

AMAFI POSITION PAPER

MiFIR REVIEW

The sanitary crisis and Brexit have underlined the necessity for the Union to develop and strengthen its open strategic autonomy globally, especially in the financial sector area where financial markets have a major role to play.

The Covid-19 health crisis has severely impacted the EU-27 economy and caused debt to surge, increasing the need for the EU to bolster its market-based financing capacity, not just to support the economic recovery but also to regain some autonomy in sectors the crisis has led to be identified as strategically important.

Besides, with Brexit, the City is no longer the Union's main financial centre. The EU must rethink how its markets operate so that it can maintain control over the ecosystem that is vital to financing its economy.

The Union is facing an unprecedented challenge where for the first time it has such a strong competitor at its door which is very agile from a legislative/regulatory perspective and has already shown concrete proof of its willingness to diverge as per the Wholesale Markets Review (e.g. end of STO and DVC, lighter transparency constraints for non-equity market).

This situation has very concrete implications for both (a) EU market actors' competitiveness and for (b) the attractiveness of the EU regulatory framework:

- (a) In the short term, we can fear that the competitiveness of UK branches of EU Firms will significantly drop as they will de facto be subject to the stricter regime *i.e.* the EU one;
- (b) In the medium to long term, we have reasons to believe that the EU regulatory framework will become less attractive than the UK one.

In this context, we consider the relaunching and deepening of the CMU project is key to enable financial markets to play a bigger role in light of the EU-27 financing challenges.

As part of the CMU project, the [MiFIR](#) review proposal presented by the European Commission last November 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. It should also aim 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 resources located in third countries, hence outside its control, be it in terms of expertise, capital or liquidity. More proportionality should also be introduced, to prioritise actions relating to the wholesale market for which a better integration at EU level is critical.

With these objectives in mind, we find extremely regrettable that several of the reform proposals both for equities and non-equities transparency regimes are based on expected benefits that have not been subject to much needed in-depth analysis, nor a comprehensive impact assessment.

The purpose of this note is to highlight AMAFI's core priorities in order to contribute to ongoing negotiations taking place both in the Council and in the European Parliament. It is made of two parts, the first one stressing AMAFI's core priorities and the second one highlighting medium priorities to improve the competitiveness of EU financial market actors and the sovereignty of the Union in the financing of its economy¹.

¹ 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.

I. Core priorities in the MiFIR review proposal

a. Establishing a European consolidated tape as a bridge between EU markets

AMAFI members support the EC's proposal to establish a consolidated tape (CT) for bonds and shares while considering that some adjustments are necessary.

For equity, most AMAFI Members consider it is critical to introduce pre trade data from the launch of the CT², to take into account (i) the strong interconnexion between pre and post trade data (ESMA 2019 [report](#) on the creation of a CT), (ii) most use cases featuring in the Market Structure Partners [report](#)³ and (iii) the benefits that, in case of market outage, only a pre and post trade CT could deliver to least sophisticated market participants willing to manage their portfolio and associated risks.

With regards to the revenue sharing mechanism, the amount a CT provider is committed to redistribute to regulated markets should not be one of the key criteria of selection. This would create a conflict of priorities, that would likely lead to the failure of the CT. A revenue allocation model should be adequately tailored and clearly framed at the legislative level. The current proposal needs further reflection on its scope and methodology. Most AMAFI members⁴ consider that the revenue sharing mechanism should be defined more precisely with regards to (a) its justification, (b) its constitution (a maximum amount per user of the CT should be determined) and (c) its scope which should encompass all contributors so it would benefit to small exchanges.

