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Presidency Discussion Paper
Market Integration and Supervision Package
Trading

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Introduction

On 4th of December 2025, the European Commission published the proposal on the Market Integration and Supervision Package ("**MISP**"). A segment of the MISP is related to trading and includes amendments to the Directive 2014/65/EU ("**MiFID**") and Regulation (EU) No 600/2014 ("**MiFIR**"). Specifically, the provisions relevant to the trading dimensions are embedded in the Master Directive Proposal (**MiFID** amendments) and in the Master Regulation Proposal (**MiFIR** amendments). The MISP was presented by the Commission at the Council Working Party ('**CWP**') kick-off meeting on 15 December 2025, together with references to the accompanying evaluation and IA. Given the extended scope of the MISP, a more detailed technical presentation addressing certain elements of the trading proposals took place on 15 January 2026. During the presentation, MS had the opportunity to express their preliminary views and comments on the proposals.

On a general note, the above exchanges indicated that while MS broadly supported for the objective of reducing fragmentation and enhancing market integration, significant divergences remain regarding the scope of ESMA's direct supervision of significant trading venues, the PEMO regime, and amendments to the consolidated tape.

Following these exchanges, MS also had the opportunity to submit their written comments on the proposal to the Presidency.

The proposed amendments seek to remove barriers to integration across the core trading sector and enhance the ability of market actors to operate seamlessly across Member States ('**MS**'), thereby enabling market integration and scale while fostering competition and ensuring that effectively gains are passed on to end users. The proposal presented in the MISP package seek to streamline the framework, enhance supervisory convergence, and clarify the conditions for cross-border activity. By introducing more targeted EU-level supervision for certain trading venues, the proposal seeks to foster greater legal certainty, strengthen the level playing field, and support the development of integrated trading structures across the Union.

The purpose of this paper is to provide a structured basis for the technical discussions of the CWP meeting on 4 March 2026, which is dedicated to the first reading of the provisions of the MISP that are relevant to trading and that are embedded in Article 3 of the Master Regulation Proposal (amendments to MiFIR) and in Article 3 of the Master Directive Proposal (amendments to MiFID).

Today's CWP provides an opportunity to engage in constructive technical examination of the proposal and continue the exchange on the key issues raised. The Presidency invites MS to provide comments during today's CWP and, to elaborate their positions in the subsequent written procedure in particular with regard to the following topics:

1. **Regulated Markets**
2. **PEMO Regime**
3. **Open Access**
4. **Equity Consolidated Tape**
5. **Significant Trading Venues**
6. **Market Structure: Application of the Tick-size Regime**

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A. Regulated Markets

Relevant Articles: Article 3(3) of Master Regulation (Article 2a of MiFIR).

1. Harmonisation of provisions on regulated markets

The Commission proposal moves requirements on the authorisation and operation of regulated markets (as well as of other trading venues) from MiFID 2 to MiFIR, to achieve further harmonisation. Article 2a on the authorisation of regulated markets and applicable law provides that MS shall not impose any additional requirements on the authorisation and operation of regulated markets than those set out in MiFIR.

Preliminary Views of the MS:

Some MS expressed support for the Commission proposal on moving requirements on the authorisation and operation of regulated markets from MiFID 2 to MiFIR. In their view, this shift from a directive to a regulation could enhance harmonisation across MS by ensuring a more uniform application of the rules. At the same time, they underlined the importance of careful and well-calibrated implementation.

A number of MS raised concerns about legal uncertainty, transitional burdens, and increased compliance costs resulting from the transfer of provisions from MiFID II into MiFIR.

One MS express concerns that moving major MiFID II provisions into MiFIR will require disentangling existing legislation transposing MiFID II (which is a maximum harmonisation directive) and it will be a lengthy process creating legal uncertainty, add administrative burdens, and increase transitional costs for market operators.

Furthermore, one MS argues that the transfer, largely mechanical and insufficiently focused on simplification, does not align with the objective of reducing regulatory obligations.

Another MS notes that some provisions being moved are currently or were recently transposed into national law, further adding to uncertainty.

In addition, one MS asked for the introduction of a provision to allow regulated markets to be operated as public entities and to be subject to additional requirements under national public law.

Another MS asked under which conditions national laws affecting (directly or indirectly) the authorisation and operation of regulated markets could be retained (for example, company law rules on the appointment of the members of the management body, or rules governing the management of companies with State Treasury participation).

A question was also raised as to the ability of regulated markets to introduce requirements on admission of financial instruments to trading that are stricter than those laid down in MiFIR.

