Final Report

Draft RTS on package orders for which there is a liquid market

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Acronyms used

CA	Competent Authority
CCP	Central Counterparty
CDS	Credit Default Swap
CFTC	Commodity Futures Trading Commission
CHF	Swiss Franc
CP	Consultation Paper
EEA	European Economic Area
EFP	Exchange for Physical
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories
ESMA	European Securities and Markets Authority
ETD	Exchange Traded Derivative
EU	European Union
EUR	Euro
FX	Foreign Exchange
GBP	British Pound
IMM	International Money Market
IRS	Interest Rate Swap
JPY	Japanese Yen
LIS	Large in scale
MAC	Market Agreed Coupon
MAT	Made available to trade
MiFID I	Markets in Financial Instruments Directive I – Directive 2004/39/EC of the European Parliament and of the Council
MIFID II	Markets in Financial Instruments Directive II – Directive 2014/65/EU of the European Parliament and the Council
MIFIR	Markets in Financial Instruments Regulation – Regulation (EU) 600/2014 of the European Parliament and of the Council
OTC	Over-the-counter

Quick Fix Regulation	Regulation (EU) 2016/1033 of the European Parliament and of the Council of 23 June 2016 amending Regulation (EU) No 600/2014 on markets in financial instruments (MiFIR), Regulation (EU) No 596/2014 on market abuse and Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories
RFQ	Request for quote
RTS	Regulatory Technical Standard
RTS 2	Commission Delegated Regulation (EU) …/…. of 14.7.2016 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
SEF	Swap Execution Facility
SI	Systematic Internaliser
SSTI	Size specific to the instrument
USD	US Dollar

1 Executive Summary

Reasons for publication

This final report presents the revised draft RTS establishing a methodology for determining whether there is a liquid market for package orders as a whole following feedback received from stakeholders to the consultation paper (CP) published on 10 November 2016. The report explains the final approach and discusses feedback received from stakeholders.

Contents

Section 2 introduces the topic. Section 3 describes the revised approach, starting with general criteria a package order has to meet in order to be eligible for having a liquid market as a whole (sections 3.2 and 3.3) before discussing the asset-class specific criteria in section 3.4. The Annex contains the final draft RTS, the cost-benefit analysis as well as a detailed feedback summary.

Next Steps

ESMA submitted the final report to the European Commission on 27 February 2017. The Commission has three months to decide whether to endorse the draft RTS.

2 Introduction

Article 9 of MiFIR

1.Competent authorities shall be able to waive the obligation for market operators and investment firms operating a trading venue to make public the information referred to in Article 8(1) for:

a) orders that are large in scale compared with normal market size and orders held in an order management facility of the trading venue pending disclosure;

b) actionable indications of interest in request-for-quote and voice trading systems that are above a size specific to the financial instrument, which would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors;

c) derivatives which are not subject to the trading obligation specified in Article 28 and other financial instruments for which there is not a liquid market;

d) orders for the purpose of executing an exchange for physical;

e) package orders that meet one of the following conditions:

   i. at least one of its components is a financial instrument for which there is not a liquid market, unless there is a liquid market for the package order as a whole;

   ii. at least one of its components is large in scale compared with the normal market size, unless there is a liquid market for the package order as a whole;

   iii. all of its components are executed on a request-for-quote or voice system and are above the size specific to the instrument.

[...]

2a. Competent authorities shall be able to waive the obligation referred to in Article 8(1) for each individual component of a package order.

[…]

6. In order to ensure the consistent application of points (i) and (ii) of paragraph 1(e), ESMA shall develop draft regulatory technical standards to establish a methodology for determining those package orders for which there is a liquid market. When developing such methodology for determining whether there is a liquid market for a package order as a whole, ESMA shall assess whether packages are standardised and frequently traded.

ESMA shall submit those draft regulatory technical standards to the Commission by 28 February 2017.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 and 14 of Regulation (EU) No 1095/2010.

1. Regulation (EU) 2016/1033 of the European Parliament and of the Council of 23 June 2016 amending Regulation (EU) No 600/2014 on markets in financial instruments (MiFIR), Regulation (EU) No 596/2014 on market abuse and Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories[1] ('Quick Fix' Regulation) introduces a pre-trade transparency regime for package orders.
2. According to the newly added paragraph 6 of Article 9 of MiFIR ESMA is required to develop draft regulatory technical standards (RTS) establishing a methodology for determining those package orders for which there is a liquid market as a whole. ESMA is mandated to assess, when developing such methodology, whether packages are standardised and frequently traded. ESMA shall submit the draft RTS to the Commission by 28 February 2017.
3. ESMA published, on 10 November 2016, a Consultation Paper[2] (CP) discussing the proposed methodology for determining package orders that have a liquid market as a whole. In order to meet the deadline set by co-legislators, ESMA could only consult for a period of seven weeks and the consultation closed on 3 January 2017.
4. ESMA received 24 responses to the consultation, five of which were confidential. Based on these responses ESMA revised the draft RTS. ESMA also received some feedback on the questions asked in the CP for the purpose of the CBA. However, most respondents did not provide detailed input and ESMA received only very limited quantitative data. The CBA presented in the Annex therefore focuses on qualitative aspects given the lack of data to assess the impact of the draft RTS in quantitative terms.
5. Overall, the revised RTS narrows down considerably the universe of package orders that qualify as having a liquid market as a whole. In line with the intentions already expressed in the CP, ESMA opted for a more cautious approach based on feedback from stakeholders but also in view of the short timeframe for developing this RTS and the currently limited access to quantitative information on packages. ESMA intends to monitor trading activity in packages closely and may consider amendments to the RTS in the medium term.

[1] OJ L 175, 30.6.2016, p. 1–7
[2] Consultation paper on package orders for which there is a liquid market, ESMA/2016/1562

3 Methodology for identifying standardised and frequently traded package orders that have a liquid market as a whole

3.1 Overall approach

6. The empowerment to develop draft RTS under Article 9(6) of MiFIR requires ESMA to establish a methodology for determining those package orders for which there is a liquid market as a whole assessing in particular whether packages are (i) standardised and (ii) frequently traded.

7. After having assessed different approaches for developing a methodology for identifying package orders that have a liquid market as a whole, including approaches based on quantitative and/or qualitative criteria, ESMA proposed in the CP a holistic approach based on qualitative criteria that are characteristic for packages that are standardised and frequently traded.

8. The majority of respondents to the consultation were supportive of a methodology based on qualitative criteria. Some respondents, while overall supportive of the holistic approach, suggested supplementing the approach by further qualitative criteria – both for the general criteria (e.g. where all components of the packages are illiquid, a package order should not have a liquid market) as well as the asset-class specific criteria (e.g. clarify that all components of a liquid package order should be denominated in the same currency).

9. Some respondents suggested supplementing the qualitative approach by quantitative criteria or relying on a quantitative approach only. Some of those respondents made suggestions for possible quantitative criteria, such as a minimum average daily number of transactions in a package, reaching a minimum ratio of transactions in a package compared to transactions on a component level, and the number of liquidity providers.

10. ESMA agrees that such criteria may be useful for identifying liquid packages. Nevertheless, ESMA continues to believe that a holistic approach based on qualitative criteria is superior to a methodology relying on quantitative criteria. First of all, ESMA does not consider that such an approach is practicable given the infinite combinations of package orders available for trading. Second, it is not clear how these quantitative criteria could be assessed, and who would be entrusted with assessing whether the criteria are met. While it appears feasible to apply these criteria on a trading venue level, those criteria would be difficult to apply at the level of the systematic internaliser (SI). Third, the ESMA draft technical standard on non-equity transparency already imposes quantitative criteria for determining the liquidity of sub-asset classes in derivatives. Building another quantitative test for packages on top of the existing one risks being arbitrary and cumbersome to apply in practice.

11. ESMA therefore decided to pursue the methodology based on qualitative criteria. This approach identifies package orders which are liquid as a whole based on general criteria (i.e. criteria that identify standardised and liquid package orders across asset classes) as well as asset-class specific criteria (i.e. criteria that reflect specificities of package orders traded in different classes of derivatives).

12. In order to accommodate concerns raised by stakeholders that the qualitative approach would also consider potentially illiquid strategies within the concept of package orders that have a liquid market, ESMA further refined the qualitative criteria and in particular enriched the approach by further asset-class specific criteria. Sections 3.2-3.4 present the revised approach in detail.

13. The empowerment of this draft RTS does not include providing further specification on the SI obligation for package orders. Nevertheless, ESMA considers it important to provide further guidance on the SI obligations under Article 18 of MiFIR in the context of package orders and therefore discussed this issue in the CP. In the CP, ESMA proposed to apply the SI obligations at the package order level where an investment firm is an SI in at least one component instrument of the package order.

14. About half of the respondents agreed with ESMA's proposal. The other half of respondents disagreed and considered that the SI obligations should only apply where an investment firm is an SI in all components of the package. According to this view, no pre-trade transparency obligations would apply for quotes in packages where the investment firm is only an SI in some of the components.

15. ESMA intends to provide guidance on the application of the SI obligations for package orders via Q&As. The responses received to the consultation on this issue will guide ESMA when deciding on the appropriate way forward.

16. Furthermore, ESMA received various questions from stakeholders asking for more guidance on the application of pre- and post-trade transparency for package orders in general, i.e. beyond the scope of this RTS. ESMA intends to clarify these issues via Q&As in the coming months.

3.2 Package orders where all components are subject to the trading obligation for derivatives

17. In the CP ESMA suggested that package orders where one component is subject to the trading obligation under MiFIR and all other components are subject to the trading obligation and/or the clearing obligation under EMIR should be determined to have a liquid market as a whole. This approach would be similar to the approach taken by the CFTC in the US for applying the trading obligation to packages.

