

**ESMA CONSULTATION PAPER
MiFIR REVIEW REPORT ON THE OBLIGATIONS TO
REPORT TRANSACTIONS AND REFERENCE DATA**

AMAFI contribution

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.

AMAFI welcomes the opportunity to respond to this consultation paper (hereafter the CP).

The European transaction reporting mechanism brings together different financial market players, investment banks, brokers, and custodians. Therefore, AMAFI's response was prepared in liaison with the "Association Française des Professionnels du Titre- AFTI". AMAFI supports the responses provided by AFTI.

Before answering the specific questions raised in the CP, AMAFI would like to highlight the following general comments.

GENERAL COMMENTS

The proposals of evolutions contained in the CP are very heavy and structuring.

AMAFI and AFTI note that the proposed changes are far from being marginal and, if retained, would require market participants to make significant investments to comply with the new standards.

While we may understand some of the reasons leading to the proposals contained in this consultation, we would like to point out that financial institutions have invested extensively in the 2017/2018 period to comply with their MiFIR reporting obligations and, in the case of systematic internalisers, with their obligations in terms of market transparency and the provision of reference data.

We also would like to recall that modifying the reporting mechanism is a very long, difficult and costly process. Indeed, reporting a transaction and maintaining the accuracy of the declaration of any event that may affect the original transaction (cancellation, modification, etc.) involves numerous applications (beyond the creation of the file itself) for which a modification must be handled carefully (non-regression, etc.). The simple addition of a data item means its retrieval (it may be available but not in the desired location), its storage (for any control, for a possible correction of the declaration), its transmission in the declaration file.

Considering the IS regime, we also note that the proposals would lead to a wide range of additional requirements (ISINs for non-ToTV IRS, multiplication of contribution of the same instrument referential data to FIRDS,) for market participants and operators with no added benefits for the financial community as a whole, and at great cost. Moreover, AMAFI would like to reiterate that any assertion that there is a need for more “level playing field” between systematic internalisers and trading venues is based on a wrong approach, since trading venues and SIs serve fundamentally different purposes.

There is no evidence that there is a need for such evolutions.

First of all, we consider that we do not have sufficient hindsight to envisage such structural changes just three years after the entry into force of MiFID II MiFIR.

More importantly, however, we note that the changes proposed in the CP are not supported by facts or in-depth analysis that would indicate that changes would be beneficial in terms of monitoring market abuse or market transparency. In other words, our initial analysis is that the cost-benefit balance is totally disproportionate.

The context of Brexit must be considered.

An in-depth modification of the MiFID II MiFIR rules cannot be envisaged without taking into account the developments that will be made in the UK. If the rules diverge too much between the UK and the EEA, then European financial institutions will face a double disadvantage. On the one hand, they will have to make heavy investments that will not be required from entities established in the UK. On the other hand, they will have to maintain two divergent systems in parallel for those which are also established in the UK.

Furthermore, AMAFI would like to stress that Brexit will change the trading landscape in the EU. This is why AMAFI considers that any major reform of the organisation of the markets in Europe should not be undertaken until it is possible to observe how the market is being distorted as a result of Brexit.

There is a need of consistency with the CMU objectives.

It is rather paradoxical to increase significantly the constraints on European financial institutions, without the benefits on the functioning of the markets or their supervision being proven at a time when Europe's political objective is to develop its financial market in order to ensure its growth.

 **There is a need to have visibility on the development schedule.**

ESMA's CP is part of the normal MiFIR amendment process as provided for in the current regulations. In addition to the MiFID II Quick Fix, which should take place by the end of the year, a review of MiFID II MiFIR is also envisaged. It is essential to have visibility on the overall calendar of potential technical developments in order to integrate them into the IT planning of financial institutions. It must be stressed that the planning for the next two years integrates other regulatory developments (ESG, CRD-CRR,) and will not be able to support other important developments.

 **In a nutshell**

AMAFI and AFTI are very reserved about most of the CP's proposals. Such developments can only be envisaged on the basis of in-depth cost-benefit analyses, shared with the industry, with the aim of developing the European financial market and not constraining it.



ANSWERS

Q1. Do you foresee any challenges for UCITS management companies and AIF managers in providing transaction reports to NCAs? If yes, please explain and provide alternative proposals.

AMAFI is not in a position to answer on behalf of asset management companies.

