082099/EU XXVII. GP
Eingelangt am 29/11/21

Council of the European Union

Brussels, 30 November 2021
(OR. en)

14368/21
ADD 2

Interinstitutional File:
2021/0384 (COD)

EF 366
ECOFIN 1168
CODEC 1546
IA 192

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	25 November 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2021) 347 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 600/2014 as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders and the Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments

Delegations will find attached document SWD(2021) 347 final.

Encl.: SWD(2021) 347 final

EUROPEAN
COMMISSION

Brussels, 25.11.2021
SWD(2021) 347 final

COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 600/2014 as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders

Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments

{COM(2021) 726 final} - {COM(2021) 727 final} - {SEC(2021) 573 final} - {SWD(2021) 346 final}

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Executive Summary Sheet

Impact assessment on Proposal for a Revision of the Regulation (EU) No 600/2014 Markets in Financial Instruments Regulation (MiFIR)

A. Need for action

Why? What is the problem being addressed?

The MiFIR review tackles **three problems** that prevail in the Union's capital markets: (1) **liquidity and trade execution risk for all capital market participants**; (2) **high cost in consolidated market data**; and (3) **the absence of business case for the consolidation of data**. Due to the MiFID which opened to competition in trading on financial instruments (like shares, bonds and derivatives), many platforms now trade identical financial instruments. This makes the trading cheaper but also scattered across over 400 trading markets across the Union. This fragmentation entails that the market data needed by investors to base their trading decisions upon is also scattered. Only the **most sophisticated market professionals** (high frequency traders and major investment banks) have the means to buy. **Most ordinary investors and their brokers** have no comprehensive view of EU trading markets and often take investment decisions based on a partial view of the market.

What is this initiative expected to achieve?

Although MiFIR already includes a basic framework for a **consolidated tape** (CT or tape), no provider of a consolidated tape has emerged for any asset classes because there is no commercial rewards, a need to conclude individual licensing arrangements and there is insufficient transaction data quality. The Commission intends to amend MiFIR to achieve the effective creation of a CT that aims to reduce liquidity and trade execution risk for all market participants. To this end, the new framework should aim at improving market data quality and paving the way for market data consolidation on the one hand. It should on the other end facilitate market data licensing and provide a business case of consolidation of market data.

What is the value added of action at EU level?

A tape consolidates core market data for a given financial instrument that is traded across several venues in the Union. A CT is therefore designed to increase transparency and confidence in the Union's market and to democratise access to core market data. Because of the direct applicability across the Union, the set-up of a tape would be swifter and more efficient than if similar initiatives were undertaken on Member State level.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred option or not? Why?

Two sets of options are explored in the report, all accompanied by level 2 measure **harmonising the market data fields** for **mandatory contributions for free** by all execution platforms that offer trading in or trade in of "reportable securities".

1. Options to improve market data quality/facilitate market data consolidation ("consolidation options")

Option 1.1 (self-aggregation): market participants would be able to register with ESMA as **self-aggregators**. This would enable them to collect and consolidate market data for their own internal use directly at their own data centre.

Option 1.2 (competing consolidators): **competing market data consolidators** registered with ESMA would collect market data and consolidate it directly at their subscriber's data centre (decentralised consolidation) allowing a lower data latency.

Option 1.3 (exchange-consolidator). EU **exchanges** for shares or the **primary centre of liquidity** for bonds and derivatives to consolidate all trading data pertaining to the securities they list (stock exchanges for shares) or for which they are the main centre of liquidity (all other asset classes).

Option 1.4 (single consolidator). The task of consolidation of all market data would be given to a **single market data consolidator** selected by ESMA on the basis of a tender. The CTP would be independent from any of the contributors.

Option 1.5 (trade concentration rule). This option would not entail a CT, but instead **consolidate *trading*** in a given category of financial instrument on a limited set of trading platforms. By consolidating trading, the sources of market data are reduced and the need for consolidating data is less urgent or even redundant.

Option **1.2** and **1.4** of this set are the **preferred options**: a single or multiple consolidators, coupled with the possibility to self-aggregate (option **1.1.**), are the most effective in making post-trade core data available to all market participants in a fair and efficient manner, increasing post-trade transparency.). Option 1.2 enjoys a slight advantage in terms of achieving optimal and timely market data quality. On the other hand, Option 1.4 ranks better in granting the opportunity to select as consolidator a new market entrant entirely independent from both market data contributors and market data companies.

2. Options to facilitate market data licensing/create a business case for market data consolidation('licensing options')

Option 2.1 (no statutory subscription fees). **No minimum subscription fees** would be required. Consequently, subscription fees would be expected to cover only the CTP operating costs not allowing revenues to be distributed to data contributors.

