

# Feedback statement

Criteria to assess CTP applicants



## Legislative References

<b>CER Directive<sup>1</sup></b>	Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC
<b>DORA<sup>2</sup></b>	Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011
<b>ESMA Regulation<sup>3</sup></b>	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
<b>Financial Regulation</b>	Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union <sup>4</sup>
<b>MiFIR<sup>5</sup></b>	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012
<b>MiFID II<sup>6</sup></b>	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial

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<sup>1</sup> ELI: <http://data.europa.eu/eli/dir/2022/2557/oj>

<sup>2</sup> ELI: <http://data.europa.eu/eli/reg/2022/2554/oj>

<sup>3</sup> ELI: <http://data.europa.eu/eli/reg/2010/1095/oj>

<sup>4</sup> ELI: <http://data.europa.eu/eli/reg/2024/2509/oj>

<sup>5</sup> ELI: <http://data.europa.eu/eli/reg/2014/600/oj>

<sup>6</sup> ELI: <http://data.europa.eu/eli/dir/2014/65/oj>

instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast)

**NIS 2 Directive<sup>7</sup>**

Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive)

**RTS 1<sup>8</sup>**

Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives

**RTS 2<sup>9</sup>**

Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives

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<sup>7</sup> ELI: <http://data.europa.eu/eli/dir/2022/2555/oj>

<sup>8</sup> ELI: [http://data.europa.eu/eli/reg\\_del/2017/583/oj](http://data.europa.eu/eli/reg_del/2017/583/oj)

<sup>9</sup> ELI: [http://data.europa.eu/eli/reg\\_del/2017/583/oj](http://data.europa.eu/eli/reg_del/2017/583/oj)

## List of acronyms

APA	Approved Publication Arrangement
API	Application Programming Interface
ARM	Approved Reporting Mechanism
BAFO	Best and Final Offer
CP	Consultation Paper
CSV	Comma-Separated Values
CT	Consolidated Tape
CTP	Consolidated Tape Provider
DRSP	Data Reporting Service Provider
EBBO	European Best Bid and Offer
ESMA	European Securities and Markets Authority
ETF	Exchange-Traded Fund
EU	European Union
GUI	Graphical User Interface
HFT	High Frequency Trading
ITS	Implementing Technical Standard
OTC	Over The Counter
PUE	Power Utilisation Effectiveness
RTS	Regulatory Technical Standards
UTC	Coordinated Universal Time

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## 1 Executive Summary

### Reasons for publication

In this feedback statement, ESMA summarises the input received on its initial reflections on the specification of the assessment criteria for the CTP selection procedures, as listed in Article 27da(2) of MiFIR.

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Following a short reminder of ESMA's approach to the CTP selection procedures (section 2), ESMA provides a detailed summary of the feedback collected for each of the criteria (section 3), respectively on governance and organisation requirements (3.1), on costs, fees and revenue redistribution (3.2), on the ability to process data and dissemination speed (3.3), on data quality, modern interface and record-keeping (3.4) and on resilience, cyber-risk and energy consumption (3.5). Where relevant, ESMA also clarifies some of the elements included in the CP.

### Next Steps

ESMA will finalise the technical specifications on the expectations for each criterion. These technical specifications will be made publicly available, together with general tendering specifications on the approach and standardised forms, at the launch of each selection procedure. The first selection procedure for the CTP for bonds will be launched on 3 January 2025.



## 2 Mandate and approach to the selection procedure

1. Following the MiFIR review, ESMA is responsible for organising three distinct procedures to select the most suitable entity able to operate CTPs for bonds, for shares and ETFs, and for OTC derivatives or relevant subclasses of OTC derivatives.
2. For each selection procedure, ESMA should assess exclusion criteria, as defined in the Financial Regulation (FR), as well as selection criteria and award criteria, further specified based on the list of 14 criteria in Article 27da(2) of MiFIR.
3. ESMA announced that the selection procedure for the CTP for bonds will be launched on Friday, 3 January 2025, and that the selection procedure for the CTP for shares and ETFs will be launched in June 2025<sup>10</sup>. ESMA has also provided additional guidance on the assessment of exclusion criteria.
4. This feedback statement summarises the input received to the public consultation but does not go into the technical details of the final approach for each criterion, as these specifications are an integral part of the selection to be unveiled only at the launch of each procedure.
5. This feedback statement also includes the advice received on the governance of the CTP from the Securities Markets Stakeholders Groups (SMSG), replicated in Annex II.

## 3 Feedback statement

### 3.1 Governance and organisational requirements

#### 3.1.1 Organisational requirements

##### 3.1.1.1 Proposal in the CP

6. ESMA proposed that the assessment of the capacity of the applicant to comply with the organisational requirements laid down in Article 27h of MiFIR is considered a selection criterion.
7. This requirement is closely interlinked with most criteria and several other EU legal acts, including the MiFIR review Level 2 mandates, such as the revenue redistribution scheme for the equity tape. When assessing this criterion, ESMA proposed to focus on those

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<sup>10</sup> <https://www.esma.europa.eu/press-news/esma-news/esma-announces-next-steps-selection-consolidated-tape-providers>

requirements which are not overlapping with the other assessment criteria under Article 27da(2) of MiFIR.