That being said as it was the case for investment firms, AIFMD and UCITS firms will face the same challenge to analyse, implement, maintain and manage the reporting rules as the investment firms. This implies the solely transmission of the report but also to comply with the provisions of article 15 of RD 2017/590.

Moreover, it would have huge impact on the current regime on the reporting mechanism for investment firms. Indeed:

- Either the AIFMD/UCIT firm chooses to make its own reporting and this case the new regime is neutral for the current investment firms (mainly brokers or market makers)
- Or the AIFMD/UCIT firm chooses to “transmit” the order according to article 4 of RD 2017/590.

In the latter case, and having in mind that generally AIFMD/UCIT firms generally transmit global orders for retail or collective schemes clients, it would be impossible to transmit the all the required information in the order (considering that even for single orders, current electronic order transmission systems are not adapted to transmit the required information). It means that the AIFMD/UCIT company and the broker will have to put in place ex-post arrangements to allocate each relevant information for any given transaction which would be very burdensome. Besides that, the broker will have to put in place arrangement to comply with GDPR rules when receiving and transmitting personal information such as CONCAT.

Lastly, AMAFI strongly opposes the proposal (see paragraphs 101 to 103 of the PC) to oblige investment firms receiving orders to report transactions as soon as all information is received. (See our answer to Q 27)

Q2. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

AMAFI agrees with ESMA proposal.

Q3. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

AMAFI agrees with ESMA proposal.

Q4. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

AMAFI agrees with ESMA proposal.

Q5. Do you envisage any challenges in increasing the scope including derivative instruments traded through an SI as an alternative to the expanded ToTV concept? Please justify your position and if you disagree please suggest alternatives.

AMAFI totally disagrees with ESMA approach for the following reasons.

In preamble AMAFI would like to stress that, contrary to ESMA assertion (para.43), “it does not seem to imply major system updates for market participants as Sis are supposed to have already systems in place..”, the proposals will have a significant technical and implementation impact on Sis but also on NCAs. Indeed, the three options proposed by ESMA are not compatible with the systems currently in place, both in terms of reporting and provision of reference data. As a result, if they were retained, investment firms would be forced to completely overhaul their information systems. The resulting costs would be disproportionate to the regulatory benefits cited by ESMA.

These consequences must imperatively be considered by ESMA as the benefits in terms of regulation that underlie the requested changes can be disputed.

- **Reporting obligations and market abuse issues.**

While AMAFI hopes for a more efficient use of all data collected by supervisors and understands the rationale behind including uToTV only instruments in the reference data reporting and transaction reporting scopes, we believe that an expansion of this scope to non-ToTV instruments traded through goes against the intention of MiFIR as clearly stated in recital 32, *“The details of transactions in financial instruments should be reported to competent authorities to enable them to detect and investigate potential cases of market abuse, [...] In order to avoid unnecessary administrative burden on investment firms, financial instruments that are not susceptible to market abuse should be excluded from the reporting obligation.”*

Based on this premise, we believe that the inclusion of all SI-traded instruments in the scope of reference data/transaction reporting is not an efficient way to target potential market abuse. To support this claim, recital 10 of Regulation (EU) 596/2014 on market abuse states that *“It is possible that certain financial instruments which are not traded on a trading venue are used for market abuse. This includes financial instruments the price or value of which depends or has an effect on financial instruments traded on a trading venue, or the trading of which has an effect on the price or value of other financial instruments traded on a trading venue.”*

One can safely assume that there is no evidence showing that all non-ToTV instruments traded through SI have an influence over the price or value of ToTV instruments. AMAFI therefore reiterates its concerns about the inadequacy of ESMA’s proposal with the original purpose of the MiFIR regime of transaction reporting.

- **Reference data**

ESMA proposals will significantly raise the number of records in the data base with no clear benefits. Conversely, this extension presents a real risk of deterioration in the quality of the FIRDS database, which will undermine the quality of reporting and market transparency.

AMAFI encourages ESMA to envisage another way to put in place an EU instrument data base. Instead of multiplying the reporting / feed of the same instrument referential data (200 TVs, 100+ SI reporting the same ISIN and related instrument referential data), it would be more appropriate to rely on referential data golden sources (eg ANNA), without passing through TV and IS.

- **Transparency and level playing field**

AMAFI does not understand the benefits for the market efficiency to extend pre and post trade transparency to non ToTV instruments. This cannot be justified by a reason of level playing field between TV and Sis?

