ASSOCIATION FRANÇAISE DES MARCHÉS FINANCIERS

FINANCIAL MARKET PROFESSIONALS

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MiFIR Review

AMAFI's priorities ahead of trilogue negotiations: comparative table between the EC proposal and the Council & the European Parliament positions

Over the past years, AMAFI has highlighted the necessity to **put the competitiveness of EU actors and the attractiveness of EU markets at the heart of upcoming CMU legislations** (*AMAFI / 21-38* ; *AMAFI / 22-09*). This is **particularly important with regards to the MiFIR review** which is the cornerstone of EU financial markets legislations. The objectives of competitiveness and attractiveness require targeted amendments which feature in the Association's position papers (*AMAFI / 22-11*; *AMAFI / 22-58*).

This is all the more critical at a time where the UK is contemplating key reforms through the Financial Services and Markets Bill and the upcoming Edinburgh Reforms. In light of the approach envisaged by the UK Government but also given the length of the EU legislative process which makes any swift correction of the regulatory regime extremely difficult, the EU should **adopt a pragmatic approach** through its MiFIR review in order **to avoid transfers of liquidity from the Union to the UK and other more attractive third country jurisdictions.**

In this context, in addition to the priorities highlighted in the table below AMAFI calls for **ESMA to be empowered to monitor the liquidity of EU financial instruments traded on EU markets as well as in third country jurisdictions** in order to adapt the calibration of the transparency regimes accordingly. The EU Authority should be **in a capacity to react quickly should a transfer of liquidity to a third country jurisdiction** be observed.

HEADLINES OF AMAFI'S PRIORITIES

- **Consolidated tape – Creation of a consolidated tape pre and post trade for equities in quasi-real time.**
- **Payment For Order Flow – Implementation of a ban that would apply to shares only.**
- **Equity & non-equity transparency regimes - Taking into account reforms envisaged through the Financial Services and Markets Bill to avoid transfers of liquidity from the Union to the UK and empowering ESMA for the calibration of the various thresholds at level 2.**
- **Derivative Trading Obligation – Enabling the early suspension of the DTO given the uncertainty around the implementation date of the MiFIR review.**

European Commission proposal (MiFIR, MiFID) ; Council position (MiFIR, MiFID) ; European Parliament position (MiFIR, MiFID)

Topic	EC proposal	Council position	European Parliament position	AMAFI positionning
Consolidated Tape				
Scope *Art. 2(1)(36b) ; Art. 27da(2) (3) ; Art. 27h(1) Recital 28 ; Art. 27h(1) ; Art. 27da(8) (Council position) Art. 27da(3) (EC proposal)*	**(i) Post trade CT for shares/ETFs as a priority; ESMA to assess (at least 18 months before 2nd selection procedure) market demand for pre trade data.** **(ii) Post trade CT for bonds;** **(iii) Post trade CT for derivatives**	**(i) Post trade CT for bonds; then** **(ii) Post trade real time CT for shares/ETFs & introduction of ex-post BBO/EBBO data for executed transactions from the outset;** **(iii) Post trade CT for derivatives based on further assessment from ESMA**	**(i) Post trade CT for bonds;** **(ii) Pre and post trade CT for shares/ETFs in real time** **(iii) Post trade CT for derivatives**	**Most members strongly support the implementation of a CT pre and post trade for shares in real time from the inception and believe this CT should be implemented first.** **We have serious doubts regarding the necessity and therefore viability of a CT for derivatives.** On this matter, AMAFI supports the Council proposal that considers it important to deal with the identification concerns on derivatives before considering a derivative CT.
Opt-in mechanism *Art. 22a(1a)* *Art. 27h(4)*	N/A	**Exemption to the mandatory contribution for smaller regulated markets and MTFs for equity and ETFs CTs, and introduction of an opt-in mechanism.**	**Similar to Council's approach but eligibility criteria differ.**	**We support the exemption to mandatory contribution, and the related ability to opt-in and believe that it should benefit only small regulated markets.**

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Revenue sharing mechanism *Art. 27h(1) Recital 24 ; Art. 27h(1)* *Art. 27da(2) (Council position)* *Art. 27da(4) (EC proposal)*	Revenue sharing mechanism for equity only would only apply to regulated markets.	**Revenue sharing mechanism applicable to all trading venues but not SIs and extended to asset classes other than shares.** **ESMA is mandated to draft an RTS specifying the preferential weights assigned to the hierarchy of remuneration of the different categories of venue.**	**Revenue sharing mechanism would apply to shares and ETFs only and would benefit to all market data contributors.** **ESMA is mandated to draft an RTS outlining the remuneration model.**	**We consider the revenue sharing mechanism should be calibrated to incentivise smaller markets. Still, it should not aim at fully compensating the loss of revenues linked to the selling of market data. We support that ESMA is mandated to draft an RTS outlining the remuneration model. Moreover, the mechanism should benefit to all contributors and apply only to shares and ETFs.**
Reasonable Commercial Basis (RCB) *Art. 13*	ESMA mandated to specify the content, format and terminology of the RCB concept.	**RCB obligations extended to APAs, CTPs, SIs and trading venues.** **RCB definition added to level 1 text: defined as a price which is based on the costs of producing and disseminating the data with a reasonable margin.**	**Definition of RCB provided in level 1 text: ": *Providing data on a reasonable commercial basis means that the price of market data shall be based on the cost of producing and disseminating such data and may include a reasonable margin".***	**We agree with the integration of the RCB definition in the level 1 text.** **We support the empowerment of ESMA to draft an RTS on content, format and terminology of the RCB concept, typically to clarify the way costs should be computed.**

