ASSOCIATION FRANÇAISE DES MARCHÉS FINANCIERS

FINANCIAL MARKET PROFESSIONALS

AMAFI / 21-68
17 December 2021

# ESMA CONSULTATION PAPER
## ON THE REVIEW OF THE MIFID II FRAMEWORK ON BEST EXECUTION REPORTS

## AMAFI contribution

**Association française des marchés financiers (AMAFI)** is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities.

AMAFI welcomes the opportunity to respond to this consultation paper (hereafter the CP) on the review of the MiFID II framework on best execution reports. While preparing its response to this consultation paper, AMAFI has liaised with La Fédération bancaire française (FBF) and L'Association française des professionnels des titres (AFTI), and supports their comments.

Before answering the specific questions raised in the CP, AMAFI would like to highlight the following general comments.

## GENERAL COMMENTS

Regarding the best execution reports required from trading venues in RTS 27, AMAFI had welcomed the suspension of their publication as provided by the MiFID II Quick Fix directive. The rationale behind the suspension of the publication of those reports was that they were rarely read and did not enable investors to make meaningful comparisons on the basis of the information they contained. Based on feedback from its members, AMAFI observes that both retail and wholesale market participants do not view or use these reports. While retail participants do not dispose of sufficient analytical and IT resources to extract and properly interpret the reports published by different execution venues, wholesale stakeholders on the other hand rely on different methods and data to assess their best execution.

Furthermore, the mechanisms adopted by wholesale market participants provide them with more recent data, while the reports provided under RTS 27 contain data dating back up to three months.
We thus believe that the proposed changes to the granularity and the indicators required do not address the structural flaws that make the reports required under RTS 27 irrelevant to such a large proportion of market participants.

In its cost-benefit analysis, ESMA cites a sole benefit expected from the proposed changes, that is making the RTS 27 reports *"a complementary source of information"* assisting the public and market participants in choosing the most suitable venue for their transactions. As stated above, we believe that parametric changes to the content of the reports will not instantly improve their relevance to the best execution policy assessments made by market participants. Moreover, the analysis does not provide a comparison between the expected benefits of these reports and the benefits from using other sources of data on execution quality.

Regarding costs, the assessment does not consider the one-off costs entailed by the IT and operational resources that should be mobilised by firms. It also does not go into the detail of data aggregation depending on the new granularity levels expected from firms.

Looking at all the elements drawn from the cost-benefit analysis, AMAFI strongly disagrees with ESMA's final assessment that the costs associated with the implementation of its proposal are proportional to the benefits and "*fully justified"* by the stated objectives. As a matter of fact, considering that the objective is providing a complementary source of information to market participants who already have mechanisms in place providing them with more complete and more immediate information, the costs inflicted on market participants for the sake of best execution reporting since the entry into force of MiFID II are highly disproportional to the expected benefits or aims of this policy.

For all the reasons mentioned above, we do not believe that the stated objectives of the proposed changes are still relevant and call for the removal of the reports required under RTS 27. This would allow for a more pragmatic approach to the upcoming overhaul of the regulatory framework for financial instruments, where the rationalisation of regulatory costs will be crucial for all market participants. We believe that it is in the best interest of the markets to safeguard the resources deployed for regulatory implementation to serve more urgent purposes.

AMAFI's position is also in line with the European Commission's proposal to delete Article 27(3) of MiFIR, citing the irrelevance of the information provided by the reports in light of the upcoming establishment of a Consolidated tape that can serve similar purposes.

Similarly, as far as RTS 28 is concerned, AMAFI believes that these best execution reports are not "useful information" for investors since they do not factor them into their decisions. In practice, regarding wholesale investors – particularly large institutions, they already have their own trading cost analysis tools for their own analysis. Buy-side investment firms receive all relevant information through other channels (*e.g.* brokerage meetings). In addition, regarding retail investors, these reports are rarely consulted by retail clients, as proven by the very low level of consultation of such reports by retail investors on players' websites. Last, from an EU competitiveness perspective, let us mention that the UK FCA has just decided to repeal for UK-based players both the obligations of RTS 27 and RTS 28, and we don't see why EU-based competitors should not benefit from the same positive regulatory evolution.
Therefore, AMAFI would rather propose to remove the best execution and quality of execution reports required under Article 27(6) of MiFID II and RTS 28.

However, AMAFI would support some of the changes proposed by ESMA to make it less burdensome and more relevant such as deletion of distinction between passive/aggressive orders. We also support the deletion of this information about tick size liquidity. Another change should be made as to allow drafting the report not necessarily at the level of the individual investment firm but rather by services or activities to prevent mixing up wholesale and retail flows.

