



Council of the  
European Union

Brussels, 29 November 2021  
(OR. en)

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**Interinstitutional File:**  
**2021/0384 (COD)**

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14368/21  
ADD 3

EF 366  
ECOFIN 1168

#### COVER NOTE

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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

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No. Cion doc.:	SEC(2021) 573 final
Subject:	REGULATORY SCRUTINY BOARD OPINION on 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

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Delegations will find attached document SEC(2021) 573 final .

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Encl.: SEC(2021) 573 final



EUROPEAN COMMISSION

Brussels, 8.10.2021

SEC(2021) 573 final

**REGULATORY SCRUTINY BOARD OPINION**

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

{COM(2021) 726 final}

{COM(2021) 727 final}

{SWD(2021) 346 final}

{SWD(2021) 347 final}



EUROPEAN COMMISSION  
Regulatory Scrutiny Board

Brussels,  
RSB

## Opinion

**Title: Impact assessment / Markets in Financial Instruments Regulation/Directive (MiFID/R) Review**

**Overall 2<sup>nd</sup> opinion: POSITIVE WITH RESERVATIONS**

### (A) Policy context

The Markets in Financial Instruments Directive I (MiFID) established a framework on investment services and activities in the EU. It allowed different types of platforms to trade identical financial instruments (like shares, bonds and derivatives) and thus increased competition in trading financial instruments. While this may have decreased trading costs, it entails the risk of scattering the trading data used by investors to take decisions. It also implies that investors need to buy the data from over 400 trading venues in order to access it in real time. As opposed to the most sophisticated capital market participants (high frequency traders and major investment banks), most ordinary investors and their brokers do not have a fully comprehensive view of the execution conditions of EU trading market transactions. They often take investment decisions based on a partial view of the market.

Retail investors also have no means of verifying whether their broker has executed a particular investment under the best conditions. This may lower both retail participation rates and the level of product innovation, the latter ultimately resulting in fewer investment opportunities.

This review of the regulation aims to tackle three problems in the Union's capital markets: (1) information asymmetries between larger and smaller capital market participants; (2) fragmentation of data sources; and (3) inefficient trade execution practices. This initiative explores options to amend MiFIR to create a consolidated tape (CT) that would give all investors, big or small, access to basic market information on core market data for a given financial instrument from all venues on which it is traded in the Union.

### (B) Summary of findings

**The Board notes that the resubmitted report is completely redrafted, from the problem definition to the options and impacts.**

**However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:**

- (1) The report does not explore all relevant options. It does not sufficiently specify how some of the options would work and why.**

- (2) The impact analysis does not sufficiently justify the estimates of the revenue of a consolidated tape. The analysis of the impacts of some options is not convincing. The report does not sufficiently analyse the combined impacts of different combinations of options under the two policy dimensions (organisation models and earnings options).**
- (3) The report does not draw clear conclusions from its analysis.**
- (4) The report does not present stakeholders' views on the revised problem description and options.**

### **(C) What to improve**

- (1) The report should better explain the degree of relevance of the problem for different types of investors and intermediaries.
- (2) The report should better clarify the functioning of some of the proposed options: (i) The report should explain why it considers that competing consolidators would only offer decentralised consolidation and why a single consolidator would necessarily apply centralised consolidation. It should also better explain the possible role of cloud-based consolidation. (ii) The report should better explain that self-aggregation is not considered as a feasible self-standing option, but that it would co-exist with a single or competing consolidator(s). It should clarify whether self-aggregators would have to pay data access fees, although the data contributors would always be obliged to provide the data. (iii) The report should clarify that the consolidated tape providers would be legally obliged to distribute revenues in excess of their costs to data contributors. It needs to specify how this would work in practice. (iv) The report should clarify what will happen with the existing free data provision after 15 minutes.
- (3) The report should consider and analyse all relevant options. This should include exploring the feasibility of a hybrid option that combines competing consolidators with the possibility for the supervisor to organise a competitive tender when there is a lack of effective competition.
- (4) The report should improve the impact analysis: (i) The report should demonstrate the robustness of the estimates of the revenue of a consolidated tape and how the level of the usage fees was determined. (ii) The report should analyse the excess revenue that could be generated by a single consolidator when there is no statutory contribution for the use of the consolidated tape. (iii) The report should analyse the costs for ESMA of managing and supervising the system under the different options. (iv) The report should re-assess the relative performance on market access of the options with a single consolidator and with competing consolidators.
- (5) The report should draw clear conclusions from its analysis to support the decision-making process. It should better establish the strengths and weaknesses of the combinations of options and of the two scenarios for the fees for private use of the consolidated tape by retail clients.
- (6) The report should present the views of different stakeholder groups on the revised problem description and options.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