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Clarifications provided by the Commission in the Council working party:

In the Council Working Party, the Commission clarified that the proposal seeks to ensure maximum convergence as regards the authorisation and operation of regulated markets. However, it does not aim to harmonise national company laws or national laws governing the participation of the State in a private company. As a result, the new MiFIR regime would need to co-exist with national laws in the areas not regulated by MiFIR. Furthermore, it was noted that the Proposal does not aim to call into question the ownership structure and permissible legal forms for regulated markets, as long as compliance with the harmonised MiFIR rules is warranted. To the extent necessary, these aspects could be clarified in the proposal. Finally, the Commission's proposal does not remove the possibility for individual regulated markets to introduce requirements on admission to trading that are stricter than those laid down in MiFIR.

2. Authorisation of regulated markets

Recital (32) of the Master Regulation clarifies that the existing MiFID 2 framework on the authorisation of regulated markets has led to the situation where several MS introduced national laws to require, as a condition for the authorisation of a regulated market, that the market operator's head office is situated in the MS where the regulated market seeks authorisation. Due to that, groups operating regulated markets in several MS are obliged to maintain several legal entities (i.e., several market operators) in different MS. This increases significantly the cost and complexity of operating simultaneously local markets.
In Article 2a of the amended MiFIR, the Commission proposal provides that any system that falls within the definition of regulated market needs to obtain prior authorisation from the competent authority of the MS where it is situated or operated, or ESMA in the cases referred to in Article 38fa. Article 2a also provides that a regulated market shall be authorised by the competent authority where: (a) both the market operator and the regulated market that the market operator intends to operate comply with all applicable requirements; (b) the market operator is a legal person established in the Union.

The Commission proposal seeks to reduce costs for cross-border groups that operate regulated markets in more than one MS, by allowing those groups to simplify their corporate structure. The Commission proposal, seeks to **remove barriers for cross-border groups that wish to operate several local markets simultaneously, thus increasing incentives and economic efficiencies for those operators that wish to build or further strengthen local presence**. It also seeks to ensure that market operators may fully leverage on the fundamental freedoms governing the single market enshrined in the Treaties. Under Article 2a, a legal entity that is a market operator in 'MS A' could request authorisation from the competent authority of 'MS B' to operate a regulated market in 'MS B' without having to set up a separate dedicated market operator (legal entity) domiciled in 'MS B'. **A regulated market authorised and operated in 'MS B' would be, in all respect, anchored to that MS, notably in terms of applicable law** ('nationality'), taxation, and supervision (unless the trading venue qualifies for ESMA supervision). The only difference compared to the current MiFID 2 framework (as transposed in several MS) is that the market operator would be explicitly allowed to be domiciled in a different MS (where it is already authorised to operate a regulated market and therefore subject to supervision).

Preliminary views of the MS:

One MS raised concerns, as this provision would allow a market operator to have its head office in a MS that is different from the MS where the regulated market is authorised and operated (i.e., where the main

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activity is performed). **Some MS** asked about potential tax implications and whether this provision could not lead to regulatory shopping.

3. Passporting arrangements for regulated markets

Today, investment firms that operate a multilateral trading facility (MTF) or an organised trading facility (OTF) benefit from a much clearer framework compared to regulated markets when it comes to cross-border market access. According to MiFID II, investment firms can in particular rely on the following options:

(i) Facilitation rights (Article 34(6) of MiFID II): investment firms can provide appropriate arrangements so as to facilitate access to and trading on an MTF/OTF that they operate by remote users, members or participants established in the territory of another MS;

(ii) Freedom to provide services (Article 34(1) of MiFID II): investment firms may freely provide investment services and/or perform investment activities (including the operation of an MTF/OTF) in other MS on a cross-border basis, provided that such services/activities are covered by their authorisation;

(iii) Right of establishment (Article 35 of MiFID II): investment firms can establish branches or tied agents in other MS to provide investment services and/or perform investment activities (including the operation of an MTF/OTF), provided that such services/activities are covered by their authorisation.

For regulated markets, MiFID II (Article 53(6)) provides that 'MS shall, without further legal or administrative requirements, allow regulated markets from other MS to provide appropriate arrangements on their territory so as to facilitate access to and trading on those markets by remote members or participants established in their territory'. However, MiFID II is silent as to whether regulated markets may provide their activities throughout the EU through the freedom to provide services or through setting up a branch.

As explained by the Commission in the Council Working Party, this regulatory asymmetry leads to legal uncertainty and, in consequence, may act as a barrier for regulated markets that wish to build/strengthen their local presence across the EU. Simply providing remote access through facilitation arrangements (i.e. putting trading screens in another MS) may be insufficient to promote cross-border activities of regulated markets. Similarly to investment firms operating an MTF or OTF, it is important that also regulated markets can benefit from comprehensive passporting rights, including the right to set up branches in other MS, to build physical presence and engage with the local investors' and issuers' community.