18. While the majority of respondents agreed that package orders composed only of components that are subject to the trading obligation could be considered to have a liquid market as a whole, the broad majority of respondents did not agree with ESMA's proposal.

19. Most respondents considered this proposal as too far reaching and raised concerns that derivatives that are only subject to the clearing obligation but not the trading obligation might not be sufficiently liquid to be traded on a trading venue. Furthermore, since only the SSTI-waiver is available for packages that have a liquid market as a whole, respondents argued for a cautious approach, which would still allow for the possibility to waive packages from pre-trade transparency.

20. In addition, several respondents pointed out that ESMA's proposal would go beyond the CFTC approach, in particular in view of the stricter pre-trade transparency regime under MiFIR compared to pre-trade transparency requirements for swaps that are made available to trade (MAT) under the CFTC rules. Most swaps that are subject to the obligation to trade on Swap Execution Facilities (SEFs) in the US are traded via RFQ-3, which results in pre-trade transparency only to the requestor, who receives a minimum of three quotes.

21. The MiFIR pre-trade transparency rules on the other hand apply to the wider market. Accordingly, the potential impact of ESMA's proposal would result in a stricter treatment of package orders in the EU as compared to the US. Respondents raised concerns that this may undermine the capacity of EU firms and venues to offer competitive packages to clients and end users, which could result in worse prices but also impact, among others, the execution and hedging risk of clients.

22. ESMA agrees with the arguments brought forward. The pre-trade transparency regime under MiFIR goes beyond the approach applicable in the US, and determining packages with components that are subject to the clearing obligation only as having a liquid market as a whole might have detrimental effects. Accordingly, ESMA revised its approach and now considers only packages where all components are subject to the trading obligation as having a liquid market.

23. In addition, a number of respondents suggested supplementing this approach by some additional criteria in order to provide for the possibility that transparency on these package orders can be waived where particular circumstances are met. Proposals included limiting the number of components of the package order, limiting the components to the same (sub)-asset class as defined in RTS 2 on non-equity transparency or to consider that packages where one or more components are illiquid or of a size that is large in scale (LIS) cannot have a liquid market.

24. ESMA assessed these proposals and considers that some of them would be helpful to better tailor the approach and to avoid mistakenly determining non-liquid packages as having a liquid market as a whole. In particular, ESMA has clarified in the revised draft RTS that packages composed of components that are subject to the trading obligation shall only be considered to have a liquid market as a whole, where:

    - The package order has no more than four components. This criterion allows distinguishing between standardised and tailored packages that can occasionally include more than 20 components.

    - All components are of the same asset class as defined in RTS 2. This criterion clarifies that, for instance, packages composed only of interest rate derivatives (IRDs) or of CDS indices are considered to have a liquid market as a whole. Infrequent packages comprised of IRDs and CDS indices would not be determined to have a liquid market as a whole.

    - Not all components are above the LIS-threshold. This criterion ensures that packages composed of components with a very high notional amount can benefit from a waiver if any individual component would. ESMA does not consider it reconcilable with the level 1 text to allow for a waiver where only one of the components of a package is above the LIS-threshold as suggested by some respondents, since the Level 1 text explicitly acknowledges that packages may have a liquid market as a whole where one or more components are above the LIS-thresholds.

3.3 General criteria

25. In the CP ESMA proposed to determine in a first step package orders that are eligible for qualifying as having a liquid market as a whole using general criteria. Based on this pre-screening only those package orders that meet the general criteria would be assessed against the asset-class specific criteria to determine whether they have a liquid market as a whole. Package orders not meeting the general criteria would not be determined to have a liquid market as a whole.

26. In the CP, ESMA proposed two general criteria:

    - o all components of the package orders shall be:
        - ▪ admitted to trading or traded on a trading venue; and
        - ▪ have standardised contractual terms;

    and

    - o all derivative components shall be available for clearing through a CCP.

27. Overall, most respondents agreed with the general criteria. Some respondents suggested ESMA to clarify that those criteria are cumulative. ESMA confirms that both criteria apply cumulatively.

<u>Notion of traded on a trading venue</u>

28. Most respondents agreed with the proposal that all components should be traded on a trading venue.

29. Some respondents considered that the second sub criterion, i.e. that all components have standardised contractual terms, is superfluous since in any case only standardised instruments are available for trading on trading venues. Other respondents considered that the term "standardised contractual terms" is too ambiguous and would need to be further specified in order to ensure legal certainty and consistent application of the RTS. Given the problems highlighted by respondents on the ambiguity of the meaning of "standardised terms" and the fact that only standardised contracts are offered for trading on trading venues, ESMA decided to remove the reference to standardised contractual terms.

30. Some respondents asked for a clarification of the meaning of admitted to trading or traded on a trading venue. ESMA agrees that this term is ambiguous and that Article 8 of MiFIR does only speak of "traded on a trading venue" without making a reference to admitted to trading. In order to provide for more certainty on the meaning of the term "traded on a trading venue", the revised draft RTS clarifies that the first general criterion is met where all components of a package order are available for trading on a trading venue. Available

for trading in this context means that a trading venue offers to trade the components to its members and participants or clients.

31. Furthermore, a number of respondents suggested to limit the concept of liquid package orders as a whole to those packages where all components are traded on the same trading venue since only these packages can be considered as sufficiently standardised and liquid. ESMA agrees with this approach and clarified in the draft RTS that all components need to be available for trading on the same trading venue.

<u>Notion of available for clearing</u>

32. Concerning the second criterion, i.e. the ability to clear derivative components, some respondents suggested limiting it to derivatives that are subject to the clearing obligation under EMIR. The main argument for this suggestion was that since there is no centralised overview of those derivatives that are available for clearing, market participants would have to check on a daily basis which contracts are available for clearing which would result in high compliance costs. In addition, some respondents suggested to limit the second criterion to derivative components cleared on an authorised or recognised CCP under EMIR.

33. Since the clearing obligation under EMIR applies only to OTC-derivatives, the scope of the instruments covered by the clearing obligation under EMIR is significantly narrower than the scope of instruments that are available for clearing. Limiting the second criterion to derivatives that are subject to the clearing obligation under EMIR would in particular exclude any package including exchange-traded derivatives (ETDs) from having a liquid market since the clearing obligation under EMIR does not apply to ETDs.

34. However, ESMA understands the concerns of market participants that it may be costly to check which contracts are available for clearing. ESMA therefore amended the criterion to clarify that only packages where all components are either subject to the clearing obligation under EMIR or the clearing obligation under Article 29 of MIFIR are eligible for having a liquid market as a whole.

35. Nonetheless, ESMA sees merit in further specifying that only derivatives available for clearing on authorised or recognised CCPs should be eligible for having a liquid market as a whole and amended the draft RTS accordingly.

<u>Additional general criteria</u>

36. In addition, a number of respondents considered it necessary to add further general criteria to assess whether a package order is liquid as a whole. Proposals included limiting the number of components, excluding cross-asset packages or clarifying that package orders cannot have a liquid market where all components are of a size large in scale compared with the normal market size or do not have a liquid market.

37. ESMA assessed these proposals and agrees that some additional general criteria should be added to the draft RTS. In particular, ESMA agrees that package orders where all

components are above the LIS-threshold, do not have a liquid market, or are either above the LIS-threshold or do not have a liquid market should not be considered to have a liquid market as a whole. While it may be the case for standardised strategies that a package has a liquid market as a whole were one or more components are above the LIS-threshold or illiquid, it appears highly unlikely that a package composed only of components that are LIS and/or illiquid has a liquid market as a whole. Furthermore, ESMA considers it appropriate to limit package orders that have a liquid market as a whole to those packages including only components of one of the asset classes covered in the asset class-specific criteria.

38. Finally, ESMA agrees that - for the time being - cross-asset class packages should not be considered to have a liquid market as a whole in this context. While ESMA concurs with the views of some respondents that some cross-asset class packages such as certain spread overs (a package composed of an interest rate swap and a sovereign bond) could be considered to have a liquid market, ESMA opted for a cautious approach. Therefore, the draft RTS excludes cross-asset class from having a liquid market as a whole.

39. ESMA added some of the proposed general criteria to the asset-class specific criteria, such as the limitation of components and the requirement that all components belong to the same sub-asset class (see section 3.4).

3.4 Asset-class specific criteria

3.4.1 Interest rate derivatives

40. For the asset class of interest rate derivatives, ESMA proposed in the consultation that the liquid market as a whole for package orders composed of interest rate derivatives would be assessed on the basis of whether it has a maximum of three components, the notional currency is EUR, USD or GBP and all derivative components have an unbroken tenor of 2,3,4,5,6,7,8,9,10 or 30 years +/- 5 days.

41. Overall respondents were in favour of the approach outlined by ESMA. However, some respondents indicated that package orders with other tenors than those listed in the draft RTS should be included. On the other hand, very few respondents considered that the use of tenors was too wide and would include packages that do not have a liquid market as a whole. Having carefully considered the views put forward and the suggested tenors, ESMA has decided to add 12, 15 and 20 years to the list of tenors.

42. Responses to the consultation were split between those who thought that it was appropriate to only capture interest rate packages with a maximum of three components, and those raising concerns that the criterion of a maximum of three components was too restrictive. The latter respondents argued that there are liquid packages with more than three components, and that therefore the restriction to three components was unnecessary. Having considered the views expressed, ESMA considers it appropriate to maintain the proposal limiting the number of components to three.

