime of checks and balances to safeguard against any against risks (real or perceived). Art. 35/36 6(a) MIFIR lists a balanced set of conditions under which a CCP can refuse Open Access, as further defined by Delegated Regulation 2016/3807. Furthermore, Art. 35/36 6(c) and aforementioned Delegated Regulation provide broadly defined powers for National Competent Authorities ["NCAs"] to refuse Open Access where this is 'deemed a threat to smooth and orderly market functioning', would 'adversely affects systemic risk' or would lead to 'market fragmentation'.

We also draw attention to the extra safeguard of an ESMA recommendation to the EC on the functioning of the Open Access regime; which is currently planned by January 2022 (only 1.5 years after Open Access would actually enter into force).

One key postscript to these forthright determinations is that since 2016 the technical and process standardisation has increased vastly and at an accelerating pace, one which is set to achieve much more with the global uptake of UPIs forthcoming and standardised deployment of instrument CFI categorisation in messaging communications and risk management. The anticipated incorporation of all this into "Reg Tech" and "AI" applications and models such as "data lakes", ledger technologies and most especially a common domain model.

In respect of operational and technical hurdles that could be claimed to result in either liquidity fragmentation or comingling risks, we emphasise that these are not apparent to our member firms who offer al almost infinite array of designated reference terms, describing sets of core economic risk factors across their liquidity pools right around the clock and around the globe each and every day. We observe that across non-equities products, the deployment of standard instrument identification protocols and the post trade risk management of consequent transactions by risk factors rather than by trademarks is now the normal practice across the industry and especially within CCPs.

We also draw attention to the extra safeguard of an ESMA recommendation to the EC on the functioning of the Open Access regime; which is currently planned by January 2022 (only 1.5 years after Open Access would actually enter into force).

In combination with EMIR, MIFID II/MIFIR already adequately appropriately balances the benefits and risks of Open Access. and the regime for ETDs will be long overdue by July 2020 and it should additional be updated to reference all MiFID Trading Venues ["TVs"] and EMIR referenced CCPs such that its comparable and available as a tool for international recognition. Amongst the benefits Open Access will deliver to the European markets are not solely a deliverable and integrated Capital Markets

Union, but also user choice and scrutiny which breeds higher standards through both innovation and early warning peer reviews. Choice, or the ed user ability to "shop around" avoids the dominant establishment of protected national champions in a truly global industry, who would otherwise be slow to evolve and therefore expensive. Without the conditions for global champions rather than local ones, the EC cannot be serious about the global role of the EUR going forwards, especially with the recent economic situation building the likelihood of a novel and large EUR Super-sovereign body of debt.

83.ii Please explain your answer to question 83:

Some concerns cited for the temporary stay may be summarised: Liquidity [fragmentation], Conduct, Competition, Level playing field with the US, Brexit, Operational and Systemic. None of these are material, and indeed are dwarfed by the day-to-day commercial and operational risks managed across the markets.

i. ***That liquidity would be fragmented by operating separate liquidity pools ["Order books"] within or between TVs for each CCP.*** Currently TVs can and do operate liquidity pools that can be settled/cleared across different CCPs/CSDs. They can also operate cleared markets where the clients choose where to novate the trades after execution, entirely independent of the arranging and executing venue. Further, TVs even operate CCP Basis liquidity pools for cases where the pricing is materially different depending upon the post-trade infrastructure chosen. More fundamentally, that it is not the role of regulations to determine the choice and availability of post-trade FMIs. Rather, the rules should deal with the safety and soundness of the system as a whole, together with the qualification and integrity of each component permission. Clearly the OI in each instrument does aggregate into single CCPs as liquidity pools or nodes, more effective competition and concomitant portability would enable each market participant to effectively review their risk and opt to move provider if desired. The case of cleared Nordic Electricity in 2018 is an example.

ii. ***That liquidity could be effectively arranged not with an anonymous order book between multiple CCPs and that a Single Order book is the only alternative for CCP access.*** We underline that across non-equity markets, nearly all TV volume in non-equity is not matched on CLOBs but by a variety of other methods including RFQ, voice and auction mechanisms. Indeed most liquidity that is reported as being on an order book would in fact have been pre-arranged above LIS and reported as a block trade.

iii. ***That ETDs are fundamentally different to cash products and require legislative "safeguards," either to protect users or financial stability.*** We underscore that the only real safeguard available in wholesale markets is user choice and the ability to move business between providers and any legislation that seeks to prevent this could not be acting in the interests of market users. Rather, by far the greatest systematic risks are those relating to the effectiveness of settlement systems and the soundness of CCPs. Any system should be preferred that offers choice and best practice, noting the lessons learnt already in Q1 2020.