**(D) Conclusion**

**The DG may proceed with the initiative.**

**The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.**

**If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.**

Full title	The review of the Markets in Financial Instruments (MiFID/MiFIR) framework
Reference number	PLAN/2019/6173
Submitted to RSB on	31 August 2021
Date of RSB meeting	Written procedure



## **ANNEX: Quantification tables extracted from the draft impact assessment report**

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

Table 1 – Overview of Benefits – Preferred option

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	Amount	Comments
<b>Direct benefits</b>		
Access to core market data through statutory subscription fee to competing tapes or a single consolidated tape	<b>Ca. EUR billions annually</b> This is an estimate of the direct cost saved by obtaining better execution quality in the equity and bond markets. This figure is based on market participants' estimates of the loss they suffer due to slippage (adverse price movement between a trading decision and the execution of a trade), which could be avoided if a consolidated tape was available. It represents the complement of the cost incurred by large dealers currently benefiting from a better view of the market. <sup>1</sup> A consolidated tape should therefore be seen as a measure redistributing from larger to smaller market participants.	<i>Main recipient of the benefit:</i> Retail investors and small market data users
Client-facing intermediaries: easier compliance with best execution requirement	Considering a hypothetical firm with 50 data consumers, the current annual costs for the market data would be €300,000. Replacing this by a tape costing €5,000 a year and €300 per user per year, would equate to a €265,000 saving, or 88% cost reduction. For a large banks there could be up to 20 times as many users of the market data <sup>2</sup> . There are 10,925 active regulated entities (including 6501 Investment Firms, 127 Regulated Markets, 145 MTFs). If we assume that the average investment firm equals the hypothetical firm above the overall cost saving across the Union for investment firms alone would be <b>EUR 1.8 billion annually</b> .	<i>Main recipient of the benefit:</i> All data users
More share trading on most transparent markets	The remuneration model would reward operators that contribute to price formation through pre-trade-transparent execution. If well-calibrated the proposal might also feed through to incentives for participants to post smaller orders to lit venues rather than place them into non-displayed venues and support distributed (and therefore more resilient) price formation and competitive markets	<i>Main recipient of the benefit:</i> Most transparent markets
Pan European financial market	Easy access to pan European data would encourage the development of a robust pan European retail market.	<i>Main recipient of the benefit:</i> Retail investors
<b>Indirect benefits</b>		
View of all EU markets	The smaller and less developed markets would become a lot more visible as at the moment only local investors and niche investors go through the trouble of obtaining the market data	<i>Main recipient of the benefit:</i> Smaller and less developed markets
5 year tender period for the single consolidated tape	The CTP would enjoy a five year period where it would be the sole provider of the consolidated market data. This	<i>Main recipient of the benefit:</i> CTP

<sup>1</sup> MSP (2020), The study on the creation of an EU consolidated tape, p50

<sup>2</sup> These estimates have been provided by an association representing financial institutions.

	period should allow the CTP to recoup its initial investments.	
Product innovation	More competition in the market for data consolidation with competing data consolidators keeps this market contestable and stimulates product innovation, requiring less supervision and oversight	<i>Main recipient of the benefit:</i> All data users

Table 2 – Overview of costs – preferred option

II. Overview of costs – Preferred option											
		Retail investors		Data users		Data Contributors		Consolidated tape provider		Supervision	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Standardised data format	Direct costs	NA	NA	All data users will have to make changes to their systems to integrate the consolidated data feed into their systems <u>Small</u> EUR 250k	<u>Small</u> EUR 50k <u>Large</u> EUR 150k – 1 million	Each trading venue and APA would need to establish a data feed to the consolidator (this is 'Business as Usual' from a technical perspective) <u>Small</u> EUR 250k <u>Large</u> EUR 500k – 1 million <sup>3</sup>  An initial tape would cover only large contributors (around 170 data contributors). The industry-wide cost of adapting data reporting standards is estimated at between € 85 and 170 million	<u>Small</u> EUR 200k-300k absent material changes in compliance requirements, which would generate additional costs. <u>Large</u> EUR 1million for the largest contributors (SIs)  Industry-wide annual market data reporting cost would therefore amount to between 34-50 million with an add-on to account for the higher cost of the G10 banks of 17 million	NA	NA	All NCAs and ESMA will have to make changes to their systems to integrate the consolidated data feed <u>NCA</u> EUR 50k <u>ESMA</u> EUR 50k	<u>NCA</u> EUR 50k <u>ESMA</u> EUR 50k
	Indirect	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