According to the Commission proposal, the new Article 2o in MiFIR, which expressly provides that an authorised regulated market may freely perform its activity within the Union, through the freedom to provide services or through setting up a branch, addresses the aforementioned regulatory asymmetry. Article 2o also clarifies procedural requirements (in particular, notification requirements).

The Commission proposal includes a non-exhaustive list of activities that a regulated market may perform on a cross-border basis. This is to enhance legal clarity as well as ensure a clear distinction between passporting rights for regulated markets and the PEMO regime. Under Article 2o, passporting rights ensure that a regulated market authorised in 'MS A' is able to provide access to <u>that same regulated market</u> to members and issuers that are domiciled in the territory of other MS. This means that, under Article 2o, a

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regulated market would be able to 'expand' its activities cross-border, while remaining anchored to 'MS A' in terms of applicable law (and, therefore, 'nationality'), as well as supervision. Importantly, passporting rights under Article 2o would not allow a market operator that is authorised to operate a regulated market in 'MS A' to also operate another regulated market in 'MS B' on the basis of that same authorisation. This is therefore different from the PEMO regime, which would allow a PEMO to operate several trading venues in several MS on the basis of one license (see, for more details, the section of the Presidency note on PEMO).

Preliminary Views of the MS:

One MS supported the list while another MS noted that the list of activities that a regulated market may perform on a cross-border basis should be exhaustive, as this would ensure legal certainty and remove national discretion.

Clarifications provided by the Commission in the Council Working Party:

In the Council Working Party, it was noted that while an exhaustive list would ensure maximum convergence and clarity, it would require a thorough assessment as to whether activities in addition to those already listed in Article 2o should be considered. Since this provision enacts fundamental freedoms enshrined in the Treaties, the list must be comprehensive; otherwise, it risks contravening the Treaties.

4. Activities performed by a market operator – Ancillary Services

Article 2a(3) of the amended MiFIR (Master Regulation) provides that the market operator shall perform tasks relating to the organisation and operation of the regulated market and may perform ancillary activities that are linked to the operation of a regulated market. Article 2p provides that a competent authority shall authorise a market operator to operate an MTF or OTF subject to the prior verification of its compliance with the provisions applicable to the operation of MTFs and OTFs.

Preliminary Views of the MS:

Several MS raised concerns about introducing the concept of "ancillary services" in relation to the activities of market operators. Their comments focus mainly on the scope of permitted activities, legal certainty, and the degree of flexibility for market operators.

Two MS noted that a market operator should be allowed to perform more activities than just ancillary activities that are linked to operation of the regulated market, as is the case today in some MS.

Another MS highlights that the scope of market operator activities has traditionally been determined at the national level, allowing diverse business models across MS. Shifting this assessment to EU-level rules could create legal uncertainty and risk excluding activities that are currently lawful and well-supervised. It emphasised also the need for transitional or grandfathering arrangements, so that activities already lawfully carried out may continue.

One MS asked for clarifications on which activities would qualify as 'ancillary activities' pursuant to Article 2a(3).

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Clarifications provided by the Commission in the Council Working Party:

By restricting a market operators' activities to the operation of trading venues and ancillary activities, the Commission proposal seeks to prevent conflicts of interests and avoid potential adverse consequences of those conflicts of interests for issuers, members or participants in those trading venues. At the same time, the Commission proposal acknowledges that market operators may wish to enrich their business offer by providing 'ancillary services' to their clients. These are activities 'linked to the operation of a regulated market', such as:

- provision of market data;
- development and commercialisation of software, hardware and network solutions for the transmission of orders or other trading data;
- activities related to the promotion of regulated markets or companies admitted to trading on those regulated markets, for example, in order to foster the development of public markets;
- management and maintenance of informational flows related to the placement and visualisation of orders placed by authorised entities acting on own account or on behalf of their clients, etc.

5. Outsourcing/internal allocation arrangements

Relevant Articles: *(Article 3(3) of Master Regulation (Article 2f of MiFIR))*

Article 2f of the amended MiFIR (Master Regulation) clarifies that where a market operator relies on resources or functions performed by another entity within the same group and located in the EU, such reliance does not constitute outsourcing, provided certain conditions (set out in paragraph 1a) are met. Furthermore, the EU location of the group entity providing those resources or functions is not relevant for the competent authority's assessment of compliance.

The Commission proposal aims to simplify the regime on resources and functions allocations within a group. While today intra-group arrangements for resource or function allocation between group entities are treated in the same way as an outsourcing arrangement entered into with entities outside the group, the Commission proposal includes amendments to organisational requirements for trading venues to ensure a more proportionate (risk-based) treatment of intra-group arrangements for resource or function allocation. These arrangements are no longer considered to be outsourcing for the purpose of MiFIR, provided that certain conditions are met to ensure effective supervision. The proposed amendments are without prejudice to the application of DORA, notably when it comes to requirements on outsourcing of ICT functions.

