APARMA Submission to ESMA Consultation Package CP1

APARMA submitted the following responses to ESMA in August 2024.

CP on the amendment of RTS 2

Q8: Do you agree with the changes to post-trade fields summarised in Table 5? Please identify the proposal ID in your response.

APARMA would like to request ESMA to clarify two changes to post-trade fields summarised in Table 5:

I) Field 12 "Type"

In Paragraph 51 of the Consultation Paper ("CP"), it is proposed to delete Field 12 "Type" from Table 2 of Annex II. However, in Table 5: Summary of proposals related to post-trade transparency publications (pages 29-30 CP), the proposal instead is to change a number of enumerations, notably to delete the value 'EUAA', 'CERE' and 'ERUE' and add the value "UKAA' in the column "Format". We do note that Field 12 "Type" has been removed from the proposed draft RTS 2.

Can ESMA please confirm whether Field 12 "Type" is to be removed?

II) Supplementary deferrals and aggregated data: missing field for "Number of transactions"

Paragraph 154 of the CP states that the content of the aggregated data to be published for sovereign debt instruments should remain unchanged and should include the total number of transactions. The current ESMA Manual on post-trade transparency includes the field "Number of transactions" as applicable under the previous aggregation regime. We note that this field has not been included as a corresponding new field in the amended Table 2 of Annex II to RTS 2.

Can ESMA please confirm that omission of this field is deliberate and that this field will not apply to supplementary deferrals under amended Article 11(3)(b) of MiFIR in respect of sovereign debt instruments, to the extent such supplementary deferrals remain relevant given the discussion in Paragraph 155? Or should this field be added to Table 2 of Annex II to RTS 2 and published? We note that this also impacts section 4.1.1.1 on Column naming convention, in terms of field names and the requirement in Paragraph 48 of the CP that these should be identical to those provided in Table 2 of Annex II to RTS 2. We would appreciate clarification from ESMA on what was intended (and corresponding amendments to the publication requirements).

Q9: Do you agree not to change the concept of "as close to real-time as technically possible"? If not, what would be in your view the maximum permissible delay?

We agree not to change the existing concept of "as close to real-time as technically possible" set in Article 7(4) of RTS 2, since we believe this is necessary for investment firms performing several tasks together with APAs prior to publication. Considering this interaction between investment firms and APAs, we do not believe the proposed 200ms transmission time set in Article 3 of the draft RTS on input and output data of CTPs is feasible. Please see further our response to CP2 Q8 regarding the RTS on input and output data of CTPs.

Q10: Do you agree with the changes proposed for the purpose of the reporting of OTC transactions?

We generally agree with the proposals. Regarding ESMA's DPE register, we kindly ask ESMA to clarify the definitions and granularity of "classes of financial instruments" and treatment of branches. Please see further in our response in Q71 and Q72 of this CP regarding RTS 23 amendments.

Q14: Do you agree with a static determination of liquidity and determine that all SFPs are illiquid? If not, can you suggest any alternative methodology on how to define liquidity for SFPs?

We would like to point out that 'local time' may not be future proof once the CTP framework is based on UTC across the EU. See further our response to Q24.

Q18: Do you agree with the proposed framework for the deferral regime for EUAs? If not, please suggest an alternative methodology.

We would like to point out that 'local time' may not be future proof once the CTP framework is based on UTC across the EU. See further our response to Q24.

Q22: What is your view in relation to the implementation of the supplementary deferral regime for sovereign bonds?

Aggregated deferrals create a level of operational complexity that is not justified by their contribution to transparency. While the proposed solution appears less complex than the current aggregation regime, we support ESMA's suggestion to remove the aggregated deferrals, in favour of publishing on an individual basis with volume omitted under Article 11(3)(a) of the updated MiFIR.

Additionally, Paragraph 5 of the CP states that "in order to ensure a consistent approach of the transparency regimes in each asset-class", ESMA will consult separately on changes addressing the transparency mandate for derivatives. However, amendments to Article 11 of the proposed draft RTS 2 remove derivatives from the scope of supplemental deferrals and instead the Article would apply only to Sovereign Bonds.

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We would appreciate clarification from ESMA whether it is ESMA's intention to change the supplementary deferral regime for derivatives from the date of application of the new RTS 2.

Q24: Do you have any further comment or suggestion on the draft RTS? Please elaborate your answer.

We would firstly like to suggest that all 'local time' mentioned in the draft RTS 2 should be amended to be Coordinated Universal Time (UTC) (Article 8, 8a and 11 specifically). This is because: (i) all market data will be expected to be consolidated by the CTP based on UTC; and (ii) the deferral regime is now being simplified and aligned across the EU.

Secondly, we noticed that ESMA currently has not yet decided the 'implementation period' for the amended RTS 2 (it is shown as 'TBC' at p. 177 of the CP). Considering the complexity of the changes and the connection between RTS 23 and RTS 2, we would like to propose the same implementation period as proposed by ESMA for the amended RTS 23 (i.e., 18 months after the date of entry into force).

Regarding fields allowed to be blank, the draft RTS 2 Annex II Table 2 does not include any references to fields that are allowed to be blank (and should not be completed) for standard deferrals under RTS 2 Article 8a(2). We additionally expect that there would be references as appropriate for supplementary deferrals. Relevant fields include:

- Quantity
- Quantity in measurement unit
- Notation of the quantity in measurement unit
- Notional amount
- Notional currency

Please can you confirm this interpretation and provide an updated table with these references and indication of fields which are allowed to be blank.

Q25: What level of resources (financial and other) would be required to implement and comply with the draft amended RTS and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale and complexity of the activities of your organisation, where relevant.

There will be significant on-going and one-off financial costs to implement and comply with this amended RTS for all APARMA members.