<sup>3</sup> Large contributors with complex and diverse data reporting arrangements could face a higher annual compliance cost with big (G10) investment banks (SIs) likely to spend EUR 2-3 million in one-off cost to comply with their market data reporting obligations.

This opinion concerns a draft impact assessment which may differ from the final version.

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	costs										
Mandatory contribution	Direct costs	NA	NA	NA	NA	The initial cost estimate is included in the cost above to produce the standardised data format	Ca. EUR 2000 / month. Contributors pay only for connectivity to local cloud-based presence	NA	NA	NA	NA
	Indirect costs	NA	NA	NA	NA			NA	NA	NA	NA
Setting up and running of a tape	Direct costs	NA	NA	NA	NA	NA <sup>d</sup>	NA	<u>Equity</u> <sup>4</sup> : EUR 4 – 12 million <u>Bonds/Derivatives</u> <sup>5</sup> :	<u>Equity</u> : EUR 1.4-5.5 million/yr <u>Bonds/Der</u>	<u>ESMA</u> IT spend of 2 million (already accounted	<u>ESMA</u> 4 FTE <sup>6</sup> IT spend of EUR 400 (already

<sup>4</sup> Range based on two separate estimates provided to DG FISMA. The key assumptions behind the estimate are as follows: (i) the operation of the consolidated tape is awarded for a period of five years; (ii) build of the tape will take place over 18-24 months in order to give exchanges and other data sources time to adapt to the prescribed reporting standard and make the required reporting changes (if necessary); (iii) the CT provider will receive data for equity and equity-like instruments from around 170 sources across the EU; and (iv) the required security and latency specifications exclude a (cheaper) cloud solution. The build and operating cost in estimate 1 contains the following products and services: (a) Technology: setting up dedicated lines and data feeds; (b) Infrastructure cost; (c) Software licensing; (d) Establishment of connections; (e) Project and account management, and (f) Administrative functions of the CTP (controlling data quality, billing tape consumers and sharing back revenues to market data contributors).

								EUR 0.8 – 7 million	ivatives: EUR 1.3 – 4 <sup>6</sup> million/yr	for and for all DRSPs) <sup>7</sup>	y accounted for and for all DRSPs) <sup>6</sup>
	Indirect costs	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Tape statutory subscription fee / consumption <sup>8</sup>	Direct costs	NA	Maximum EUR 1/month	NA	EUR 100 per individual user/month	NA	NA	NA	NA	NA	NA
Data revenue lost by data contributors	Direct costs	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	Indirect costs	NA	NA	NA	NA	NA	Exchanges: max one third of EUR 245 million annually <sup>9</sup>	NA	NA	NA	NA

<sup>5</sup> The cost figures for a bonds / derivatives tape are based on three separate estimates provided to DG FISMA. The estimate that makes up the higher end of the spectrum concerns a proposal for an intra-day bond CT, which shares many cost drivers of an equity CT.

<sup>6</sup> For this specific higher-end figure, please see a detailed breakdown of the running costs in table 10 where the five year running cost boils down to EUR 3.8 million.

<sup>7</sup> Following the ESA review, ESMA will be in charge of registering data reporting services providers (DRSPs) including consolidated tape providers (CTPs) that are new types of entities. ESMA will also ensure their ongoing supervision and it will be empowered to conduct investigations. This will necessitate additional specialised staff estimated at 4 FTEs. Given the large number of data managed by those entities, a large IT system is needed to assess their quality, the way they are processed and published. Those IT costs are estimated at EUR 2 million (one-off costs) as well as EUR 400 000 per year (maintenance costs).

<sup>8</sup> DG FISMA proposed amounts, based on a number of 10,925 active regulated entities (including 6501 Investment Firms). It is assumed that all 6501 investment firms subscribe to the tape to prove "best execution" and that 1% of the EU population would subscribe to the CT as retail users for a fee capped at EUR 1/month. In the US, 5.4 million non-professionals (2% of the US population) subscribe to the CT.