Preliminary Views by the MS:

Some MS welcomed the amendments on the internal allocation of resources and functions. However, other MS expressed concerns, notably regarding potential risks such as legal uncertainty that may arise from those amendments and called for the introduction of additional safeguards. In this context, a MS noted that, given outsourcing is defined differently across legislative frameworks, the proposed provision may be difficult to reconcile with DORA. Furthermore, it was suggested that the generalized exemption for intragroup outsourcing be considered at least by providing:

- transparency and notification obligations;
- proportionate ex-ante assessment and intervention powers for the competent authority;

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- alignment with the EMIR, CSDR and DORA regimes, in order to avoid regulatory inconsistencies

<u>Questions to MS:</u>

Q1: Do MS agree with the Commission proposal for the harmonisation of requirements applicable to trading venues? Do MS consider that the proposal should clarify any of the aspects (e.g., interplay with national laws, ability of a regulated market to impose stricter rules)?

Q2: Do MS agree with the Commission proposal for the authorisation regime for regulated markets? Do MS consider that the proposed regime should further clarify any of the aspects? If so, which ones and how?

Q3: Do MS agree with the Commission proposal on the activities that a regulated market would be allowed to perform? If no, which other main activities do MS believe a market operator should be allowed to perform (please consider flexibility for regulated markets versus the risk from a possible conflict of interest)? Do MS consider that the proposed regime for ancillary activities should be further clarified? If so, how?

Q4: Do MS agree with the Commission proposal for the passporting regime for regulated markets? Do MS consider that the proposed regime should further clarify any of the aspects? If so, which ones and how?

Q5: Do MS agree with the Commission proposal on intra-group arrangements for resource or function allocation? If no, would the introduction of additional safeguards, such as the obligation to notify the competent authority of such arrangements, mitigate your concerns?

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B. PEMO Regime

Relevant Articles: Article 3(3) of Master Regulation (Articles 2za – 2ze of MiFIR)

As opposed to the clarifications on passporting rights for regulated markets described above, and which do not entail substantive modifications to the existing legal regime, the concept of a Pan-European Market Operator (‘PEMO’) is entirely new.

As also frequently noted by MS, smaller issuers and investors (including retail investors) are more likely to trust and engage when they perceive a market as being locally anchored and active. Cross-border (remote) listings and trading remain prevalent in larger financial centres, while they are less common in smaller markets, where growth remains based on building a strong and reliable local presence. Issuers and investors often see value in being listed/trading on a local market that apply their national laws (for instance, when it comes to listing rules, corporate governance standards, and transparency rules). Local presence remains key to building confidence, attract issuers and support the development of an ecosystem.

Some MS asked questions on the impact of the PEMO regime on the existence/development of local markets. As clarified by the Commission in the Council Working Party, its proposal does not call into question that the local market presence, and particularly the existence of local markets, is important to mobilise capital and foster investors’ confidence. Building on this premise, the Commission proposal should reduce the costs and the complexity that entities/groups face today when operating local markets in several MS, and, in doing so, should support – rather than weaken - local presence to the benefit of issuers and end investors.

Today, entities that wish to operate local markets in more than one MS (for example, cross-border trading venues groups) are faced with a complex regulatory and supervisory framework. They are required in particular to:

- set up a legal entity (a market operator) in each MS where they wish to operate;
- seek authorisation from the competent authority in each MS where they wish to operate;
- comply, on an ongoing basis, with the (often divergent) supervisory instructions that they receive from each local competent authority.

As a result, the existing regulatory framework makes the simultaneous operation of multiple local markets costly, complex, and, therefore, economically inefficient. In the longer term, this may put into question the ability of cross-border groups to remain competitive and may, in consequence, lead to the disappearance of smaller local markets.

Through the introduction of a PEMO regime, therefore, the Commission proposal should reduce costs and increase economic efficiencies for entities that operate local markets in more than one MS. The objective is thus to strengthen the incentives for those entities to maintain and further develop genuine local presence.

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Preliminary Views by the MS:

Two MS expressed support for the idea of a PEMO. However, their support is contingent upon the transfer of direct supervisory powers over the other entities covered by this Regulation. They argue that, for ESMA to operate as an efficient and effective supervisor, it would require a sufficiently broad scope of entities to fall under its direct supervision.

On the other hand, several MS, while they supported the objectives pursued by the proposal and agreed with the broader goals of market integration, they expressed concerns that the PEMO model, as currently designed, gives rise to a number of policy considerations that merit careful assessment.

Other MS supported the PEMO proposal with the condition that, all the competent authorities of the MS in which the PEMO operates (with or without local presence) should be involved in the supervision of that PEMO.