43. Regarding the currencies referenced for interest rate derivatives, overall respondents agreed with the currencies suggested in the draft RTS, with some respondents suggesting

additional currencies such as CHF and JPY. ESMA decided not to extend the list of currencies in the revised draft RTS at this stage but, as with the other criteria, may revise this in the future.

44. A number of respondents suggested that the notional currency for all components of the package order should be the same. ESMA agrees with this view and has clarified this in the final draft RTS.

45. Some respondents informed ESMA that although the proposal would work for most interest rate derivatives packages, it was not suitable for interest rate future components of packages. Those respondents stressed that in particular the tenor approach would only work for OTC-derivatives, whereas ETDs have standardised expiry dates. ESMA agrees that the initial proposals did not yet sufficiently consider this aspect and has, based on feedback received from stakeholders, added a new criterion to the revised RTS to be used for interest rate future components of packages, taking into account the feedback received.

46. Last but not least, ESMA considered it appropriate to include in the list of liquid packages bond futures rolls. Those packages were already included in the list of examples in the CP to which most respondents agreed, but was not yet included in the draft RTS annexed to the CP. Given the support of respondents that these packages are liquid as a whole, ESMA added bond future rolls to the criteria specified in Article 3 of the revised draft RTS.

3.4.2 Equity derivatives

47. For the asset class of equity derivatives, ESMA proposed in the consultation that the liquid market for these package orders would be assessed based on whether it has a maximum of four components and the components are denominated in EUR, USD or GBP.

48. While respondents were overall supportive of the qualitative approach, many respondents considered that the proposed approach would capture too many packages composed of equity derivatives as having a liquid market as a whole. Therefore, many respondents suggested adding further criteria to distinguish those packages that have a liquid market as a whole from other traded packages in the area of equity derivatives that do not have a liquid market as a whole. In particular, it was suggested to define a liquid package as one where all components have the same underlying and are denominated in the same currency. ESMA agrees with these proposals and amended the draft RTS accordingly.

49. Furthermore, respondents advised to limit the components of a package to two since packages with more legs would be complex packages, which are less standardised and less liquid. ESMA acknowledges these concerns and consequently reduced the maximum number of components to two.

50. Some market participants suggested that it is premature to include cross-asset packages and volatility trades in the category of liquid packages. Furthermore, some respondents suggested that only those packages referring to an index could be considered to have a liquid market as a whole. ESMA acknowledges these concerns and clarified in the draft RTS that only packages where all components are referring to the same underlying index may be determined to have a liquid market as a whole.

51. Some respondents advocated for limiting liquid packages to those with components with a maturity restricted to the front end of the future curve or up to 6 months. ESMA decided to limit liquid packages to those with components with a maturity up to 6 months and amended the draft RTS accordingly. In addition, EMSA further narrowed down the scope of equity packages by including a criterion requiring that where the package order contains options, all options need to have the same expiry date.

3.4.3 Credit derivatives

52. For the asset class of credit derivatives, ESMA proposed in the consultation to only consider as liquid those package orders where all the derivative components of the package order have the same underlying index, the notional currency of the components is in EUR, USD or GBP and the package order moves from the latest off-the-run index series into the current on-the-run index series.
53. The majority of the respondents agreed to the approach proposed limiting the packages that have a liquid market as a whole for the asset class of credit derivatives to index rolls. A few respondents suggested that additional criteria should be taken into account recommending in particular that all components should be denominated in the same currency or that all components should belong to the same sub-asset class. Furthermore, respondents indicated that at present, trading activity is concentrated in CDS index rolls with five year tenor.
54. Furthermore, the majority of respondents also supported the proposed currencies in which the components shall be denominated. However, two respondents highlighted that CDS indices denominated in GBP should not be included.
55. Respondents were split between those in favour of the inclusion of a list of indices eligible to be a liquid package and those supporting the current proposal.
56. ESMA considered it appropriate to maintain the current approach but introduced the following additional criteria as suggested by respondents: (i) all components shall be denominated in the same currency, and (ii) the roll is limited to CDS indices with a tenor of five years. Finally, GBP was excluded from the list of currencies in which the components shall be denominated.

3.4.4 Commodity derivatives

57. For the commodity derivatives asset class, ESMA proposed in the consultation that the liquidity would be assessed based on whether the package has a maximum of two components, the notional currency is EUR, USD or GBP and the package order moves from a contract expiring on a particular date into another contract with a different expiry date.
58. Only few respondents provided input on commodity derivatives. Overall, respondents were favourable to ESMA's proposal. Some of them suggested adding further criteria. In particular, respondents suggested to clarify that all components of a package should have

the same underlying commodity. ESMA agrees with that suggestion and adapted the final draft RTS accordingly.

59. There was broad support to limit the scope of liquid packages to those having a notional currency of USD, EUR or GBP. ESMA therefore maintained its initial proposal in this respect. The revised proposal also specifies that both elements of the package should be denominated in the same currency.

60. With regard to contract expiry dates, respondents indicated that only packages expiring and moving into the following available expiry date should be considered liquid. ESMA agrees with this suggestion and amended the draft RTS accordingly.

3.4.5 Other derivatives

61. ESMA asked in the CP whether any asset-class specific criteria should be added for other derivative asset classes or whether stakeholders agreed that packages of other asset classes not covered in the proposed draft RTS should not be considered to have a liquid market as a whole. Respondents broadly agreed that there was no need to cover additional asset classes in the draft RTS. ESMA therefore did not add asset-class specific criteria for other asset classes in the final RTS.

62. Furthermore, ESMA proposed in the consultation that packages made of other asset class including FX derivatives have no liquid market as a whole in the context of this empowerment. Respondents were supportive of the proposal consequently it was maintained.

4 Annexes

4.1 Annex I

Feedback on the consultation paper

Q1: Do you agree with ESMA's proposal to apply the SI obligations at the package order level where the investment firm is an SI in at least one component instrument of the package order? If not, please explain why and propose an alternative?

Respondents expressed different views on this question. While a small majority was in favour of the proposal to apply the SI obligations at the package order level where an investment firm is an SI in at least one component instrument of the package order, a number of respondents did not agree. Respondents advocating against ESMA's proposal suggested that in order to apply the SI obligations at the package level, an investment firm should be an SI in all components of the package. Some of those respondents suggested also that the exemption of the SI obligations under Article 18(1) and 18(2) of MiFIR should apply if only one component is above SSTI.

Furthermore, some respondents asked for further guidance on the overall application of the pre- and post-trade transparency requirements for packages.

ESMA's response: As already highlighted in the CP, the application of the pre-trade transparency regime for package orders by SIs is not part of the empowerment for developing this RTS. Nevertheless, ESMA considers it important to provide further guidance on this issue and intends to issue Q&As. When drafting the Q&As, ESMA will take into account the feedback provided by stakeholders. In addition, ESMA intends to provide further guidance on the application of the pre- and post-trade transparency requirements for packages.

Q2: Do you agree with the proposed methodology based on qualitative criteria? Do you consider an alternative methodology as better suited for identifying liquid package orders as a whole?

The majority of respondents supported a methodology based on qualitative criteria with some respondents considering it necessary to improve the approach with the objective to narrow down the scope of package orders that have a liquid market as a whole. Proposals included:

- Some respondents suggested that where components of the package order do not have a liquid market or are above LIS is a strong indication that the package order is not liquid as a whole;
- Some respondents suggested to complement the qualitative criteria by some quantitative criteria or to carry out a further analysis on the actual liquidity of the package;
- Some respondents suggested that further qualitative criteria should be added to the general and/or asset class specific criteria.

Other respondents did not agree with a methodology based on qualitative criteria and suggested instead to use a methodology based on quantitative thresholds based on the following criteria: (i) number of investment firms which hold themselves out as market maker; (ii) transactions which occur as a result of a package order compared to the total transactions in each component; and (iii) average daily number of transactions in the package as a whole. Those respondents raised concerns that in many cases packages are much less frequently traded than their respective components.

ESMA's response: In view of the overall support of the qualitative approach, this approach has been maintained. ESMA agrees that the approach may benefit from adding further general and asset-class specific criteria to ensure that only packages that are standardised and sufficiently liquid are determined to have a liquid market as a whole. Accordingly, ESMA added further general and asset-class specific criteria.

Q3: Do you agree with the general criteria for identifying package orders that may be eligible for being liquid as a whole? Do you consider necessary to add further criteria or to remove any of the criteria proposed? Please explain.

Q4: Do you consider it necessary to further specify the first criterion on the standardisation of components? If yes, which characteristics should be considered to specify the standardised components of packages?

The majority of respondents agreed with the general criteria – with the exception of the criterion that all components should have standardised contractual terms – for identifying package orders that have a liquid market as a whole. Some respondents asked for some clarification and or suggested the addition of additional criteria:

- the general criteria should be cumulative;
- derivative components should be subject to the clearing obligation;
- not all the components are above the LIS-threshold;
- all legs should be traded on the same trading venue;
- limitation of components;
- all legs are traded in the same currency.

Concerning the criterion that all components should have standardised contractual terms, the vast majority of respondents raised concerns that this criterion is not needed and might even create legal ambiguity since it could be interpreted very differently. Those respondents also suggested that where components are available for trading on a trading venue already requires a high level of standardisation and that no further criterion for standardisation is therefore necessary.

ESMA's response: In view of the overall support, ESMA maintained its overall approach for the general criteria subject to some targeted amendments:

- ESMA removed the criterion on standardised contractual terms;
- ESMA added a new criterion clarifying that where all components are above LIS, illiquid or a combination thereof the package order should not have a liquid market as a whole.
- The asset-class specific criteria limit the components and require as well that all components are traded in the same currency.
- ESMA clarified that all components should be subject to either the clearing obligation under EMIR or the clearing obligation under MiFIR. This approach ensures that also ETDs that are not covered by the EMIR clearing obligation are eligible for having a liquid market as a whole.