8. In particular, ESMA explained in the CP its focus on how the CTP proposed to ensure that retail investors, academics, civil society organisations and competent authorities will benefit from the information from the CTP for free. The CTP should ensure that the conditions under which users can benefit from the tape for free are clear, transparent, and easily accessible.
9. Furthermore, the CTP should ensure that it can provide market and regulatory data that is usable for all users, i.e. ensure that regardless of their technical capabilities all users are able to use the data provided by the CTP.
10. For the organisational requirements provisions under Article 27h(1)(a), (d), (f) and (g) of MiFIR, ESMA explained that it would rely on the information provided on the assessment criteria on the ability to process data (c), the speed of dissemination (e), data quality (f) and the necessity of joint application (n), respectively, and hence not cover those elements in the assessment of the organisational requirements.

#### **3.1.1.2 Feedback to the consultation**

11. In the CP, ESMA asked how to define retail investors, academics, and civil society organisations for the purpose of the CTP.
12. For the definition of retail investors, a couple of respondents suggested using or starting from the definition of retail clients. Several respondents claimed that retail investors do not have commercial or industrial purposes. A couple of them suggested to also exclude SMEs, or professional corporates explicitly.
13. Some respondents highlighted that retail investors have limited financial resources and are individuals whose professional activities are not subject to authorisation or supervision by any financial authority. Finally, while there were mixed views on the fact that those investments are carried out on a personal basis (e.g. not on behalf of others).
14. As far as the definition of academics is concerned, in general respondents agreed that academics should be natural person, researchers, professors, and students affiliated with educational or research institutions but using the data for scientific purposes only and not on behalf of an industry or market participant so excluding paid consulting work and excluding any other direct or indirect commercial or business-related activity.
15. Regarding the definition of civil society organisations respondents generally agreed that they should be independent, non-profit organisations that operate independently from the

government and are typically involved in advocacy and public interest activities. One respondent suggested to define civil society organisations in accordance with the Treaty on the Functioning of the European Union.

### **3.1.1.3 ESMA's assessment**

16. In view of the feedback received, ESMA intends to provide further clarity on the approach for identifying retail investors, academics, and civil society organisations.

## **3.1.2 Governance structure**

### **3.1.2.1 Proposal in the CP**

17. ESMA proposed that the assessment of the adequacy of the governance structure of the applicant should be considered as an award criterion. An appropriate governance model is paramount to create an effective framework that supports the well-functioning of the CTP.

18. In this context, ESMA considered that the CTP should provide ESMA at the time of application with the necessary information to ensure it complies with the authorisation requirements set out in the RTS on the authorisation of CTPs. These include information on the organisation and the CTP's corporate governance, as well as its management body and the arrangements in place to identify, manage and disclose existing and potential conflicts of interest.

19. In addition, ESMA proposed that the CTP's governance model should ensure an appropriate level of stakeholder involvement, in particular of data contributors and data users. This governance structure is to enable stakeholders to make recommendations to the CTP, to receive from the CTP key indicators and information on various areas, as well as to allow stakeholders to be consulted on proposed changes to the revenue distribution scheme.

20. In this context, ESMA provided an example in which the CTP could set up an Advisory Committee, that includes representatives of data users and market data contributors, to ensure that the views of different types of market participants are taken into consideration.

### **3.1.2.2 Feedback to the consultation**

21. In the CP, ESMA asked what the most important elements that should be considered when defining the governance structure of the CTP are, and whether the CTP should include representation of other stakeholders within their governance structure.

22. The majority of respondents supported the importance to have a robust, well-balanced governance framework and highlighted the importance of this for the setup of the CTP. These respondents supported that the CTP should, at the time of application, provide ESMA with the necessary information to ensure it complies with the authorisation requirements set out in the RTS on the authorisation of CTPs.
23. Some respondents highlighted the importance of having arrangements in place to identify, manage and disclose existing and potential conflicts of interest. This includes strict conflicts of interest policies, maintaining a comprehensive conflicts of interest inventory, along with applying adequate mitigating actions.
24. A few respondents highlighted that the CTP should ensure that its management body is also responsible for outsourced tasks and is able to implement adequate controls and processes to ensure smooth operations on an ongoing basis with any external providers.
25. The majority of respondents supported the proposal to have a model in place, such as an Advisory Committee, to ensure an appropriate level of stakeholder involvement with a balanced representation of stakeholders including data user representatives and market data contributors.
26. Some respondents highlighted that the representation of such a Committee should be proportionate, with no one segment dominating, such as having equal voting rights across the different stakeholders. These respondents also suggested that ESMA and the European Commission should have permanent voting rights representation as part of the Committee.
27. A few respondents proposed that the CTP's Board composition should consist of a majority of external, independent directors with the appropriate and necessary experience, to ensure the broadest range of stakeholder interests are taken into consideration in the Board's decision making, and to avoid potential conflicts of interest between the core CTP activity and other activities in which the authorised entity might be involved in.
28. One respondent suggested that, in a limited context, ESMA, the European Commission and regional trade associations should be invited as observers.
29. The SMSG supported that a robust governance structure should form part of the assessment criteria in the selection of the CTP but considered that the proposed Advisory Committee is unlikely to provide sufficiently strong governance. The SMSG provided suggestions for reinforcing the governance of the CTP, for instance by having broad stakeholder, including public sector, representation, with voting rights, on its board (see Annex II of the feedback statement).

30. Finally, one respondent suggested that the assessment of the adequacy of the governance structure of the applicant should be considered a selection criterion, instead of an award criterion, given its importance.

### **3.1.2.3 ESMA's assessment**

31. ESMA will provide further guidance in the tender specifications to allow for a consistent assessment of all applications.