Several MS did not support PEMO at this stage as they support that more clarifications are needed on consequences for local markets and for access to finance for SMEs.

Some MS welcome the possibility of a purely voluntary application for an authorisation as PEMO.

One MS express concerns that the introduction of PEMO may create consumer protection risks, particularly due to increased concentration and complex cross-border accountability.

Another MS supports that the PEMO regime should be made conditional upon the cumulative fulfilment of a set of safeguards, including at least the following elements:

1. the establishment of reinforced supervisory colleges, chaired by ESMA,
2. the retention by national authorities of substantive supervisory responsibilities over PEMO branches
3. objective, transparent and binding access criteria,
4. appropriate ex ante and ex post assessment mechanisms

1. Applicable law

As per the Commission's clarifications in the Council Working Party, the main idea of the new PEMO regime is to allow entities that wish to operate local markets in more than one MS to streamline their licenses and corporate structure ('back office'), while remaining locally anchored vis-a-vis issuers and investors, both in terms of applicable law as well as market ecosystem ('front office'). The new legal framework should create tangible economic incentives for cross-border groups of trading venues to build/further develop their local presence.

The new PEMO regime would allow an operator to:

(i) fully optimise all of its licences under a *single licence*; as well as

(ii) fully optimise its corporate structure under a *single legal entity*.

A PEMO would be allowed to operate trading venues in several MS based on a single authorisation (freedom to provide services or freedom of establishment). The new regime would therefore allow a PEMO dedicated branches.

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Preliminary Views of the MS:

Several MS asked to clarify aspects of the PEMO regime relating to the 'applicable law'. Under the Commission's proposal, the authorisation as a PEMO should indicate in which MS each trading venue operated by a PEMO is deemed to be situated or operated. The language in the proposal ('deemed to be operated or operated') reflects the fact that the local market (whether operated through the freedom to provide services or through setting up a branch) would not have separate legal personality from the PEMO, which could be situated in a different MS, and would not be individually authorised by the local competent authority (rather, by ESMA as part of the PEMO authorisation). This indication has, however, important legal consequences: a trading venue that is deemed to be situated or operated in MS 'A' would be anchored to that MS, notably as regards the applicable law. All national requirements of MS 'A' that concern listing and trading on a trading venue authorised in that MS, and that define the 'nationality' of such venue, would continue to apply also in the case of a trading venue operated by a PEMO that is deemed to be situated or operated in MS 'A'. For instance, listing rules, corporate governance standards for listed issuers, sanctions for breaches of the market abuse regulation, and other national law provisions of MS 'A' that, today, would apply to issuers whose securities are admitted to trading on a trading venue authorised in MS 'A', or to trading in securities admitted to trading on a trading venue authorised in MS 'A', would continue to be regulated by the national laws of MS 'A', insofar as not fully harmonised at the EU level.

This is to ensure that the markets operated by a PEMO are genuine local markets, perceived as such by the local issuers and investors' community. As each market would maintain a strong local footprint, the PEMO regime would ensure sufficient proximity and thereby responsiveness to local ecosystems' needs. It would preserve local markets' role as 'entry points' to EU capital markets.

For already existing local markets, a PEMO that intends to become the operator of those markets, would not be able to change the 'nationality' of that local market. This is because the proposal explicitly provides that those markets *would continue to be deemed to be located or operated in the MS where they were initially authorised*.

Finally, irrespective of the regime applicable to the operator of a trading venue, the scrutiny and approval of prospectuses would continue to be anchored to the MS of the domiciliation of the entity seeking admission to trading or going through a public offer of its securities.

2. Passporting rights for PEMOs

Preliminary Views by the MS and the Commission's clarifications in the Council Working Party:

Several MS asked to clarify the interplay/difference between the right to provide cross-border services for PEMOs and passporting rights for trading venues.

Cross-border rights attached to an authorisation as PEMO, pursuant to Article 2za, are different from passporting rights for regulated markets, MTFs and OTFs pursuant to Articles 2o and 2w. Cross-border rights under Article 2za would allow a PEMO that is domiciled in MS 'A' to operate trading venues in the territory of other MS, without the need to seek a separate ad hoc authorisation from competent authorities of those other MS. Passporting rights under Articles 2o and 2w would allow the operator of

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a trading venue that is authorised in the territory of MS 'A' to provide remote access to that trading venue to issuers and investors situated in the territory of other MS (see, for more details, the section of the Presidency note on passporting rights for trading venues). The main difference between the two regimes is that, in the case of passporting rights attached to a 'standard' trading venue license, the passport would allow for the provision of cross-border (remote) access to that same trading venue to members, participants and issuers located on the territory of other MS; however, it would not allow the operator of that trading venue to operate *other* trading venues in other MS on the basis of that same license – something that would only be allowed under the PEMO regime.