ESMA confirms that the qualitative criteria apply cumulatively. Where one of the general criteria is not met, the package should not be determined to have a liquid market as a whole.

Q5: Do you agree with the proposed interest rate derivatives specific criteria? If not, please explain why and present your preferred approach. Do you consider it necessary to add further criteria? If yes, please explain.

Most respondents suggested adding further interest rate derivatives specific criteria. Proposals included:

(i) limit the number of components to 2;

(ii) clarify that all components are denominated in the same currency;

(ii) introduce for ETDs an additional criterion to determine which maturities should be considered to have a liquid market since the benchmark tenor approach does not work for ETDs;

(iv) cross-asset class packages should not be included and it should be clarified that all components are of the same sub-asset class;

(v) all components should be denominated in the same currency;

Furthermore, some respondents considered the criteria to restrictive and suggested to include (vi) further benchmark tenors (1, 12, 15, 20 and 25y), (vii) for certain types of packages also non-benchmark dates, and (viii) package orders with more than 4 components.

Concerning the benchmark tenors, many respondents asked for clarification that the tenor should be calculated with reference to the effective date and not the execution date.

ESMA's response: Following feedback from stakeholders, ESMA added additional interest rate specific criteria, in particular on (ii), (iii), (iv), (v) and some benchmark dates of (vi). ESMA assessed the other proposals made but considered them either as too restrictive (such as limiting the number of components to 2) or as too broad, thereby risking to determine non-liquid packages as having a liquid market as a whole (such as removing the criterion limiting the number of components).

Q6: Do you consider that derivative components in other currencies (e.g. other EEA currencies, JPY) should be included? If yes, please explain.

The majority of respondents opposed broadening the scope to other currencies, whereas some respondents supported the inclusion of some additional currencies, such as JPY, CHF and other EEA currencies.

ESMA's response: After reviewing the responses, ESMA considers it appropriate not to add other currencies to the list at this point in time.

Q7: Do you agree that only packages with derivative components with the above mentioned benchmark dates should be considered liquid? If not, please explain. Which other or additional benchmark dates do you suggest?

About half of the respondents agreed with the proposal in general, whereas the other half did suggest either to remove certain benchmark dates or to include additional ones.

ESMA's response: After review of the responses, ESMA decided to extend slightly the benchmark dates by adding components with a benchmark date of 12, 15, and 20 years since feedback from MTFs trading package orders indicated that these tenors have a liquid market.

Q8: Do you consider that for certain types of packages derivative components that have broken dates (e.g. invoice spreads) or which are traded on IMM and MAC dates (e.g. rolls) have a liquid market?

The majority of respondents agreed that certain types of packages that have broken dates such as invoice spreads or IMM and MAC rolls have a liquid market. Most of those respondents considered in particular IMM & MAC rolls as liquid. Furthermore, about half of the respondents supported this approach also for invoice spread packs containing Bund and Gilt futures. However, some of these respondents raised issues on the practicability of applying pre-trade transparency for invoice spreads.

A few respondents did not support this approach and considered that packages with broken dates do not have a liquid market as a whole. One respondent suggested that the liquidity assessment should be different for ETDs and OTC-derivatives.

ESMA's response: ESMA agrees that components traded on IMM/MAC dates should be considered to have a liquid market. By clarifying that benchmark tenors should be determined based on the effective date, components traded on IMM and MAC dates will be considered to have a liquid market if traded on one of the benchmark years specified in the RTS.

ESMA acknowledges that some invoice spreads may have a liquid market, but agrees that in view of the practical challenges for developing a sound approach for identifying those packages, and given the limited time to deliver the RTS, it appears at this point in time more prudent to exempt cross-asset class packages from having a liquid market. ESMA may provide guidance on the application of pre-trade transparency for cross-asset class packages, since in case all components of a package order are liquid and below LIS, or not all components are below LIS, it would not be possible to waive pre-trade transparency.

Q9: Do you consider it necessary to specify criteria for non-derivative components of packages? If yes, which criteria would you suggest and why?

Only a few stakeholders provided input to this question. While some respondents acknowledged that there may be cross-asset class packages combining interest rate derivative with non-derivative components that have a liquid market as a whole, such as spread overs, most respondents nevertheless advocated for a cautious approach and to not allow for non-derivative components, at least for the time being. Some respondents suggested the following criteria to assess the liquidity of spread overs: i) the bond component is a sovereign bond ii) issued in EUR, GBP or USD and iii) has a liquid market as determined in RTS 2. Other respondents indicated more generally that such components have to be correlated with other (derivative) components.

Other respondents considered that any package that include any derivative-component should not be considered liquid.

ESMA's response: ESMA acknowledges that some spread overs may have a liquid market. At the same time ESMA agrees with the view expressed by some stakeholders that in view of the practical challenges for developing a sound approach for identifying those spread overs that have a liquid market, and given the limited time to deliver the RTS, it appears at this point premature to develop criteria for spread overs and more generally cross-asset class packages. Therefore, no criteria on non-derivative components where added to the RTS.

ESMA may provide guidance on the application of pre-trade transparency for cross-asset class packages since according to the Level 1 text in certain cases such as where all components of a package order are liquid and below LIS, it would not be possible to waive pre-trade transparency.

Q10: Do you agree with the proposed equity derivatives specific criteria? If not, please explain why and present your preferred approach. Do you consider it necessary to add further criteria? If yes, please explain.

In general, respondents were supportive of the proposal but suggested some amendments. In particular, the majority of the respondents agreed to include as additional criterion that all components in a package need to be denominated in the same currency.

Furthermore, some respondents suggested setting the number of components to two since when the number is higher the package becomes more complex thus less standardised and less liquid.

Some respondents also suggested that it is premature to include volatility trades and cross-asset packages as liquid, e.g. equity derivatives and shares or equity derivatives and bonds.

Last but not least, some respondents commented that even though in RTS 2 equity derivatives are liquid along the curve, packages should be deemed liquid only when its components have a maturity restricted to the front-end or to 6 months or less.

ESMA's response: The above proposals were considered and the draft RTS amended accordingly.

Q11: Do you consider that derivative components in other currencies (e.g. other EEA currencies, JPY) should be included? If yes, which ones?

Few respondents, in particular exchanges, were in favour of including other EEA and non-EEA currencies but the majority of respondents did not see merit in adding other currencies to the three identified.

ESMA's response: No further currencies were added to the draft RTS.

Q12: Do you consider it necessary to specify that all components of the package order should have the same underlying? If yes, please explain.

The majority of respondents supported the fact that the components of package orders in equity derivatives should have the same underlying. Some respondents even though they identified packages with components on correlated underlyings claimed that they were not sufficiently liquid.

Furthermore, feedback from exchanges indicated that only underlyings referring to an index can be considered to have a liquid market as a whole.

ESMA's response: The revised draft RTS clarifies that all components should have the same underlying index.

Q13: Do you agree with the proposed credit derivatives specific criteria? If not, please explain why and present your preferred approach. Do you consider it necessary to add further criteria? If yes, please explain.

The majority of respondents supported the approach defined for credit derivatives. One respondent suggested to add as criteria that all components shall be denominated in the same currency, that the legs of the package shall belong to the same sub-asset class or that the package shall not have more than three components, that all components are liquid, below large in scale and traded on the same trading venue. Only one respondent suggested to include quantitative criteria.

ESMA's response: Based on the feedback received, ESMA maintained the proposal presented in the CP, but clarified that all legs shall be denominated in the same currency.

Q14: Do you agree that derivative components in USD, EUR or GBP should be considered sufficiently liquid for the purpose of this RTS? Do you consider that derivative components in other currencies (e.g. other EEA currencies, JPY) should be included? If yes, which ones?

The majority of respondents supported ESMA's proposal. Furthermore, two respondents suggested that there are no indices denominated in GBP.

ESMA's response: ESMA agrees that GBP should be excluded from the currencies in which an index is denominated.

Q15: Do you consider it necessary to further specify the indices that are eligible? If yes, please specify which specific indices should be included. Do you consider it necessary to specify the maturity dates of the underlying indices?

Respondents were split between those agreeing with the current proposal and those asking for a list of indices. Those in favour of a list of indices claimed that such list should be aligned with the list of mandatorily cleared indices as liquidity is a key factor in determining which instruments should be subject to the obligation to clear through a CCP. Those in support of the current proposal claimed that further specifying the indices would artificially limit packages that may be liquid but would not be regarded as such because the index is not specified. Last but not least, it was indicated that at present, trading activity is concentrated in CDS index rolls in the five year tenors.

ESMA's response: ESMA maintained the current proposal. In addition to ensure that only the most liquid packages are included, the revised draft RTS limits the components to those with a tenor of five years.

Q 16: Do you agree with the proposed commodity derivatives specific criteria? If not, please explain why and present your preferred approach? Do you consider it necessary to add further criteria? If yes, please explain.

Only few stakeholders provided feedback on the questions on commodity derivative specific criteria. Most respondents considered that the proposed criteria would catch also package orders that may not have a liquid market as a whole and proposed therefore to further specify the criteria. Proposals included:

- Focus on the front end of the futures curve for "rolls";
- All components should be of the same RTS2 sub-asset class;
- All components should have the same underlying commodity and be denominated in the same currency;
- All components are deemed to be liquid.

ESMA's response: ESMA agrees with most of these proposals and amended the draft RTS accordingly. However, ESMA did not take on board the last proposal ("all components are deemed to be liquid") since Article 9(1)(e) of MiFIR explicitly acknowledges that a package order may have a liquid market where at least one of its component does not have a liquid market.

