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| Response Form to the Consultation Paper on the review of certain aspects of the Short Selling Regulation |
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**Responding to this paper**

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions. Comments are most helpful if they:

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

ESMA will consider all comments received by **19 November 2021.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

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

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. use this form and send your responses in Word format (**pdf documents will not be considered except for annexes**);
3. Please do not remove tags of the type <ESMA\_QUESTION \_SSRR\_1>. **Your response to each question has to be framed by the two tags corresponding to the question.**
4. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
5. When you have drafted your response, name your response form according to the following convention: ESMA\_SSRR\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_SSRR\_ABCD\_RESPONSEFORM.
6. Upload the form containing your responses, **in Word format**, to ESMA’s website (www.esma.europa.eu under the heading “Your input – Open Consultations” -> Consultation Paper on Review of MAR Guidelines on delay in the disclosure of inside information and interactions with prudential supervision”).

**Publication of responses**

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

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

# All interested stakeholders are invited to respond to this consultation paper. This consultation paper is primarily of interest to issuers of financial instruments admitted to trading or traded on a trading venue, investment firms, market makers, primary dealers, persons who engage in short sales or transactions resulting in net short positions. Responses are also sought from any other market participant including trade associations and industry bodies, institutional and retail investors, consultants and academics.

**General information about respondent**

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| --- | --- |
| Name of the company / organisation | Deutsches Aktieninstitut e.V. |
| Activity | Choose an item. |
| Are you representing an association? |  |
| Country/Region | Germany |

Please make your introductory comments below, if any.

<ESMA\_QUESTION\_SSRR\_0>

Deutsches Aktieninstitut has supported the core elements of the EU Short Selling Regulation, in particular the two-level transparency regime for covered short sales (Articles 5 and 6), the restrictions on uncovered short sales (Article 12) and the exemptions for market making and primary market operations (Article 17). From our perspective the current SSR basically finds a good balance between limiting potential problems arising from excessive or abuse short selling and the benficial role of short sales for the efficiency of the price discovery process and the liquidity of markets. Ensuring market efficiency as well as avoiding abusive practices are in the interest of listed companies whose shares might be shortened.

Against this background and the spirit of the SSR we comment on a selective number ESMA’s proposals which Aktieninstitut finds worth considering. However, in general we believe that the SSR has worked properly so that any change to the level 1 text needs to be considered thouroughfully.

<ESMA\_QUESTION\_SSRR\_0>

1. Does ESMA’s analysis confirm the observation that you made in your perimeter of competency? Please provide data to support your views?

<ESMA\_QUESTION\_SSRR\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SSRR\_1>

1. What are your views on the proposed clarifications?

<ESMA\_QUESTION\_SSRR\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SSRR\_2>

1. Do you agree with the proposed clarification?

<ESMA\_QUESTION\_SSRR\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SSRR\_3>

1. What are your views regarding the exclusion or, alternatively, a percentage–based weighting approach, for indices, baskets and ETFs in the context of long – term bans?

<ESMA\_QUESTION\_SSRR\_4>

<ESMA\_QUESTION\_SSRR\_4>

1. Do you agree with the proposed alignment of the conditions to adopt measures under Article 20 and Article 28 of SSR?

<ESMA\_QUESTION\_SSRR\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SSRR\_5>

1. Do you agree with the proposed amendments to Article 24 of Delegated Regulation 918/2012?

<ESMA\_QUESTION\_SSRR\_6>

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<ESMA\_QUESTION\_SSRR\_6>

1. Do you agree with the proposed amendments to the SSR and, more specifically, the mediation procedure under Article 23 of SSR?

<ESMA\_QUESTION\_SSRR\_7>

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<ESMA\_QUESTION\_SSRR\_7>

1. What are your views on ESMA’s proposal to include subscription rights in the calculation of NSPs in shares?

<ESMA\_QUESTION\_SSRR\_8>

In general, issuers are interested in both understanding the spectrum of short selling strategies and that these strategies are reflected properly in the notification regime. Misleading signals to the market and the issuers should be avoided. This holds also true for strategies that are related to subscription rights or convertible bonds.

<ESMA\_QUESTION\_SSRR\_8>

1. Do you agree with this proposal to reinforce the third-party’s commitment? If not, please elaborate. If yes, would you either (A) keep the three types of locate arrangements, but increase the level of commitment of the third party to a firm commitment for all types of arrangements, or (B) simplify the regime to keep only one type of firm locate arrangement?

