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From:	European Economic and Social Committee
date of receipt:	31 March 2022
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

Subject:	OPINION of the European EESC on the Review of the Markets in Financial Instruments Regulation (MiFIR) (consolidated tape) 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 the above mentioned opinion.

Other language versions, if needed, are available on the following website:

<https://dmsearch.eesc.europa.eu/search/opinion>

Encl.



OPINION

European Economic and Social Committee

Review of the Markets in Financial Instruments Regulation (MiFIR) (consolidated tape)

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) 727 final – 2021/0385 (COD)]

ECO/576

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Referral	Council of the European Union, 03/02/2022 European Parliament, 27/01/2022
Legal basis	Articles 114 and 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	03/03/2022
Date adopted in plenary	23/03/2022
Plenary session No	568
Outcome of vote (for/against/abstentions)	209/0/4

1. **Conclusions and recommendations**

- 1.1 The European Economic and Social Committee (EESC) welcomes the fact that, as announced in the 2020 Capital Markets Union action plan¹, the European Commission has put forward, in good time, a proposal to establish consolidated tapes for the shares, exchange-traded funds, bonds and derivative financial instruments asset classes. This is another step towards making the Capital Markets Union a reality. The EESC supports the European Commission's proposal.
- 1.2 The EESC reiterates that establishing the Capital Markets Union is a priority and an important prerequisite for creating a genuine single market, for overcoming the consequences of the COVID-19 pandemic, and for transitioning to a sustainable economy in Europe.
- 1.3 The EESC welcomes the proposal for a Regulation introducing the consolidated European tapes and the accompanying measures. If well implemented, they will significantly increase the transparency and availability of market data, align the regulatory framework conditions for execution venues, and strengthen European capital markets. Consolidated transparency will significantly mitigate the effects of the persistently high fragmentation of European capital markets.
- 1.4 The EESC attaches great importance to ensuring non-discriminatory, free access to market data for all, in particular small and medium-sized enterprises as well as retail investors more generally. The EESC calls on the European Commission to reduce existing information asymmetries.
- 1.5 The Committee recommends that the European Commission undertake further action in the context of creating the Capital Markets Union in order to further develop the very uneven equities culture across Europe. In addition to preventative consumer protection rules aimed at building confidence, this includes, in particular, measures to improve consumer education. The EESC also calls on the European Commission to place great importance on the aspects of occupational health and safety and working conditions in all measures aimed at creating the Capital Markets Union. This includes ensuring that the human resources of European and national supervisors reflect the increase in their remit.
- 1.6 On the controversial issue of a ban on receiving payments for the transmission of client orders for execution purposes or "payment for order flow" (PFOF), the EESC recommends strengthening the following principle: financial intermediaries may only select the trading venue or counterparty for the execution of their clients' transactions with a view to achieving the best execution for their clients. The EESC supports the European Commission's view that tangible or intangible remuneration of financial intermediaries by trading venues or counterparties for the transfer of execution orders is fundamentally inconsistent with this.

¹ [COM\(2020\) 590 final](#)

2. **Background to the opinion**

2.1 On 25 November 2021, the European Commission presented a package of measures to strengthen the Capital Markets Union ("CMU package"). The package consists of a communication from the European Commission and four legal acts². The subject of this opinion is the revision, as part of the CMU package, of the Markets in Financial Instruments Regulation (MiFIR)³, which essentially sets out the rules for financial market infrastructure and, together with the European Markets in Financial Instruments Directive⁴ (MiFID II), provides the regulatory framework for the provision of investment services.

3. **General comments**

3.1 *Presentation of the proposal*

3.1.1 A common feature of the proposals outlined in the CMU package is that they aim to increase transparency in the still fragmented European capital markets. The European Economic and Social Committee welcomes this objective, as a Capital Markets Union will not be successfully established without good transparency and reliable, readily available data. The proposed amendments to the Markets in Financial Instruments Regulation (MiFIR) are of great importance in this connection. The proposed amendments relate primarily to market infrastructure, since investor protection rules were already covered by the MiFID "quick fix" at the beginning of 2021 against the background of the COVID-19 pandemic⁵.

3.1.2 The greatest possible transparency of securities markets is therefore also necessary, in order to provide better access to capital markets for small and medium-sized enterprises and for retail investors more generally. It is true that, currently, all execution platforms are already required to publish information on, for example, the volume, time and price of transactions. However, collecting this data in a consolidated way – and thus providing a real overview of the market – is only possible for large securities firms, and solely at considerable financial expense. Nobody can therefore currently be sure they are really getting the best price. Easy access to reliable market data is, however, absolutely crucial. This also applies in particular to sustainability-related information, which is essential in order to create sustainable financial markets in the context of the implementation of the European Green Deal, and plays an increasingly important role. There is an important substantive link here to the European single access point and to the simplified provision of sustainability-related information (sustainable development goals).