Q17: Do you consider that derivative components in other currencies (e.g. other EEA currencies, JPY) should be included? If yes, which ones?

Only few stakeholders provided feedback on this question. Of those responding, most were supportive of limiting the notional currency of the derivative component to USD, EUR and GBP.

ESMA's response: ESMA added no additional currencies to the commodity derivative specific criteria.

Q18: In which types of contracts do package orders in commodity derivatives mostly occur? Do you consider it necessary to provide for asset class specific criteria that take option and future/forwards contracts into account? If yes, please explain.

ESMA received only very limited input on that question. Overall, respondents indicated that there is a broad variety of packages. Most of these packages would be EFPs, that is a package composed of a physical asset and a commodity derivative. Other strategies mentioned included time spreads and correlation structures. Rolls trading a future position into a spot month contract into the next maturity contract appear to be the most liquid package.

ESMA's response: ESMA limited commodity derivative packages that have a liquid market as a whole to commodity future rolls. EFPs will be in any case eligible for a waiver.

Q19: Do you consider it necessary to develop criteria at a more granular level (e.g. energy derivatives, agricultural derivatives) to better reflect the particularities of package orders in the different sub-asset classes? If yes, please explain

The majority of the respondents considered it not necessary to develop criteria at a more granular level (some further argued that given the time constraints under which the consultation occurred, ESMA should take a cautious approach to identify liquid package in the commodities segment).

ESMA's response: ESMA did not develop more granular criteria.

Q20: Do you consider it necessary to specify that all components of the package order have the same underlying? If yes, please explain at which this concept of "same underlying" should apply (e.g. same asset class, same sub-asset class, same sub-class – as per Annex III of RTS 2 – or at a more granular level).

Some respondents supported the proposal to specify that all components of the package order should have the same underlying (same sub-asset class or sub-class), whereas others highlighted that such a specification would remove package orders with components of correlated or different underlyings from the scope.

Some respondents also highlighted that it is important to specify that Art 3(4) of the draft RTS only relates to commodities referred to in MiFID 2 Annex 1 Section C (5), (6), and (7).

ESMA's response: ESMA agrees that requiring that all components of the package order to have the same underlying would result in limiting the number of package orders in commodity derivatives that would have a liquid market as a whole. Since ESMA received only very limited feedback on package orders with components that have different underlyings, and in particular on their liquidity status, ESMA considers it appropriate at this stage to specify that all components of the package order have the same underlying.

Furthermore, ESMA clarified in the RTS that commodity derivatives should be understood as defined in table 7.1 of Annex III of RTS 2.

Q21: Are there package orders in other derivative asset classes that are in your view standardised and frequently traded and which should be eligible for having a liquid market as a whole? If yes, what asset class specific criteria do you suggest for those?

and

Q22: Do you agree with the approach proposed for FX derivatives or do you consider it necessary to include an asset-class specific approach for FX derivatives?

The feedback in this area was limited but the majority of respondents supported the fact that no other asset classes need to be covered by the definition of a liquid package, nor an asset-class specific approach is needed for FX derivatives. However, a couple of respondents asked for further guidance on the definition of FX derivatives.

ESMA's response: No changes to the proposal.

Q23: How should ESMA deal with cross-asset class package orders? Should ESMA develop cross-asset class specific criteria? If yes, please specify those. Alternatively, should cross-asset class package orders be allocated to only one asset class? If yes, how?

In general, there was support that cross-asset class packages should not considered to be liquid because of difficulties in implementing the liquidity assessment and lack of evidence supporting their liquidity. However, some respondents stressed that certain spread overs, i.e. packages of an interest rate swap and a sovereign bond, and packages made up of a sovereign bond and a future are liquid. Some respondents also suggested the criteria to be used to deem liquid such packages, including among others, the liquidity of the bond.

ESMA's response: ESMA agrees with the proposal of declaring as illiquid cross-asset class packages. Even though some packages, such as certain spread overs, may have a liquid market, ESMA concurs that given the limited information at ESMA's disposal for developing specific criteria for spread overs and the lack of evidence supporting their liquidity in the EU, those packages should – at least for the time being – not be considered to have a liquid market as a whole.

Q24: Do you agree that package orders where all components are subject to the trading obligation for derivatives should be considered to have a liquid market as a whole? If not, please explain

Overall the majority of the respondents agreed that where all the components of the package orders are subject to the trading obligation, that package order should be considered as having a liquid market as a whole. However, some respondents criticised that having components that are subject to the trading obligation does not guarantee that the components are liquid enough to qualify for a pre-transparency waiver.

ESMA's response: ESMA maintained its approach that where all components are subject to the trading obligation the package should be considered to be liquid as a whole. However, in order to provide for further safeguards some additional criteria were introduced (no more than four components, not all components are above LIS, all components are of the same asset class) to allow for better differentiating standardised packages from tailored strategies.

Q25: Do you consider that package orders where at least one component is subject to the trading obligation and all other components are subject to the clearing obligation should be considered to have a liquid market as a whole? If not, please explain.

The vast majority of respondents disagreed with this proposal.

ESMA's response: ESMA agrees to a more cautious approach from the outset and amended the draft RTS to clarify that packages composed of components where at least one component is subject to the trading obligation and all other components are subject to the clearing obligation should not be considered to have a liquid market as a whole.

Q26: Do you agree that the categories of packages above should be considered as standardised and frequently traded for the purpose of this RTS empowerment? If not, please explain.

The majority of the respondents agreed with ESMA that the list of categories put forward in Table 2 of the consultation paper should be considered as standardised and frequently traded. The respondents also commented that they found having a table of categories useful.

ESMA's response: ESMA will in the future publish the list of categories of packages to provide information to the industry on the categories that are considered to be standardised and frequently traded.

Q27: Are there any categories of packages missing in the above asset classes that should be considered for the purpose of this RTS empowerment? Are there in your view categories of packages in other asset classes that ESMA should consider?

Most of the respondents did not consider that there were any categories of packages missing in ESMA's proposal.

ESMA's response: No changes to the proposal.

Q28: Do you agree with the draft RTS in annex IV? If not, please explain.

The majority of the respondents did not agree with the draft RTS, with some respondents suggesting amendments to the RTS text.

ESMA's response: ESMA was aware at the stage of the CP that the draft RTS would require additional features to better frame those packages that are to be considered liquid as a whole. ESMA has, therefore, reviewed all of the comments and has further developed the RTS.

Q 29 – 40: Cost-benefit analysis questions.

ESMA's response: As per the cost-benefit analysis in Annex III

4.2 Annex II

Legislative mandate to develop technical standards

Article 9 of MiFIR

1.Competent authorities shall be able to waive the obligation for market operators and investment firms operating a trading venue to make public the information referred to in Article 8(1) for:

f) orders that are large in scale compared with normal market size and orders held in an order management facility of the trading venue pending disclosure;

g) actionable indications of interest in request-for-quote and voice trading systems that are above a size specific to the financial instrument, which would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors;

h) derivatives which are not subject to the trading obligation specified in Article 28 and other financial instruments for which there is not a liquid market;

i) orders for the purpose of executing an exchange for physical;

j) package orders that meet one of the following conditions:

   i. at least one of its components is a financial instrument for which there is not a liquid market, unless there is a liquid market for the package order as a whole;

   ii. at least one of its components is large in scale compared with the normal market size, unless there is a liquid market for the package order as a whole;

   iii. all of its components are executed on a request-for-quote or voice system and are above the size specific to the instrument.

[...]

2a. Competent authorities shall be able to waive the obligation referred to in Article 8(1) for each individual component of a package order.

[…]

6. In order to ensure the consistent application of points (i) and (ii) of paragraph 1(e), ESMA shall develop draft regulatory technical standards to establish a methodology for determining those package orders for which there is a liquid market. When developing such methodology for determining whether there is a liquid market for a package order as a whole, ESMA shall assess whether packages are standardised and frequently traded.

ESMA shall submit those draft regulatory technical standards to the Commission by 28 February 2017.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 and 14 of Regulation (EU) No 1095/2010.

4.3 Annex III

Cost-benefit analysis

Pursuant to Articles 10(1) and 15 of the Regulation establishing ESMA[3], ESMA is empowered to develop draft RTS or draft implementing technical standards (ITS) where the European Parliament and the Council delegate power to the Commission to adopt the RTS/ITS by means of delegated acts under Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts within the scope of action of ESMA. The same article obliges ESMA to conduct open public consultations on draft RTS/ITS and to analyse the related potential costs and benefits, where appropriate. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the draft RTS/ITS.

This section contains a cost-benefit analysis (CBA) of the draft RTS with regard to package orders.

1. Executive Summary

Article 9(1)(e) of Regulation (EU) 600/2014 on Markets in Financial Instruments Regulation (MiFIR) introduces a pre-trade transparency waiver for package orders. In the circumstances detailed below in the Baseline section, a package order is eligible to a pre-trade transparency waiver, unless the package order has a liquid market as a whole. The purpose of the draft RTS is to further specify the conditions to be met by a package order to be considered liquid as a whole.

This document has four sections: an introduction to the topic discussed (Introduction), the baseline to consider for determining the incremental costs and benefits arising from the draft RTS (Baseline), an identification of the stakeholders subject to those amendments and how they may be affected (Stakeholders) and finally, an analysis of the costs and benefits arising from the incremental obligation attributed to the standard vs. the baseline defined previously (Cost Benefit Analysis). The stakeholders identified are trading venues, members and participants of trading venues, systematic internalisers (SIs) and other market participants.