Finally, AMAFI disagrees with the cost-benefit analysis. We believe that the execution required under RTS 28 has in itself a poor cost-benefit ratio. It follows that, while the potential proposals are welcome, their implementation is necessarily costly. Thus, AMAFI considers that the overall costs that would be associated with the implementation of the potential proposals are not proportionate to the benefits.

## ANSWERS

**Q1: Do you agree with the proposed scope in terms of execution venues for the reporting under a possible new RTS 27?**

AMAFI is not responding to this question

**Q2: Do you agree with the proposed level of granularity by types of financial instruments instead of individual financial instruments under a new potential reporting regime? Ashares considered to have a liquid market and shares not considered to have a liquid market)? If not, please state the reasons for your answer and clarify what alternative categorisations you would propose in order to have a meaningful level of granularity for a new reporting regime.**

AMAFI is not in favour of reforming the type or the level of aggregation of the data used to produce these reports. We recommend the deletion of those reports (See general comments)

**Q3: Do you agree with the proposed metrics to report the execution quality obtained by execution venues?**

AMAFI does not agree with this proposition, please refer to the general comments.

**Q4: Have you observed good or bad practices of reporting by execution venues under the current RTS 27 that can be relevant for the elaboration of proposals to enhance access and user-friendliness of this information? Please provide specific examples if possible.**

AMAFI is not responding to this question.

**Q5: Have you observed good or bad practices of reporting by investment firms under the current RTS 28 that can be relevant for the elaboration of proposals to enhance access and user-friendliness of this information? Please provide specific examples if possible.**

Based on practical and operational feedback from its members, AMAFI has found that the execution reports required under RTS 28 are not really taken into consideration by the client of investment firms. AMAFI believes that these best execution reports cannot be considered to be "useful information" for investors since they do not factor them into their decisions. In practice, wholesale investors – particularly large institutions – already have their own trading cost analysis tools for their own analysis. Buy-side investment firms receive all relevant information through other channels (*e.g.* brokerage meetings). In addition, regarding retail investors, these reports are rarely consulted by retail clients, as proven by the very low level of consultation of such reports by retail investors on players' websites. Last, from an EU competitiveness perspective, let us mention that the UK FCA has just decided to repeal for UK-based players both the obligations of RTS 27 and RTS 28, and we don't see why EU-based competitors should not benefit from the same positive regulatory evolution.

Therefore, AMAFI would rather propose to remove the best execution and quality of execution reports required under Article 27(6) of MiFID II and RTS 28.

However, if the requirement of reporting should be maintained, AMAFI would support some of the changes proposed by ESMA to make it less burdensome and more relevant such as deletion of distinction between passive/aggressive orders.
AMAFI would propose another change on the current regime: as provided in ESMA's answer n° 11 in the best execution section of the Investor Protection Q&As ("*ESMA is of the view that, in line with Article 65(6) of the Delegated Regulation, the annual report on the top five entities chosen for execution should be provided at the level of the individual firm*"), AMAFI understands that the annual report on the top five execution venues must be provided at the level of the individual investment firm. Nevertheless, some investment firms gather several services (*e.g.* asset management, global market activities, private bank, retail services). The fact that all executions performed by all activities of the firm should be aggregated can notably lead to providing inaccurate information to retail clients (e.g., venues used for wholesale executions would be overestimated compared to retail flow for instance).

AMAFI believes that the ranking would be more effective and consistent if it were established by services or activities rather than by investment firm.

**Q6: Do you agree with the classification for reporting proposed in Annex I of the possible new RTS 28, especially with regard to the suggested methodology for the reporting on equity instruments? If not, what alternative categorisations would you propose?**

AMAFI considers that the information about the tick size liquidity bands under (a) of Annex I is not relevant and complicated to implement. Furthermore, ESMA proposes to delete this information for investment firms that transmit client orders or place decisions to deal for execution to a third-party entity.

Thus, AMAFI supports the deletion of this information about tick size liquidity bands also for investment firms that execute client orders or decisions to deal in order to ensure effective and consistent classification for reporting.

**Q7: Do you agree with the proposals for a possible review of RTS 28?**

- ***On the clarification of reporting obligations both for (i) firms executing client orders and (ii) for firms providing the services of reception and transmission ("RTO") services.***
- ***And the following changes in tables in Annex II***

AMAFI considers that this clarification of reporting obligations for firms executing client orders and for firms providing RTO services is generally welcome, given that many of the requirements for RTO firms were unclear.