Option 2.2 (statutory subscription fee). This option sets a **minimum statutory subscription fee** in order to create commonality between the consolidator(s) and the contributors as there would allow a **revenue redistribution** to market data contributors.

Option 2.3 (statutory subscription fee and RPW access fee). This option sets a **minimum statutory subscription fee** (with

revenue redistribution) and incudes an **additional usage fee** for venues using market data as a **reference price**.
Option **2.3** of this set is the **preferred option** as this not only facilitates more qualitative market data from the data contributors but also encourages the market participants to favour lit markets.

Who supports which option?

Investors, alternative trading venues, asset managers, banks, high frequency traders and national supervisors in general support the creation of a consolidated tape operated by an entity independent of the listing exchanges (Options 1.2 and 1.4, not Option 1.3). Some retail representation believes the CT will not solve all problems linked to information asymmetries in financial markets. Incumbent exchanges are sceptical about the creation of a CT, due to potential revenue impacts that a timely consolidated tape might have on their venue-specific proprietary data products. Incumbent stock exchanges also advocate that ESMA administers or at least supervises the consolidated tape provider to apprehend conflicts of interest.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise the main ones)?

- Consolidation options 1.2 and 1.4 would “democratise” insights into where the best price and the deepest pool of liquidity in any given financial instrument obtained. It would level the playing field: a retail investor, its broker, a trader working for a small asset manager or a major bank would all have some of the same market intelligence that currently only larger market makers have. A CT, provided either by a single provider (option 1.4), or by competing providers (option 1.2), would avoid that retail clients and their intermediaries miss out on **obtaining the best available price** for their orders and provide them with a tool to **check compliance** with the **best execution rule**.
- Consolidation Option 1.2 has a slight latency advantage, as the decentralised delivery of data is slightly more accurate in terms of latency. Consolidation Option 1.4 provides ESMA with the possibility to award the consolidator role to an entirely new entrant.
- The monitoring through the tape will **incentivise brokers** and asset managers to actively seek to include in their portfolios the most optimal instruments and not just those available on the few venues they currently subscribe to.
- By providing a revenue allocation model that functions as an economic **incentive to channel trades to execution protocols** that are pre-trade transparent, the CT could increase incentives to provide accurate and timely data using the harmonised data format. This leads to an alignment of incentives between market data contributors and market data consolidators, which would also boost confidence in the operation of the Union’s capital market.

What are the costs of the preferred option (if any, otherwise the main ones)?

Projected operational cost for the provider of a consolidated tape for shares and bonds have been assessed as follows:

Equity tape costs (annual)	**Bond or derivative tape costs (annual)**
Build/Setup costs – EUR 0.8-2.4 million/yr	Build/Setup costs – EUR 0.16-1.4 million/yr
Running costs – EUR 1.4-5.5 million/yr	Running costs – EUR 1.3-4 million/yr
Total – **EUR 2.2-7.8 million**/yr	**Total – EUR 1.46-5.4 million**/yr

The tape would function under a revenue model from the users, where the tape provider would charge professional users an annual “per user” subscription of EUR 100/month. Non-professional users would either pay no fee or a maximum of EUR 1/month. Excess profit shall be redistributed to data contributors. Estimates for an **equity** tape show that annual total **revenues** are estimated at approximately EUR 200 million depending on the specific features of the tape. Subtracting average annual operating costs, that means a total of **EUR 100 to 150 million revenue allocation could be distributed among data contributors** (for bonds and derivatives, the dependence on data revenue is less pronounced, therefore, no revenue simulation has been conducted for those tapes).

How will businesses, SMEs and micro-companies be affected?

Consolidation options 1.1, 1.2 and 1.4 would have the benefit that **SMEs shares** listed on only one or a few regulated markets or SME Growth Markets become visible to every (non-local) investor and broker, or, for option 1.1, to self-aggregators in the Union. This would increase the attractiveness of investments and the possibilities of their shares being included in investment funds or investment portfolios which would, in turn, increase SMEs’ effectiveness of raising capital.

Will there be significant impacts on national budgets and administrations?

There will be **no direct impact** on national budgets. Options 1.2 and 1.4 require the adoption of level-2 legislation for a harmonised data reporting standards. The preferred options will also require supervision and enforcement by ESMA.

Will there be other significant impacts?

In terms of **social impact**, option 1.1, 1.2 and 1.4 would potentially favour the participation to markets from a larger section of the population. They would also have impacts of an **indirect** nature as a consequence of more efficient financial markets.

D. Follow up

When will the policy be reviewed?

A first analysis by ESMA would be provided 24 months after the new rules’ implementation followed by annual updates.