

Reply form

on the Consultation Paper 3



Responding to this paper

ESMA invites comments on all matters in the Consultation Paper and in particular on the specific questions in this reply form. Comments are most helpful if they:

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

ESMA will consider all comments received by **15 October 2024**.

Instructions

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

- Insert your responses to the questions in the Consultation Paper in this reply form.
- Please do not remove tags of the type <ESMA_QUESTION_CP3_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA_CP3_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_CP3_ABCD.

- Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input - Consultations’.

Publication of responses

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

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and heading '[Data protection](#)'..

1. General information about respondent

Name of the company / organisation	Deutsche Boerse Group (DBG)
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

2. Questions

2.1 ITS on SI

Q36 Do you agree with the ESMA's proposed approach? Please elaborate.

<ESMA_QUESTION_CP3_36>
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<ESMA_QUESTION_CP3_36>

Q37 Do you think the fields included in the new form are exhaustive? If not, which other information are missing for the purpose of the template? Do you consider all requested fields to be needed? What is your perspective on the potential inclusion of a dedicated field for entering the MIC of the APA utilized by the SI during the notification submission process? Please elaborate.

<ESMA_QUESTION_CP3_37>
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<ESMA_QUESTION_CP3_37>

Q38 Do you think that two weeks would be a processing time long enough for the investment firms that intend to continue/start carrying out activities as SIs in any class of financial instruments to submit the new notification to the respective NCAs? Please elaborate.

<ESMA_QUESTION_CP3_38>
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<ESMA_QUESTION_CP3_38>

Q39 Are there any other suggestions you would like to propose? Please elaborate.

<ESMA_QUESTION_CP3_39>
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<ESMA_QUESTION_CP3_39>

2.2 RTS 3

Q40 Do you agree with the proposed amendments to RTS 3, including the Annex? If not, please explain.

<ESMA_QUESTION_CP3_40>
Yes, DBG agrees with the proposed amendments to RTS 3.<ESMA_QUESTION_CP3_40>

Q41 Do you foresee any challenges with the use of JSON format compared to XML? Please provide estimates of the costs, timelines of implementation and benefits (short-and long term) related to potential transition to JSON.

<ESMA_QUESTION_CP3_41>

Consistent to our response to ESMA Consultation Paper on RTS 2, RTS on reasonable commercial basis and RTS 23, which we will repeat here, DBG has some reservations regarding the adoption of the JSON format. Whereas we do not disagree with the adoption of the JSON format in the non-real-time space, we do insist on the fact that the change in format will be a long and costly process for all reporting entities. Hence, we would demand that the changes in RTS 23 reporting with the merging of RTS 2 fields as well as the RTS 3 fields and the transition to JSON are made at the same time. This synchronisation would avoid additional costly development efforts, which would necessarily occur with a staggered implementation. We would ask ESMA to account for this lead time for the set-up of the application date of RTS 3. Moreover, even if we anticipate a smooth transition to JSON thanks to its lightweight and flexible structure, JSON's inherent features – such as simplicity and the absence of standardised schemas – require careful handling to maintain data quality. Hence, it would be beneficial for ESMA to create a robust data validation framework for the data provided in the JSON format. This framework would ensure the accuracy and reliability of data submitted by various reporting entities, promoting consistency and adherence to regulatory requirements while maintaining overall data integrity.

Finally, as pointed out above and for the avoidance of doubt, we would like to reiterate that we do not consider JSON as being suitable for real-time data distribution due to better alternatives, i.e. binary formats.

<ESMA_QUESTION_CP3_41>

Q42 What is your preferred option for the frequency of reporting of data to ESMA from trading venues, and CTPs upon request: a) maintain bi-weekly reporting as present or b) switch to monthly reporting, on the 16th day of the month for the previous month? Please justify your answer and provide examples and data on the costs and benefits of your preferred approach.

<ESMA_QUESTION_CP3_42>

DBG would be in favour of the option b), namely switching to monthly reporting. We would consider that a monthly reporting would have some benefits. Firstly, a less frequent reporting exercise does evidently reduce the operational workload and associated costs for trading venues. Secondly, development resources could be reallocated towards enhancing data quality, resulting in more consistent and reliable information submitted to regulatory bodies. Thirdly, the improved data management through simplification of data processing and optimization of systems would result in an improved system performance and data quality.

