



# **Report on the development in prices for pre- and post-trade data and consolidated tape providers. International Bulletin of February 2020.**

On 5 December 2019, the European Securities and Markets Authority (ESMA) published a Report on price developments of the pre- and post-trade transparency data from trading venues — regulated markets, multilateral trading systems and organised trading facilities — approved publication arrangements and consolidated tape providers, in which it assesses the impact of the relevant provisions of the Directive and the Regulation on financial instrument markets (known as MiFID II and MiFIR, respectively) as from the date of their application.

In turn, the Report contains a series of recommendations regarding the application of the provisions of these two rules that aim to reduce the cost of market data. Specifically, the document focuses on the following requirements: 1) the publication of market data on a reasonable commercial basis; 2) the provision of market data on a disaggregated basis and 3) the provision of market data free of charge 15 minutes after its publication.

On the other hand, the Report also includes an assessment of the figure of the consolidated tape provider for equity and equity-like financial instruments. In particular, this Authority identifies the possible reasons why one has not yet been established in the European Union (EU), identifies the most suitable characteristics that could guarantee its success and suggests certain regulatory amendments in line with the proposed model.

In this way, ESMA complies with the requirement set forth both in Articles 90.1 and 90.2 of MiFID II, and in Article 52.7 of MiFIR, to provide advice to the European Commission so that it can prepare reports on the two issues referred to above in order to inform the European Parliament and the Council about them (which has finally been done in a single report). Previously, this Authority had launched a public consultation to find out the sector's opinion about them.

## **DEVELOPMENTS IN MARKET DATA PRICES**

As noted above, the Report assesses the impact of the implementation of the market data provisions introduced by MiFID II/MiFIR that aim to improve the quality and availability of market data and to reduce the cost thereof.

From the analysis of the responses received to the public consultation launched by ESMA on the issues covered in this Report and to a questionnaire sent to the trading venues and approved publication arrangements on the developments in market data prices, the European Authority notes an increase in the latter, in particular those for which there is a greater demand. In addition, it indicates as one of the possible reasons for the increase that in order to set its price, both the cost of producing and disseminating this information and its value to users are being taken into account.

Consequently, ESMA concludes that the new regulatory provisions have not achieved the expected impact of reducing the cost of market data.

## **PUBLICATION OF MARKET DATA ON A REASONABLE COMMERCIAL BASIS**

Articles 64 and 65 of MiFID II require approved publication arrangements and consolidated tape providers, respectively, to publish post-trade transparency data (volume, price and time of transactions) on a reasonable commercial basis. Similarly, Article 13 of MiFIR requires that the trading venues be satisfied with this same requirement, but both in relation to the pre-trade transparency data (bid and offer prices and the depth of trading positions) and the post-trade transparency data. Moreover, Articles 15 and 18 of MiFIR also require systematic internalisers to make firm quotes public on a reasonable commercial basis.

After the assessment, ESMA confirms that it has not been possible to achieve the intended objective with the imposition of this requirement but maintains its preference to continue with the current criterion that governs this

obligation (transparency plus) and work on improving its application.

Therefore, ESMA intends to focus in 2020 on the drafting of supervisory guidance on the application of this requirement that will improve the use and comparability of the information disclosed in this regard. Specifically, the following Level 3 initiatives are proposed:

1. Development of a standard publication format to be used by all trading venues, approved publication arrangements and systematic internalisers in the disclosure of information on a reasonable commercial basis (data policy and prices).
2. Standardisation of key terminology.
3. A guide that defines key concepts.
4. A guide on the typology of costs to include in the fee calculation.

Only if after the application of these guidelines the situation does not improve, ESMA proposes to consider moving to a price regulation model.