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: [Capital Markets Union - Delivering one year after the Action Plan](#); [Proposal for a European Single Access Point \(ESAP\)](#); [Revision of the Regulation on European long-term investment funds \(ELTIF\)](#); [Revision of the Alternative Investment Fund Management Directive \(AIFMD\)](#) and the [Revision of the Markets in Financial Instruments Regulation \(MiFIR\)](#).

³ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ([OJ L 173, 12.6.2014, p. 84](#)).

⁴ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) ([OJ L 173, 12.6.2014, p. 349](#)).

⁵ Directive (EU) 2021/338 of 16 February 2021, [OJ L 68, 24.5.2017](#).

- 3.1.3 Rapid, reliable and easily accessible market data will also promote competition between trading venues through the transparency it brings, since, under conditions of transparency, securities transactions are carried out where the best price is to be obtained and where liquidity is high. Transparency with regard to crypto-assets in the system of consolidated European tapes is also a crucial aspect for private investors and institutional investors alike.
- 3.1.4 The consolidated European tapes – one for each asset class (shares, exchange-traded funds, bonds and derivative financial instruments) – are an essential tool for reducing existing information asymmetries. They may also help to reduce the dominance of high-frequency trading. The EESC welcomes competition in the market infrastructure. For the Committee, it is important that competition is fair and that it takes place on a level playing-field. Regulatory arbitrage between trading venues should be ruled out. While the European Market Infrastructure Regulation (EMIR) has direct effect in the Member States, it is essential for the European Commission to closely monitor the accompanying national legislative acts and their practical implementation, as well as national supervisory practices, with a view to ensuring a level playing-field, and, where appropriate, to call on the Member States to make adjustments and, if necessary, penalise infringements.
- 3.1.5 The introduction of the consolidated tapes – i.e. centralised databases providing easy, non-discriminatory access to consolidated market data for all investors (small and large asset managers, pension funds, retail investors) as well as all financial intermediaries, whether large or small – will reduce the information advantage of large providers and significantly facilitate access to financial markets, thus making them more efficient in the future.
- 3.1.6 The consolidated European tapes can also help to counter trends towards excessive volatility, such as price surges and crashes, by creating enhanced transparency.
- 3.1.7 In the EESC's view, the transparency created by the consolidated tapes and the easier access to market data, including for retail investors, do not replace the need for ongoing, well-developed investor protection. Facilitated access to data for retail investors calls to mind the need to strengthen efforts to ensure sufficient consumer education on financial affairs in order that consumers can engage with the opportunities and risks of capital markets responsibly.
- 3.1.8 The creation of the consolidated tapes is also a significant step forward from the point of view of data ethics, which is gaining increasing importance in our digitalised world, where data is a commodity and a key to participation in economic and social life. The EESC advocates non-discriminatory access to market data. The Committee welcomes the fact that the introduction of the consolidated tapes will give small businesses and consumers in particular access to essential data that would otherwise not be accessible to them due to a lack of financial resources. The introduction of the consolidated tapes therefore responds to the need for ethical access to information in the financial markets.
- 3.1.9 The EESC welcomes the fact that the European Commission has based its proposals on intensive discussions on their market impact, both on European trading venues and on international competition. The Committee also welcomes the fact that the European Commission has plans to carry out a subsequent evaluation of the new rules.

3.2 Consolidated European tapes (CTs), Articles 22 and 27 of the MiFIR proposal

- 3.2.1 The EESC reiterates⁶ its support for the Commission's proposal to introduce the consolidated European tapes. If well implemented from a technical point of view, they will enable all market participants to have near real-time access to trading data – on equities, exchange-traded funds, bonds and derivative financial instruments – from across all EU trading venues. As such, the consolidated European tapes should make an important contribution to tackling market fragmentation. However, the success of the consolidated European tapes will crucially depend on their practical implementation (obligation to provide data, data standards, access to data, data quality, data security, data protection (where relevant), eliminating transparency problems by assigning an international securities identification number (ISIN) to derivative financial instruments for their entire lifespan (rather than on a daily basis), use of state-of-the-art technologies, operational resilience, and easy and cost-effective access).
- 3.2.2 To be successful, all data providers – be they stock exchanges or banks, conventional data providers or fintechs – must be subject to the same strict quality requirements on a non-discriminatory basis. In addition, quality data and a sound governance structure are further essential prerequisites for success. The EESC believes that it is crucial that the quality of data and the governance of the CT system be constantly monitored and, where necessary, readjusted.
- 3.2.3 The EESC supports the well-balanced proposal to give the European Securities and Markets Authority (ESMA) a central role in the ongoing monitoring of the consolidated European tapes. The EESC hopes that ESMA – and national supervisors in the area of securities supervision – will also be provided with the financial, material and human resources necessary to this end.
- 3.2.4 The procedures for selecting one consolidated tape operator per asset class are of great importance. The EESC deems smooth and transparent selection procedures to be important. This is mainly because the first consolidated tape operators will have a significant competitive advantage when it comes to re-tendering after five years. It would therefore be desirable for the calls for tenders to attract a broad range of competitive tenders. The Committee welcomes the fact that the selection criteria are set out in detail and that the organisational requirements for consolidated tape providers are specified. The EESC is in favour of an approach whereby consolidated tape providers publish performance statistics and reports on data quality incidents free of charge on their website at the end of each quarter.
- 3.2.5 The consolidated European tapes will also be an essential step towards, and tool for, enabling investment service providers to fulfil their "best execution" obligation (Article 27(2) MiFID II) in a better informed, more broadly based and simpler manner. Achieving the best price will be the key criterion, particularly for retail investors. However, by way of precaution, the EESC would like to point out that the consolidated European tapes should not replace the principle of "best execution".