We would like to insist on the topic of the timeline to implementation and new processes:

- First, it is important to note that transitioning to a new reporting schedule will require significant changes to existing systems and processes. Trading venues will need sufficient time to develop and implement the necessary changes in their data warehouse and reporting systems. Hence, it is crucial that trading venues are informed as quickly as possible of the decision to keep biweekly or switch to monthly reports; In the second case, they will have additional adjustments to make to their reporting process and it will be challenging to manage to be ready to produce the relevant reports by 29 September 2025. If the official announcement were to come with a very tight deadline, it will not be possible to meet the deadline. Generally, we would need to secure at least three to six months to plan, develop, test, and implement the change effectively.
- Second, we would also need clarification as to whether on 29 September 2025 trading venues will have to resubmit all reports for the past 12 months under the new volume-cap definition. This task is particularly challenging given the ongoing migration of our DBG reporting system to a new data platform. The data required for re-submission won't be readily available in the new system and will have to be manually extracted from deep archive storage and loaded into the new system. This process is time-consuming, and we would need at least six months to complete the task, to ensure accuracy and thoroughness.

<ESMA_QUESTION_CP3_42>

2.3 RTS 7

Q43 Do you agree with the proposed Article 1 – Definitions? Please explain.

<ESMA_QUESTION_CP3_43>

DBG would broadly agree with the proposed Article 1. We would however, for avoidance of misunderstanding and confusion in the future, appreciate that the wording used by ESMA in Recital 7 is repeated in Article 1 for the definition of ‘Algorithmic trading systems’. Since in different parts that MiFID II covers there is reference to market participant systems used for algorithmic trading, whilst draft RTS 7 intends to focus specifically on the trading venue systems, we suggest a clarification of the scope of Article 1(1)(a) by adding the following words (in bold): "(a) ‘Algorithmic trading systems’ means any arrangements or systems **of the trading venue** that allow or enable algorithmic trading." <ESMA_QUESTION_CP3_43>

Q44 Do you agree with the proposed Article 17 – General principles in the establishment of Circuit Breakers)? Please explain.

<ESMA_QUESTION_CP3_44>

DBG agrees with the general principles for the establishment of circuit breakers, but we have identified two aspects leading to a proposal for the rewording of Article 17(2) and Article 17(3).

Firstly, we do appreciate the clarification on the alternative between trading halts and price collars, contrary to the relevant part in the ESMA Supervisory Briefing on calibration of circuit breakers for liquid instruments; we also appreciate that ESMA reckons that a trading venue can adopt either a static or a dynamic reference price and not both. We would also mention that trading venues might adopt different mechanisms than static and/or dynamic reference prices to manage excess volatility episodes for certain types of instruments or certain trading models where circuit breakers are not the right mechanism to ensure price continuity. This would be common practice for example on European derivative exchanges for products where the price discovery is normally driven by external factors, such as for options products. The discretion that ESMA leaves to trading venues to determine the parameters should extend to the mechanisms themselves where the market operator can explain and justify that neither static nor dynamic reference prices apply and demonstrate how price continuity is ensured in case circuit breaker should apply.

Secondly, Article 17(3) refers to “market-specific circumstances”, which we find misleading; it can indeed be understood that by ‘circumstances’ one refers to a specific situation contrary to structural aspects of the market. It is important that the characteristics of the trading model itself or of the instruments listed on the platform do justify that the trading venue has decided to rely either

on a static or on a dynamic reference price or to rely neither on a static nor on a dynamic reference price, not exceptionally but on a potentially more permanent basis, pending the annual review of the methodology.

Hence, we would suggest amendments to both Article 17(2) and 17(3) reflecting the aforementioned comments:

- for Article 17(2) as follows (**in bold**): “Trading venues shall design the circuit breakers deployed for the instruments traded on the basis of a static and a dynamic reference price, unless the trading venue demonstrates to its national competent authority that due to market-specific **characteristics** volatility is adequately managed deploying only a static or a dynamic reference price **or neither a static nor a dynamic reference price.**”
- for Article 17(3) (**in bold**): “[...] The assessment should specifically encompass cases where the trading venue has decided to rely either on a static or on a dynamic reference price **or to rely neither on a static nor on a dynamic reference price**”.

<ESMA_QUESTION_CP3_44>

Q45 Do you agree with the proposed Article 18 – General principles in the establishment of the methodology for the calibration of Circuit Breakers? Please explain.

<ESMA_QUESTION_CP3_45>

DBG agrees with the general principles for the establishment of the methodology for the calibration of circuit breakers.<ESMA_QUESTION_CP3_45>

Q46 Do you agree with the proposed Article 19 – Disclosure requirement regarding circuit breakers? Please explain.

<ESMA_QUESTION_CP3_46>

Regarding access to information on circuit breakers, DBG would not agree with the first sentence in Article 19(1), “Trading venues shall disclose on their website information regarding the functioning and effects of circuit breakers.” Indeed, we would ask for the information regarding the functionality and effects of circuit breakers to be in general publicly and easily available albeit not necessarily only via a website. As an example, Eurex, for its derivatives, provides other channels, which are free and openly available for all, and actually show comprehensive information when it comes to reference data and parameters at individual contract level, i.e. the Eurex reference data API (<https://www.eurex.com/ex-en/data/free-reference-data-api>). We would suggest to ESMA to replace the sentence “Trading venues shall disclose on their website information” with “**Trading venues shall make available publicly, easily accessible and free of charge information**”.