The Commission proposal clarifies that a PEMO may make use of passporting rights under Articles 2o and 2w with respect to each trading venue that it operates. This means that a PEMO would be able to allow for remote access by issuers and investors to the trading venues that it operates based on the 'standard' trading venue passporting regime laid down in Articles 2o and 2w.

3. Access to the PEMO status

Preliminary Views by the MS and the Commission's clarifications in the Council Working Party:

Several MS welcomed the voluntary nature of the PEMO regime.

One MS suggested that access to PEMO regime should be further framed, notably by introducing several 'access conditions'.

As per the Commission's proposal, pursuant to Article 2za, 'any legal person intending to operate more than one trading venue in more than one MS' would be eligible to apply for a PEMO authorisation. This means that any entity that already operates more than one trading venue in more than one MS (whether a market operator or an investment firm) or that intends to do so following authorisation as a PEMO, would be eligible to become a PEMO. The absence of further conditions seeks to ensure that access to the PEMO regime would remain a 'genuine' choice for operators that are active cross-border, or that wish to become active cross-border, only subject to their own cost-benefit analysis. The introduction of criteria would thus limit the freedom of choice of operators and would interfere with the market-driven focus of the proposal, reducing the ability of EU market players to pursue the most efficient strategies with a view to becoming more globally competitive.

One MS asked whether a PEMO would be required to operate at least one regulated market, and if only market operators would be allowed to seek authorisation as a PEMO.

Article 2za refers to 'trading venue' in general. This means that a PEMO is not required to operate at least one regulated market. At the same time, Article 2zd requires a PEMO to comply with all requirements that apply to a market operator. In consequence, once authorised as a PEMO, an entity would be required to comply with Article 2a(3) of the amended MiFIR, which restricts the activities that a market operator is allowed to perform to the operation of trading venues and ancillary activities.

Another MS inquired whether the same group could combine a PEMO licence with a licence issued to an investment firm in the same group to operate an MTF or OTF.

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Article 2zb(7) provides that a PEMO authorisation may not be combined with other authorisations for the operation of a regulated market, MTF or OTF within the same group. This condition was introduced to avoid abuse of the PEMO licence by market participants, including cases where groups would put in place complex licencing arrangements with a view to benefiting from regulatory arbitrage. A PEMO licence is designed to be a transparent and efficient licencing arrangement that rests on the premise of effective cross-border oversight by a single supervisor (see also the following section).

4. Supervision over PEMOs

The Commission proposal clarifies that entities that opt for the PEMO regime will become mandatorily subject to the ESMA supervision. This is because the PEMO regime can only function efficiently if the operator is subject to ESMA supervision. Any other supervisory model/arrangements were deemed likely to deliver suboptimal supervisory outcomes and give rise to risk, considering the cross-border nature of the PEMO activities.

Preliminary Views of the MS:

Several MS welcomed that the proposal requires that a PEMO be subject to ESMA supervision.

One MS wondered about the consequences of a PEMO licence being revoked by ESMA. The revocation of a PEMO licence removes the possibility of the entity to benefit from a single licencing arrangement. The entity in question could still seek a 'standard' trading venue licence with an NCA, however, should the grounds for the revocation of the PEMO licence remain valid, it appears unlikely that the entity would be able to demonstrate the compliance with the MiFIR requirements for the issuance of a new licence.

As for other entities subject to ESMA supervision, certain supervisory tasks in relation to the PEMO regime (in particular, market abuse monitoring and emergency powers) would remain with 'national surveillance authorities'. Importantly, for a trading venue operated by a PEMO, the national surveillance authority will be the competent authority of the MS where the trading venue is deemed to be situated or operated.

Questions to MS:

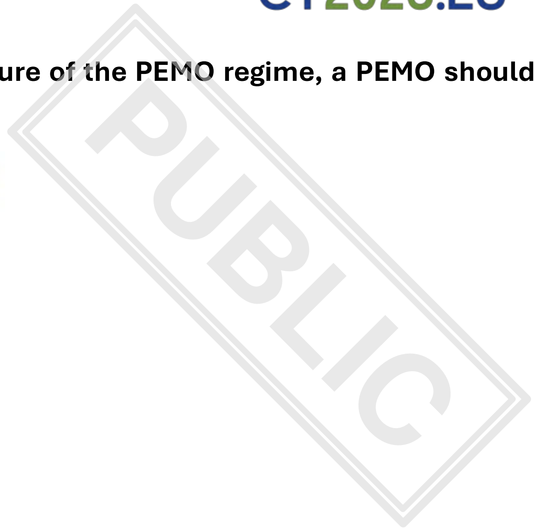
Q6: Do MS support the PEMO regime as proposed by the Commission taking into consideration the clarifications provided?