Q6. Do you agree that the extension should include all Systematic Internalisers regardless of whether they are SI on a mandatory or voluntary basis? Please justify your position.

AMAFI strongly disagrees with ESMA approach regardless of whether they are SI on a mandatory or voluntary basis.

Q7. Do you envisage any challenges with the approach described in paragraphs 45-46 on the scope of transactions to be covered by the extension? Please justify your position and indicate your preferred option for SIs under the mandatory regime explaining for which reasons. If you disagree with all of the outlined options, please suggest alternatives.

See our answer to Q5.

Q8. Do you foresee any challenges with the proposal to replace the reference to the term “index” in Article 26(2)(c) with the term “benchmark” as defined under the BMR? If yes, please explain and provide alternative proposals.

AMAFI agrees with ESMA proposal.

Q9. Which of the three options described do you consider the most appropriate? Please explain for which reasons and specify the advantages and disadvantages of the outlined options. If you disagree with all of the outlined please suggest alternatives.

AMAFI strongly believes that option 3 (*status quo*) should be retained. It is indeed the most workable solution since it limits (in comparison with Options 1 and 2) the need for complex additional logic to identify in-scope instruments.

Q10. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

AMAFI agrees with ESMA proposal.

Q11. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

AMAFI agrees with ESMA proposal.

Q12. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

AMAFI agrees with ESMA proposal.

Q13. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

AMAFI strongly disagrees with this proposal.

According to AMAFI understanding, ESMA would like Sis to send reference data for non-ToTV instruments but also for all existing ToTV instruments which are already populated by trading venues.

On the first point we do not see any advantage in term of market efficiency to populate FIRDS with non-ToTV instruments.

On the second point we estimate that this would significantly raise the number of records in the data base for the same ToTV instrument. This will end up with problems of errors et reconciliation issues at the expense of the quality of FIRDS

AMAFI encourages ESMA to envisage another way to put in place an EU instrument data base. Instead of multiplying the reporting / feed of the same instrument referential data (200 TVs, 100+ SI reporting the same ISIN and related instrument referential data), it would be more appropriate to rely on referential data golden sources (eg ANNA), without passing through TV and IS.

Q14. Did you experience any difficulties with the application of the defined list concept? If yes, please explain.

See our response to Q13 above

Q15. Do you foresee any challenges with the approach as outlined in the above proposal? If yes, please explain and provide alternative proposals.

See our response to Q13 above

Q16. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

AMAFI disagrees with ESMA proposal. This would tremendously enlarge the scope of the financial instruments eligible for market transparency (non ToTV instruments) without any benefit for the functioning of the financial market.

Q17. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

AMAFI disagrees with ESMA proposal. MAR should only concern ToTV and uToTV instruments and not be extended to non ToTV ones.

Q18. Do you foresee any challenges with the approach outlined in paragraphs 75 and 76? If yes, please explain and provide alternative proposals.

Yes. See our answer to question 19 below.

Q19. Do you foresee any difficulties with the implementation of an additional code generated by the trading venue to be disseminated down the transaction chain in order to link all transactions pertaining to the same execution? If yes, please explain and provide alternative proposals.

Yes, the implementation requires huge modifications.

This question was already raised in ESMA/2014/1570 Consultation Paper. The CP concluded (§178) that “although the report matching number would in theory be useful information for competent authorities, there are many practical difficulties for its implementation.”

There is no reason today to consider that the situation is different. The high degree of complexity is shown in the following example.

Indeed, to allow a direct and total transactions identification, 2 new references would need to be introduced with substantial impacts within their implementation by non-executing registrants. Practically registrant would have to manage 2 references:

Example:

Client A sells 100 securities
Client B sells 200 securities
Client C sells 300 securities

Investment firms places a 600 securities sell order
Broker sends the order on the market, order is executed in 2 parts:

- 1) **A TVTIC1 150 Securities sell**
- 2) **A TVTIC2 450 Securities sell**

Broker will report:

- **A 150 securities sell on behalf of the investment company including TVTIC1 reference**
- **A 450 securities sell on behalf of the investment company including TVTIC2 reference**

Investment firm (in INTC mode) will report:

- **A 150 securities sell facing the Broker that would have to include TVTIC1 and REF INTC1**
- **A 450 securities sell facing the Broker that would have to include TVTIC2 and REF INTC1**
- **A 100 securities buy facing client A that would include REF INTC1**
- **A 200 securities buy facing client B that would include REF INTC1**
- **A 300 securities buy facing client C that would include REF INTC1**

The addition of these 2 references implies:

- **For TVTIC reference: extraction along all the order transmission chain, distribution within the reporting and storage**
- **For « INTC » : creation, persistence (especially uniqueness and incrementation), distribution within the reporting and storage.**

Enforce such references had been found too heavy at the inception ; consider their introduction in retrospect does not mitigate any implementation difficulties but does increase cost and risks (it is always very complicated to introduce originally unaddressed features).

Accordingly, we do not approve of 2 references addition and would like to emphasize the need of sufficient anteriority with the reporting exploitation before any change.

Q20. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

Yes.

This information is irrelevant considering market abuse surveillance.

We understand that this information might be relevant for the regulator for other needs such as allowing better knowledge of financial market participants, identifying market trends, ... but costs related to this change seems to us disproportionate to the aim pursued.

Moreover, it must be noted that an investor may have a different client classification in several financial institutions.

If this information would have to be communicated impacts would be significant:

- **Information collection (the registrant is not systematically the entity managing client relationship)**
- **Being able to store the information within used repositories for reporting production**
- **Disclose the information taking into account a new message template**

In the absence of more precisions on information usage by the regulators we are not in a position of suggesting alternative solution.

Q21. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

AMAFI agrees with ESMA proposal

Q22. Which of the two approaches do you consider the most appropriate? Please explain for which reasons.

AMAFI supports the removal of the short selling indicator.

Q23. Do you foresee any challenges with the outlined approaches? If yes, please explain and provide alternative proposals.

AMAFI disagrees with the proposal to extend the obligation to report pre-trade transparency waiver to the transactions in non-equity instruments executed on a SI.

Q24. Do you foresee any challenges with the outlined approach to pre-trade waivers? If yes, please explain and provide alternative proposals.

See our answer to question 23 above.

Q25. Have you experienced any difficulties with providing the information relating to the indicators mentioned in this section? If yes, please explain and provide proposals on how to improve the quality of the information required.

See our answer to question 23 above.

Q26. Do you foresee any challenges with this proposal? If yes, please explain and provide alternative proposals.

AMAFI does not respond to this question.

Q27. Do you agree with this approach? If not, please clarify your concerns and propose alternative solutions

AMAFI strongly disagrees with this proposal

MIFIR article 26 allows today an Investment Firm that does not execute the transaction to:

- **Either produce an additional reporting to the one of the executing entities**
- **Or disclose to the executing entity all mandatory information in order for it to perform the complete reporting**

The solution of an entity transmitting orders in the mean of the article 26(4) of MIFIR has been taken in due consideration when the entry into force of the new reporting. The complexity of tis implementation (technical, legal, ...) has been considered disproportionate and unacceptable. Thus, in France around 90% of non-executing entities have preferred to produce additional reporting.

We understand the intent behind this proposition but force an entity to declare on behalf of another entity once this has provided it with all mandatory information can in no way dimmish solution complexity et brings no answer to issues raised by that time:

- Adjustment of orders transmission chains to integrate declaration data (ie. Voice orders?)
- What executing entity should have to do when waiting for an order "with data" but some are missing or incorrect? Refuse to take the order or execute it? (No Data = No trade?)
- Who is responsible of client's data?
- How to manage reporting rejections? (follow up, amendment, ...)
- How to translate this relationship contractually?
- How to manage reported data confidentiality, especially recipient's total identification?
- **How to manage global orders?**

Q28. Do you agree with this analysis? If not, please clarify your concerns and propose alternative solutions.

AMAFI agrees with ESMA analysis

Q29. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

AMAFI agrees with ESMA's analysis on the inadequacy between the purposes of each reporting regime and supports removing the paragraph pointed out by ESMA in Article 26(7) MiFIR.

Q30. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

AMAFI is not responding to this question

Q31. Are there any specific aspects relating to the ISIN granularity reported in reference data which need to be addressed? Is the current precision and granularity of ISIN appropriate or is (for certain asset classes) a different granularity more appropriate?

AMAFI is not responding to this question

Q32. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

AMAFI is not responding to this question

Q33. Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

AMAFI is not responding to this question