<sup>9</sup> A 2018 industry estimate puts the market data revenue of all FESE exchanges at EUR 245 million annually. Since this also incorporates revenue from pre-trade data streams and proprietary, low-latency feeds that are geared specifically to highly sophisticated market data users, this can be seen as a considerable overestimation of the revenue loss they would incur as a result of the proposed CT.

							Bond data contributors: NA				
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EUROPEAN COMMISSION  
Regulatory Scrutiny Board

Brussels,  
RSB

## Opinion

**Title: Impact assessment / Markets in Financial Instruments Regulation/Directive (MiFID/R) Review**

**Overall opinion: NEGATIVE**

### (A) Policy context

The Markets in Financial Instruments Directive I (MiFID) established a framework on investment services and activities in the EU. It allowed different types of platforms to trade identical financial instruments (like shares, bonds and derivatives) and thus increased competition in trading financial instruments. While this may have decreased trading costs, it entails the risk of scattering the trading data used by investors to take decisions. It also implies that investors need to buy the data from over 400 trading venues in order to access it in real time. As opposed to the most sophisticated capital market participants (high frequency traders and major investment banks), most ordinary investors and their brokers do not have a fully comprehensive view of the execution conditions of EU trading market transactions. They often take investment decisions based on a partial view of the market. Retail investors also have no means of verifying whether their broker has executed a particular investment under the best conditions. This may lower both retail participation rates and the level of product innovation, the latter ultimately resulting in fewer investment opportunities.

This review of the regulation aims to tackle three problems in the Union's capital markets: (1) information asymmetries between larger and smaller capital market participants; (2) fragmentation of data sources; and (3) inefficient trade execution practices. This initiative explores options to amend MiFIR to create a consolidated tape (CT) that would give all investors, big or small, access to basic market information on core market data for a given financial instrument from all venues on which it is traded in the Union.

### (B) Summary of findings

**The Board notes the useful additional information provided in advance of the meeting.**

**However, the Board gives a negative opinion, because the report contains the following significant shortcomings:**

- (1) The report does not provide sufficient evidence of market failures. It does not sufficiently identify and distinguish the problems by type of investors.**

This opinion concerns a draft impact assessment which may differ from the final version.

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- (2) The report does not sufficiently explore available options for the different types of investors.
- (3) The report is not clear about the implementation modalities of the presented options, including ways to select the consolidated tape operator and ensure that markets remain open to competition in the future.
- (4) The impact analysis is confusing and does not account for uncertainties.

**(C) What to improve**

- (1) The report should present evidence of market failures that justify the need for a regulatory intervention. It should explain what economic inefficiencies occur as a result of imperfect market transparency. The problem definition should better explain the rationale for intervention for different users, particularly for retail investors. It should provide evidence of a demand for complete market data feeds in real time from all types of users.
- (2) The report should better align the proposed options with the problems it identifies and should better capture retail clients' needs. It should explain how the options, including the proposal to abolish the existing free data provision after 15 minutes, address the identified problems. The report should clarify why it does not consider the option of standardising the data formats and leaving the provision of the tape to market actors.
- (3) The report should clarify the implementation of the proposed options. It should explain if and how pre-trade transparency is addressed, how the operator of the consolidated tape would be chosen under the preferred option, and how it will ensure that the market for the consolidated tape remains open to competition. In this last respect, it should explain the incentive for a (potentially) monopolistic tape provider to improve its service and limit costs, and how realistic it would be to replace it at the end of its term.
- (4) The report should improve the impact analysis. It should better identify winners and losers by providing a clearer distinction of costs and benefits for the different user groups. It should distinguish between the implications of the redistribution of data revenue and costs, and possible economic benefits. The report should differentiate between revenues for different types of actors and traders (nanosecond or millisecond traders, retail traders). It should be transparent about any uncertainties in the data, including on cost drivers and on foregone revenue by exchanges. It should account for the risk of a lower number of data consumer subscriptions and a higher cost of establishing and running a consolidated tape through sensitivity and break-even analyses. It should also develop analysis of the cost implications of the implementation of sub-options.

*Some more technical comments have been sent directly to the author DG.*

**(D) Conclusion**

**The DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.**

Full title	The review of the Markets in Financial Instruments (MiFID/MiFIR) framework
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Reference number	PLAN/2019/6173
Submitted to RSB on	10 June 2021
Date of RSB meeting	7 July 2021