32. ESMA would like to highlight that, ESMA and the European Commission do not expect to have a formal role in the CTPs stakeholder's involvement governance model, such as the example of an Advisory Committee as set out in the CP. Due to ESMA's function as a supervisor, it would not be appropriate for ESMA to have a formal full membership role as part of such an Advisory Committee. ESMA would expect that such a committee should ensure that the views of different types of market participants are taken into consideration, with appropriate rotation of representatives of the Committee, and promote neutrality, transparency of decision making, avoidance of conflicts of interest, and stakeholder accountability.

## **3.1.3 Necessity of joint application**

### **3.1.3.1 Proposal in the CP**

33. ESMA proposed that the assessment of the necessity, in terms of technical and logistical capacity, for each of the applicants to apply jointly, for the cases where a joint application is submitted should be considered an award criterion.

34. In this context, ESMA considered that a joint application should be understood as one or more applicants (or firms) putting together a bid for the consolidated tape under one single entity or under the same name, even if there is no formal agreement between the different parts. ESMA further noted that an outsourcing arrangement should not be considered as a joint application.

35. The CP also clarified that ESMA intends to look at the technical and logistical capacity of each applicant to apply independently. Joint applications should be able to provide the necessary information that each applicant brings to the application, including complementary expertise to enhance the final outcome, in particular by emphasising each applicant's specialised knowledge and/or capabilities and identifying the key areas where collaboration between each applicant can contribute decisively to the execution of the project, with higher scores for joint applicants providing more conclusive evidence.

36. Moreover, ESMA considered that joint applicants should ensure that potential conflicts of interest are identified and appropriately addressed.

### **3.1.3.2 Feedback to the consultation**

37. The majority of respondents agreed with ESMA's approach in the assessment of the necessity of joint applications, in particular that there should be a formal agreement between parties. In addition, respondents agree that outsourcing should not be understood as a joint application.

38. A couple of respondents requested clarification on whether a prototype of the CT should be ready at point of application since the wording on "demonstrated capability" raised confusion.

39. One respondent disagreed with ESMA's approach on joint applications as it understands ESMA is having a too strict approach and in consequence will make it more challenging for joint applications to be successful. The analysis of this criterion should solely focus on the technical and logistical capabilities.

40. In relation to conflicts of interest, respondents suggested there should be clear, legally enforceable measures to prevent them. Furthermore, respondents recommended there should be transparency in ownership structures and governance, with robust mechanisms to monitor and mitigate conflicts. Lastly, respondents suggested ESMA should clarify how conflicts are defined, in particular for joint applications.

41. On a different note, but also relevant for this topic, some respondents noted that there should be a legal separation between the CTP and other businesses of the applicant – core business of the CTP and other commercial activities should be independent from each other.

### **3.1.3.3 ESMA's assessment**

42. On conflicts of interest, ESMA would point out that these should be clearly addressed by all applicants, i.e. they should not be assessed only in light of joint applicants. Similarly, ESMA agrees that the core business of the CTP and other commercial activities should be independent from each other, but the assessments should not be made only in light of joint applicants.

43. As regards the concerns that ESMA's approach appears to disadvantage joint applications, ESMA reminds stakeholders that this criterion is part of the criteria to be assessed according to Article 27da(2) of MiFIR and that hence it is not possible to pursue a different approach.

## **3.2 Costs, fees and revenue redistribution**

### **3.2.1 Expenditure and costs**

#### **3.2.1.1 Proposal in the CP**

44. ESMA proposed to assess the total expenditure to develop the CT and the costs of operating the CT on an ongoing basis as an award criterion.
45. This assessment was foreseen to reward lower costs and to be based on a cost breakdown along the cost categories in the RTS on RCB. Moreover, development and operating costs were to be evaluated separately and a higher weighting assigned to the latter.
46. ESMA intended to consider in its assessment the ability of CTP applicants to maintain the quality of services for 5 years, including through investments in innovation.

#### **3.2.1.2 Feedback to the consultation**

47. ESMA received mixed feedback regarding its proposed approach.
48. Several respondents disagreed with ESMA's proposal to give greater weighting to the operating costs (compared to the development costs) when selecting CTPs, as this could risk applicants shifting significant costs onto the one-off development cost but neglecting maintenance and resilient operations. The criterion should instead consider the entire costs of running the CT for the contract period, including any development costs incurred prior to the award decision.
49. Respondents stressed, that total expenditure and ongoing costs for operating the CTP are strongly linked to the overall quality of the CT. Considering this criterion in isolation or compromising the quality to keep costs down would defeat the objective of the CT as users will not subscribe to a low-quality tape.
50. Respondents recommended screening any contractual provisions applicants may have with technology providers to ensure that the CTP will be subject to an ongoing reasonable commercial basis (including upon contract renewal). Moreover, they recommended to treat costs for in-house developments of infrastructure (which will be directly supervised by ESMA) differently from costs incurred when using a third party.
51. One respondent stressed that submitted financial plans should be realistic and include different scenarios for revenues and expenses. Another respondent recommended ESMA to foresee an annual cost monitoring to avoid operating costs exceeding projections or to

explicitly limit fee increases. Moreover, the respondent suggested to exclude financial costs other than amortisation from the calculation of costs.

### **3.2.1.3 ESMA's assessment**

52. ESMA will reflect on the need to assess its approach based on the feedback received, notably considering the evaluation of development expenditures and operating costs in conjunction.

53. While ESMA acknowledges that linkages between different selection and award criteria exist (such as higher data quality or dissemination speed being associated with higher costs), ESMA will need to evaluate all criteria independently from one another, ensuring an appropriate balance.

