



European Commission public consultation on the review of the MiFID II/MiFIR regulatory framework. International Bulletin of June 2020.

On 17 February, the European Commission published a consultation to obtain the views of stakeholders on certain aspects of the legal regime for financial markets instruments regulated by MiFID II¹/MiFIR² and, where appropriate, propose any review that is deemed appropriate. The consultation is open until 18 May.

The consultation document contains three sections. The first seeks to gather general views on the application of this regulatory framework and, particularly whether the objectives of increasing transparency, improving investor protection and enhancing competition have been achieved.

The second section focuses on more specific issues such as the advisability of establishing an EU consolidated tape, various aspects related to investor protection, the impact of the new rules on investment research - particularly SME research reports - and the commodity derivatives market.

In this section, the Commission also asks stakeholders for their views on other non-priority areas, such as the derivatives trading obligation, multilateral trading systems, the double volume cap, non-discriminatory access among trading venues and central counterparties, digitalisation, the application of new technologies and spot FX trading.

The third section gathers any additional comments.

The main issues that the Commission is seeking views on, in section, two are summarised below.

Priority areas identified

I. The establishment of an EU consolidated tape

The Commission is seeking the views of stakeholders on the establishment of a single provider consolidating trading data across the EU - referred to as the consolidated tape ('CTP'). It believes that given the current fragmented market landscape, due in part to the different alternatives included in MiFID I and II in connection with trading and execution venues, means that investors and their intermediaries often lack a consolidated view of where financial instruments are traded, how much is traded and at what price. The Commission, therefore, believes that, among other benefits, the CTP would help brokers to locate liquidity at the best price available and increase investors' capacity to evaluate the quality of their broker's performance in executing an order.

The consultation on this matter takes into account the conclusions from the ESMA Report published in December 2019³ in regard to pre- and/or post-trade transparency and the provision of market data and asks what features this new tool should have. These include:

- a) High level of data quality
- b) Mandatory contributions
- c) Mandatory data consumption
- d) Data to be consolidated (pre-trade or post-trade transparency, or both)
- e) Full coverage, i.e. whether the CT should consolidate 100% of the data
- f) The scope of the CT in terms of financial instruments (shares, exchanged traded funds, bonds, public debt or derivatives)
- g) Whether the latency of the tape should be "real time"
- h) The operating or governance framework and how to fund the tape

The document also asks about possible amendments to certain MiFID II/MiFIR provisions, with a link to the CTP,

specifically in the area of secondary markets.

In particular, it asks stakeholders for their views on how the share trading obligation (STO) has worked and whether certain aspects of its scope should be reviewed – exemptions and shares listed in trading venues in third countries -, with three possible alternatives: a) maintain the STO, b) make adjustments to the STO, or c) revoke the STO altogether. The consultation seeks views on whether systematic internalisers should be kept as execution venues for purposes of the STO and asks about the aspects that would need to be revisited to ensure that they are able to compete on a level playing field with trading venues. Further, it asks for views on the factors that should be reviewed to ensure better price formation in stock trading.

Another question contained in the document relates to the appropriateness of aligning the scope of the STO and of the transparency regime with the scope of the consolidated tape.

Lastly, the Commission questions whether the post-trade transparency regime for instruments other than shares or equivalents could limit the effectiveness of the CTP. It sets out several alternatives such as shortening the two-day deferral period for price information, shortening the four-week deferral period for volume-related data, or the harmonisation of national deferral regimes, among others.

II. Investor protection

In this area, the European Commission focuses on the following issues.

1. Easier access to simple and transparent products

The Commission asks stakeholders about the advisability of reforming product and cost governance regulations as well as certain conduct requirements with the aim of improving access for retail clients to simple products such as plain vanilla bonds, exchanged traded funds and UCITS funds.

2. Relevance and accessibility of adequate information

The Commission asks stakeholders for their views on the possibility of clients being allowed to opt out unilaterally from ex-ante cost information obligations, in particular when they are eligible counterparties or professional investors, given that they are able to easily access this information through other channels.

It also raises the possibility of gradually phasing out paper-based information, in line with the Commission's Green Deal and Sustainable Finance Agenda, with possible exceptions for retail investors.

Lastly, the Commission proposes the development of an EU-wide database allowing for the comparison between different types of investment products.