Regarding the extent/range of the information to make public, trading venues aim at striking the right balance between information which is useful to market participants and information which is too sensitive and would threaten orderly trading on their platforms. In particular, we believe that strict confidentiality around the number of times the trading halts were activated, hence their frequency, is crucial. Trading halts are triggered depending on price volatility, information specific to the instruments, the nature of the instrument, macroeconomic events, a variety of variables which cannot necessarily be inferred directly by looking at the numbers. The subjective perception of the numbers might affect market participants' confidence in trading venues. As a consequence, trading venues might have to review their mechanisms not on the basis on orderly market conditions but on the perception of what are orderly market conditions, which can be very volatile and bias the design of the said trading halts. This type of information shall only be disclosed to NCAs and ESMA.

DBG also has some reservations regarding Article 19(1)(f) which we developed in our response to Q47.

<ESMA_QUESTION_CP3_46>

Q47 Article 19(1)(f) mandates trading venues to disclose “information on the triggering of circuit breakers, with at least an annual frequency”. Do you support such disclosure, and do you think ESMA should further specify the type of information that should be disclosed? Please explain.

<ESMA_QUESTION_CP3_47>

DBG would assume it is at the exchange's discretion to decide which information should be provided as per Article 19(1)(f), given that ESMA does not specify the exact details or granularity of the abovementioned “information”. Our understanding is that the minimum expectation from ESMA regarding to this “information” does not go beyond what is already requested in the draft RTS as well as in the latest ESMA Supervisory briefing launched in October 2023. We would refer in particular to paragraph 246 of the Consultation Paper and the fact that the regulator “does not propose mandatory disclosure of the parameters underpinning the activation of trading halts, as it could be argued that such granular disclosure could entail unwanted effects on trading behaviors affecting orderly trading or even be potentially misused by market participants (e.g. to artificially trigger a circuit breaker).” As explained in our response to Q46 we do publish detailed information including the value of the parameters for number of instruments but do not publicly provide those values for other instruments where it appears critical to orderly trading.<ESMA_QUESTION_CP3_47>

Q48 Do you agree with the proposed template to report information to NCAs? Please explain.

<ESMA_QUESTION_CP3_48>

Yes, DBG would agree with the proposed template by ESMA. Referring to our response to Q47, and consistently with the template applied since 2018, we would suggest that the information on the number of times trading halts were triggered in the previous year could be included into this report to NCAs but not made public.

Moreover, we would like to have the possibility to leave some fields empty when the requirement does not apply, like for example, for those instruments/venues where only a static price reference applies. The mention of the terms “where applicable” would be useful for a selected number of fields.

<ESMA_QUESTION_CP3_48>

Q49 Do you agree with the proposal to delete Articles 15 of RTS 7 ('Business continuity arrangements')? Please explain.

<ESMA_QUESTION_CP3_49>

Yes, DBG agrees with ESMA's proposal. DORA is the reference legislation in the finance sector when it comes to digital operational resilience. Therefore, provisions outside of DORA covering this policy area should be amended or, ideally, repealed to ensure consistency and avoid overlapping and possibly contrasting requirements.

<ESMA_QUESTION_CP3_49>

Q50 Do you agree with the proposed way forward on Article 8 of RTS 7 ('Testing of trading systems')? Please explain.

<ESMA_QUESTION_CP3_50>

Yes, DBG agrees with ESMA's proposals. We welcome the removal of testing requirements which are already covered under DORA.<ESMA_QUESTION_CP3_50>

Q51 Do you agree with the proposed way forward on Article 23 of RTS 7 ('Security and limits to access')? Please explain.

<ESMA_QUESTION_CP3_51>

Yes, DBG agrees with ESMA's proposals. We welcome the removal of incident reporting requirements which are already covered under DORA.

<ESMA_QUESTION_CP3_51>

Q52 Do you agree with the proposed amendments to Article 6 of RTS 7 ('Outsourcing and procurement'), Article 16 ('Business continuity plan') and Article 17 ('Periodic review of business continuity arrangements')? Please explain.

<ESMA_QUESTION_CP3_52>

Similarly to the previous responses, DBG agrees with ESMA's approach with regards to Articles 6, 16 and 17. DORA provides a more recent policy position on digital operational resilience than RTS 7. However, we would like to stress the need to provide further guidance and details on the term "critical operational functions" in respect of trading venues.

<ESMA_QUESTION_CP3_52>

Q53 Do you suggest the deletion of other RTS 7 provisions due to the amendments to Article 48 of MiFID II? Please explain.

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Q54 Do you suggest the amendment to other provisions of RTS 7, due the amendments to Article 48 of MiFID II? Please explain.

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