## **3.2.2 Fees and Reasonable Commercial Basis**

### **3.2.2.1 Proposal in the CP**

54. ESMA proposed that the assessment of the level of the fees that the applicant intends to charge to the different types of users of the core market data, the simplicity of its fee and licensing models, and compliance with Article 13 of MiFIR is considered an award criterion.

55. ESMA proposed a two-folded assessment of this criterion. The first part of the assessment would focus on scoring the simplicity of the applicants' fee structures, which would depend on the number or tiers of fees, the number of types of clients and the number of types of licenses.

56. A lower number for any of these variables would attract a higher score.

57. ESMA proposed to assess the intended compliance of the applicants with Article 13 of MiFIR, the second part of this criterion, on a high level for the initial selection procedure for bonds. Once the RTS has been adopted, ESMA intends to assess compliance for this part of the criterion for the subsequent selection procedures on the basis of the RTS.

58. Candidates would be expected to practically showcase their commitment to adhering to and their ability to fulfil the minimum legal prerequisites already at authorisation stages.

### **3.2.2.2 Feedback to the consultation**

59. Most respondents agreed that simplicity in fee structures and licensing models is important. However, a number of respondents cautioned that the approach proposed by ESMA would



be an oversimplification which may not fully capture the inherent complexity of fee schedules and licences.

60. According to respondents, a very simple fee structure may result in a market data provision not taking into account sufficiently the needs of market data clients. Market data clients may then be forced to process and pay for unwanted data.
61. A number of respondents warned against the possible danger of underfunding of market data providers because of ESMA's proposal. A focus on the level of the fees could invoke a 'race to the bottom' leading to the risk of the CTP being incapable of collecting sufficient revenues to maintain viability. This risk may be exacerbated by the fact that consumption of the CT is not compulsory (as in the US) and may therefore be unpredictable.
62. Most respondents explicitly or implicitly referred to the RTS on RCB which will impact the level of the fees and the fee structure.
63. A number of respondents gave concrete examples of types of products that could be used to base fees on. These looked alike and are linked to the output interfaces of market data: machine readable fees or data delivered in real time, data delivered in batches, CSV files and data accessible via a GUI on the website.
64. There was a general opposition to value-based pricing, although a few respondents favoured fees linked to usage. A few respondents stressed the importance of allowing CTPs to offer additional value-added services to ensure commercial viability and support innovation.

### **3.2.2.3 ESMA's assessment**

65. ESMA will reflect on the feedback when finalising its approach. ESMA intends to rely in its assessment on the MiFIR provisions and the requirements in draft RTS on RCB it proposed in the relevant [Final Report](#), for the first selection procedures. In the event of significant changes between ESMA's proposal and the final RTS, ESMA will reflect the changes as part of the authorisation process and in subsequent the selection procedures.
66. ESMA intends to provide further clarity on the provision of value-added services in the selection procedures.

### **3.2.3 Revenue redistribution for bonds**

#### **3.2.3.1 Proposal in the CP**

67. ESMA proposed to assess only whether the applicants for the bond CT intend to put in place arrangements for revenue redistribution but not assess the details of the specific arrangements.

#### **3.2.3.2 Feedback to the consultation**

68. ESMA received limited feedback regarding its proposal.

69. Only one respondent suggested that revenue redistribution for bonds should be purely voluntary and if implemented it should be ensured that it would not negatively affect fees for end users.

## **3.3 Ability to process data and dissemination speed**

### **3.3.1 Ability to process data**

#### **3.3.1.1 Proposal in the CP**

70. ESMA proposed to evaluate the ability of applicants to process data as an award criterion.

71. The proposal for the approach to assess applicants based on their ability to process, consolidate, and disseminate pre-trade and post-trade data highlighted three key areas for evaluation:

- **Data Reception:** the applicant's technological capability to receive large volumes of data from various sources. This involves evaluating the systems used for data ingestion and the protocols for acquiring data.
- **Data Consolidation:** the proposal focused on the importance of the applicant's technological infrastructure in integrating and consolidating the received data. This includes assessing systems for data integration and ensuring interoperability across different data sources.
- **Data Dissemination:** the applicant's efficiency in distributing data, focusing on the infrastructure used for data distribution and the network capacity to handle large-scale dissemination.

72. ESMA proposed to give higher scores to applicants demonstrating advanced technological infrastructure capable of handling large data volumes with high speed, accuracy, and security. ESMA highlighted that this criterion is interconnected with other aspects, such as data quality (Article 27da(2)(f) of MiFIR) and modern interface/connectivity requirements (Article 27da(2)(j) of MiFIR).

### **3.3.1.2 Feedback to the consultation**

73. The feedback from respondents reflected general support for ESMA's approach of assessing the ability of CTP applicants to process data based on the robustness of their technological infrastructure. Stakeholders agreed that focusing on the technological capabilities—such as scalability, low latency, accuracy, and security—throughout the data lifecycle is crucial for evaluating applicants effectively. There was also consensus that this approach should be holistic, considering not just data processing but also interconnected criteria, such as data quality and connectivity.

74. However, several respondents viewed this criterion as fundamental to the selection process, arguing that the ability to process data should be treated as a "selection" rather than an "award" criterion, as it is a core requirement for a functional CTP. Without meeting the minimum data processing capabilities, a CTP would not be reliable, making this criterion essential for advancing in the selection procedure.