- (a) A maximum amount per user of the CT should be determined. It would have to be calibrated to ensure (i) of the alignment of the contributors' interest with the success of the CT, (ii) attractive prices for users and (iii) the viability of the CT. The targeted amount to remunerate contributors could be decreasing over time in order to encourage contributors to limit their dependence to revenues generated by the sales of data.
- (b) With regards to the modalities of allocation, one could consider an allocation by pool, with for instance (i) a first pool with a fixed reward per contributor, reflecting fixed costs linked to their contribution (e.g. connection costs), (ii) a second pool benefiting in priority to smaller exchanges, with the allocation linked to the number of listed companies of less than EUR 1bn of capitalization and (iii) a last pool allocated to the volumetry of data contributed.
- (c) The tender should reflect a revenue structure where the CT costs are covered with a reasonable margin, together with a commitment to reduce the fee charged per user when the number of users increases.

Besides, most AMAFI members consider that the creation of a CT will not solve the issue of increasing market data costs. Most AMAFI members⁵ welcome the EC proposal to convert ESMA guidelines on market data into a legal text as well as the empowerment of ESMA to specify how the Reasonable Commercial Basis principle should be applied. However, we consider that ESMA remaining recommendations⁶ and in particular the provision for market data to be provided on the basis of costs should have been included in the level 1 text as well as the deletion of the articles allowing trading venues, APAs, CTPs and SIs to charge for market data proportionate to the value market data represents to users.

² Some AMAFI members do not believe that a real-time pre-trade CT should be pursued due to concerns that such a tape would advertise a misleading sense of liquidity creating a flawed and easily gameable benchmark to the detriment of less sophisticated investors.

³ For more details, please see Appendix.

⁴ Some AMAFI members do not share the views outlined below in relation to the revenue sharing mechanism.

⁵ Some AMAFI members would underline that the market is currently adjusting to much awaited guidelines from ESMA on MiFID II/MiFIR Market Data obligations and that in light of this no further action should be taken prior to the ESMA peer review in 2023.

⁶ ESMA [Final Report](#) on market data costs, points 58-65, page 26-27.

b Preserving the delicate balance between transparency and liquidity for non-equity instruments

We consider it is of paramount importance to take into account the specificities of the bonds and derivatives markets.

We are against the proposals (i) to limit the dissemination of the price until the end of the day and (ii) to limit the masking of volumes to 2 weeks (currently 4 weeks in the member states with the main non-equity markets). Such limitation would make it extremely difficult for market makers to (i) hedge their risks and (ii) to unwind their positions, limiting their ability and willingness to enter into transactions of significant sizes or on illiquid instruments.

As we are supportive of the harmonization of the transparency regime across the Union, we tend to believe that the regime adopted by NCAs in charge of the main markets (of which France and Germany, notably 4 weeks deferral for publication) would be the best suited from this standpoint.

Moreover, we recommend to lead an impact analysis on liquidity before suppressing the Size Specific to the Instrument (SSTI) which own existence is based on the principle of protecting liquidity providers from undue risk (as per MiFIR Art 11 (1) (c)). If however policy makers would chose to remove one of the 2 existing thresholds (SSTI or LIS) without liquidity analysis, we would recommend to set the level of the remaining threshold to the level of the SSTI.

The same way as liquidity providers will continue to be protected from undue risk for transactions on sovereign bonds (weekly aggregation deferral) and those executed by Central Banks (exempted), we call for sufficient protection to apply to other bonds and to derivatives in the form of well calibrated deferrals, especially for illiquid instruments and trades of large sizes.

Further analysis would also be required on the appropriateness of modifying the level of Pre-Trade Transparency required for SI (MiFIR Art 18) by suppressing the SSTI. Our recommendation, in favour of simplification, would be to remove completely this requirement, especially as it is not bringing any value to market participants which use other tools (e.g. axis, indicative streaming prices...) and trading protocols (e.g. RFQ) for pre-trade transparency.

Ultimately, AMAFI supports real-time transparency for liquid instruments and trades of small sizes, for which hedging and risk management are straightforward.

