

EBF POSITION ON MIFIR REVIEW

The European Banking Federation (EBF) is a strong supporter of deepening the Capital Market Union to enable financial markets to play a stronger role in light of the EU-27 financing challenges.

The review proposal presented by the European Commission (COM) on 25 November 2021, as part of a broader CMU package, is of critical importance to increase the competitiveness of financial market actors operating in the EU-27 and the attractiveness of the Union's regulatory framework.

With these objectives in mind, the EBF finds it regrettable that several of the MiFIR reform proposals both for the equity and the non-equity transparency regimes are based on expected benefits that were neither subject to an in-depth analysis nor to a comprehensive impact assessment. This makes the impact of the proposals very difficult to assess and could lead to unintended consequences for investment firms, clients and the EU capital market as a whole.

1. Consolidated Tape

The EBF supports the EC's proposal to establish a consolidated tape (CT) while considering that some adjustments to the proposal should be made.

As a general comment, we would like to highlight that the creation of a CT will not solve the issue of increasing market data costs. In fact, in order to tackle the market data problems, the EBF considers it a necessary step to include ESMA's recommendations in binding EU-legislation¹.

1.1 Need for a calibrated CT

EBF members generally support a well-calibrated consolidated tape. One EU-wide solution for all asset classes is preferred compared to the Commission's proposal of commercial CT solutions.

An EU CT can have numerous advantages as a "golden source" for market participants. However, to achieve this, it has to be ensured that the CT data is of the highest quality. Guaranteed high-quality data input is therefore a key to the success of the CT. The processing and dissemination of the data must also meet the highest quality standards. The quality assurance systems of the CT must be totally reliable to guarantee data excellence and dependable retrievability at all times.

¹ [mifid ii mifir review report no 1 on prices for market data and the equity ct.pdf \(europa.eu\)](#), page 26-27, section 58-65.

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For liquidity providers, such as SIs, which execute client orders against own account, the data to be submitted to the CT includes information on their individual positions and risk taking. In order to avoid unintended consequences, it is therefore important that the establishment of a CT is combined with well-calibrated deferrals in the post-trade transparency obligations. In addition, it is important that the CT data must not include the MIC code of SIs. Otherwise, SIs would face great difficulty in hedging their risks resulting from the publication of detailed data on individual transactions.

1.2 Mandatory contribution and compensation

We welcome the mandatory contribution submitted free of charge by trading venues (TV) and approved publication arrangements (APA) to the CT provider.

Regarding revenue sharing, we believe all contributors should be compensated in manner which is fair and bearable for the investors/markets.

1.3 No mandatory consumption

EBF does not support mandatory consumption. Users should be able to adjust their level of consumption of the CT and choose the level of aggregation according to their operational needs for market data.

It is important to underline that even after the establishment of a CT, investment firms will still need to purchase access to proprietary data for trading and best execution purposes directly from each trading venue as trading venues' proprietary data is indispensable for investment firms and cannot be replaced by CT data. It is therefore extremely important to avoid that a CT is structured in such a way that it in fact adds to the existing problem with increasing market data costs in EU. It is also important that it meet the firms' real needs.

Separately, market participants will continue to subscribe to the direct and low-latency data feeds necessary for trade execution and market-making. Regarding these feeds, we encourage regulatory authorities to ensure that contracts and fee models from TVs and data vendors are monitored².

1.4 Role of users in the governance

The success of the CT stands and falls also with the quality of the governance model. We believe a balanced representation of all users by involving markets participant via consultation and by setting up an advisory committee representing the stakeholders' base set up in a transparent manner is mandatory.

² This is particularly important in light of the fact that the Final Guidelines on the MiFID II/ MiFIR obligations on market data published by ESMA in 2021 (18/08/2021 | ESMA70-156-4263) are partly interpreted in a questionable manner by TVs and data vendors.

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The proposal to set up an expert stakeholder group (Article 22b(1)) does not seem sufficient as it neither ensures that all stakeholders would be involved, nor does it make clear how the advice of this group would be incorporated into the delegated acts to be adopted by the Commission. In addition, the mandate of this group is too narrow. The mandate should encompass all relevant aspects, including costs, data quality, data standards, and technical aspects of the tape.

2. Equity transparency

2.1 Competitiveness of EU equity markets

We would like to highlight the need for ensuring competitiveness and attractiveness of EU equity markets. In the context of Brexit, the UK has started reviewing its legislative and regulatory framework and it is key that EU equity markets remain aligned with UK markets in particular regarding the share trading obligation (STO), the double volume cap (DVC) and the reference price waiver (RPW).

It should be recalled that professional clients such as many asset managers and pension funds are themselves subject to best execution requirements which means that if the UK firms after the above-mentioned changes can provide better prices and speed of execution MiFIR could incentivise professional clients to do their business in the UK instead of in the EU. This would be all the more damaging for EU investment firms as, because of the share trading obligation, they would not have access to pools of liquidity on EU shares that might develop outside of the EU jurisdiction.

2.2 SI Midpoint Executions above LIS

The difference between the bid and offer price of a stock represents the economic incentive for the parties making the prices to do so. Where that incentive is not required because one party to an execution is an eager buyer while the other is an eager seller the logical price to execute that transaction is at mid-price. To introduce rules preventing use of that price for trades of smaller size is unjustified and decreases the quality of execution for one party to the execution, especially for retail investors as they tend to trade in smaller sizes. The current proposal to create a three-tiered set of mid-point trading rules exacerbates the existing issues of complexity afflicting equity markets in Europe and damages investors' perceptions of the quality of the market's structure.