<ESMA\_QUESTION\_SSRR\_9>

ESMA‘s analysis points out that the locate requirement of Article 12 may – in certain situations – result in a too low level of commitment with respect to the delivery of a shortened stock which ultimately may lead to excessive short selling and settlement disruptions. As Article 12 was once introduced to avoid such situations (which is in the interest of investors and listed companies) we basically support ESMA’s proposals to ensure firmer commitments.

ESMA’s proposal, should however still keep a good balance between avoiding potential negative consequences of uncovered short selling without restricting existing locating practices too much and without interfering with existing market practices more than necessary.

<ESMA\_QUESTION\_SSRR\_9>

1. Do you agree with this introducing a five-year-long record-keeping obligation for locate arrangements? If not, please justify your answer.

<ESMA\_QUESTION\_SSRR\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SSRR\_10>

1. Do you agree with reinforcing and harmonising sanctions for “naked short selling” along the proposed lines? If not, please justify your answer.

<ESMA\_QUESTION\_SSRR\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SSRR\_11>

1. Do you consider that shares with only 40% of their turnover traded in a EU trading venue should remain subject to the full set of SSR obligations?

<ESMA\_QUESTION\_SSRR\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SSRR\_12>

1. Do you consider that NCAs should take any other qualitative but specific parameter into account in the identification of the shares subject to the full set of SSR obligations even if they are more heavily traded in a third-country venue? If yes, please elaborate

<ESMA\_QUESTION\_SSRR\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SSRR\_13>

1. Would you modify the threshold for the public disclosure of significant NSPs in shares? If yes, at which level would you set it out? Please justify your answer, if possible, with quantitative data.

<ESMA\_QUESTION\_SSRR\_14>

We agree with ESMA’s preliminary view is that the current publication threshold for individual short positions still provides a good compromise between transparency to the market on the one hand and market efficiency on the other.Thus, we see no need to change the publication threshold. However, see also our response to Q 15.

<ESMA\_QUESTION\_SSRR\_14>

1. Would you agree with the publication of anonymised aggregated NSPs by issuer on a regular basis? If yes, which would be the adequate periodicity for that publication?

<ESMA\_QUESTION\_SSRR\_15>

From the perspective of issuers, the transparency of short sales of shares is a logical complement to the existing notification requirements of voting rights. It allows market participants and issuers to assess whether there are investors interested in falling stock prices and, at the very end, their obligation to cover those positions.

Accordingly, rumours can be judged better against this background and possible manipulative behaviour can be identified easier. Furthermore, transparency of short sales can prevent extreme shortenings of certain shares. Each potential short seller will act more cautious if he is aware that there is a high level of short sales in a respective share. This helps to prevent extreme increases in stock prices in a short squeeze situation.

Against this background it could indeed be considered to improve information on the aggregate level of short sales in the market. Under the current regime the aggregate level of short sales is exclusively known to the competent authorities because they receive notifications according to Article 5 and 6. In contrast, market particpants currently do not have a full picture of the aggregate level of short sales because they are only informed about high individual positions on the basis of the notifications of Article 6.

However, we also recognize the potential drawback of aggregate information on short sales, which could provoke speculations against short sellers also in situations where short selling is not excessive. In a similar vain, it appears to be possible that aggregate information could create a momentum for additional short sales if information will be too frequent. Thus, though generally in favour of an aggregate information to the market, we are of the opinion that the publication threshold and the frequendy of information should be defined in matter that finds a right balance. Also against this reasoning it appears to be preferable to align supervisory practices in that respect instead of changing the level 1 text before experiences will have been made.

<ESMA\_QUESTION\_SSRR\_15>

1. Have you detected problems in the identification of the issued share capital to fulfil the SSR notification/publication obligations? If yes, please describe and indicate how would you solve those issues.

<ESMA\_QUESTION\_SSRR\_16>

No.

<ESMA\_QUESTION\_SSRR\_16>

1. Do you agree with the establishment of a centralised notification and publication system for natural and legal persons to communicate their NSPs? In your view, which would be the benefits or shortcomings this system would bring? Please explain.

<ESMA\_QUESTION\_SSRR\_17>

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<ESMA\_QUESTION\_SSRR\_17>