Q7: Do MS consider that the PEMO regime provides for sufficient clarity on the applicable law? If not, how could it be clarified further?

Q8: Do MS find the interplay between the PEMO regime for the cross-border operation of a trading venue and the 'standard' passporting regime for trading venues sufficiently clear? If no, how would MS clarify it?

Q9: Do MS consider that the PEMO regime should remain flexible or rather subject to stricter eligibility (access) requirements? If the latter, what those requirements should be and how would it affect the uptake?

Q10: Do MS agree that, given the single-licence feature of the PEMO regime, a PEMO should be subject to the ESMA supervision?



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C. Open Access

Relevant Articles: Articles 3(8) and 3(9) of Master Regulation (Articles 34c, 35 and 36 of MiFIR).

Open access provisions currently contained in MiFID (Articles 37, 38 and 55) and in MiFIR (Articles 35 and 36) were intended to facilitate and reduce the cost of the clearing and settlement of transactions executed on EU venues. Ensuring smoother interactions between financial market infrastructures fosters competition, allows market participants to streamline their clearing and settlement arrangements, and ultimately makes the EU trading environment more efficient.

- **CCP access to trading venues (and vice-versa)**

The effectiveness of access measures is hindered by the broad conditions under which access can be denied, by the complexity of the procedure and its systematic involvement of NCAs, and by the development of practices restricting the ability for market participants to choose their CCP. Anecdotal evidence shows that access requests, when not denied, can also be subject to delayal tactics and take up to more than 10 years before effective access is granted.

As regards the access of CCPs to trading feeds, and vice versa, the proposal ensures that access procedures are framed by tight deadlines, so that the granting of access cannot be delayed until later than 8 months after the initial request, in the most complex cases. It also ensures that one authority, ESMA, is only involved in case of disagreement between parties.

Preliminary Views of the MS:

While two MS were supportive of ESMA's role, several MS underlined the importance of ensuring the proper involvement of national competent authorities in cases of access disputes. In particular, they called for ESMA's consultation of relevant NCAs to be mandatory rather than discretionary, noting that NCAs possess greater supervisory knowledge of national market participants.

Some MS further requested clarification on the appeal procedures applicable to ESMA decisions and emphasised the need to avoid potential regulatory accountability gaps where ESMA may override the prudential supervision of CCPs. Additionally, one MS requested further legal clarification as to what constitutes a formal request for access and, correspondingly, what qualifies as an access refusal. In particular, clarification was sought as to whether the granting of access subject to specific operational or technical conditions would amount to a refusal for the purposes of triggering supervisory action by ESMA.

Other grounds for refusal included concerns raised by one MS on strict conditions as regards financial stability risks or concerns as regards the smooth and orderly functioning of markets. Those safeguards appear to be supported by some MS, while another MS called for the reinsertion of some of the broader grounds for refusal (e.g., liquidity fragmentation). while also noting that the reference to "systemic risk" as an access criterion could be too vague.

Additionally, another MS raised concerns regarding the ability of trading venues to meet the three-month deadline of ensuring full access to CCPs after the receipt of the positive response to the request for access.

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Lastly, those amendments reinstate the principle that, when granted, access should be granted in a fair and non-discriminatory manner: this guarantees that open access remains effective also for smaller CCPs and venues, thereby addressing a concern flagged by a MS. Finally, one MS suggested that the access provisions could be limited only to significant CCPs and significant trading venues while less significant trading venues should be able to refuse access where such access would result in the economic non-viability of the venue. However, this could not only narrow down the scope of the application of the current access provisions in MiFIR but could also limit the effectiveness of the measure. In addition, fostering a more open architecture would boost in general the attractiveness of smaller trading infrastructure, notably vis-à-vis non-local market participants, who do not have in place the necessary clearing arrangements with the local CCP.

Two MS asked for a clarification of the provision included in Article 36(4) MiFIR. The full effectiveness of access provisions is currently hindered by practices linked to 'preferred clearing'. Under such practice, counterparties can indeed clear through an alternative CCP than the trading venue's 'default' CCP that has been granted access to the trading venue only where both counterparties choose to clear through such CCP. If both counterparties do not choose to clear through the same CCP, the trade feeds are sent to the 'default' CCP. Given the impossibility for market participants to foresee who will be a counterparty to a trade, this practice *de facto* suppressed all incentives to choose alternative CCPs. This is despite the fact that, from a technical point of view, it is possible for two different CCPs chosen by two counterparties to a trade to clear that trade when such CCPs have established interoperability arrangements. Article 36(4) therefore clearly prohibits the trading venues' practices to refuse the access to their trading feeds to the counterparties that have chosen an alternative CCP, on the sole basis that those counterparties have not chosen the same CCP, as long as those CCPs are interoperable. This is intended to allow market participants to fully leverage the efficiency gains offered by interoperability, where such interoperability has been put in place by CCPs. The provision does not mandate the creation of interoperability links between CCPs.