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		PFOF		
PFOF ban *Art. 39a*	The text clearly specifies what falls under the ban: "investment firms acting on behalf of clients shall not receive any fee or commission or non-monetary benefits from any third party for forwarding client orders to such third party for their execution".	**Maintains an EU-wide PFOF ban, however adds individual Member State discretion to allow the practice for clients domiciled in that Member State only.** **Member States wishing to exercise the national discretion must notify ESMA – who will maintain a public list of those exercising the discretion.** **What falls under PFOF is defined as "any fee or commission or non-monetary benefits from any third party for forwarding client orders to any third party for their execution".**	The practice is prohibited across the Union with a quasi-similar wording as the one used by the European Commission. The text specifies that venue rebates are excluded from the ban.	**AMAFI's preferred option would be to introduce a strong framework, rather than a ban, with the obligation for PFOF platforms to have competing market makers and to demonstrate the benefits for the end-clients.** **If a ban were to be privileged by the co-legislators, we believe the ban should only affect financial instruments which involve retail clients' flows, for which the price formation process is order driven (eg shares), and where there is no clear benefit of the payment for the retail clients.** **It should not be extended to other financial instruments, for which the price formation process is linked to other parameters.**

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Equity transparency regime				
Double Volume cap *Art. 5*	Replaced by a single cap of dark trading set at 7% above which the Reference Price Waiver (RPW) and the Negotiated Trade Waver cannot be used, having in mind that the RPW can only be used for transactions above a certain size (see below).	Retains the idea of a single cap but with a 10% threshold which would only apply to the RPW.	Similar approach than the one proposed by the European Commission with a threshold of 7% having in mind that the RPW can only be used for transactions above a certain size to be determined by ESMA (see below).	**We would have supported the five-year suspension with a review based on ESMA's opinion as originally proposed by D. Hübner. At this stage, we would rather support the Council's approach.** **The evolution of rules in the UK should also be factored in the process, as divergence in the rules related to the use of the double volume cap may have an impact on the competitiveness of EU markets.**

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Reference Price Waiver *Art. 4*	Introduction of a minimum size threshold for transactions using the RPW – Limiting to orders with a size greater than or twice the Standard Market Size (SMS).	No minimum size threshold for the use of RPW.	ESMA is mandated for the calibration of the minimum size threshold for the use of the RPW.	**We call for caution on the setting of a minimum size for the use of the RPW, having in mind that such evolution would have an impact on the competitiveness of EU markets.** **Were such size threshold be retained by co-legislators, we would support the delegation to ESMA to calibrate it, with a clear indication that ESMA should factor in the impact on the competitiveness of EU markets.**
Quoting Obligation *Art.14*	Increases SI firm quoting obligation – SIs will need to provide firm quotes in trades in sizes up to a minimum of 2x SMS.	Removes the Commission's proposal to increase the minimum quoting size to 2x SMS, but also removes the wording in current MiFIR setting out a minimum quoting size of 10% SMS.	ESMA is mandated to determine the minimal quoting size.	**Overall, we consider it is important not to further constrain the activity of EU SIs, notably in terms of tick sizes.** **It is important to bear in mind that divergence between the**

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Mid-point matching *Art. 17a* *Recital 12*	Restricts SIs' ability to match 'small trades' at midpoint – to below 2x SMS.	Removes all restrictions on midpoint matching for SIs.	SIs can match orders at mid-point for sizes above a threshold to be determined by ESMA.	**EU and UK frameworks would be detrimental for EU SIs and EU clients. As the main clients of EU SIs are located outside the EU (mainly in the UK), should the EU implement a more restrictive regime (e.g. constraints on mid-point trading) then those clients would be less incline to trade with EU SIs. Moreover, the majority of** **the volumes on EU stocks are traded by non-EU investors, these non-EU investors will have access to better prices on EU stocks when they trade with UK SIs (UK SIs are not accessible to EU investors due to the STO). This may contribute to the emergence of UK-based liquidity pools on EU shares, hence out of reach for both EU market participants and authorities.**