CP on the RTS on reasonable commercial basis

Q26: Do you agree to the general approach used to specify the costs and margin attributable to the production and distribution of market data? Please elaborate.

Individual APARMA members will be responding to ESMA directly where applicable on ESMA's RCB proposals and APARMA therefore kindly requests ESMA to refer to the respective individual submissions.

Q27: Do you agree with the proposed approach to cost calculation based on the identification of different cost categories attributable to the production and dissemination of market data (i.e. (i) infrastructure costs; (ii) connectivity costs; (iii) personnel costs; (iv) financial costs; (v) administrative costs)? Please elaborate.

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Q28: Do you agree with the proposal of apportioning costs based on the use of resources (i.e., infrastructure, personnel, software…) for each service provided? Do you think the methodology to be used to apportion costs should be further specified? Please elaborate.

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Q29: Do you agree that the net profit as defined in Article 3 of the draft RTS can be a representative proxy of the margin applicable to data fees and would you include additional principles to define when a margin can be considered reasonable? Please elaborate.

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Q30: Do you agree with the proposed template for the purpose of information reporting to NCAs on the cost of producing and disseminating data and on the margin applied to data? Please elaborate, including if further information should in your view be added to the template.

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Q31: What are in your view the obstacles to non-discriminatory access to data taking into consideration the current data market data policies and agreements?

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Q32: What are the elements which could affect prices in data provision (e.g. connectivity, volume)? Do they vary according to the use of data made by the user or the type of user? Please elaborate.

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Q33: Do you agree with ESMA's proposal on how to set up fee categories. Please justify your answer.

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Q34: Regarding redistribution of market data, do you agree with the analysis of ESMA? If not, please elaborate on the possible risks you identify and possible venues to mitigate these. In your response, please elaborate on actual redistribution models.

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Q35: Are there any other terms and conditions in market data agreements beyond the ones listed in this section which you perceive to be biased and/or unfair? If yes, please list them and elaborate your answer.

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Q36: Please provide your view on ESMA's proposal in respect to (i) the obligation to provide pre-contractual information, (ii) general principle on fair terms, (iii) the language of the market data agreement, (iv) the market data agreement conformity with published policies and (v) the provision on fees and additional costs.

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Q37: According to your experience, has the per-user model been inserted in the market data agreements as an option for billing? If yes, do you have experience in the usage of this option? Is the proposed wording of this option in the draft RTS useful? What are in your views the obstacles to its use?

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Q38: Do you agree with ESMA's proposal on penalties? Please elaborate your answer.

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Q39: Do you agree with ESMA's proposal on audits? Please elaborate your answer.

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Q40: Would you adopt any additional safeguards to ensure market data agreements terms and conditions are fair and unbiased? Please elaborate your answer.

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Q41: Do you agree with the standardised publication template set out in Annex I of the draft RTS? Do you have any comments and suggestions to improve the standardised publication format and the accompanying instructions? Please elaborate your answer.

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Q42: Do you agree with the proposed list of standard terminology and definitions? Is there any other terminology used in market data policies that would need to be standardised? If yes, please give examples and suggestions of definitions.

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Q43: Do you consider that the "user-id" and the "device" should still be considered as "unit of count" for the display and non-display data respectively? Do you think (an)other unit(s) of count can better identify the occurrence of costs in data provision and dissemination and if yes, which?

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Q44: Do you foresee other types of connectivity that should be defined beside "physical connection" to quantify the level of data consumption? Please elaborate your answer.

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Q45: Do you think there is any other information that market data providers should disclose to improve the transparency on market data costs and how prices for market data are set? If yes, please provide suggestions.

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Q46: Do you agree with the approach on delayed data proposed by ESMA? Please elaborate your answer.

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Q47: Do you agree with the proposal not to require any type of registration to access delayed data? Please elaborate your answer.

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Q48: ESMA proposes the RTS to enter into force 3 months after publication in the OJ to allow for sufficient time for preparation and amendments to be made by the industry. Would you agree? Would you suggest a different or no preparation time? Please elaborate your answer.

Since Article 16 of the draft RTS requires at least two months' notice for any unilateral change to the terms and conditions of the market data agreement, a 3-month period means market data providers may only have 1 month to incorporate the new RCB requirement and communicate to their clients properly. Further considering that some fields in Annex I and Annex II of the draft RCB RTS are based on either a full calendar year or accounting year, a 12-month implementation period is a more suitable preparation time.

Q49: Do you have any further comment or suggestion on the draft RTS? Please elaborate your answer.

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Q50: What level of resources (financial and other) would be required to implement and comply with the RTS and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale and complexity of the activities of your organisation, where relevant?

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CP on RTS 23

Q72: With regards to the categorisation of classes of financial instruments for the purpose of the DPE register, how such classes should be designated in the register? Is there any further information that should be included in the register to ensure its usability and interoperability with other relevant systems? Do you foresee any practical implementation challenges, and if so, how they could be mitigated.

APARMA sent a stand-alone paper on recommendations for DPE implementation on 1st July 2024. A copy of this paper has also been uploaded with this submission response. Please refer to that separate document or contact david.bullen@aparma.org for a copy.

About APARMA
The APA & ARM Association, APARMA, represents common APA and ARM interests on regulations and laws impacting APA and ARM businesses in the EU and UK and the associated supervisory framework to ensure efficient dialogue with regulatory policymakers. APARMA focuses on developing and supporting the adoption of best practices with the common aim of improving industry data quality. APARMA aims to assist authorities and regulators with advice on practicalities related to implementing laws and rules, bearing in mind the practicalities of the data sets involved. Its six members are affiliates of Bloomberg, Cboe Europe, London Stock Exchange, MarketAxess, Nasdaq Nordic and Tradeweb Markets.

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