75. Additional suggestions for enhancing the assessment framework included considering factors like latency variability (to ensure consistent data transmission), future extensibility of the technological setup (to accommodate evolving market demands), and the specific needs of different market participants. For example, the bond market may prioritise data quality over low latency, while retail investors value data accessibility, clarity, and additional tools such as trend charts and educational resources. Although some of these aspects, such as operational resilience and data storage, are covered under other criteria, their inclusion within the data processing assessment was recommended to reinforce a comprehensive evaluation.

### **3.3.1.3 ESMA's assessment**

76. In response to comments from respondents suggesting that this aspect should be treated as a "selection" rather than an "award" criterion, ESMA acknowledges that data processing is indeed a core function of CTPs. However, ESMA believes that applicants demonstrating a superior ability in this area should receive a higher score, as the selection process should prioritise the candidate best equipped to handle this critical function.

77. While the award criterion allows for differentiation among candidates based on their capabilities, it is important to note that minimum requirements for data processing are

established in Level 2 regulations. This approach ensures that while candidates can be competitively evaluated, there is no deviation from the basic regulatory standards.

78. Regarding the suggestions received for enhancing the assessment framework, ESMA will take into account the potential for future extensibility of the technological setup in the selection phase, so as to ensure that the chosen CTP can adapt to evolving market demands over time. Other suggestions provided by respondents, such as operational resilience, will be assessed within the context of different CTP assessment criteria and are therefore not incorporated into the specific evaluation of the data processing capability criterion.

### **3.3.2 Dissemination speed**

#### **3.3.2.1 Proposal in the CP**

79. In the CP, ESMA proposed to consider the speed at which the applicant can disseminate core market data as an award criterion.

80. Although there is a clear importance of data dissemination speed, ESMA recognised that focusing solely on speed may indeed lead to compromises in data quality, as there may be less time available for thorough validation and verification processes. In addition, ESMA also considered that there are varying sensitivities to latency across different asset classes (for instance, equity information being more time-sensitive), and therefore ESMA considers calibrating the unit of measures for the assessment of this criterion on the basis of the asset class (e.g. in the context of the equity CT by setting lower thresholds of dissemination speed in order to have higher scores).

81. Overall, the proposal explained ESMA's intention to prioritise applicants who provide concrete evidence that their dissemination systems ensure low latency and higher speeds will correspond to higher scores in the evaluation process.

#### **3.3.2.2 Feedback to the consultation**

82. Respondents agreed with ESMA that the minimum speed of dissemination should be assessed in conjunction with data quality. In addition, respondents suggested that there is a difference between asset classes, and in the particular case of equity between pre- and post-trade data. Furthermore, they considered that there should be a balance between speed and costs associated with low latency. In general, there was a broad agreement amongst respondents that the CTP would not be used for trading hence it is not required to be at very low latency.

83. In addition, most respondents expressed their concerns with setting a minimum speed.

84. The feedback received from respondents in relation to bonds suggested that accuracy is more important than speed for CT users. The CTP should focus on providing accurate data and speed does not have to be set in milliseconds – seconds are still appropriate. Respondents considered that data quality will ultimately be the success factor for the CTP.
85. In relation to equity, most of the feedback received focused on pre-trade data. Respondents suggested that the CTP should wait for the slowest BBO contributor before publishing the EBBO. They also considered that the tape should reorder BBOs in accordance with timestamps in order to ensure a correct display of the EBBO at all times.
86. Respondents also requested clarification as to how speed should be measured. In this context, it was noted that the post-trade cycle includes various stages with different timestamps, the most important being the timestamp on the time of execution.

### **3.3.2.3 ESMA's assessment**

87. ESMA understands the need for clarification of how speed should be measured and to distinguish between the different cycles of publication. The procurement documents will ensure that any assessment of the speed (be it receipt, consolidate, or disseminate) is appropriately defined at each stage.

## **3.4 Data quality, modern interface and record-keeping**

### **3.4.1 Data quality**

#### **3.4.1.1 Proposal in the CP**

88. ESMA explained in the CP that it intends to assess data quality of prospective CTPs as an award criterion, focusing on the applicants' methods and arrangements to maintain high standards throughout the data lifecycle.
89. The minimum requirements for data quality measures will be defined in the RTS developed under Article 22b of MiFIR, serving as the benchmark for evaluating applicants. Recognising the significance of robust data quality measures in enhancing market transparency and efficiency, ESMA proposed to reward applicants who demonstrate a commitment to exceeding the minimum standards. This could involve presenting a comprehensive and detailed plan for implementing data quality measures, including strategies to address potential challenges and shortcomings. Additionally, applicants who propose innovative measures not covered in the draft RTS, aimed at improving data accuracy, consistency, and timeliness, would be scored favourably. These proactive

approaches are seen as indicators of a commitment to maintaining high data quality standards.

90. The assessment of data quality will also be interconnected with other criteria outlined in MiFIR. For instance, evaluating the technological capabilities of applicants, as specified under Article 27da(2)(c), will provide insights into their ability to ensure data quality. Since the technological infrastructure is instrumental in processing data efficiently, it will be considered alongside data quality measures. Moreover, the relationship between the speed of data dissemination, as mentioned in Article 27da(2)(e), and the effectiveness of quality arrangements will be examined.

#### **3.4.1.2 Feedback to the consultation**

91. The feedback showed broad support for ESMA's approach to rewarding CTP applicants who demonstrate additional commitments to improving data quality beyond the minimum regulatory requirements. Many stakeholders appreciated the emphasis on incentivising applicants who propose measures to enhance data accuracy, consistency, and timeliness. However, data contributors generally considered the existing data quality requirements adequate and expressed reservations about the need for further commitments.