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Share trading obligation *Art. 23.1*	The STO applies to shares with an EEA ISIN unless those shares are traded on a 3rd country venue in the local currency or if those trades are carried out between eligible counterparties between professional counterparties or between eligible and professional counterparties and do not contribute to the price discovery process. Suppression of the derogation for non-systematic, ad-hoc, irregular and infrequent basis	Maintains the EC proposal and the suppression of the derogation for non-systematic, ad-hoc, irregular and infrequent basis The Council proposal does not consider the EC demand that ESMA shall publish on its website a list of the shares with an EEA ISIN subject to the STO.	Maintains the EC proposal and the suppression of the derogation for non-systematic, ad-hoc, irregular and infrequent basis The EP specifies that the STO requirement does not apply for shares that are traded on a third country venue if ever they are in a non-EEA currency (art.23.1 (a)).	**We consider that the derogation in Article 23 of MiFIR on a non-systematic, ad-hoc, irregular and infrequent basis is extremely important and should not be deleted to continue covering exceptions from normal business activities.** **Regarding the exemption to STO for shares traded on a third-country venue, AMAFI is in favour of the EP proposal that specifies this exemption applies to shares traded in a non-EEA currency.**
Non-equity transparency regime				
Pre trade transparency regime *Art. 8*	N/A	Removes pre trade transparency for RFQ and voice systems.	Removes pre trade transparency for RFQ and voice systems.	**We support the deletion of the SSTI waiver and consider it is critical for SIs not to be subject to further constraints**

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Art. 8a *Art. 9* *Art.18*	 Proposes the deletion of the SSTI waiver incl. SIs.	Full deletion of pre trade transparency for non-equity SIs Introduction of a separate pre trade transparency regime for derivatives. Maintains the proposition to delete the SSTI waiver.	SIs would remain subject to pre trade transparency. Maintains the proposition to delete the SSTI waiver.	**than what is envisaged in the UK.** **As such we would support the approach from the Council.**
Post trade transparency regime *Art. 11* *Art. 11a*	Deferral regime harmonised and shortened – with post-trade price transparency only to be permitted to be deferred until the end of the trading day, whilst volume masking must be no longer than two weeks. ESMA will also specify which transactions are eligible for 15-minute, end of trading day and two weeks deferrals. Removal of national discretion to allow for four-week deferrals – replaced	For bonds, structured finance products and Emission Allowances, replaces the three existing post-trade deferrals under MiFIR (LIS, illiquid and SSTI) with five new deferral categories based on transaction size and market liquidity of the financial instrument – the text specifies a maximum deferral length per category, ranging from 15 minutes to four weeks for the largest transactions. ESMA to calibrate the exact deferral lengths applicable to each category.	Establishment of a single deferral regime for bonds and derivatives with maximum deferrals set up at level 1. Four-week maximum deferral for the largest transactions.	**We support the creation of five new categories of deferrals according to trade size and market liquidity.** **However, we believe that the maximum deferrals should not be determined in the level 1 text but rather that the calibration should be done by ESMA at level 2, with an explicit mandate to take into account the evolution of rules in other jurisdictions and the impact on competitiveness of EU markets and liquidity providers.**

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	with an EU threshold. Following ESMA's suggestion to introduce a tailored regime for sovereign bonds, four weeks will still be permitted for sovereign debt instruments.	For derivatives, the same five categories of maximum deferral as bonds/other non-equity instruments are introduced – with ESMA to determine the lengths applicable to each category and the transactions falling into each bucket.		
DTO				
Standalone suspension *Art. 32a*	Introduction of a standalone Commission power to suspend the DTO under certain conditions – for certain investment firms via an Implementing Act, following the request of an NCA.	Maintains standalone Commission power to suspend the DTO under conditions that slightly differ from EC original proposal – for certain investment firms via an Implementing Act, following the request of an NCA.	Maintains standalone Commission power to suspend the DTO. Introduction of a procedure that would enable the EC to extend the suspension of the DTO to investment firms from other member states should they be in a similar situation as those from the member states who made the initial demand.	**We support the proposal for the standalone suspension.** **Given uncertainty around the entry into force of the MiFIR review and because this issue is neither controversial in the Parliament, nor in the Council, we call for ESMA to issue a forbearance statement to suspend the DTO until the level 1 text of the MiFIR review is implemented.**

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MiFID				
Transaction reporting regime *Art. 26*	N/A	N/A	The EP requires the Commission to assess the possibility of extending transaction reporting obligations to AIFMs and UCITS management companies – by 12 months after entry into force.	**AMAFI is strongly against adding AIFM/UCITS firms to the scope of entities obligated to report transactions to NCAs. This would have huge detrimental impact on the current regime of the reporting mechanism for investment firms. In fact it means that AIFMD/UCIT companies and the brokers will have to put in place ex-post arrangements to allocate each relevant information for any given transaction and the broker will have to put in place arrangement to comply with GDPR rules when receiving and transmitting personal information (such as CONCAT) which would be very burdensome.**

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