2. Introduction

MiFIDII/MiFIR introduces a pre-trade and post-trade transparency regime for bonds, structured finance products, emission allowances and derivatives (non-equity instruments), further specified in the Commission Delegated Regulation of 14.07.2016 on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (RTS2). Initially, package orders were not identified as a specific category of orders in MiFIR and the Level 2 empowerment did not allow ESMA to develop a tailored pre-trade transparency approach for package orders. However,

[3] 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.

the Level 2 empowerment allowed ESMA to give some guidance on the treatment of packages for post-trade transparency. Accordingly, RTS 2 sets out the post-trade transparency obligations for package transactions and establishes that post-trade information related to package transactions should be made public in relation to each component.

The MiFIR amendment ("Quick Fix") adopted in June 2016 introduces a definition of package orders and package transactions under Article 2(1)(49) and (50), and sets out the conditions under which a package order may benefit from a pre-trade transparency waiver under Article 9(1)(e).

A package order is defined as an order priced as a single unit for the purpose of executing an EFP or for two or more financial instruments for the purpose of executing a package transaction. Orders in EFPs are eligible to a pre-trade transparency waiver without having to meet specific conditions. Package orders in financial instruments may be eligible to a pre-trade transparency waiver, depending on the characteristics of the components. However, some of those pre-trade transparency waivers are no longer available where there is a liquid market for the package order as a whole.

To ensure a harmonised implementation of this exemption to the waiver, this draft RTS further specifies the conditions to be met by package orders to be determined having a liquid market as a whole.

The costs and benefits section evaluates, to the extent possible, the effects of the draft RTS on the stakeholders directly and indirectly affected, as well as the indirect costs or market effects that the implementation of the draft RTS may create. This CBA takes into account the responses received to the CP and the initial draft RTS published in November 2016, as well as other data provided by market participants. This CBA is of a qualitative nature as no respondents provided data on anticipated implementation costs in response to the CBA questions included in the CP. In addition, it should be noted that, in some cases, it is very difficult to disentangle the costs attributable to the Level 1 legislation and those arising from the Level 2 RTS.

3. Baseline

From a legal perspective, the legislation to consider is Article 9(1)(e) of MiFIR.

Under Article 9(1)(e), a CA may waive pre-trade transparency obligations for trading venues in relation to package orders when:

(i) at least one of the components of the package order is a financial instrument for which there is not a liquid market, unless there is a liquid market for the package order as a whole;

(ii) at least one of its components is large in scale compared with the normal market size, unless there is a liquid market for the package order as a whole;

(iii) all of its components are executed on a request-for-quote or voice trading system and are above the size specific to the instrument.

Article 9(6) empowers ESMA to develop draft RTS "to establish a methodology for determining those package orders for which there is a liquid market. When developing such methodology for determining whether there is a liquid market for a package order as a whole, ESMA shall assess whether packages are standardised and frequently traded."

There is a large range of different types of package orders in the market. These packages may combine any number of components of almost any type of instruments across the same or different asset classes. They provide an opportunity for market participants to trade two or more financial instruments simultaneously in a single transaction, and to ensure specific prices (and times to maturity) for those multiple instruments. Market participants are thus able to execute an investment or hedging strategy without facing the market risk from being long or short during the period of time required to complete the second (or additional) transaction(s). In addition, as the package order is priced as a single instrument, one spread only is paid by the requesting party, as opposed to a spread for execution of a transaction in each of the components of the package order.

In some asset classes, package orders may account for a significant proportion of trading. As part of the responses to the CP, one large brokerage firm indicated that almost 80% of its trading volume in interest rate derivatives is executed through package orders, be it on-venue or OTC. One trading venue mentioned that 34% of its trading volume in interest rate derivatives and 48% in equity derivatives is executed through package orders. Another trading venue noted that 21% of its trading value in equity derivatives are executed as packages.

Package orders are traded on RMs and MTFs as well as OTC in all asset classes. Pre-trade transparency for package orders traded on RMs and MTFs is quite diverse. Package orders may be traded on pre-trade transparent order books for smaller sizes, either through automatically available combinations or through tailor-made combination functionalities. They may also be traded as block trades without pre-trade transparency and then reported to a regulated market, or on MTFs operating request for quote systems, here again with limited or no transparency. Where the package order includes one leg traded on a trading venue and another traded on another venue or OTC, no pre-trade transparency is currently provided by the trading venue on the price of the package order. Similarly, package orders are currently traded OTC without pre-trade transparency.

Under Article 9(1)(e)(i) and (ii), the requirement for trading venues to make the price of package orders with a liquid market as a whole pre-trade transparent comes as an exception to the pre-trade transparency waivers otherwise available to package orders with at least one illiquid component or one component above LIS. The additional obligation created by the draft RTS is the scope of package orders that are considered liquid as a whole, thereby restricting the possibility for trading venues and SIs to ask for a pre-trade transparency waiver. However, it is extremely difficult to disentangle the compliance costs arising respectively from the Level 1 text and from the Level 2 draft amendment. ESMA considers that most of those costs are linked to the Level 1 text.

It is worth noting that the ESMA's empowerment under Article 9(6) does not include package orders consisting of components where all have a liquid market or are of a size above LIS. Under Level 1, such package orders are not eligible to a pre-trade transparency waiver. The pre-trade transparency framework for package orders as set out in Level 1 appears overall to be more demanding than post-trade transparency, while for all other financial instruments subject to the MiFIR transparency regime, the post-trade transparency requirements are more demanding than the pre-trade transparency requirements.

4. Stakeholders

The stakeholders identified are:

- **Trading venues:** Trading venues will have to assess the liquidity status of the package orders they offer for trading against the criteria set out in the draft RTS. They may have to adjust their trading system parameters to the liquidity status of the package order traded to ensure that relevant package orders are made pre-trade transparent. Additional pre-trade transparency obligations will also have an impact on monitoring and maintenance of their pre-trade transparency data feed.

  If members/participants/users were to consider that the pre-trade transparency obligations resulting from the combined effect of Level 1 and the draft RTS are too demanding and expose them to undue risks when trading on venue, they may choose to execute more of those package orders OTC, thus without pre-trade transparency. Should this materialise, it would have an impact on on-venue trading volume as well as on trading venues' resources.

  Conversely, pre-trade transparency for package orders with a liquid market traded on venue may attract new on-venue order flow as market participants have more information on available prices for such package orders.

- **Members/participants/users of trading venues:** Those stakeholders would be impacted where the package orders they currently trade without pre-trade transparency would become pre-trade transparent under the combined effect of Level 1 and of the draft RTS. This may potentially have an impact on the willingness of dealers in providing liquidity at current spreads as pre-trade transparency would expose them to increased market risk and affect their ability to hedge the risks they undertake. However, increased pre-trade transparency for package orders that have a liquid market as a whole will also contribute to increased competition across dealers, with a potential impact on spreads.

- **SIs:** SIs providing quotes in package orders with a liquid market as a whole will not be able to ask for a pre-trade transparency waiver, unless all components are illiquid or are of a size above large in scale (LIS), and will have to meet pre-trade transparency obligations at package order level. The exact impact of the draft RTS on SIs will depend on the definition of an SI in package orders and on how the SSTI waiver for package orders is assessed. Those two issues are outside the scope of the draft RTS.

- **Institutional investors, buy-side firms and end-investors more broadly**: Those stakeholders will be impacted to the extent that the pre-trade transparency framework resulting from the combined effect of Level 1 and of the definition of package orders with a liquid market as a whole under the draft RTS has an impact on total costs of trading in such package orders and on the ability of such market participants to appropriately mitigate risks.

5. Cost-Benefit Analysis

The draft RTS sets out the methodology for package orders to be considered liquid as a whole, taking into account the standardisation and liquidity assessment foreseen in the empowerment.

ESMA considered that in the case of packages where an infinite combination of components can be traded, a liquidity assessment based on quantitative criteria similar to the one conducted for RTS 2 would not have been practicable. This would have required the identification of different types of packages and the development of tailored liquidity criteria per type of package. The lack of package identification in currently available trade repository data would have anyhow made the exercise impossible at this stage.

The option consisting in producing an exhaustive list of package orders with a liquid market as a whole was discarded as well. Any such list at the level of an RTS would have been quickly outdated and the approach would not have been in line with ESMA's mandate to develop "a methodology".

Instead, the draft RTS is based on a more holistic, qualitative approach building on the characteristics of the components of package orders. Given the lack of quantitative data at package order level, a cautious approach has prevailed in all aspects of the methodology proposed in the draft RTS to assess whether a package order is liquid as a whole.

Under the draft RTS, a package order is considered liquid as a whole under two sets of circumstances: a) when the package order is only composed of components subject to the trading obligation under the procedure set out in Article 32 of MiFIR or b) where the package order meets a combination of general criteria and asset-specific criteria.

A- Specific designation of package orders with a liquid market as a whole

The draft RTS proposes that a package order made up only of components subject to the trading obligation is always considered liquid as a whole. The assumption here is that where all the components are standardised, as required under the clearing obligation, and frequently traded, as part of the liquidity assessment required both under the clearing and the trading obligation, the package order itself is standardised and frequently traded and thereby liquid as whole.

In a slightly different context, the US Commodity Futures Trading Commission (CFTC) adopted a similar line of reasoning regarding packages. When assessing which package transactions should be made available to trade (MAT) and subject to the trade execution requirements, the CFTC ultimately considered that where the swap components of a package transaction are all MAT, then the package transaction is MAT.

