

September 2021

# EBF High level Comments on ESMA Consultation on market transparency under MIFID 2 (RTS 1 & 2)

## EBF position:

The EBF would like to thank ESMA for the opportunity to comment on the proposed changes on RTS 1 & 2 under MIFIR.

- **Timing**

Many of the proposals in the consultation paper will involve substantive IT changes which will be very costly and operationally burdensome for investment firms to implement. **It is therefore very important to ensure that all amendments are made subject to a thorough cost/benefit analysis and to avoid temporary solutions that may be overhauled by a forthcoming MiFID Review.** In particular, changes to waivers and deferrals should wait until after the Level 1 review.

While we generally share ESMA's view that delayed implementation of Level 2 makes sense, we would like to emphasise that this does not only apply to certain provisions, but to all amendments. Unnecessarily complex implementation rules place a heavy burden on any change process. Moreover, we would like to add that for a smooth and efficient implementation it is necessary to know all the details in advance, including requirements that go beyond Level 2. Regarding the effective date, we would like to emphasise that January 1 of each year always poses massive problems. The reason for this lies in particular in the end-of-year work and the usual IT freeze period when all resources are already tied up in other projects.

- **Mandate**

We would like to highlight the fact that we have some concerns regarding ESMA's mandate to propose certain changes. ESMA correctly states in para 242 of its CP that they do not have a mandate to specify the arrangements for the publication of quotes by SIs with

**European Banking Federation aisbl**

**Brussels** / Avenue des Arts 56, 1000 Brussels, Belgium / +32 2 508 3711 / info@ebf.eu  
**Frankfurt** / Weißfrauenstraße 12-16, 60311 Frankfurt, Germany  
**EU Transparency Register** / ID number: 4722660838-23

  
[www.ebf.eu](http://www.ebf.eu)

respect to non-equity financial instruments. In our view, ESMA should wait for the Level 1 review. We therefore strongly reject the proposal for “Description and details to be published” in fields #19 and #20, according to which the details specified would also apply to SIs.

- **Alignment between MAR and transparency requirements**

The EBF generally supports the ambition to make the definition of non-price forming trades less complex and to increase the legal certainty as regards how the concept should be interpreted. In addition to the proposals in the consultation, we consider that it is very important to clarify that it would be allowed for an investment firm not to publish a transaction under the transparency rules if such publication would be in contravention with MAR e.g. the information would be misleading because there are no real buyer or seller interests in the transaction and/or the client is both buyer and seller. In other words, the EU-legislators/ESMA should clarify that MAR takes precedence over post-trade transparency requirements in MiFID II (e.g. in a recital).

- **Streamlining**

We understand that it is ESMA’s intention to streamline Articles 2, 6 and 13 of RTS 1 by substituting various existing references with a single reference to Article 2(5) of RTS 22. While we generally support the intention to reduce overlaps and to streamline above mentioned articles, we are not entirely convinced that the reference to Article 2(5) of RTS 22 and in particular, to “clearing or settlement purpose” transactions, is sufficiently unambiguous. Discussions around Article 2(5) of RTS 22 in the past have shown that the definitions made there are not always clear. We therefore already see a need to clarify certain interpretations by means of Q+A at Level 3. For example, it should explicitly be stated that give-ups fall under the exception.

## About EBF

The European Banking Federation is the voice of the European banking sector, uniting 32 national banking associations in Europe that together represent some 4,500 banks - large and small, wholesale and retail, local and international - employing about 2.1 million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that securely handle more than 300 million payment transactions per day. Launched in 1960, the EBF is committed to creating a single market for financial services in the European Union and to supporting policies that foster economic growth.

[www.ebf.eu](http://www.ebf.eu) @EBFeu

For more information contact:

**Pauline Guérin**  
Senior Advisor  
[p.guerin@ebf.eu](mailto:p.guerin@ebf.eu)  
+32 2 508 37 32