92. There were significant concerns expressed regarding the use of financial incentives, such as revenue redistribution, as a means to improve data quality. The prevailing view was that ESMA should focus on technical methodologies for assessing data quality rather than financial mechanisms, which are seen as less effective in achieving the desired improvements. Additionally, some respondents raised issues around the potential cost implications of allocating resources to meet higher data quality standards. There was a concern that this could negatively impact a CTP's scoring in the assessment process. To address this, some stakeholders suggested evaluating data quality enhancements in conjunction with expenditure-related criteria to ensure a balanced approach.

93. Several recommendations were made to improve the proposal further. A prominent suggestion was for CTPs to publish regular data quality reports on the performance of data contributors, which would create transparency and exert pressure on contributors to maintain high standards. It was also suggested to confirm whether such practices would be permissible under existing regulatory frameworks.

#### **3.4.1.3 ESMA's assessment**

94. ESMA would like to clarify that the assessment of data quality will be limited to the methodologies and processes developed to detect and resolve data quality issues. The evaluation will not consider financial incentives, such as the suspension of revenue redistribution, as these aspects are already assessed under a different criterion. This

ensures that the focus remains on the technical and operational measures necessary to uphold data quality throughout the data lifecycle.

95. Regarding the cost implications raised by some stakeholders, ESMA intends to evaluate data quality and operational expenses separately. This approach ensures that applicants who can achieve high standards of data quality without compromising on cost-efficiency will be recognised and awarded accordingly.
96. In relation to the suggestion that CTPs publish regular data quality reports on contributors' performance, ESMA reminds stakeholders that, according to Article 27ha of MiFIR, the CTP is already expected to publish yearly reports on data quality performance. These reports will be prescribed by an RTS, for which ESMA will explore the mandate to introduce mandatory reporting of data quality performance of data contributors.

### **3.4.2 Modern interface and connectivity**

#### **3.4.2.1 Proposal in the CP**

97. ESMA's proposal outlined the importance of using modern interface technologies as a selection criterion. The objective was to ensure that applicants can deliver core market data effectively and reliably through robust connectivity solutions. Seamless connectivity was deemed essential for the CTP to fulfil its role in providing timely and accurate market information to participants, making this a fundamental eligibility requirement.
98. To qualify, ESMA explained that applicants must demonstrate that their interface technologies meet several critical requirements:
- **Reliability:** the technology should consistently provide connectivity without disruptions or failures, ensuring uninterrupted access to market data.
  - **Scalability:** the interface should handle increasing data volumes and user demands while maintaining performance standards.
  - **Low Latency:** the technology should support data transmission with minimal delay, allowing for the timely delivery of market data.
  - **Security:** strong security measures should be in place to protect data transmissions from unauthorized access, interception, or manipulation.
99. ESMA explained that it plans to assess this criterion alongside the criteria for resilience and data processing capabilities specified in points (a) and (c) of Article 27da(2) of MiFIR.

### **3.4.2.2 Feedback to the consultation**

100. Overall, the feedback showed broad support for ESMA's proposal to use modern interface and connectivity as a selection criterion. There was general agreement on the importance of ensuring that the chosen technologies meet the requirements of reliability, scalability, low latency, and security. Respondents appreciated ESMA's focus on robust and adaptable technology to facilitate efficient data handling for both professional and non-professional users.
101. However, some stakeholders raised specific considerations for applying the criterion. Several respondents emphasised the need to view interface and connectivity requirements in conjunction with other related criteria, such as data quality and technological infrastructure. Different asset classes may necessitate tailored minimum technical requirements, particularly regarding latency, which should be adjusted to balance costs while maintaining quality standards. For example, latency might be prioritised for equities but considered less critical for bond markets, where data quality may take precedence.
102. Some participants expressed concerns about the potential administrative and financial burdens associated with compliance, particularly regarding the Digital Operational Resilience Act (DORA). There were suggestions that CTPs should be evaluated for both display (GUI) and non-display (API) capabilities, catering to diverse user needs.
103. A few respondents cautioned against an approach establishing minimum standards, arguing that it could limit innovation by prioritising regulatory compliance over advanced solutions to connectivity challenges. They suggested allowing flexibility to adapt to evolving technologies rather than rigid standards that may become outdated.
104. Respondents also noted that in their views, accessibility is a key consideration for retail investors, with suggestions for user-friendly, cost-effective interfaces that integrate smoothly with broker platforms. Ensuring that the CTP's interface is not overly complex can help promote usability while still meeting technological standards.

### **3.4.2.3 ESMA's assessment**

105. Regarding the suggestion to evaluate some features of connectivity in conjunction with other factors, such as financial considerations (e.g., the potential high costs associated with low latency), ESMA clarifies that the assessment of this criterion will be performed separately from the evaluation of operational expenses. This approach aligns with the reasoning explained in the previous section on Data Quality, where similar considerations were addressed.



106. ESMA acknowledges the feedback suggesting the inclusion of "user-friendliness" in the assessment and confirms that it will be taken into account. However, cost-efficiency will not be included in the evaluation for the same reason as mentioned above, to maintain a clear focus on technical and operational aspects.

107. ESMA clarifies that the requirement of accessibility for both human users and machine interfaces is already covered under the draft RTS on CTP input/output data, which mandates that CTPs publish data in both human-readable and machine-readable formats. Therefore, this aspect is already covered in Level 2.