iv. ***That exchanges would lose control of the contracts' legal basis under governing law and jurisdiction, or these would differ between TVs.***

   a. TVs and market operators do not need to hold any legal powers for emergency actions over a contract during its post-trade lifecycle. These are matters solely for the parties to a contract as the legal basis for an executed contract need not be retained by the TV. Governing authority may remain under the same jurisdiction between different market operators.
   b. Reconfiguring the TV perimeter as an arranging and matching licence would segregate the operation of markets from legal finality and post trading processes.

v. ***That "non-discriminatory" access by TVs to CCPs would fragment liquidity, erode the price discovery process and weaken their role of CCPs as guardians of the G20 reforms.***

   a. The benefits from more competition between CCPs has been described in some recent industry white papers, noting that OI and settlement flows would migrate to those with efficient systems and more "skin-in-the-game."

b. Forward cashflows are fungible and risk is not always encapsulated solely in the price of a contract. CCPs manage and aggregate their interest rate, currency and credit risks as factors across tenors in much the same way that their users do.
c. The uptake of open access would dismantle barriers around trademarks and IPR allowing liquidity pools to be aggregated. Failures and stresses in this environment would be more transparent and could effectively demonstrated as in such CCP basis markets previously mentioned.

vi. That the EU should pursue the same objectives as other large overseas exchange groups by focusing on size and scalability in building national champions with a global footprint as a Capital Markets Union objective, whilst restraining third countries utilisation of Article 38 of MiFIR

a. We note that any national champion argument should only have grounds where the protected entities are utilities under public control.
b. Any argument to lower standards or prevent competition because a third country does so is not in long term sustainable. The EC should be wary of national or corporate efforts to create and protect "national champions". Open competition is the better way to ensure best practice and effectiveness.

Question 84.1 If you do think that the open access regime will effectively introduce cost efficiencies or other benefits in the trading and clearing areas, please indicate the specific areas (such as type of specific financial instruments) where, in your opinion, open access could afford most cost efficiencies or other benefits when compared to the current situation:

EVIA recalls that the ongoing dominance of the vertical silo incumbents serves to embed a resistance to change and substantial inefficiencies to market structures. These contribute to added end user costs together with the absence of proper choice and peer review. All of this hinders any prospective global role for the EUR as a reserve and transactional currency. Open access leads to lower costs, deeper pools of liquidity, improved service levels, greater capital efficiency and more innovation.

Rather, a globally competitive role for the Euro may be best delivered by a capital market union which by definition requires more integrated liquidity, together with a low risk and low-cost post trading system. This will be delivered in accordance with international standards which therefore requires licenced firms to compete and to open new facilities in a harmonised and standardised operational, legal, and regulatory environment, predicated on a non-discriminatory basis.

As we set out in recent responses to both ESMA and member state ministries, it is vital to remind all parties that this idea of Open Access as a key element of integrated post trading landscape is not new and was previously constructed by the Giovannini Group in 2001 as a necessity to integrate Europe's capital markets. Whilst such ideas have been shelved in the years since the global financial crisis, the urgency to dismantle those barriers and their rent seeking replacements with a veracity and urgency remain undiminished.

Whilst the Commission ask for specific asset classes and FMI segments that would gain from Open Access, we underscore that in the spirit of the Giovannini Group, it remains that case to state that all asset classes and each operational segment in the trading chain, together with operational risk management, are all set to gain. For instance, in the asset class of short-term interest rates, the Libor replacement project has promoted the trading of OIS, and Repo based contracts across each category of MiFIR trading venue. That these are currently fungible everywhere except in the ETD sector clearly illustrates the frictions, hazards, operational and systemic risks that can quickly build up where silo's and IPR trademarks are enabled.

Similar examples can found in Interest Rate Swaps where the ETD silo's trademark ERIS Swaps rather than propagate risk and cashflow netting, whilst access to exchange traded credit markets has always been rationed by the access and cost limitations to "REDD Codes" by the dominant vertical exchange.

Similar access restrictions and costs can be demonstrated in the cleared equity and interest rate options markets across Europe and latterly in the absence of fungibility in simple cleared FX markets listed as ETDs.

Question 84.1 Please explain your answer to question 84:

We envisage benefits to all stakeholders deriving from the ongoing migration of risk away from bilateral credit annex or multilateral master agreements and into broader netting sets with and between post trade infrastructures such as CCPs. For these gains to unfold and be realised, a broad and effective Open Access culture needs to establish itself with lower access barriers and costs of trading and data to all participants.

Cost efficiencies could emerge for example through netting advantages by clearing instruments from multiple venues at a single CCP. Where two equivalent products are each cleared at a different CCP (because they each trade at vertically integrated CCP/venue combinations) firms cannot nett their exposures and therefore have to pay extra margin. Whilst a base case of Open Access could enable these two margin pools could be offset, with multiple venues operating, so the ability to unwind CCP risk is far more effective and cheaper, leading to lower systematic risks from more liberal portability and therefore significant capital efficiencies, a more effective and cheaper cost delivery on one aspect of CMU. This could even spur some competition among CCPs for access to a venue. This should lead to lower costs and more innovation. It is for this reason that a recent Greenwich/FIA survey among 190 market participants lists 'more competition among clearinghouses' as the second most cited change request by respondents[1]. We would remind here the recent comments of Paul Tucker of the FSB to OMFIF regarding CCP risks and the 2018 case example in Scandinavian energy contracts cleared by Nasdaq and the buyside coalition White Paper querying the sufficiency of CCPs skin in the game. In short, Open Access is the most effective tool against systematic risks by facilitating user choice towards the safest CCPs and ongoing peer reviews.

