

AMAFI POSITION PAPER

MiFIR REVIEW

The sanitary crisis and Brexit have underlined the necessity for the Union to strengthen its strategic autonomy and its financial sovereignty. In this context, the relaunching and the deepening of the CMU project have a central role to play to increase the competitiveness of EU financial markets in a new post-Brexit ecosystem¹.

The main objective should be to enable EU markets to further contribute (i) to the economic recovery at national and European levels and (ii) to the financing challenges the Union is facing in relation to the mitigation of climate change, the ageing of the population and the development of EU champions in strategic fields such as digital and sustainable finance.

The review of MiFID II / MiFIR, which has become the cornerstone of EU financial markets legislation, is of the utmost importance in this context, notably to ensure that the financing of the Union's economy can build on robust domestic financial markets and does not need to rely too extensively on third country resources that it could not control in terms of expertise, capital or liquidity.

More precisely, while MiFID aimed at developing competition and transparency across equity markets as well as increasing investor protection, and while MiFID II / MiFIR main objectives were to develop the transparency for non-equity markets and to further increase investor protection, we believe **this review should notably aim at increasing the competitiveness of financial market actors operating in the EU.**

These private actors should be put in a position where they can drive their investment towards the enhancement of their client and risk management solutions, i.e. be able to allocate budget towards priorities identified **internally** rather than **externally** because of new costly regulatory requirements. This is all the more critical as evolutions in several other fields of regulation (in link with sustainable finance, index reform, CSDR, etc.) require significant investments from EU market players. In this context, robust, documented and comparative impact analysis supporting a clear cost benefit surplus should, more than ever, be the driving rule². When a positive balance is not clearly and without any doubt established and documented – as a counter-example, RTS 27 and 28 reports – the new rule should not be adopted.

The review should also aim at introducing more proportionality to better reflect the specificities of the wholesale market for which a better integration at EU level is critical and should be set as a short-term priority.

As it is expected that MiFIR should be reviewed by the end of the year and MiFID II later in 2022, the purpose of this note is to emphasize AMAFI's core priorities with regards to market structure issues.

In this context, AMAFI is extremely worried by the potential amendments considered in light of the recent consultations from ESMA and the European Commission (EC) which tend to strengthen the constraints weighing on transparency and on systematic internalisers, especially since such reforms would likely weigh on the liquidity of EU markets, and since no proper cost-benefit analysis has been undertaken to assess the necessity of such reform.

¹ For further details please see AMAFI-CEPS report on Completing Capital Markets Union, [link](#)

² « *There is no doubt that the UK remains the largest capital markets hub in Europe* », in European Capital Markets, The regulatory considerations for banks as they move beyond Brexit, Deloitte and Markit, 2021

Besides, we have particular concerns with regards to the potential implications unfolding from the recent ESMA final report on reference data and transaction reporting³. Again, we consider the proposed changes should be supported by facts and an in-depth analysis to justify that they are beneficial either in terms of monitoring market abuse or market transparency.

In light of the preparatory work undertaken by both ESMA and the EC and while the exact scope of the MiFIR review still has to be determined, we highlight in this paper issues of (i) high and (ii) medium priority in order to improve the competitiveness of EU financial market actors and the sovereignty of the Union in the financing of its economy⁴.

I. Identified core topics of the upcoming MiFIR review

a. Establishing a European consolidated tape

Most AMAFI members are in favour of the creation of a **real time post-trade Consolidated Tape (CT)**.

However, we believe that the complexity to set a Consolidated Tape advocates in favour of a gradual approach, rather than a “big bang” that would consist of building at the same time, and potentially with different providers, CTs on equities and bonds.

The post trade consolidated tape for equity instruments should be set up first, then, once the equity solution has been implemented successfully ie when we have been able to learn from experience, the consolidated tape for bonds should be implemented: this order of priority together with the phased-in approach is absolutely essential in order to be efficient and cost savvy.

A number of AMAFI’s members also consider that the establishment of a pre-trade CT for equity instruments should be factored in the legislative approach. Even though it will not be a silver bullet, the setting of a European consolidated tape should be considered as one of the key initiatives necessary to strengthen EU’s capital markets to help address the issue of fragmentation of market data resulting from the post-MiFID II fragmented trading landscape in the EU secondary markets.

To ensure the success of such European CT, we consider the following issues⁵ as critical:

- **Scope of consolidation** – For a CT to be fully operational, it should cover all in-scope instruments and 100% of reporting entities. Meanwhile, it is crucial that industry members and especially supervisors continue to work on data quality issues.
- **Scope of consumption** – It should be noted that while the CT will be *in fine* required to cover all trading venues, APAs and IFs, users should be able to adjust their level of consumption of the tape and choose the level of aggregation according to their operational needs for market data especially in accordance with best execution principles;
- **Costs & funding** – The costs of the CT should be limited to the running of the infrastructure. The contribution of data by trading venues, IFs and APAs should be mandatory and free of charge. Users would not have to licence with each individual trading venue, APA and SI for the defined use cases⁶. A revenue sharing mechanism should be put in place in order to reward the contributors to the CT. Revenue not injected in the functioning or investment expenses of the CT would be shared between

³ ESMA, MiFIR review report on the obligations to report transactions and reference data, [link](#)

⁴ This paper reflects the position of a large majority of AMAFI’s members. “We” and “us” should therefore be read as the opinion of the vast majority of AMAFI’s members.