### **3.4.3 Record keeping**

#### **3.4.3.1 Proposal in the CP**

108. ESMA proposed using the assessment of record-keeping arrangements as a selection criterion.

109. The evaluation will focus on whether the applicants have appropriate measures in place to preserve records in compliance with Article 27ha(3) of MiFIR. Only those applications that provide clear and concrete evidence of compliance with the organisational requirements for record-keeping specified in Article 27ha(3) will be considered eligible.

#### **3.4.3.2 Feedback to the consultation**

110. ESMA received limited feedback on this selection criteria, showing overall support for the proposed approach.

## **3.5 Resilience, cyber-risk and energy consumption**

### **3.5.1 Resilience**

#### **3.5.1.1 Proposal in the CP**

111. ESMA proposed that the technical ability of an applicant to provide a resilient consolidated tape across the Union should be a selection criterion. The evaluation will be based on compliance with the requirements under DORA, including ICT risk management, incident management, and operational resilience testing.

112. Applicants must provide clear evidence and documentation of their compliance with these DORA requirements.

### 3.5.1.2 Feedback to the consultation

113. The overall feedback was supportive, with some respondents in favour of limiting the assessment to DORA requirements and other proposing to assess stricter criteria beyond DORA.
114. A few respondents agreed in principle, but raised concerns on the legal uncertainty since the Technical Standards under DORA may not be applicable at the time of selection. Those respondents highlighted the need for additional guidance on the applicable DORA requirements.
115. Two respondents proposed to apply the NIS 2 Directive and the Critical Entities Resilience (CER) Directive on top of the DORA framework, to assess both 'digital' and 'physical' resilience.
116. One respondent emphasised their understanding that applicants would be required to describe their target go-live framework without having all the elements in place at the time of the application.

### 3.5.1.3 ESMA's assessment

117. ESMA reminds respondents that the DORA requirements apply to all DRSPs, and therefore to future CTPs at the time of their authorisation.
118. The DORA Regulation is *lex specialis*, and therefore supersedes the requirements under the NIS 2 Directive and the CER Directive that would otherwise apply to DRSPs. ESMA will therefore limit its assessment under the resilience criterion to the applicable requirements, i.e. only stemming from the DORA framework.

## 3.5.2 Business continuity and cyber risk

### 3.5.2.1 Proposal in the CP

119. ESMA suggested that an applicant's ability to ensure resilience and business continuity, along with their processes to mitigate outages and cyber-risk, should be an award criterion. ESMA explained that the evaluation would focus on the qualitative aspects of the applicants' solutions, which may incorporate additional measures inspired from DORA and from other frameworks.
120. Under this criterion, applicants must document their processes and solutions, with higher scores awarded to those demonstrating superior approaches.

### **3.5.2.2 Feedback to the consultation**

121. Respondents expressed mixed views on ESMA's approach to business continuity and cyber-risk.
122. Some respondents noted that the requirements under DORA are sufficiently stringent and that additional commitments will have an impact on operating costs and may be difficult to assess consistently across applicants. One respondent raised concerns over the complexity to make this criterion comparable across applicants.
123. One respondent also suggested to consider business continuity and cyber-risk as a selection criterion, given its importance for the success of the CTP.

### **3.5.2.3 ESMA's assessment**

124. ESMA will ensure that the tender specifications include further guidance to allow for a consistent assessment of all applications.

## **3.5.3 Energy efficiency**

### **3.5.3.1 Proposal in the CP**

125. ESMA proposed that the assessment of an applicant's process to mitigate energy consumption in data collection, processing, and storage should be an award criterion. This criterion would in particular aim at ensuring alignment with EU sustainability legislation.
126. ESMA explained that it intends to use the European Code of Conduct on Data Centre Energy Efficiency and the Power Utilisation Effectiveness (PUE) metric. Applicants must report their expected PUE over five years, with lower PUE values (closer to 1.0) indicating higher efficiency and resulting in higher scores.

### **3.5.3.2 Feedback to the consultation**

127. Respondents expressed an overall support for ESMA's proposed approach, with no negative feedback received.
128. One respondent raised concerns regarding the predictability of the energy usage and the PUE for five years of operation. Another respondent asked that ESMA clarifies how it will verify that the PUE is not underestimated by applicants.

129. One respondent proposed that energy consumption be considered a selection criterion. Another respondent suggested that the CTP applicants' expectations on the PUE be confirmed/underwritten by their infrastructure companies (e.g. cloud vendors).

### **3.5.3.3 ESMA's assessment**

130. ESMA highlights that relevant background documentation on the PUE, including an Assessment Framework<sup>11</sup> and annual Best Practice Guidelines<sup>12</sup>, are made available on the website of the European Code of Conduct on Data Centre Energy Efficiency<sup>13</sup>.

131. The Best Practice Guidelines notably specify how to define the operator of the data centre, while the measurement and calculation of the PUE are defined in the European standard EN 50600-4-2, which is equivalent to the global standard ISO/IEC 30134-2.

132. ESMA will reflect on the proposal that CTP applicants should look to confirm or underwrite PUE estimates from sub-contractors or third-parties upon which they may rely for collecting, processing and storing data.