By conjoining trading venues under standard product identifiers, Open Access will contribute to deeper pools of aggregated market liquidity and the better translation of risk between the product sets. Amongst other benefits such as lower execution costs in cheaper capital and risk translations, this frees up collateral in a world where collateral is increasingly scarce. It should also encourage or build the basis for competing venues to emerge and present ongoing challenge to dominant incumbents, who tend to exploit the reliance on data sets and post trade access. We note from the previous answer that it is not the role of MiFID to preserve numerous intra EU national champion brands; especially as from other industries such as telecoms, steel and airlines demonstrate daily as to why protecting flag carriers does not act in the interests of the consumer, especially in a global and wholesale business.

Netting by risk factors rather than siloed IPR Trademarks will offer many system and societal benefits such as the simple empowerment of peer review and the stakeholder analytical choice around whether to hold their mutualised risks in GARCH based VAR type models which whilst cheaper for the operator, do appear to keep underestimating tail events such as those in Q1 2020.

Question 85. Are you aware of any market trends or developments (at EU level or at national level) which are a good or bad example of open access among financial market infrastructures? Please explain your reasoning and specify which countries:

There are many examples across swaps, equities, bonds, commodities, and repo there are numerous cases where Open Access has led to successful and improved outcomes for the markets.

[1] Derivatives Market Structure 2020, Greenwich Associates in partnership with FIA, page 6-7, https://www.greenwich.com/fixed-income/derivatives-market-structure-2020

For OTC swaps, SwapClear has established connectivity with around 40 execution venues; including Bloomberg, BGC, DealerWeb and Nex. CDSClear connectivity includes Bloomberg and Tradeweb, while CommodityClear is connected with numerous Euronext commodity futures & options.

In general we would cite LCH SwapClear, RepoClear and ForexClear is good examples of a CCP which it able to novate many types of product and complexities of risk sets in a demonstration of the industry capacity to accommodate Open Access as its business model using even last generation systems and models. Coupled with straight forward and standard "SPAN" risk management principles together with external market data sets, it has turned this concept into an effective and scalable business model.

In the equities space, EquityClear clears for a broad range of venues such as Acquis, CBOE, Equiduct, ICAP, Nasdaq, Oslo Bors, Six, Traiana, Turquoise and Block Match. For repo and bonds, apart from MTS, RepoClear clears for CME-BrokerTec, TP Repo, Tradition, and Tradeweb.

ICE Clear Europe and ICE in the United States have created a globally dominant CDS clearing franchise largely because it is an Open Access product where the trading almost exclusively occurs no third-party TVs or bilaterally. Critical for the success of both LCH SwapClear and ICE is the role of "Middleware's" or post-allege trade transport agents such as MarkitSERV or ICE_Link to standardise and to aggregate the information upon which the clearing function is reliant.

Conversely there are examples of more restrictive practices. These see barriers erected by such aspects as instrument specificity, trademarking, price, latency, technology, and portability. Concentration risks accrue and the work of Paul Tucker on secondment to HKEX from the bank of England has been well documented.

IX. Digitalisation and new technologies

Question 86. Where do you see the main developments in your sector: use of new technologies to provide or deliver services, emergence of new business models, more decentralised value chain services delivery involving more cooperation between traditional regulated entities and new entrants or other? Please explain your answer:

EVIA notes our response in March to the wide-ranging horizontal EC Consultation on crypto-assets which endorse two core points. Firstly, that the key factor holding back the development of markets in crypto-assets is the lack of regulation which has dissuaded client commitment and participation; and therefore we recommend the principled approach that any regulatory regime follows the logic that the same activity that causes the same risk should be subject to the same regulation. Secondly, we argue that we envisage many use cases, generally, beyond the simple asset model, especially in relation to liabilities, collateral tokens and payment mechanisms. Therefore, regulating the characterisation of crypto-assets simply by reference to either their form or to their function yields an incomplete picture. We remind the Commission that this is redolent of the major challenges in MiFID 2/R wherein neither the perimeter nor the instruments are defined adequately, nor in reference to use cases (think about FX, money markets, funding markets and commodities as first blush instances of representational challenges.)

The much-needed inclusion of crypto-assets into the regulatory perimeter needs and requires an extensible and open classification to enable market participants to build and generate common models to represent the activities. These will need the ISO framework to generate unique standard product and trade identifiers in a much better way then we have witnessed over the last decade. This is because, under DLT implementations, there may be no separate "crypto-asset" at all, but purely a

claim against a permissioning or validating entity. Therefore, the perimeter should understand and define a crypto-asset by reference to the following attributes: its function; its means of production; its characteristics of holding and transfer; its relationship with fiat money; the level of digitisation; and perhaps most of all, its relationship with the issuer, if any.