3. Non-equity transparency

3.1 Well-calibrated deferrals taking the needs of clients and liquidity providers into account

The EBF agrees that there is a case to simplify the transparency framework for non-equity in MiFIR. Moreover, we generally support the policy objective of

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increasing transparency for retail clients which typically trade in small sizes. This is important in order to encourage their participation in EU capital markets.

However, it is important to avoid imposing an excessively high level of transparency for those investment firms who provide liquidity to the market by trading in large sizes on own account. Since they are risk takers, we believe such liquidity providers need sufficient time to unwind positions and hedge their risks. Therefore, the EBF supports a calibrated approach that takes the needs of clients and liquidity providers into account, including when developing the level 2 rules on thresholds, scope and sizes.

3.2 Deferrals for both prices and volumes

In this context it is important to note that a price deferral until EOD is insufficient in order to protect liquidity providers. Both price and volume need to be deferred for longer periods than proposed by the Commission.

3.3 Keep the size specific to the instrument to protect liquidity providers from undue risk

In order to ensure efficient bilateral trading in the EU, the size specific to the instrument (SSTI) should be kept since it protects SIs against undue risk. ESMA's proposal to remove the SSTI was linked to a proposal to lower the LIS, which is missing in the Commission's proposal.

While we support the aim of simplifying of the transparency deferral regime, we recommend carrying out an impact analysis on liquidity before suppressing the SSTI the existence of which is based on the principle of protecting liquidity providers from undue risk (as per Article 11 (1) (c) of MiFIR).

The EBF regrets that ESMA's proposals in the final report regarding Article 18 were not included in the Commission's MiFIR review proposal. EBF supports ESMA's proposals to abolish the obligation to disclose quotes for illiquid bonds (Article 18 (2)) as well as the obligation to transactions with other clients in Article 18 (6) and 18 (7). We also support ESMA's proposal to delete Article 18(5). Finally, we suggest allowing SIs to trade on an anonymous basis.

Altogether, it should be underlined that unilateral and mis-calibrated changes to the non-equity transparency regime may affect the ability and willingness of dealers to offer liquidity in the Union. Similar to equities (see above), they may ultimately result in a shift of liquidity, especially in EU bonds, from the Union to the UK.

4. SI obligations for equities - Restrictions on quoting threshold / standard market size

We find the increase in para 2 of Article 14 in the pre-trade size quoting obligation for SIs out of proportion. The new framework would make it mandatory to move from the current min. 10% of the SMS, to a new regime i) increasing by 20-times the same obligation ("twice the SMS" versus "10% the SMS") and ii) making it

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double when compared to the current quoting obligation provided for on trading venues (which is referred to once the SMS). Hence, in our opinion we do not support these revisions and would recommend that EU policymakers retain the current regime.

Also, we highlight that the proposed amendments to para 3 seem to contradict the minimum qualifying size requirement set equal to twice the SMS, as the combination of the new paragraphs 2 and 3 will have the effect that SIs' quotes would be made public only when the sizes are exactly equal to twice the SMS. Further to the proposal in the paragraph above, we suggest amending this part of the Proposal by setting the "obligation to make public firm quotes" for sizes between 10% and twice the SMS (which enhances transparency compared to the current regime).

5. Best execution

We are in favor of deleting Article 27(3) and 27(6) of MiFID II, related to "RTS 27" and "RTS 28" best execution reports. They (i) do not bring any value to investors, (ii) are not used by investors and (iii) represent an important burden to produce.

6. DTO targeted exemption provision

We welcome the COM proposal to suspend the derivatives trading obligation (DTO), upon Member State's request for EU market makers, under certain circumstances when trading with non-EU clients. More precisely, to avoid potential market fragmentation, we consider that any exemption requested by a NCA for its investment firms and granted by the COM should also benefit automatically other concerned entities in the Union as long as they respect the set criteria.

We also support the Commission's proposals to align the clearing (EMIR) and the derivative trading obligations following the entry into force of EMIR Refit.

Taking into account the expected length of the EU legislative process before the entry into force of the MiFIR review and given the urgency to enable UK branches of EU firms not to apply anymore the EU DTO when trading with non-EU clients, we call for a fast implementation of this provision.

7. Transaction Reporting

We understand from Recital 18 that the COM aims to align the timing of changes in reporting frameworks, i.e. the date as of which new requirements effectively apply since it should help to smooth implementation. While we support this aim, we have to point out that the proposed amendment of Article 26 (9)(j) MiFIR, however, carries the risk of creating misunderstandings since it does not relate to changes in reporting frameworks but merely to "the date by which transactions are to be reported". The COM's idea needs to be adequately reflected in the wording of the MiFIR.

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8. PFOF

MiFID II already provides for a broad toolkit of regulatory measures in this scope (i.e. well calibrated provisions on conflict of interest, inducements and best execution). Such provisions have ensured so far adequate protection for clients. We believe such measures deserve a much firmer enforcement combined with a greater supervisory convergence across the Union (followed by an adequate period of observation), before any new regulatory measures are introduced. Indeed, a general ban on certain practices should always be the *ultima ratio*, as it would also represent a derogation to the above MiFID II approach.

9. Process

Finally, a clear and transparent process plan is central, including reasonable implementation time. Experience from both MiFID I and MiFID II/MiFIR shows that there should be a minimum of at least 18 months from the time both Level 1 and Level 2 are published in the "Official Journal of the European Union" until they apply³.

³ Any change to STO/DTO should apply as early as possible (i.e 20 days after publication to UE official Journal) in order to avoid any unlevel playing field.

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About EBF

The European Banking Federation is the voice of the European banking sector, bringing together national banking associations from across Europe. The federation is committed to a thriving European economy that is underpinned by a stable, secure, and inclusive financial ecosystem, and to a flourishing society where financing is available to fund the dreams of citizens, businesses and innovators everywhere.

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