Given that, on their side, UK authorities and other third country jurisdictions show no intention to reinforce the constraints imposed on market makers, the proposal could lead dealers, everything else being equal, to prefer providing liquidity at a better price in the UK/other third country markets, rather than in the Union. Ultimately, this would result in a transfer of liquidity from the EU to the UK/other third country markets, and in a loss of attractiveness of the Union's markets.

c. STO : extending the derogation based on currency used to all non-EU currencies

With regards to the share trading obligation (STO), we support the transposition in the level 1 text of the [transitional measures](#) adopted by ESMA in October 2020.

However, we consider the derogation based on the currency used for the transaction should be extended to all non-EU currencies instead of the domestic currency of the market where the transaction takes place. This is the case for instance of AMS AG, lastminute.com, COSMO PHARMACEUTICALS N.V.CMN et PIERER Mobility AG, whose transactions are mainly in CHF both in the Swiss and UK markets.

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.

d. DTO targeted exemption provision

We welcome the EC proposal to suspend the DTO, upon member state 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 EC should also benefit automatically to other concerned entities of the Union as long as they respect the set criteria.

We also support the EC 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 are calling for a fast implementation of this provision.

It is critical for the proposal to enter into force as quickly as possible as once a client has moved to another dealer to get liquidity, it is extremely difficult to establish or re-establish a trading relationship for EU market makers. In this context, we consider two options could be envisaged:

- Use of a text that is more advanced in the legislative process;
- A no action letter from ESMA.

Besides, it is important to ensure that the suspension mechanism is sufficiently flexible for EU market makers that would like to benefit from it. Typically, the mechanism should be based on an ex-post check of the suspension by NCAs, rather than an ex-ante approval for each transaction scoped in by the suspension criteria.

e. Payment for order flow: defining precisely scoped in practices

We consider that the prohibition of payment for order flow should be accompanied by a more precise definition of the practices that would be subject to the ban. We believe it is necessary to have a sufficiently refined reading of PFOF, as a ban could capture very different practices, some of which do not consist of having “high-frequency traders, organised as SIs [...], [that] pay retail brokers in exchange for the latter channelling their retail orders” and do benefit end-clients (zero commission agreements on warrants, for instance).

We also consider that many of the poor practices that rightly worry the EC could be avoided by a stricter implementation of existing rules in terms of best execution, suitability and appropriateness tests, and call for a level playing field in terms of supervisory practices in this area, regardless of the decision finally made on a ban on PFOF.

II. Medium priorities in the MiFIR review proposal

a. Ensuring consistency in the definition of standard market size in the transparency regime for equity

We support the EC’s proposal which aims to amend the volume cap mechanism though we question the need to reduce the level to 7% and have not seen any cost benefit analysis to justify the change.

With regards to the increase of transactions’ volumes that could benefit from transparency derogations up to twice the standard market size, we believe it could be envisaged, as long as, the definition of standard market size is not modified in RTS 1. Nevertheless, this should be supported by a relevant cost benefit analysis.

b. Preserving open access provisions

Most AMAFI members are against the deletion of open access provisions⁷. They question the argumentation of the EC which considers that it would improve competition and innovation. Indeed those are the very benefits the provisions were introduced for and will deliver if commercial opportunity and regulatory support secure adherence. There is no reason to introduce in a level 1 text provisions that would pre-empt the possibility to put in place open access for ETDs for instance through the use of new technologies. The same issue was previously raised for cash markets while in the end it has become a successful, if incomplete, change of the clearing arrangements to the benefit of market participants. Open access for ETDs could lead to lowering the clearing costs.

c. Deleting Article 27(3) & (6) on best-execution reports

We are in favour of deleting both Article 27(3) and 27(6) of MiFID II, related to “RTS 27” and “RTS 28” best execution reports. They represent an important burden to produce and are not read by investors while many buy-side investment firms can receive all the relevant information via other means (e.g. brokerage meetings).

This seems all the most relevant as the UK will delete them as part of the Wholesale Markets Review.



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.

⁷ Some AMAFI members welcome the proposal to remove the open access provisions for ETDs underlining that this removal would eliminate the prospect of liquidity fragmentation (at the trading level) and of the increase of systemic risk (at the clearing level).