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<sup>11</sup> [https://e3p.jrc.ec.europa.eu/sites/default/files/documents/publications/jrc\\_assessment\\_framework\\_final\\_v2.pdf](https://e3p.jrc.ec.europa.eu/sites/default/files/documents/publications/jrc_assessment_framework_final_v2.pdf)

<sup>12</sup> [https://e3p.jrc.ec.europa.eu/sites/default/files/documents/publications/jrc136986\\_2024\\_best\\_practice\\_guidelines.pdf](https://e3p.jrc.ec.europa.eu/sites/default/files/documents/publications/jrc136986_2024_best_practice_guidelines.pdf)

<sup>13</sup> <https://e3p.jrc.ec.europa.eu/communities/data-centres-code-conduct>

## 4 Annexes

### 4.1 Annex I: Summary of questions

**Q50: How would you define retail investors, academics, and civil society organisations for the purpose of the CTP?**

**Q51: What are in your view the most important elements that should be taken into account when defining the governance structure of the CTP?**

**Q52: Should the CTP include representation of other stakeholders within their governance structure?**

**Q53: Do you agree with the proposed approach on the assessment of necessity of joint application?**

**Q54: Which minimum requirements on identifying and addressing potential conflicts of interest would you consider relevant?**

**Q55: To score the applicants on their development expenditure and operating costs, ESMA intends to look at the costs the applicant will need to cover on an annual basis. Do you agree with this approach? If not, which alternative approach would you deem more appropriate?**

**Q56: The simplicity of the fee structure and licensing models can be scored by taking into account the number of tiers, fee types and licensing models. Does this accurately reflect simplicity? If not, would you propose a different approach to assess simplicity? Please elaborate.**

**Q57: The approach proposed for the assessment of the ability of CTP applicants to process data is grounded on the assessment of the technological infrastructure in ensuring scalability, low-latency, accuracy, and security throughout the data lifecycle. Do you agree with this approach, or would you consider additional elements to be assessed?**

**Q58: Which is the minimum speed of dissemination you would consider appropriate for the CTP? Please distinguish between asset classes (and for the case of the equity CTP, between pre- and post-trade date).**

**Q59: The proposed approach to data quality would reward additional commitments and measures that CTP applicants intend to put in place. Do you agree with this approach? What additional commitments and measures would you consider appropriate?**

**Q60: The proposed approach to modern interface and connectivity is grounded on the assessment of the interface technology in terms of reliability, scalability, low latency and security. Do you agree with this approach, or would you consider additional elements to be assessed?**

**Q61: Do you agree with the proposed approach to record keeping, based on the provision of document supporting intended compliance?**

**Q62: The proposed approach to resilience, business continuity and cyber risks is grounded in assessing mandatory DORA requirements applicable to CTPs as a first step (selection criterion), to then reward additional commitments and measures CTPs applicants intended to put in place to mitigate and address outages and cyber-risk. Do you agree with this approach? What additional commitments and measures would you consider appropriate?**

**Q63: Do you agree with the use of the Power Utilisation Effectiveness (PUE) as the metric to assess the energy consumption of the CTP? If not, which alternative approach would you favour?**

## 4.2 Annex II: SMSG Advice

*SMSG advice to ESMA on its Consultation Papers on i) the MiFIR Review Package on non-equity trade transparency, reasonable commercial basis, and reference data and ii) the MiFIR Review Package on Consolidated Tape Providers and Data Reporting Service Providers*

### 1. Executive Summary

[...]

#### **Governance of the consolidated tape provider**

The SMSG agrees that robust governance structures should form part of the assessment criteria in the selection of the consolidated tape provider but considers that the proposed Advisory Committee is unlikely to provide sufficiently strong governance. The advice sets out suggestions for reinforcing the governance of the consolidated tape provider, for instance by having broad stakeholder, including public sector, representation, with voting rights, on its board.

[...]

### 6. Governance of the consolidated tape provider

The SMSG wishes to express its strong support for the introduction of consolidated tapes (one tape per asset class). A consolidated tape (CT) will act as a single price comparison tool consolidating data on an asset class across the EU, assisting market participants in analysing market liquidity and increasing investors' capacity to evaluate the quality of execution of their orders.

We believe that the CTs will democratise data access for all investors, regardless of their resources or sophistication, with a comprehensive and standardised view of equities and fixed income trading environments. This will contribute to the creation of a truly pan-European market, in line with the goals of the Commission's Capital Markets Union ("CMU").

These tapes will make cross-border investments easier through the creation of a truly (albeit virtually) integrated pan-European market, which will ultimately benefit corporates when raising capital and investors when allocating their savings. This will contribute to the ultimate goal of increasing capital flows within the EU and overcoming investors' existing home bias.

The SMSG strongly agrees that robust governance structures should form part of the assessment criteria in the selection of the consolidated tape provider. Moreover, the SMSG agrees with ESMA's statement in para 251 that the CT should be governed in such a way that

it reflects the interests of all stakeholders, including data contributors and users. While we appreciate the introduction of the concept of the Advisory Committee, given the “time-limited monopoly” that will be created by design, we consider that this body is unlikely to provide sufficiently strong governance of the CTP and suggest that ESMA considers expanding on the governance requirements set out in the consultation paper as follows:

- The board of the CTP would ideally include broad stakeholder representation including data users (e.g. buy-side, sell-side and other users), data contributors and vendors.
- This representation should be proportionate, i.e no segment should dominate (i.e. different communities such as data contributors and data users should have equal voting rights).
- There would ideally be permanent representation of, and voting rights for, the European Commission and ESMA on the board of the CTP.
- The board, including stakeholder representation, would also ideally have voting rights, and right of veto, on decisions relating to pricing policies/fees, revenue sharing scheme (if applicable), the ease of use of licensing policies, data content, its standardisation and quality, speed, and connectivity.
- A robust conflict of interest policy should be in place to help manage the governance.