At the same time, this Authority suggests the following regulatory changes in this matter:

1. Include a new mandate in the Level 1 texts entrusting to this Authority the development of draft technical standards specifying the content, format and terminology of the information on a reasonable commercial basis that the trading venues, approved publication arrangements, consolidated tape providers and systematic internalisers have to provide.
2. Move to Level 1 the principle that the price of market data has to be cost-based and facilitate more specific development at Level 2.
3. Include a new requirement at Level 1 which consists of trading venues, approved publication arrangements, systematic internalisers and consolidated tape providers sharing information about the cost of producing and disclosing the market data and the additional margins with the national competent authorities and with ESMA. It also proposes the development at Level 2 of the requirements regarding the frequency, content and format of this information.
4. Eliminate the provisions that allow trading venues, approved publication arrangements, consolidated tape providers and systematic internalisers to charge users in proportion to the value of the information to them.

#### PROVIDING DATA ON A DISAGGREGATED BASIS

This new requirement, set out in Article 12 of MiFIR for trading venues, is intended to ensure that users only pay for the data they need. However, in order to limit the cost that it may entail for these venues, Level 2 texts provide for the option of complying with this requirement at the customer's prior request.

However, ESMA states in its Report that the demand for disaggregated market data has been limited and has not contributed to reducing its cost. Among others, the reasons given by this Authority are the cost involved, that the granularity of the information provided in this way is insufficient or that the trading venues are not making it easy to obtain the information.

To improve this situation, ESMA proposes focusing on the enforcement of the requirements of this obligation and to have the trading venues provide it as soon as possible. It also suggests studying the role played by data vendors in shaping market data prices.

#### THE OBLIGATION TO PROVIDE MARKET DATA FREE OF CHARGE 15 MINUTES AFTER ITS PUBLICATION

Articles 64 and 65 of MiFID II require approved publication arrangements and consolidated tape providers, respectively, to offer post-trade transparency data free of charge within fifteen minutes of publication. This same obligation is included for the trading venues in Article 13 of MiFIR.

ESMA states in its report, following the analysis of the responses from the public consultation, that certain trading venues and approved publication arrangements are still not complying with this requirement. In addition, some users have complained that trading venues make it difficult to access this information and are not providing data in machine-readable formats or that they are even providing them without format.

However, this Authority believes that there have been certain improvements such as, for example, that it has been established as usual practice for trading venues to facilitate access to this information to retail investors even if they are not doing so for professional users.

Consequently, ESMA proposes the following recommendations in this area:

- Regarding the criticism that certain trading venues are not facilitating access to this information in an expeditious manner or in a readable format, it suggests the amendment of Article 13 of MiFIR to include this requirement expressly, as is already the case for approved publication arrangements and consolidated tape providers.
- With regard to the enforceability of this obligation, it proposes that both the national competent authorities and itself devote more resources to enforcing compliance therewith.
- Finally, it proposes better performance of some aspects of this obligation at Level 3 (such as the distribution of data or value-added services).

Concerning the proposal by some trading venues to reduce the time in which this information is made available to the public free of charge, ESMA states in its report that it prefers to maintain the trading day + 1 rule.

## **CONSOLIDATED TAPE PROVIDERS FOR EQUITY AND EQUITY-LIKE FINANCIAL INSTRUMENTS**

MiFID II regulates the figure of the consolidated tape provider to whom it entrusts the compiling of reports of transactions carried out in trading venues, as well as those published by approved publication arrangements. The objective is to consolidate all this information in a continuous and real-time electronic data flow that provides data on prices and volumes for each financial instrument.

Moreover, Recital 117 of this Directive provides for its initial implementation as a commercial solution and only if it does not arise in this way does it provide for the possibility of launching a public procurement process.

Despite the regulatory provisions mentioned, ESMA notes in its Report that the reality is that to date there has not been any entity that consolidates the information covering 100% of EU market data. In its analysis, it notes as possible reasons for this lack of interest that future commercial profits may be reduced due to the complication of having to negotiate agreements with more than 170 trading venues and approved publication arrangements; the regulatory requirements are too demanding; the existence of competition from data vendors; and even certain deficiencies in the quality of the data (in particular, in the over-the-counter (OTC) transactions and in those that take place in the systematic internalisers).