As operators of trading venues and firms holding permissions to arrange and bring about transactions, the most fundamental question in our context remains which properties of crypto-assets and Distributed Ledger Technology ["DLT"] should be regulated. The answer to these questions must lie in the activities being conducted and those participating in them. The Consultation states that technology neutrality is one of the guiding principles of the European Commission's policies. We wholeheartedly agree with and endorse this approach.

Whilst crypto-assets and digital payments have held a degree of focus recently, they are but one of five elements that we consider important developments in our sector concerning the use of new technologies. The others, in order of importance are: "RegTech" and data lakes; evolving communications; the evolution of market participants and the horizontal or cross-cutting impact of technological change with the nature of "identity". Much has been written and consulted upon across the topics or digital regulatory reporting ("DRR") and wider envelope of RegTech with many regulators and central banks investing significantly not only in resources but also in cooperation and collaboration.

Alongside the changing nature of the system and its means of communications, we also need to highlight the changing nature of market counterparties as the role of the dealer principal has been greatly diminished as European banks have reduced their capital and human commitments to the FICC model whilst both subsidiarising sales and trading operations around the world and evolving agency models wherever possible. Therefore, the number, the concentration, the geographical spread and the nature of trading venue participants has been changing at pace meaning a greater reliance on intermediaries and "middleware services" such as aggregators, credit modules and post-trade financial market infrastructures ["FMIs"]. The outcome of this has meant more trading models and protocols with more contingent or indicative pricing. The concept of MiFID2 to be based upon CLOB and RFQ modalities needs to be further revised to be process agnostic.

Finally, perhaps the least glamourous but most important area of development concerns the evolution in the nature of identity and its technical presentation and validation. MiFID rules around client onboarding, KYC related AML provisions are outdated. We believe that both hosted and distributed leger technology will make the concept of identity and trust as integral to the trade process with parameters including credit, settlement and access also being borne by the digital identity of a market counterparty and perhaps the natural persons within that entity. As a consequence, we think that clients should be able to present a validated digital identity to a trading venue or broker rather than the current inefficient process of requiring the investment firm offering the venue or service to complete all the due diligence as outreach.

Digital trust and identity will also play a significant part in the cross-cutting nature of different permissioned activities and this would especially to be the case where collateral is being arranged and traded, payments are being made or scheduled, both alongside the underlying investment products being matched and traded. We believe for instance that the close interrelation of balance sheet efficiency under the Basle rules, collateral rehypothecation and borrowing, settlement discipline, and market operations and liquidity will require substantial automation and artificial intelligence roll-out. We therefore would ask the Commission to consider pursuing a much better harmonisation of the

terms and operation of the suite of financial conduct and capital legislation[2], especially in respect of their reliance on common definitions and data sets.

Question 87. Do you think there are particular elements in the existing framework which are not in accordance with the principle of technology neutrality and which should be addressed?

Please explain your answer:

Those CCPs operated within vertical exchange and CCP clearing siloes may not offer the same straight through trade entry tools and middleware protocols to external trading venues either matching trades for novation or arranging block-trades under the exchange rules that users experience if wholly within the same silo. EVIA members would find it helpful if open access provisions set out technology provision as a key access arrangement along with price and other commercial variables.

Question 88. Where do you think digitalisation and new technologies would bring most benefits in the trading lifecycle (ranging from the issuance to secondary trading? Please explain your answer:

It follows from our answer to question 87 that we consider digitalisation and new technologies would bring most benefits in the trading lifecycle in six thematic areas: crypto-assets and digital payments; "RegTech," DRR and data lakes; evolving communications; the evolution of market participants and the horizontal or cross-cutting impact of technological change with the nature of "identity".

These will all bring benefits and efficiencies, not least by challenging the authorities to dismantle the barriers to commercial competition that MiFID currently holds out via the protection of national champions, the restraints on open access and closed systems of reference and transaction data, most especially in the absence of a range of candidates operating and fulfilling the ISO 6166:2013 ; 10962:2019 and 10383:2012 standards. However, amongst these six areas we would highlight the nature of identity and therefore of trust and history to be the context of most change expected over the forthcoming years.

Question 89. Do you consider that digitalisation and new technologies will significantly impact the role of EU trading venues in the future (5/10 years' time)?

EVIA Answer: 5. Fully agree.

Question 89.1 Please explain your answer to question 89:

We note that the thrust of the EU Commission enquiry here may be related to the distribution of financial products and investments to retail clients; an area that is clearly becoming digitised through the deployment of AI and cloud technologies. Retail customers are however outside the perimeter of EVIA members wholesale platforms and services and highly unlikely to become relevant over the course of the next decade.