The CFTC further considers that where one component is MAT, and all the other components are subject to the clearing requirement in the US, the package transaction is MAT. However, based on the responses to the consultation, ESMA withdrew its initial proposal that package orders only comprised of components subject to the trading or to the clearing obligation should be considered liquid as a whole. Even though those packages are MAT under the CFTC rules, ESMA opted for a more cautious approach since the pre-trade transparency obligations under MiFIR go beyond the transparency obligations resulting from the CFTC trade execution requirements.

ESMA also took into account the concerns expressed that the pre-trade transparency regime at package level should not be substantially more demanding than at individual component level. Where all the components of the package order are LIS compared to normal market size, and thereby eligible to a pre-trade transparency waiver, the draft RTS foresees that the package order will not be considered liquid as a whole and will accordingly be eligible to a pre-trade transparency waiver as well.

Similarly, and as the liquidity of a package order decreases when its complexity increases, a package order in derivatives subject to the trading obligation would only be considered as liquid as a whole where it has no more than four components and where all components belong to the same asset class under RTS 2.

It is noted that ESMA has not yet developed an RTS specifying the classes of derivatives that will be subject to the trading obligation and that this criterion will only become effective once the trading obligation applies.[4]

Policy Objective	Establish an appropriate level of pre-trade transparency in package orders for more efficient markets.
Technical Proposal	Package orders made up of no more than four components that all belong to the same asset class of derivatives and are all subject to

[4] See ESMA Discussion Paper on the trading obligation for derivatives under MiFIR https://www.esma.europa.eu/sites/default/files/library/2016-1389_dp_trading_obligation_for_derivatives_mifir.pdf

	the trading obligation under MiFIR are considered to be liquid as a whole, unless all the component orders are LIS. See Article 1(a) of draft RTS for more details.
Benefits	Once the list of derivatives subject to the trading obligation is available, this specific criterion will provide clarity, legal certainty and predictability as to package orders that have a liquid market. It sets out uniform applicable conditions under which CAs may, or may not grant pre-trade transparency waivers to trading venues and systematic internalisers trading in packages, contributing to a level playing field across EU market participants. Derivatives subject to the trading obligation have already passed a standardisation and liquidity test, including for the clearing obligation. It can reasonably be expected that package orders only comprised of such derivatives will be liquid as a whole as well. The trading obligation criterion laid down in the draft RTS is consistent with the approach developed by the CFTC for package orders in the context of the trade execution requirements and contributes to international consistency in the treatment of packages. Package orders with derivative components all subject to the trading obligation will be easy to identify for market participants. The draft RTS follows a dynamic approach: as additional derivatives become subject to the trading obligation, this will translate into a broader scope of package orders considered to have a liquid market as a whole.
Cost to regulator: - *One-off* - *On-going*	CAs may incur additional on-going staff supervisory costs to ensure compliance with pre-trade transparency obligations for those package orders considered to have a liquid market as a whole. ESMA considers those costs to be minor and to be driven by Level 1.
Compliance cost: - *One-off* - *On-going*	Trading venues will incur one-off and on-going IT and staff costs to assess whether the package orders they offer for trading with at least one leg being illiquid or one leg being LIS, are liquid as a whole. However, the criterion for assessing liquidity as a whole under Article 1(a) is straightforward and compliance costs are expected to be minor. Trading venues will likely incur one-off costs to adjust their trading rules and functionalities to ensure that package orders considered to have a liquid market as whole are pre-trade transparent as well as on-going costs to monitor pre-trade data feeds.

	ESMA considers those costs to be non-significant and mainly driven by Level 1.
Cost to other stakeholders	Potential costs for SIs will depend on the RTS on the trading obligation and whether a package order where all components are subject to the trading obligation is subject to the trading obligation. Should this be the case, costs for SIs trading package orders where all components are subject to the trading obligation will arise more from the RTS on the trading obligation than from this draft RTS. When such package order would not be subject to the trading obligation, for instance because the counterparty is a non-financial counterparty not subject to the clearing obligation under EMIR, the SI trading a package order with one component above LIS will have to check whether all the components meet the condition set out in Article 1(a). It may also incur some staff training costs. Potential costs will also depend on the definition of an SI in a package order as well as on SSTI. ESMA considers costs arising from this draft RTS to be non-significant as the criteria set out in Article 1(a) are straightforward.
Indirect costs	Liquidity providers may be less willing to provide liquidity in some package orders if they are of the view that they are less able to hedge the risks they take due to increased pre-trade transparency. This may translate into higher spreads for end-investors and fewer available hedging strategies. The cautious approach taken under the draft RTS should limit that risk and the related indirect costs. It is however unclear whether a package order where all components are subject to the trading obligation but are not in the same currency may indeed have a liquid market as suggested by the draft RTS and whether such assessment may be a source of indirect costs for market participants. ESMA considers that the cost of wrongly qualifying those packages as having a liquid market is overall very low, given that the components are limited to four and the LIS-waiver remains available where all components are above the respective LIS-thresholds. Potential indirect costs for SIs (and ultimately for end-investors trading OTC) will also depend on the circumstances under which an investment firm qualifies as an SI in a package order. Such clarification is outside ESMA's mandate under this draft RTS. ESMA

	intends to clarify the definition of SIs in package orders through Level 3.

B- A combination of generic and asset-class specific criteria

This second approach under which a package order with at least one component not having a liquid market or one component being LIS may nonetheless be considered having a liquid market as a whole is based on a methodology which includes:

a) general criteria that are valid across asset-classes. Those general criteria are necessary, but not sufficient conditions, for a package order to be liquid as a whole;
b) specific criteria established for each asset class: interest rates derivatives, equity derivatives, credit derivatives and commodity derivatives.

The generic criteria tend to focus on standardisation, whereas the specific criteria seek to identify the components that are most frequently traded. A package order is deemed liquid as a whole when it meets both the general and the specific criteria. The fundamental premise underpinning this approach is that for a package order to be considered liquid as a whole the individual components must be standardised and liquid in the first place.

a) General criteria

This first section sets out the general criteria to be met by the components of a package order for the package order to be considered standardised and liquid:

- all of the components of the package order are available for trading on the same trading venue;
- all the components are subject to the clearing obligation under EMIR or under Article 29 of MiFIR.

Availability for trading on a trading venue is indicative of the necessary level of standardisation as it requires the existence of industry standard terms that can be clearly documented and communicated by the trading venue to market participants. Likewise availability of a clearing offering for a particular derivative reflects both its standardisation and liquidity. CCPs tend to develop clearing offerings that are focussed on the most commonly traded and standardised instruments in the market, and require a baseline level of market liquidity under their risk management framework. However, ESMA took into account the concerns expressed by some respondents to the consultation that monitoring of availability for clearing might have been a source of substantial costs for market participants. In the revised draft RTS, the clearing criteria have been narrowed down to instruments subject to the clearing obligation under EMIR. The reference to the clearing obligation under MIFIR was a necessary supplement to avoid considering all package orders comprising an exchange-traded derivative not liquid as a whole, which ESMA could not justify. The revised draft RTS will reduce compliance costs.

However, and taking into account the comments received, the draft RTS recognises that there are circumstances where a package order could not be considered liquid as a whole from the outset.

In particular, the draft RTS addresses the concern that pre-trade transparency requirements at package order level could be substantially more demanding than at a component level, thereby potentially discouraging market participants from trading package orders. Similarly to the criterion on the trading obligation above, the draft RTS foresees that, where all the individual components of the package order would be eligible to a pre-trade transparency waiver either because they do not have a liquid market or because they are above LIS, the package order would not be considered to have a liquid market as a whole and would become eligible for a waiver.

The draft RTS also narrows down the scope of package orders considered potentially liquid to package orders with interest rate derivatives, equity derivatives, credit derivatives and commodity derivatives where all components belong to the same asset-class. The reason is that as package orders contain cross-asset class components, they typically become less standardised and frequently traded.

Some respondents to the CP noted that for interest rate derivatives, certain spread over package orders involving an interest rate swap and a sovereign bond are standardised and highly traded. ESMA concurs with the comment but decided not to consider cross-asset package orders liquid as a whole at this stage given the difficulty in identifying spread overs that have a liquid market in the short time period available for developing the RTS and in view of the lack of quantitative data.

Policy Objective	Establishing an appropriate level of pre-trade transparency in package orders for more efficient markets.
Technical Proposal	General criteria to be met by package orders to be potentially eligible to be considered as liquid as a whole: i. All the components of the package order are available for trading on the same trading venue ii. All components of the package order are subject to the clearing obligation under EMIR or under Article 29 of MiFIR Package orders with components that are all illiquid, are all above LIS or a combination thereof or with components that do not all belong to the same interest rate derivative, equity derivative, credit derivative or commodity derivative asset class do not have a liquid market as a whole. See Article 2 of the draft RTS for more details

Benefits	By requiring that all components of package orders are both available for trading on the same trading venue and subject to the trading obligation under EMIR or Article 29 of MiFIR, the draft RTS sets reasonable grounds for considering that the package order itself is standardised and may potentially be considered liquid as a whole. The assessment of package orders as potentially liquid as a whole under Article 2 is based on a dynamic approach that will accommodate market developments, as products start or stop being available for trading on a trading venue and/or start or stop being subject to the trading obligation under EMIR. The draft RTS provides clarity, legal certainty and predictability regarding package orders that will not be considered liquid as whole in any circumstances under Article 9(1)(e). By introducing such exemptions at the outset, the draft RTS contributes to ensure that market participants are not discouraged to trade package orders and that the benefits of trading package orders, as opposed to trading individual components separately, remain available to end-investors. Trading venues will not be faced with pre-trade transparency practical implementation issues since all components of the package order must belong to the same asset class and be available for trading on the same trading venue for the package order to be liquid as a whole.
Cost to regulator: - *One-off* - *On-going*	CAs may incur additional on-going staff supervisory costs to ensure compliance with pre-trade transparency obligations for package orders considered to have a liquid market as a whole. ESMA considers those costs to be minor and to be driven by Level 1.
Compliance cost: - *One-off* - *On-going*	Article 2 of the draft RTS is not expected to be a source of compliance costs for trading venues. Trading venues would know upfront whether all the components of the package order they offer trading in are available for trading on their trading venue. Likewise, trading venues will incur no search costs related to the clearing criterion.
Cost to other stakeholders	SIs in package orders will incur on-going costs to assess whether all the components of the package orders they trade are available for trading on the same trading venue.