⁵ For further details please see ([AMAFI/21-28](#))

⁶ Where the data is used as part of commercial data product/service offerings and/or the creation of commercial products/services based upon the data, there is still a place for licensing with the contributors of the data.

data contributors depending on the quality and the size of their reported feeds. The CT funding should be shared between all EU IFs and AMs notably⁷.

- **Governance** – The leadership body of the CT should ensure the representation of all types of stakeholders (data providers and users) in the decision-making process;
- **Supervision** – MiFID II should be amended to enable the CT to be under the direct supervision of ESMA through a dedicated team. The aim is to prevent conflicts on the functioning of the CT which might come up at national level.

b. Preserving the precarious balance of the transparency regime for non-equity instruments⁸

With regards to pre-trade transparency, AMAFI considers that the current set of waivers applicable to non-equity instruments should not be removed but rather preserved, given that they contribute to protecting liquidity providers from undue risks. It should also be stated that the implementation of the current regime has already proved costly and burdensome for market intermediaries. Hence, unless a proper impact assessment⁹ concludes that there is a real need to amend the existing regime, and that the amended rules would undoubtedly deliver significantly enhanced value for market participants, this issue should not be considered as a priority by the EC's services.

When it comes to post-trade transparency, we consider that the current scope of instruments covered is sufficient, and that the regime should not be extended. The main issue remaining revolves around the availability and quality of data resulting from the reporting delegation process and the fragmented publication of data by APAs and trading venues in divergent format. We believe this could be solved by best practices initiated by market participants and aggregators, and that the creation of a European Consolidated Tape, provided it follows certain rules, would greatly help in this matter. Regarding the need for a uniform deferrals regime, AMAFI recommends harmonizing the deferral systems by converging towards the better calibrated, allowing for the 4-week volume omission, the 48 hours deferral period for price information and the provisions under Article 11(3), points (b), (c) and (d) of MiFIR. AMAFI is of the opinion that the MiFIR review should be directed towards a simpler transparency regime. By contrast, the options proposed in ESMA's review report on the transparency regime for non-equity instruments¹⁰ for unifying the deferrals regime rather seem to bring more complexity¹¹.

A necessary equilibrium between transparency and liquidity

Market makers play a central role as liquidity providers in EU non-equity markets. While their ability to take positions has already been reduced by prudential rules, it is essential not to further increase transparency otherwise it will become extremely difficult for them to (i) hedge their risks and, when it comes to bonds, to (ii) unwind their positions. The latter makes the equilibrium particularly sensitive. More transparency rules would limit their ability to enter significant sizes of transactions and would lead to market makers providing less liquidity in the Union while more liquidity could still be provided in the UK, on the ground of local rules.

An alternative that is sometimes mentioned would be to move towards a transparency model inspired by the TRACE system in the US, where the price of transactions is made transparent quite rapidly.

Still, adopting this system would require an in-depth analysis: (i) the adoption of TRACE took more than 15 years and is still limited to corporate bonds, (ii) under TRACE, volumes are protected for a longer period than in the EU (6 months at least) when they exceed thresholds (USD 5m for investment grade bonds, EUSD 1m for high yield instruments) that are quite low compared with current LIS / SSTI levels, (iii) the costs to adopt

⁷ As a reminder, rough estimates from ESMA's register for investment firms indicate that more than 6400 investment firms, 1200 UCITS management companies and 2200 AIFMs could be eligible to enrol in the tape.

⁸ For further details please see ([AMAFI / 21-29](#))

⁹ Given the increasing importance of trading algorithms in the non-equity space, such assessment should notably be based on an in-depth analysis of the way algos would react to a change in the transparency framework, hence on the risk incurred by liquidity providers (see below).

¹⁰ ESMA, MiFIDII/MiFIR review report on the transparency regime for non-equity instruments and the trading obligation for derivatives, [link](#)

such system would be quite significant, and would need to be justified by a massive enhancement in the value delivered, which looks quite uncertain.

It is also worth stressing that, because of the intermittent nature of transparency information, investors in fixed income instruments mostly rely on composite indicative prices that are aggregated and streamed by MTFs operators on the ground of indicative bids and offers provided on a continuous basis by the dealers that are active on their platform. While such indicative prices cannot be confused with transparency information, AMAFI believes that their importance for investors should be acknowledged by the setting of a specific regulatory framework that could notably include the enforcement of the Reasonable Commercial Basis principle and the prohibition of exclusive distribution terms.

c. Improving access to liquidity for branches of EU firms: amending the scope of the EU DTO

Since 1 January 2021, the uncoordinated application of EU and UK DTOs has led to significant upheavals in the liquidity of instruments subject to the trading obligations, both in the interdealer (D2D) and in the dealer-to-clients (D2C) markets, overall reducing the global competitiveness of EU-27 financial institutions especially for their UK branches trading with non-EU clients. It is also noticeable that, alongside the targeted transfer of some transactions to EU venues, US SEFs already appear as the ultimate beneficiaries of the current overhaul of on-venue liquidity and are likely to become even more attractive in the medium to long term¹².