Notwithstanding the above, wholesale trading venues and arrangers will continue to be equally impacted digitalisation and new technologies, and likely much more so than the last decade where the re-regulation agenda very effectively crowded out the benefits of technological change right through that period.

Question 90. Do you believe that certain product governance and distribution provisions of the MiFID II/MiFIR framework should be adapted to better suit digital and online offers of investment services and products?

EVIA Answer: 6. Don't know / no opinion / not relevant.

Question 90.1 Please explain your answer to question 90:

EVIA is not responding to this question.

Question 91. Do you believe that certain provisions on investment services (such as investment advice) should be adapted to better suit delivering of services through robo-advice or other digital technologies?

EVIA Answer: 6. Don't know / no opinion / not relevant.

Question 91.1 Please explain your answer to question 91:

EVIA is not responding to this question.

X. Foreign exchange (FX)

Question 92. Do you believe that the current regulatory framework is adequately calibrated to prevent misbehaviours in the area of spot foreign exchange (FX) transactions?

EVIA Answer: 1. Disagree.

No, EVIA does not concur that the current regulatory framework is adequately calibrated to prevent misbehaviours in the area of spot FX transactions.

Question 92.1 If you do not believe that the current regulatory framework is adequately calibrated to prevent misbehaviours in the area of spot foreign exchange (FX) transactions, which recommendations would you make to improve the robustness of the regulatory framework?

EVIA recommends the following changes which specifically need to exclude physical FX markets from MiFID, but include them within the scope of MAR:

i. All FX instruments and all on venue FX related activities and transactions, including spot and payments should be explicitly subject to the market abuse regulation. This recognises that any foreign exchange transaction could be intended to attempt money laundering, market manipulation or financial crime by offering a supervisory framework for the '*harms and risks that [may] apply.'* We consider these to consist of the following non-exhaustive list: Money Laundering; Fraud; Contractual uncertainty; Fragmentation; False/Off venues; no shopping around; Migration of business away; Liquidity Mirage; Misreporting; Protectionism/Cost of Access/Frictional Cost of Transactions.

ii. Section C of the MiFID II Directive should be amended to exclude transactions that are settled physically up to a tenor of 12 m. This would have the effect of excluding spot and forward FX transactions from the broad scope of MiFID requirements in recognition that they are very frequently not "investments" and almost never derivatives. The intent should seek to treat FX payments of any tenor as payments under the PSR, FX Swap Instruments and linked FX forwards as funding trades under SFTR, and other more complex trades and packages as investments under MiFID without regard to the maturity of any legs.

iii. Specific definition within MiFID should be set out for FX instruments in addition to what constitutes a "derivative". Currently Section C of the MiFID II Directive holds the dual role within the single phrases of both defining instruments and setting out the roadmap of their treatment under the directive and regulation.

iv. This outcome for FX Transactions to be regulated by either: PSR, SFTR or MiFID would more closely align to the treatment of FX under the CEA-Dodd-Frank Act in the United States.[3] It would also align to the treatment of commodities with Europe under C6, C7 and implicitly recognises that since each and every FX transaction holds USD as its denominator, its unit of account and its payment currency; so a broad alignment with the USD regulatory regime is both desirable and inescapable for the foreseeable future.

v. We refer to the EVIA response to ESMA's consultation on the provisions of the Market Abuse Regulation in September 2019, whereby ESMA sought industry views on the effectiveness of the MAR regime to date, including the scope and inclusion of the FX markets. EVIA forcefully set out the case for spot FX to be included within MAR for those transactions and other solicitation and arranging activities conferred onto a regulated TV such as those MTFs and OTFs operated by EVIA members.

vi. We note that authorised TVs already comply with MAR on all FX products including those not currently in scope of MAR nor MIFD such as FX spot and short dated transactions. We also remind of the comments last October[4] by the then governor of the Bank of England to the UK Parliament that FX Spot trades need to be within the scope of MAR in order to set a legal perimeter which the FX Global Code of Conduct simply does not address, which leads to the conclusion that the Bank of England comments were also reflecting the positions of all of the central banks on the FSB Global FX Committee. Firms holding MiFIR licenses continue to operate the FX Spot market under the same objectives for their rules, namely, to offer marketplaces that are: *Deep/Liquid, Safe, Multilateral, Timely, Innovative, Competitive, Predictable, Enforceable.*

vii. In making FX Spot transactions reportable under either PSR, SFTR or MiFIR, so the EC should facilitate short dated FX trades to have ISINs according to their typology rather than the current situation where neither the ANNA_DSB nor any other ANNA numbering agency will anoint an ISIN. These ISINs should not be derivatives ISINs with specific date attributes, but nevertheless deployable within SFTR and MiFIR schema as part of linked transactions, packages, or complex trades. This would concur more closely to the reporting approach taken in the US and many ASEAN nations.