Appendix – Analysis of the use cases featuring in Appendix A6 of the Market Structure Partners report on the creation of an EU consolidated tape

For each use cases and depending on the data required, the table below highlights whether (i) a pre-trade CT as close to real time as possible (Pre-T RT), (ii) a CT post-trade as close to real time as possible (Post-T RT) and/or (iii) a CT post-trade with a 15-minute delay (Post-T 15 min) would answer best to market actors' needs.

Note that the post-trade transparency should continue to be in real-time, while taking into account the deferral regimes for illiquid instruments and trades of large size.

Colour code

	Required
	Somewhat useful
	Not useful

Use case ID	Type of CT			
	Bonds	Equities		
	Post-T RT	Pre-T RT	Post-T RT	Post-T 15 min
Issuing				
1a Pre-Issuance Analytics & Pricing				
1b Improved visibility of Small and Mid-Cap issuer Instrument				
1c Publication of Issuer Yield Curves		N/A	N/A	N/A
1d Decisions and Disclosures at Issuance and Ongoing				
1e Cash and Capital Structure Management				
Asset Allocation				
2a Asset Allocation				
2b Asset movements/ Transition Management				
Portfolio/Investment Management				
3a Portfolio Construction				
3b Ongoing Monitoring				
3c Portfolio rebalancing				
Pre-Trade Analytics				
4a Pre-trade Analytics for Investors				
4b Pre-trade Analytics for Smart Order Routers/Venue Selection				
4c Price Formation and Transparency at the same price for everyone (Buy and Sell-side trading desks-Agency and Risk)				
4d Block-size liquidity provision (Sell-side Trading Desk)				
4e Trading Strategy Research (Venue and SI liquidity Provision)				
4f Sales/trade Idea generation				
In flight execution Management				
5a Investor's In-Flight Execution Management (Buy-side Trading Desk)				
5b Sell-side In-Flight Execution Management & unwinding of block trades				

5c Utility data for monitoring and risk checks				
5d Harmonized taxonomies				
5e Front line Support & Help Desk for electronic trading				
Post trade Analytics				
6a Transaction Cost Analysis				
6b Post-trade Analytics, Liquidity Providers				
6c Provision of Best Execution (Retail Clients)				
Middle and Back Office Processing and Administration				
7a Valuation and Fair Price Adjustments				
7b Reconciliations				
7c CSDR Penalties calculation				
7d Initial Consistency checks/Product Improvements				
Funding and Collateral Management (including non-cash collateral)				
8a Initial and Variation Margin calculations				
8b Securities Lending and Collateral Management				
8c Less liquid Instruments e.g. ETFs for lending and use as collateral				
8d Standardised Collateral Agreements				
8e Credit/ Counterparty Risk, OTC Derivatives				
Market Surveillance				
9a Detection of Insider Trading				
9b Detection of Market Abuse/ Manipulation				
9c Detection of Insider Trading and Market Manipulation (NCAs & Regulatory Bodies)				
Risk Management				
10a Liquidity Risk Management				
10b Fund Manager Risk Oversight				
10c Liquidity Risk Management				
10d Market Risk Management				
10e Market Risk – Fundamental Review of the Trading Book				
10f Credit/Counterparty Risk				
10g Operational Risk – Back up Source of Market Data				
Performance Measurement, Evaluation & Attribution				
11a Calculation of the rate of return				
11b Index/benchmark creation and pricing				
11c Macro Performance Attribution				
11d Micro Performance Attribution - Equities				
11e Micro Performance Attribution – Fixed Income				
Regulatory Oversight/Policy				
12a Update of Regulatory Metrics/thresholds				
12b Ongoing Monitoring of regulatory requirements				
12c Cross market scenarios involving NCAs				

12d Forthcoming regulatory proposals				
12e Harmonized implementation of regulatory requirements				
12f Regulatory oversight				
Audit				
13a Audit oversight				
Improving environmental practices				
14a Helping to achieve Environmental Action Policies				