- ***On the deletion of firms' obligation to report orders that were passive and aggressive orders.***

AMAFI considers that this deletion of firm's obligation to report orders that were passive and aggressive orders is welcome insofar as this obligation is complex to implement. Indeed, it is not clear how firms providing RTO services should apply RTS 28 and ESMA's answer n° 14 in the Investor Protection Q&As – in the best execution section – creates confusion on this issue.

We believe that this distinction between passive and aggressive orders is not relevant to the top 5 execution venues report. Indeed, some orders are unclassifiable. For instance, close orders and cross client orders cannot be considered as passive nor aggressive orders. Furthermore, the fact that an order is attached to a specific instruction does not imply its qualification as passive or aggressive with the only exception where RTO would instruct the broker to carry out a passive or aggressive execution – which is not the case if the instruction attached to the order is of another nature.

- ***On the inclusion of information on received payments for order flow in the summary.***

AMAFI is not in favour of including information on received payments for order flow in the summary. Indeed, given that the concept of payments for order flow is not clearly defined, it is difficult to comment on this proposition.

- ***On the machine-readable electronic format.***
- ***On the CSV format.***

AMAFI considers that the objective of accessibility will not be met, since the CSV format is complicated to read for retail investors. Besides, the CSV format is costly to implement for the investment firms.

Therefore, we do not support the requirement to publish RTS 28 reports in the CSV format.

**Q8: Do you agree with the cost benefit analysis as it has been described in Annex II?**

Regarding RTS 28, AMAFI disagrees with the cost-benefit analysis.

We believe that the execution required under RTS 28 has in itself a poor cost-benefit ratio. It follows that, while the potential proposals are welcome, their implementation is necessarily costly.

Thus, AMAFI considers that the overall costs that would be associated with the implementation of the potential proposals are not proportionate to the benefits.

As for RTS 27, AMAFI disagrees with ESMA's assessment as well.

First, ESMA cites a sole benefit expected from the proposed changes, that is making the RTS 27 reports *"a complementary source of information"* assisting the public and market participants in choosing the most suitable venue for their transactions. Considering that the current use of these reports by market participants is close to zero by ESMA and the European Commission's own assessments, AMAFI does not grasp in the proposed changes advantages that are worthy of engaging additional costs to reform these reports. Moreover, the analysis does not provide a comparison between the expected benefits of these reports and the current benefits from using other sources of data on execution quality. We therefore perceive no added value from these changes, according to members' feedback and based on ESMA's own wording when presenting the aim of these reports.

Regarding costs, the assessment does not consider the one-off costs entailed by the IT and operational resources that should be mobilised by firms. It also does not provide any estimates regarding the costs stemming from data aggregation depending on the new granularity levels and metrics proposed.

Looking at all the elements drawn from the cost-benefit analysis, AMAFI strongly disagrees with ESMA's final assessment that the costs associated with the implementation of its proposal are proportional to the benefits and "*fully justified"* by the stated objectives. As a matter of fact, considering that the objective is providing a complementary source of information to market participants who already have mechanisms in place providing them with more complete and more immediate information, the costs inflicted on market participants for the sake of best execution reporting since the entry into force of MiFID II are highly disproportional to the expected benefits or aims of this policy.

**Q9: Are they any additional comments that you would like to raise and/or information that you would like to provide?**

According to Article 3(3)(d) of the ESMA's new RTS 28 project, the summary of the analysis and conclusions investment firms draw from their detailed monitoring of the quality of execution obtained on the execution venues where they executed all client orders in the previous year shall notably include, for the top five execution venues, transaction fees paid.

AMAFI is concerned about whether all transaction fees paid are included. We believe that if all transaction fees paid were included, this requirement would be burdensome for investment firms and not useful information for investors. Thus, AMAFI does not support the inclusion of this information in the summary of the analysis and conclusions.

Like said above, AMAFI would propose another change on the current regime: as provided in ESMA's answer n° 11 in the best execution section of the Investor Protection Q&As, AMAFI understands that the annual report on the top five execution venues must be provided at the level of the individual investment firm. Nevertheless, some investment firms gather several services (e.g. asset management, global market activities, private bank, retail services). The fact that all executions performed by all activities of the firm should be aggregated can notably lead to providing inaccurate information to retail clients (e.g., venues used for wholesale executions would be overestimated compared to retail flow for instance).

AMAFI believes that the ranking would be more effective and consistent if it were established by services or activities rather than by investment firm.