ESMA Trading Venue Perimeter Opinion (Submitted 28th April 2022)

Link, 28 January 2022: [ESMA consults on trading venue perimeter (europa.eu)](https://www.esma.europa.eu/press-news/esma-news/esma-consults-trading-venue-perimeter#:~:text=The%20European%20Securities%20and%20Markets%20Authority%20%28ESMA%29%2C%20the,paper%20%28CP%29%20on%20what%20constitutes%20a%20multilateral%20system.)

# Multilateral System Definition

KEY POINTS FROM THE TEXT:

 …any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system

• It is a system or facility - *a set of rules that governs how third-party trading interests interact – can include “non-automated systems or repeatable arrangements that achieve a similar outcome as a computerised system” but explicitly excludes “general-purpose communication systems”*;

• there are multiple third party buying and selling interests – *excludes the ‘system operator’, noting ‘operator’ is not itself defined*;

• those trading interests need to be able to interact - *match, arrange and/or negotiate on essential terms (being price, quantity) with a view to dealing;* and,

• trading interests need to be in financial instruments

**Q1: Do you agree with the interpretation of the definition of multilateral systems?**

We welcome the clear definition of this very important term. As a standards organisation, we note two aspects of the definition or related points in the consultation which make reference to undefined terms. We have provided our views as to what we believe is the intention of these terms and suggest that ESMA clarifies as appropriate.

First, the term ‘general-purpose communication system’ (as per paragraph 15 of the consultation). Common usage of this term would capture systems that facilitate the communication of electronic data with no transformation or usage of the business content of the data. This would permit a ‘general communication system’ to undertake transformations of data format and non-business content (for example, a system may change message timestamps and address information). There are examples of various types of these systems in use by the industry:

* Simple networks for transmitting information between counterparties, examples including private leased lines, dedicated commercial trading network services (e.g., Radianz, TNS) and the internet.
* ‘Hub and spoke’ systems which connect counterparties via a central hub (e.g., Autex, NYFIX). These systems operate on a ‘store and forward’ basis whereby messages are sent to the hub, decoded there, and used to generate new messages to send to the target counterparty (containing the same business data but potentially with formatting changes or different message address information).

Second, with reference to the term ‘third party operator’, we note that the term ‘operate’ is not clearly defined and, without careful definition, this has the potential to broaden the scope of multilateral systems. For example, if ‘operate’ were to include the outsourcing of server hosting or maintenance (which is very common), then a very large number of systems could inadvertently be brought in scope.

If the intention is only to capture firms that are ‘operating’ the system in a manner that directly, and in real time, contributes to the dealing process, then we suggest that ‘operate’ be defined accordingly, i.e., to focus on the real-time functional outcome of the system (what it does) as opposed to the mechanics of how it achieves that outcome (e.g., servers running software).

**Q2: Are there any other relevant characteristics to a multilateral system that should be taken into consideration when assessing the trading venue authorisation perimeter?**

No response.

# Technology Providers – Communication Tools

KEY POINTS FROM THE TEXT:

These platforms provide a wide variety of services to market participants, like market data services, trading inventory, amongst other things.

Recital 8 of MiFIR is clear in identifying that facilities where there is no genuine trade execution or arranging should not be required to seek authorisation as a trading venue.

There needs to be genuine interaction (for example by including a button, or by providing the ability to communicate) where the intention to enter into a transaction can be confirmed between the users of such platform in order for it to qualify it as a multilateral system.

**Q3: In your experience, is there any communication tool service that goes beyond providing information and allows trading to take place? If so, please describe the systems’ characteristics.**

No response

# Technology Providers – OMS and EMS Providers

KEY POINTS FROM THE TEXT:

OMS which are aligned with the aim and functioning described above [inward looking, workflow automation] are not intended and should not be considered multilateral systems as they do not bring together, nor allow for the interaction of multiple third party buying and selling interest.

EMS are more tilted towards managing orders across multiple execution venues, offering traders real time information on market data and analytics. In some instances, these systems can also provide algorithmic support to traders, e.g. slicing orders which are then directed to different venues depending on available prices and liquidity indicators. EMS often generate execution reports and costs' analysis, as a follow up to trade execution.

EMS aim at facilitating order execution by offering an overview of liquidity and prices on various venues, subsequently sending the orders to the preferred trading venue or trading venues for execution. As such, those EMS which support the execution of orders on trading venues and do not allow for the interaction of multiple third party buying and selling interests should not be considered as multilateral systems and hence would not need to seek an authorisation as a trading venue.