	There is no database providing a list of instruments available for trading on a trading venue. Under MiFID II, trading venues are required to have transparent rules regarding the criteria for determining the financial instruments that can be traded under their systems but are not required to provide an exhaustive list of such instruments. ESMA is aware of the search costs entailed by the draft RTS and will consider how to facilitate access to the information. Those monitoring costs will anyhow be limited to the sub-set of financial instruments that meet the component asset class specific criteria, which are the most frequently traded ones. Although the initial assessment of availability for trading of package order components may be a source of limited staff costs, the expectation is that on-going compliance costs will gradually decrease. ESMA considers that the clearing criterion will be a source of non-significant search and monitoring costs as the information is readily available for non-exchange traded derivatives. In addition, the criterion is automatically met when the instrument is available for trading on a regulated market.
Indirect costs	None identified

b) Asset-class specific criteria

In addition to the generic criteria described above, additional tests are applied per asset class to assess whether a package order is frequently traded. A package order that meets both the generic criteria and the specific test for its asset class is considered liquid as a whole.

The draft RTS include specific criteria for the following asset classes: interest rates derivatives, credit derivatives, equity derivatives and commodity derivatives. At this stage, no specific criteria are suggested for package orders in FX derivatives. As all FX derivatives are considered not to have a liquid market under RTS 2, it is unlikely that any package orders in FX derivatives is considered as frequently traded and it has not been considered worthwhile developing a methodology to that end.

The asset specific criteria initially considered in the CP have been adjusted based on the feedback received and on additional information provided by some market participants. In each asset class, additional specific criteria have been introduced that restrict the scope of package orders with a liquid market as a whole, with the exception of the number of liquid tenors for interest rate swaps. This is consistent with the cautious approach taken by ESMA in the absence of quantitative market data at package order level, as already outlined.

In each of the relevant asset classes, the draft RTS sets out the maximum number of components a liquid package order may have based on the understanding that the larger the number of components, the more complex and less frequently traded the package order is. The draft RTS also refers to the currency in which the components must be traded (EUR, USD or GBP, except for package orders in credit derivatives that currently do not trade in GBP on trading venues) and specifies that all components must be traded in the same currency. Respondents to the CP stressed that no package order in JPY or other currency was frequently traded in the EU. Additional criteria typically relate to tenors, maturity and expiry dates of the components. More information is provided below per asset class.

Package orders consisting of interest rate derivative (IRD) components

The draft RTS proposes that all the IRD components of a package order belonging to same sub-asset class under RTS 2 for the package order to be liquid as a whole. ESMA is aware that, as mentioned by some respondents, invoice spreads packages consisting of an interest rate future and an OTC interest rate derivative are commonly traded in the EU, in particular those involving Gilt futures or Schatz, Bobl or Bund Futures. However, at this stage, ESMA has taken a cautious approach and chose not to consider invoice spreads package orders as having a liquid market as a whole.

To align with market standards and reduce compliance costs, the definition of tenors has been revised to refer to the effective date (future date of entry into force of the obligations arising from the contract) and no longer to the contract trade date.

Rolls in bond futures were not mentioned in the initial draft RTS but were included in Table 2 of the CP setting out the package categories that ESMA suggested could be considered standardised and frequently traded. Respondents to the CP agreed that the strategies set out in the table are standardised and frequently traded. Consequently, a specific criterion for rolls in bond futures is now included in the draft RTS with a limitation to package orders that roll a position in the contract that is nearest to expiry into the one with the same underlying.

Package orders consisting of equity derivatives

The specific asset criteria have been substantially revised compared to the initial draft as trading venues claimed most of their package orders in equity derivatives would have been unduly considered liquid as a whole. Regulated markets commented that only equity derivatives in index futures were liquid, moreover only during the roll periods. Other equity derivatives packages were far more diverse and could potentially include a substantial number of combinations that would be unfrequently traded, even though each equity derivative component would be considered liquid under RTS 2. Furthermore, market participants were concerned that if most package orders in equity derivatives were to be considered liquid as whole, they would not be eligible to a pre-trade transparency waiver, even when one component would be LIS.

In support of these arguments, NASDAQ Nordic provided the following equity derivative market data for the period 1 August to 31 October 2016 (average daily numbers):

Product	Total volume	Volume, Strategies	Nbr of total deals	Nbr of Deals, Strategies	Nbr of Strategy Orderbook	Nbr of Deals per Strategy Orderbook
Equity options	5 231 513	185 077	76 528	2 188	1 033	2,1
Index futures	9 289 394	1 993 571	1 221 469	98 210	12	8 184
Index options	1 850 014	34 913	56 064	829	1 194	0,7

Whilst another trading venue explained that the majority of trading in equity derivatives packages takes place on its lit orderbook, they also confirmed that a significant portion is traded in large sizes and is not pre-trade transparent. Should equity derivatives packages become pre-trade transparent, including those traded in large sizes, trading venues are concerned that trading will move OTC. Market participants might also switch to trading LIS components separately and no longer as a strategy, with the ensuing costs and risks.

The valid concerns expressed would already be partly addressed by the revised generic exemption for package orders consisting of components all above LIS under Article 2(2) of the draft RTS. ESMA nonetheless deemed appropriate to further reduce the scope of liquid package orders in equity derivatives by limiting the number of components from four to two and by introducing five additional asset class specific criteria (e.g. all the components have the same underlying index, the expiry date of all components does not exceed 6 months and all components belong to the same asset sub-class). The revised RTS will reduce indirect compliance costs for trading venues and market participants.

Package orders consisting of credit derivatives

Compared to the initial draft RTS, and taking into account the broad support for the credit derivatives specific criteria, the revised draft RTS has been left largely unchanged. Two changes were made to exclude GBP from the available currencies and to limit the components to CDS indices with a tenor of 5 years, the most frequently traded ones as noted by some respondents to the CP.

Package orders consisting of commodity derivatives

The scope of package orders with a liquid market has been narrowed down to packages consisting of commodity derivative futures. Furthermore, the revised RTS specifies that the package order would only be liquid as a whole where it rolls the position from a future that is nearest to maturity into a position in a future expiring at the next maturity date.

Policy Objective	Establishing an appropriate level of pre-trade transparency in package orders for more efficient markets.
Technical Proposal	Asset-class specific criteria for identifying package orders with a liquid market as a whole for: - Interest rate derivatives (Article 3) - Equity derivatives (Article 4) - Credit derivatives (Article 5) - Commodity derivatives (Article 6) See relevant articles in the draft RTS for more details.
Benefits	The draft RTS provides clarity, legal certainty and predictability as to package orders that have a liquid market as a whole. It sets out uniform applicable conditions under which CAs will not be able to waive pre-trade transparency obligations in relation to package orders, thereby contributing to a level playing field across EU for trading venues and market participants. In the absence of quantitative data, the draft RTS follows a cautious approach in identifying package orders with a liquid market as a whole. The draft RTS strikes a reasonable balance between, on the one hand, the need to ensure a sufficient level of pre-trade transparency in package orders so that market participants are aware of available prices and can make informed trading decisions and, on the other hand, the need to take into account the specificities of packages that enable investment firms and their clients to better manage their risks. The draft RTS contributes to ensuring that a pre-trade transparency waiver remains unavailable only regarding those package orders

	that are liquid as a whole, for which pre-trade transparency is not expected to negatively affect trading. The specific criteria retained take into account the characteristics of the most frequently traded package orders for each asset class considered, as confirmed by market participants in their responses to the CP. The asset class specific criteria are simple and easy to identify.
Cost to regulator: - *One-off* - *On-going*	CAs may incur additional on-going staff supervisory costs to ensure compliance by relevant trading venues with pre-trade transparency obligations for package orders with a liquid market as a whole. ESMA considers those costs to be minor and to be driven by Level 1.
Compliance cost: - *One-off* - *On-going*	Trading venues may incur one-off IT and staff costs to assess whether the package orders they trade meet the specific asset class criteria. When trading venues do not currently provide the requested level of pre-trade information in package orders considered liquid, they will incur one-off costs, including IT costs, to adjust trading and to implement monitoring system parameters in order to make public the requested pre-trade information ESMA considers those costs to be minor and to be driven by Level 1.
Cost to other stakeholders	SIs in package orders will incur one-off costs, and on-going costs as new package orders emerge, to assess whether the package orders they trade are liquid as a whole based on the asset specific criteria. They will incur some staff training costs as well. The asset specific criteria suggested in the draft RTS are easy to identify. We consider those costs to be minor and to be driven by Level 1.
Indirect costs	Market participants/investors trading package orders considered liquid as a whole under the draft RTS may potentially incur additional execution costs where liquidity providers would make a different liquidity assessment and where pre-trade transparency obligations on liquidity providers would lead to higher spreads/reduced liquidity and less perfect hedging. Given the cautious approach taken in the draft RTS, ESMA does not expect those indirect costs to materialise as a consequence of the draft RTS.