Such outcome would not only severely and durably damage the global competitiveness of EU institutions in the derivative market, but it would also go against the Union's ambition to increase its sovereignty and the competitiveness of its financial markets through the deepening of the CMU initiative.

In this context, EU investment firms' branches should be exonerated from the applications of the EU DTO when they deal with non-EU clients. AMAFI welcomed the approach adopted for the EU STO and calls on the EC to demonstrate the same pragmatism to solve the current issue with regards to the scope of application of the EU DTO.

An alternative to this change in scope limited to the branches of EU investment firms outside the EU would be to exempt from the EU DTO scope all transactions undertaken by EU dealers with non-EU counterparties while mandating that such transactions remain subject to the EU transparency obligations.

II. Other important issues to improve the competitiveness of EU actors

a. Ensuring a reasonable pricing for market data

Market data plays a central role in the investment decision making process of financial market actors. It is hence of the utmost importance to ensure that the provisions in MiFID 2 / MiFIR aiming at ensuring that market data are made available on a reasonable commercial basis are enforced, and where necessary consolidated.

Over the past years and including after the implementation of MiFID 2 / MiFIR, the increase in the cost of data observed from a user perspective stemmed from both the direct prices charged for data feed by market data providers and the multiplication of indirect costs linked to complex market data agreements that require additional resources to manage and control the use of market data. It is also caused by a clear trend of market participants consuming an increased amount and variety of data. This requires innovations by trading venues and data providers for the infrastructure necessary to provide and use data.

While AMAFI welcomes the recent ESMA consultation on the Guidelines on the obligations on market data, we believe more regulatory efforts are needed, as outlined in several of our contributions¹³. We would recommend an enhanced comparability of pricing lists published by trading venues. To enable the

¹² For further details please see the EU's associations joint [letter](#) to J. Berrigan

¹³ For further details please see: ([AMAFI / 21-14](#)), ([AMAFI / 21-04](#)), ([AMAFI / 20-03](#)), ([AMAFI / 19-87](#))

enforcement of the *reasonable commercial basis* concept, AMAFI calls for a simplification and harmonisation of tariff grids, contracts and regulatory guidance requirements regarding good practices for audits.

Moreover, AMAFI reiterates that the application of the RCB rules to data vendors would be highly important for levelling the playing field between market data providers and non-regulated entities.

b. Alleviating the burdens of the OTC derivatives and reference data regime

AMAFI considers that, under the current regime, the application of the systematic internaliser (SI) regime to instruments which are not traded on a trading venue (non-ToTV instruments) and the requirement to supply reference data for instruments where the underlying is traded on a trading venue (uToTV instruments) already create major unnecessary burdens.

We are hence particularly concerned with the approach recently proposed by ESMA in its final report on the obligation to report transactions and reference data¹⁴, that would subject all SI quotes and transactions in derivatives belonging to the same sub-asset class to the reference data and reporting obligations. We believe that such approach contributes to the misleading tendency of equating SIs with trading venues in the regulatory framework and would lead to an unnecessary escalation of the complexity of the transparency regime for liquidity providers operating under the SI regime.

We are convinced that, contrary to the direction recommended by ESMA, there is a need to simplify the transparency regime in order for market participants and supervisors to focus on the improvement of data quality¹⁵. Furthermore, assigning ISIN codes to uToTV instruments creates difficulties in terms of transparency, efficiency and costs for both regulators and investment firms.

It should also be reminded that the application of transparency to OTC derivatives does not bring any value to the price formation process for such instruments. As a matter of fact, the pricing of those instruments rather depends on multiple parameters observed elsewhere in the market (spot price of the underlying, volatility, skew, etc.), and the disclosure of previous quotes for other OTC instruments does not really help, since it is quite difficult to assess how “similar” two transactions are, especially when their pricing also depends on the existing relation between the dealer and its client, and on their credit quality.

The SI regime should thus only apply to ToTV instruments and exclude uToTV instruments. AMAFI calls to make clear that the decision to be a SI for non-TOTV instruments can only be voluntary and to eliminate the requirement related to uToTV instruments for investment firms that become an SI on the ground of quarterly activity assessments.



About AMAFI

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities. Nearly one-third of members are subsidiaries or branches of non-French institutions.

¹⁴ ESMA, MiFIR review report on the obligations to report transactions and reference data, [link](#)

¹⁵ For further details please see [\(AMAFI / 21-29\)](#)