⁶ [OJ C 155, 30.4.2021, p. 20 et seq.](#)

3.2.6 The consolidated European tapes can only be fully effective if the various execution platforms in the market are subject to a level playing-field. The EESC therefore supports the European Commission's proposals, all of which aim to ensure full transparency of trading platforms, in particular the ban on "dark pools", where traders are not subject to any transparency requirements.

3.3 *Trading venue obligation for derivative financial instruments, Article 28 MiFIR proposal*

3.3.1 The EESC welcomes the fact that the European Commission's proposal corrects a systematic error that arose with the publication of the EMIR Refit. In future, small financial counterparties will be legally exempt from the trading venue obligation and – as has already hitherto been the case – from the clearing obligation.

3.4 *Trading venue for shares, Article 23 MiFIR proposal*

3.4.1 The proposal limits the trading venue obligation for shares to assets with an international securities identification number (ISIN) from the European Union. Furthermore, even these are exempted from the trading venue obligation when trading takes place outside the European Union in the local currency. The proposal is beneficial from an investor's point of view, since, in the case of assets with a trading venue outside the European Union, the best prices are also likely to be obtained in that venue. This likewise and in particular applies to assets that carry an EU ISIN but are mainly traded in pounds sterling on the London Stock Exchange. The EESC therefore expressly agrees with the proposal.

3.5 *Payment for order flow (PFOF), Article 39(a) MiFIR proposal*

3.5.1 The proposal prohibits the remuneration model known as PFOF, whereby financial intermediaries receive fees from their trading partners in exchange for directing their clients' business to that trading partner. PFOF is mainly a financing model for online brokers, which is often a cheap alternative to traditional trading for retail investors. In particular, in the case of "zero-commission" brokers, the practice is to charge customers only a small fee for the order and to obtain (broker) revenues from rebates on the trading venue. In many cases, all orders to trade are concentrated on one trading partner. Such rebates are not disclosed to customers. The EESC agrees with ESMA⁷ that this practice is in any case not suitable in light of the best execution obligation and the required price transparency. On the other hand, these online brokers provide cheap and low-threshold access to investment services, particularly for retail investors. The Committee considers it essential to ensure equal cost transparency and a level playing-field between fintechs and conventional providers. The EESC recommends that particular attention be paid to this issue in the subsequent stages of the legislative process.

3.5.2 In the EESC's view, it will also be necessary to discuss whether, notwithstanding the legal concerns (best execution), PFOFs might be undesirable for reasons of market structure, simply because they will divert too much trading volume from stock exchanges and thus jeopardise the

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ESMA public statement, Document ESMA35-43-2749, dated 13.7.2021: "ESMA warns firms and investors about risks arising from payment of order flow"

overall functioning of stock exchanges. A reduction in market liquidity would be completely contrary to the objectives of the Capital Markets Union. In particular, it would seriously harm the necessary market transparency (in particular pre-trade transparency) and have a negative impact on customers.

3.6 Best execution

3.6.1 The European Commission proposes to waive the obligation, set out in Article 27(1) MiFID II, for execution venues to publish information on the quality of execution of orders. This proposal from the European Commission makes sense since it is commonly accepted that investors have, in practice, not used the reports as a useful source of information, and that post-trade information on transactions will also be available through the consolidated European tapes. The EESC understands and supports this.

3.6.2 However, it does not make sense for ESMA to be carrying out consultations at the moment on the adaptation of precisely those regulatory technical standards (RTS 27 and RTS 28) which give concrete expression to the provision that the European Commission, in the proposal it has submitted, is proposing to delete (Article 27(2) MiFID II). Furthermore, not only does it make no sense, it also places an unnecessary administrative burden on the parties concerned, which is ultimately of no benefit. In the interests of good and sustainable regulatory practice, the EESC believes that such an approach must be avoided.

Brussels, 23 March 2022

Christa Schweng
The president of the European Economic and Social Committee