3. Client profiling and classification

In this regard, the Commission proposes the creation of a new category of semi-professional clients, in line with the recommendations of the Next CMU High-Level Group (composed of the Finance Ministers of Germany, France and the Netherlands, in which Spain was also represented), for which it suggests a relaxation of the current regime.

The Commission also seeks views on the advisability of lowering the requirement applicable to clients who request to be treated as professionals (professional clients on request) to a portfolio of at least €500,000.

4. Product oversight, governance and inducements

The Commission proposes to simplify product governance, offering the following alternatives: a) it should only apply to products to which retail clients can have access; b) it should apply only to complex products, or c) the current regime should be maintained but its practical application monitored.

It also asks whether investment services firms should be allowed to sell their products to clients who are not part of the product's target market if they insist on buying them.

It seeks stakeholders' opinions on whether inducements should be banned, as some consumer associations have stated that inducement rules under the existing regime are not sufficiently dissuasive to prevent conflicts of interest in the distribution process.

Lastly, it proposes a harmonised certification process for financial advisory services.

5. Distance communication

The Commission asks stakeholders whether they agree that the provision of investment services via telephone requires ex-ante information on costs and charges, in addition to the advisability of maintaining the requirement that all telephone communications between the investment firm and its clients that may result in transactions be recorded and stored for a period of time.

6. Reporting on best execution

The Commission seeks the views of stakeholders about possible improvements in reporting obligations on compliance with the principle of best execution.

III. Assessment of the new rules introduced by MiFID II/MiFIR on research unbundling and their effect on SME research coverage

The Commission points out that the new rules on the unbundling of research reports from other services provided by entities, introduced in MiFID II with the aim of preventing conflicts of interest, has led to a decrease in coverage, especially for SMEs.

Therefore, in order to increase the production of research on SMEs, which it believes is key to raising investments in SMEs, possible regulatory policy options are being considered including authorising bundling exclusively for providers of SME research, as well as for independent research providers.

The consultation reflects on possible financing alternatives for SME research, whether privately – from the trading venues themselves – or with public money.

Lastly, other options being considered by the EC include an EU-wide SME research report database or the review of existing rules on issuer-sponsored research.

IV. Commodity derivatives market

In this document, the European Commission discusses its efforts to foster more commodity derivatives trading denominated in euros.

It proposes to recalibrate the rules on pre-trade transparency and position limits in these markets, or to allow for trades negotiated over the counter to be negotiated in trading venues. Specifically, stakeholders are asked about the following possible measures:

- a) Level 1 could contain a specific requirement for nascent markets as an advantage or higher position limits for illiquid markets, or even establish position limits only for critical contracts.
- b) Review of the criteria used to set position limits.
- c) Clarify the role and responsibility of trading venues in position management controls.
- d) Consider an exemption from position limit rules for financial counterparties fulfilling their mandatory liquidity provision obligations.
- e) Recalibrate the pre-trade transparency regime.

Areas identified as non-priority

The European Commission also aims to gather views of stakeholders on a series of non-priority areas, and for which it does not, in principle, intend to propose regulatory policy changes.

Firstly, the Commission asks whether adjustments should be made to the derivatives trading obligation (DTO), e.g., in the area of market making activities. It also asks whether there is a need to adjust the DTO regime to align it with the EMIR Refit changes, with regard to the clearing obligation for small financial counterparties and non-financial counterparties.

Secondly, with regard to multilateral trading systems, the Commission seeks to gather views on whether the current definition contained in the regulations should be maintained or whether a much broader concept should be considered to include the electronic platforms that have been emerging recently, although they claim to match trading interests on a bilateral basis.

Lastly, stakeholders are asked about the impact of the double volume cap mechanism on the markets, non-discriminatory access among trading venues and central counterparties, digitalisation and application of new technologies, and whether spot FX trades should fall within the scope of MiFID II/MiFIR.

1 Directive 2014/65/EC of the European Parliament and of the Council, of 15 May 2014, on markets in financial instruments.

2 Regulation (EU) No. 600/2014 of the European Parliament and of the Council, of 15 May 2014, on markets in financial instruments.

3 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

Useful link:

[Public consultation on the review of the MiFIDII / MiFIR regulatory framework](#)