[3] FX swaps and deliverable FX forwards have been exempted from regulation as swaps by the Department of the Treasury. FX swaps and FX forwards are nonetheless subject to SDR reporting under CFTC Regulations, Part 45, and business conduct and anti-evasion requirements.

[4] Governor Mark Carney at the TSC 15th October 2019

viii. The MiFID revised framework needs to fit with the forward embrace of CyptoAssets into the perimeter of both EU regulation and that across the G20. EVIA commend and agree with the statement made in February 2020 by the Financial Markets Law Committee of the Bank of England ["FMLC"][5]: wherein, speaking here of Cryptoassets, but applicable to FX, *"an instrument can be an 'Investment' or it can be a 'Payment' – but it can never be both at once. It can also rarely be neither."*

ix. The TV perimeter definition needs to change to accord with elsewhere and capture the activity undertaken by TVs to arrange, to negotiate and to bring about transactions rather than be instrument focused by deploying a TOTV approach which otherwise purely hinges on past-facto legal execution.

Question 92.1 Please explain your answer to question 92:

FX and commodities are not primarily traded as investments but are widely negotiated on wholesale platforms whose activities normally reach far beyond the EU perimeter. By product scope, packaging, geographical reach and client type, MiFID2 rules have not fitted well with operation of liquidity in these asset classes.

i. EVIA members operate the multilateral platforms across the geographic and product scope of the FX markets and it is imperative to establish that they all apply the same MiFID and MAR record keeping and monitoring framework to trading in spot FX transactions in conjunction their operations for FX forwards and for FX derivatives as each system diurnally passes its liquidity through the licences it holds across the G20 principal regulatory frameworks. Regulatory licencing requirements outside the EU almost always require venue organisation rules to apply to FX spot and clearly operators need their systems to operate across all applicable regimes as a commercial imperative. This has become more pertinent over the last decade as allegations of misbehaviour and attempted market abuse have been investigated by supervisors, have been deposed in the judicial system and have seeded the, Global FX Code of Conduct ("GFXCoC")[6] which is currently undergoing its first review. In light of these considerations, EVIA firmly advocated inclusion to ESMA in 2019 [7]as they conducted an assessment of the potential impact on the inclusion of spot FX under the MAR regime.

ii. Whilst the GFXCoC complements the same objectives as MAR, best practice does not replace the criminal perimeter, and this was spelt out by Mark Carney, then both Chair of the FSB and the Governor of the Bank of England when he made testimony to the UK Parliament's Treasury Select Committee on October 2019.

iii. We acknowledge that the GFXCoC promotes the best practices to which spot FX market participants should adhere, and indeed EVIA does operate a public adherence register[8] and advocates that the EC ask ESMA to consider references to some of the specific considerations throughout its 19 principles for FX spot to facilitate the application of a consistent cross-border approach to MAR using the articulation developed by the Code.

iv. The GFXCoC however remains aspirational, voluntary and only partial leaving open questions around the effectiveness and adequateness of spot FX transactions solely to be governed by the code, whilst not answering the burgeoning pertinent and related questions around Cryptoassets. We observe steadily increasing public adherence statements by a significant numbers of the market participants and stakeholders, but the proportions are very small indeed despite our own wholesale market evidence that both trading venues and their clients are requesting adherence with the Code as part of their on-boarding process.

[5] http://fmlc.org/about-the-fmlc/organisational-structure/

[6] https://www.globalfxc.org/fx_global_code.htm

[7] https://www.evia.org.uk/public-documents/

[8] https://www.evia.org.uk/foreign-exchange/

v. Much more importantly in terms of outcomes is the recurring question of the perimeter. Whilst we noted that EVIA members have effective electronic surveillance systems in place across all their licences around the world to monitor for prescribed behaviours in the FX market (and hence the inclusion in the MAR regime should not cause any inconvenience for these venues) it is questionable whether in practice this is also effectively done by the unregulated facilities and technologies soliciting themselves as platforms and liquidity aggregators supporting the FX markets.

vi. The recent influx of such non-regulated facilities is by no means constricted either to FX spot nor solely within the EU. Systems operating as aggregators or as outsourced technology solutions for FX financial instruments and derivatives, but yet performing arranging and matching activities with the same clients as those firms who operate within or together with the MiFIR, MAR and CRR perimeter do so at much lower costs which has the effect of encouraging trade flow out of intended scope. A more consistent approach to spot FX regulatory provisions under MAR should level the playing field, in particular for EU trading venues operating inside the MiFIR perimeter whilst additionally adhering to third country regimes.

vii. A broader application of MAR should be accompanied under the review of the effective perimeter and a substantive change to PERG C4 within the MiFID II/R framework. The venue perimeter should be far broader, and the product definitions be explicitly set out for deployment within PERG rather than using this framework as a definition within itself resulting in the circularity with which market participants have become familiar. Product definitions should be based upon ISO standard CFI codes and Unique Product Identifiers and would therefore implicitly become narrower. In particular, it follows from this, and remains of paramount importance, that forward transactions are not automatically understood to be "derivatives[9]". This would be a big step to begin to realign MiFID with the rest of the world as with the requirements of industry which constitutes a key step towards Capital Markets Union.