Additionally, this Authority recognises that data vendors are in some way currently providing services similar to those of a consolidated tape provider. However, this aggregation work is partial and does not offer a comprehensive view of 100% of the activity of a financial instrument. In particular, consolidation is considered partial because it does not integrate all trading venues and all approved publication arrangements that record activity on a particular financial instrument. The reason could be related to the fact that the specific demand for certain more specialised data packets is, of course, lower.

Among the main conclusions, after the assessment carried out by ESMA in this area, the following are noteworthy:

- In relation to the availability of post-trade transparency information, this Authority emphasises that although trading venues, approved publication arrangements and data vendors are making it available to the public, there is no source that consolidates 100% of the market data which, in turn, it believes is related to the lack of sufficient quality of the data from over-the-counter transactions or systematic internalisers.
- In relation to the timeliness of the disclosure of this information, ESMA believes that trading venues, approved publication arrangements and data vendors are generally providing this information in real time and that the failures that are occurring result from the different disclosure requirements (depending on whether transactions take place in trading venues or over-the-counter markets).
- Concerning the quality of market data, this Authority agrees with the comments received in the public consultation and indicates that there is room for improvement in this regard. Therefore, in this document it states its intention to work in the future to improve the quality of this data in close collaboration with the national competent authorities and market participants.

Consequently, and in line with this assessment, ESMA is in favour of establishing a consolidated tape provider in the EU since, in its opinion, this figure will help overcome the current fragmentation of our markets by allowing participants to have access to a consolidated view of the transparency information available, which will make it easier for them to know where liquidity is. At the same time, it believes that this figure will favour the achievement of the Capital Markets Union through a more integrated European market and will facilitate the implementation of certain policies such as that of best execution.

Among the various features that ESMA proposes to take into account when establishing a consolidated tape provider for equity and equity-like financial instruments, are the following:

1) *Data quality*: for its proper functioning, it is essential to improve the quality of the data that will serve as the basis. Therefore, it will propose regulatory amendments at Level 1 and 2 texts and, likewise, will work on the development of supervisory guidance (Level 3).

2) *Mandatory contribution*: it proposes that trading venues and approved publication arrangements be required to provide post-trade transparency information free of charge.

3) *Profit sharing with entities that provide the information*: it recommends that this figure charge a fee to users and that the profits obtained be shared among the entities that provided the information, for which it will propose regulatory amendments at Level 1 and 2 texts.

4) *Mandatory consumption*: to ensure the implementation and success of this project, it proposes to make consumption mandatory during its first years of life. To do this, it will suggest regulatory amendments at Level 1 and developments at Level 2 that specify the criteria to be taken into account so that the cost of this mandatory consumption is provided (for example, calculating the rate to be paid based on consumption) as well as investment services and activities excluded from fulfilling this obligation.

5) *Full coverage*: it proposes the consolidation of 100% of transactions on equity and equity-like financial instruments, with specific exceptions.

6) *Data publication*: it recommends that data be published in real time.

7) *Operation of an exclusive provider*: it believes that to guarantee the success of this figure, only one consolidated tape provider should be appointed initially (for a period of between 5 and 7 years) after a selection process based on competitiveness criteria, which must also inform the renewal of the contract. This will also require amendments to Level 1 and 2 texts.

8) *A sound governance framework*: this will entail regulatory amendments at Level 1 and 2 which will specify aspects to be fulfilled by consolidated tape providers such as neutrality, a high level of transparency, the role and involvement of contributing entities and users, accountability, continuity in the provision of services or resilience.

Finally, ESMA offers to provide technical advice to the European Commission for its establishment. It also announces that it is prepared to begin a public procurement process to designate an entity to manage a consolidated tape provider.

**Link of interest:**

[MiFID II / MiFIR Review Report No. 1. On the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments.](#)