The outcome would be different … where the EMS sends orders for execution directly to specific counterparties instead of trading venues, and hence might be considered multilateral in nature and hence in scope of trading venue authorisation.

In the latter case, it is crucial to ensure that the regulatory borderline between genuine execution systems and systems that constitute a trading venue is appropriately supervised. Hence, systems like the ones described above may, under certain circumstances (e.g. depending on their specific features and their level of complexity), be operated in a similar way to trading systems operated by trading venues and require, in consequence, an authorisation as a trading venue.

Clear guidance should be given to these types of EMS/OMS to ensure regulatory clarity and safeguard a level playing field between similar system.

* As an example, an EMS which would allow for firms to send RFQs to multiple players, allowing for an interaction within the system could be considered a multilateral system, depending on the specifics, and hence subject to the authorisation as a trading venue.
* In addition, a third-party operated EMS that influences the operation of the system and the routing of the orders for the investment firms (or with little influence from it) should be subject to a closer scrutiny from regulators to understand whether the borderline from authorisation may be crossed.

**Q4: Are you aware of any EMS or OMS that, considering their functioning, should be subject to trading venue authorisation? If yes, please provide a description.**

We recognise, though not entirely agree with, the definitions of OMS and EMS provided in the consultation. One key point is that there are examples of both types of system that provide the ability to transmit or receive relevant information (e.g., orders, notices of execution) between the user of the system and external destinations, for example:

* A trading venue (where the OMS/EMS user is a participant of that venue),
* A trading venue via a DEA provider,
* A systematic internaliser,
* Another counterparty (e.g. a broker) who may process the order in various ways (e.g. work the order in an algorithm, send it to another broker for execution and so on).

From the perspective of the OMS/EMS, these destinations all behave in the same way – they receive an order and (should the order be executed) return one or more executions. Those executions are created on, respectively (with reference to the above list):

* The trading venue,
* The trading venue,
* The systematic internaliser,
* A trading venue or systematic internaliser as chosen by the counterparty receiving the order, or an execution concluded on an OTC basis.

The key point here is that the execution is created on an execution venue or on an OTC basis by an investment firm and therefore the OMS/EMS is not in any way involved in the creation of the execution. Whilst the more advanced systems may permit some automation (e.g., selection of destination trading venue, systematic internaliser or other investment firm based on current market data and/or predefined rules), the same principle applies – no executions are created within that system.

One other point we would like to make regards procedure. It is not clear who has the responsibility for identifying and assessing OMS/EMS providers for eligibility as trading venues (i.e. regulators, the users of the systems or the OMS/EMS providers themselves?), what the process for identification, assessment would actually be and, in the event that an investment firm uses an OMS/EMS that ESMA considers to qualify for authorisation as a trading venue but has not sought or obtained that authorisation, who is legally in breach of the regulation (noting that OMS/EMS providers are often not investment firms).

# RFQ Systems

**Q5: Do you agree that Figure 4 as described illustrates the operation of a bilateral system operated by an investment firm that should not require authorisation as a trading venue?**

No response.

**Q6: Do you agree that a “single-dealer” system operatord by a third party, as described in Figure 5, should be considered as a multilateral system? If not, please explain.**

We would like to repeat one of the points we made in our response to Q1. With reference to the term ‘third party operator’, we note that the term ‘operate’ is not clearly defined and, without careful definition, this has the potential to broaden the scope of multilateral systems. For example, if ‘operate’ were to include the outsourcing of server hosting or maintenance (which is very common), then a very large number of systems could inadvertently be brought in scope.

If the intention is only to capture firms that are ‘operating’ the system in a manner that directly, and in real time, contributes to the dealing process, then we suggest that ‘operate’ be defined accordingly, i.e., to focus on the real-time functional outcome of the system (what it does) as opposed to the mechanics of how it achieves that outcome (e.g., servers running software).

# Pre-arranged Transactions

**Q7: Do you agree that systems pre-arranging transactions that are formalised on a trading venue, even when arranged in a multilateral way, should not be required to be authorised as trading venues? Do you agree with the justification for such approach?**

No response.

**Q8: Are there any other conditions that should apply to these pre-arranged systems?**

No response.

**Q9: Are there in your views any circumstances where it would not be possible for an executing trading venue to sign contractual arrangements with the pre-arranging platforms? If yes, please elaborate.**

No response.