viii. Rebasing the Trading Venue perimeter upon licensable activity rather than upon trade conclusion and the legal uncertainty currently deemed to be "execution," would correct the transparency, reporting and the conduct failings consequent to the current initial reliance on very imperfect attempts to define instruments and trading intents which will only become more problematic with the inclusion of Cryptoassets[10]. The direct implication follows that the scope of MAR should not be directly aligned with that of MiFID, but that it must go wider to encompass the different roles played by currency transfers such as hedging, payments and funding. This allows reporting to be decoupled from venue licencing, such that FX funding trades, commonly known as FX Swaps can be reported under the most relevant regulation which is SFTR[11]. FX Payments may be regulated by the PSR[12]

ix. There are three further supporting pieces of observable evidence to back up the above proposed approach to broaden the application MAR, PSD2/PSR and SFTR, but to narrow that of MiFID:

   a. First, the regime applicable to spot FX should take into consideration the nature of the market participants active in this market. Spot FX has become a liquidity pool provided exclusively by specialist technical non-bank market makers with limited or no permissions in the EU on platforms which similarly require no licences.

[9] Article 2(1)(29) MiFIR: 'derivatives' mean 'those financial instruments defined in point (44)(c) of Article 4(1) of Directive 2014/65/EU; and referred to in Annex I, Section C (4) to (10) thereto'.

[10] These challenges were concisely set out in March 2020 in the response to the EC consultation by the Bank of England's Financial Markets Law Committee: http://fmlc.org/response-to-european-commission-consultation-framework-for-markets-in-cryptoassets-17-march-2020/

[11] "SFTR" https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2365&from=EN

[12] "PSR" https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2366&from=EN

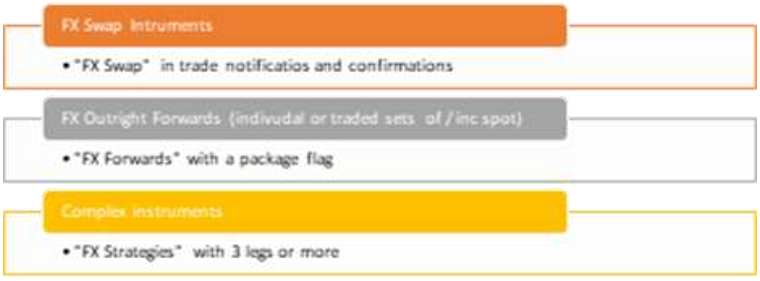
b. Secondly, whilst the immediate focus is global standardisation, we additionally note the failure to harmonise supervisory transpositions within the EU.

- Spot FX is deemed to be inside the scope of MiFID in Germany, whilst in others, including the UK, it remains outside. When the spot instrument is traded as part of a "Package Transaction"
- EVIA believes that where the spot and other short dated legs of a contingent transaction apply, all components should be brought into the scope of financial instruments and treated accordingly.

c. Thirdly, we reiterate the case for harmonising the EU approach to the FX perimeter to that other jurisdictions' regulatory regimes who in general are observed to be more convergent under a broad wholesale licensing approach irrespective of product.

- Given the global nature of the market combined with the fact that every FX trade is denominated and settled in USD, a global standard perimeter deems required.
- The EU should harmonise or at a minimum to map across the EU approach to the set of definitions currently being consulted upon by the CFTC in the P43 and P45 reporting ("packages")[13] where there is no concept of spot non-reporting.
- It may therefore also be key tenet of the MiFID review check process alignment for RMO and other reporting standards across ASEAN members of the G20.
- The Review should also consider Brexit harmonization, particularly any joint measures that may be deemed desirable, sought, or agreed around reference data, transparency, reporting and other exchanges of information under treaties or MOUs.

d. Lastly, and in addition to the changes to C4, the Technical Standards revised and expanded definitions of products and services (to take account of Complex instruments[14] and reconsider the use of the term "Strategy" which was deployed prior as a replacement for the term "Package," but which ESMA now appear to take a signal for complex trades



[13] CFTC reporting schema CP sets out to define packages Part 45 – see page 139 / Tech Spec page 13
[14] Recital 80 of MiFID II clarifies that: "Investment firms are allowed to provide investment services that consist only of execution and/or of the reception and transmission of client orders, without the need to obtain information regarding the knowledge and experience of the client in order to assess the appropriateness of the service or the financial instrument for the client."

Question 93. Which supervisory powers do you think national competent authorities should be granted in the area of spot FX trading to address improper business and trading conduct on that market?

Please explain your answer:

EVIA understands that pended advocated remedial measures, EU NCAs need be allotted any new or novel supervisory powers than they apply today. We consider the context to Q93 as one seeking to fix for underlying deficiencies and gaps in the EU regulatory framework. As such we advocate a cure rather than a running repair.

Many of the central banks' FX committees mentioned above have made adherence to the Code a pre-requisite for membership, including the ECB's FX Contact Group (*The FXCG is a forum for interaction between the ECB and industry-wide market professionals involved in the wholesale foreign exchange (FX) market* https://www.ecb.europa.eu/paym/groups/fxcg/html/index.en.html), which further encouraged major market participants to sign statements of commitment. As per our response to Q92.1, we do not believe that an amendment to the regulatory framework for Spot FX, via MAR and/or MiFID/R, is appropriate.

In respect of tools available to EU NCAs to enforce the FXCOC, we note the following global examples which demonstrate how other jurisdictions have recognised the Code:

- Australia (ASIC) regulate conduct in Spot FX through multiple provisions in the Corporations Act 2001 and the Australian Securities and Investments Commission Act 2001 (https://download.asic.gov.au/media/4270050/rep525-published-26-may-2017.pdf and assesses conduct against both Acts, the Global Code and Report 525 https://asic.gov.au/about-asic/news-centre/speeches/redefining-conduct-in-fx-markets/ and https://download.asic.gov.au/media/5417669/rep652-published-18-december-2019.pdf
- Hong Kong (HKMA) promotes adherence to the Global Code and whilst recognising that the Code is voluntary is actively working with market participants to promote adherence, requesting a demonstration of adherence.
- Ireland (Central Bank of Ireland) is planning a Senior Executive Accountability Regime (https://centralbank.ie/news/article/speech-senior-executive-accountability-regime-derville-rowland-22-oct-2019) as an equivalent to the UK's SMCR, which is expected to contain procedures to address individual accountability and enforcement.
- Singapore (MAS) has adopted the Global Code into its Blue Book and associated FAQ (http://www.sfemc.org/industry-good-practice-blue-book.html) which is seen as the industry guidance on good practices applying to all market participants, and notes that all SFEMC members consider themselves bound by the Blue Book. The FAQ also notes that *'The SFEMC has endorsed the Financial Markets Regulatory Practices (the "FMRP") Examination administered by the Institute of Banking and Finance ("IBF") as the professional certification programme for all individuals engaged in the wholesale financial markets. The FMRP Examination assesses the understanding of wholesale dealing practices and market conduct based on the Blue Book.'*

Section 3. Additional comments

You are kindly invited to make additional comments on this consultation if you consider that some areas have not been covered above. Please, where possible, include examples and evidence.

Question 94. Have you detected any issues beyond those raised in previous sections that would merit further consideration in the context of the review of MiFID II/MiFIR framework, in particular as regards to the objective of investor protection, financial stability and market integrity? Please explain your answer:

EVIA reiterates the immediate outstanding Issues and Topics in MiFID2

- Clarify the approach to third country access and equivalence
- Allow for true 'Open Access' to market infrastructures, in respect of the CCP acceptance of contracts concluded on third party trading venues.
- Create the conditions for lower data costs, by standardisation of data delivery mechanisms, the harmonisation of data models and uniformity of data product descriptions on price lists. Reappraise and clarify the scope of MiFID with respect to the definitions of financial instruments, of "derivatives" as well as recalibrating the proportionate treatment of wholesale market venues from those open to retail investors
- Revise the perimeter guidance to MiFID to exclude transactions in non-investment products:
    - This should exclude foreign exchange transactions of under twelve months to delivery to align with the approach taken towards money markets and with that across the rest of the world; exclude borrowing and lending activities such as repurchase agreements; and exclude transactions in physically delivered commodities
    - It should include transactions in *Crypto-assets* such as those based on blockchains, where they form investments and exclude them where are payments
- Increase the agility of reference data by replacing the reliance on specific schema generated instruments [RTS 23] by embracing the ISO UPI taxonomy and its CFI classifications under RTS 2 and therefore clarify which instruments are ToTV at any point in time
- Define the application of the DTO more narrowly to transactions entirely within the EU
- Retain the broad perimeter and therefore preserve the role and function of triggers for proportionality including C6, C7, C10 exemptions and the SSTI waiver thresholds
- Reconsider the functional perimeter for foreign exchange transactions such that both payments and funding trades are excluded in favour of MAR, SFTR and PSR; whilst enabling legs of financial instrument packages to be simply included where appropriate.
- Address the absence of Issuer LEIs across the corporate bond market by substituting these with the identity of the trading venue
- Renew efforts to harmonise inconsistent interpretations of MiFID supervision between and across National Competent Authorities by introducing further Commission guidance to simplify and revise ESMA level 3 measures
- Simplify execution reports and revise the application of inappropriate retail rules such as 'Best Execution' to professional and eligible counterparties where choice and competition should be the pertinent controls
- Harmonise terms and definitions with other legislative files
- Consider a more functional reappraisal of the wholesale financial services legislative architecture based upon global standards and principals, such that regulations covering Functional Requirements are crosscut by, but separate to, those provisioning Service Licences.