- **Freedom of CSD choice**

<u>Preliminary Views of the MS:</u>

Several MS have raised questions as regards the rationale behind the proposed Article 34c MiFIR. The obligation for regulated markets to provide this freedom already exists under Article 37(2) of MiFID II. This provision was originally designed to guarantee that market participants have the option to settle their trades via their preferred 'settlement system', i.e., their chosen Central Securities Depository (CSD), without needing to open an account with the CSD of choice of the trading venue. However, the current criteria under which this choice can be denied were sufficiently broad for the provision to apply in practice. Consequently, trading venues can compel market participants to open accounts with their (or their partner) CSDs, even when (indirect) links exist between their members' CSD of choice and the venue's (partner) CSD. This hinders competition between CSDs and may drive up the cost of settlement. Furthermore, the original provision only applied to regulated markets.

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A MS further noted that there is still ambiguity around the matter of who ultimately determines the location of settlement (i.e., the trading venue or the CCPs) as well as regarding how the term “any CSD” should be interpreted.

One MS opposes the provision citing that its implementation would be especially difficult for CSDs from MSs with non-euro currencies.

Another MS proposed that, where access to a trading venue or CCP requires technical or operational adaptations, the applying CSD should reimburse reasonable implementation costs incurred by the trading venue or CCP. This approach was suggested as a means to ensure proportionality and to mitigate the financial burden on incumbent infrastructures.

Some MS argued that the new provision might not be fully consistent with the provisions under Article 53 of CSDR. Nevertheless, the MiFIR provision on the freedom of the CSD choice should be considered alongside the 'hub and spoke' model proposed under the CSDR amendments included in the Market Integration and Supervision Package, which will ensure at least indirect connectivity amongst all EU CSDs, meaning that the condition set out in Article 37(2)(a) of MiFID II would always be fulfilled. While members may face higher settlement fees if they opt for another CSD than the trading venue’s preferred CSD, this provision reasserts the principle that the choice of CSD should be with market participants, rather than the one imposed by the trading venue.

Therefore, as explained by the Commission in the Council Working Party, the proposal reinstates this freedom of choice, extends it to encompass all trading venues (beyond regulated markets), and eliminates the possibility for trading venues to mandate their members to open an account with a specific CSD.

Finally, one MS has raised concerns regarding the decision to make no amendments to Article 38 of MiFIR even though it contains interpretive uncertainties and an apparent “dual regime” allowing third-country CCPs and trading venues to access EU trading venues and CCPs respectively. While the current proposal removes Article 38 and 55 MiFID, similar bilateral access possibilities still appear to exist under MiFIR. This creates uncertainty about whether bilateral access (without a formal request or refusal) remains legally recognised and how it fits within the new refusal-based supervisory model.

Questions to MS:

Q11: Do MS agree that the current MiFID/R provisions on open access do not achieve the intended policy outcome (e.g. in terms of competition)? Do MS support the streamlined open access provisions as proposed by the Commission? If not, where do you see issues and how would you address them?

Q12: Do MS agree that the current MiFID provision on the CSD choice does not apply in practice? Do MS support the streamlined provision on the CSD choice as proposed by the Commission? If not, where do you see issues and how would you address them?

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D. Equity Consolidated Tape

Relevant Articles: *Article 3(2)(a)(xiii) and Article 15, fourth paragraph, of Master Regulation.*

As per Recital 27, the Commission's proposal seeks to expand the level of equity pre-trade information that is disseminated by the consolidated tape for shares and ETFs ("the equity CT"). This would allow the equity CT to offer a more comprehensive view of trading interests in the Union, hence creating better conditions for deepening the liquidity and attractiveness of EU markets, reinforcing the quality of execution for EU investors, as well as ultimately increasing the value and viability of the EU equity CT. More specifically, rather than making public an anonymised European Best Bid and Offer for a particular share or ETF at any point in time for continuous order books (the *status quo*), the equity CT would in the future publish the attributed five best bid and offer prices for each of these instruments. This means that the users of the equity CT would be able to identify where the volumes that were available at the best bid and offer prices were (i.e. in which trading venue), providing a more accurate view of the liquidity pockets and pricing conditions across the EU at a given moment.

As explained by the Commissions in the Council Working Party, going to five levels of information would enable market participants to understand better on which terms their orders could have been executed, considering also the depth of liquidity (e.g. a large distance between the best and second-best bid or offer would imply shallow liquidity and fragility in the market). This information is vital for the purposes of best execution verification. In addition, the Commission's proposal also suggests that the equity CT disseminates the five best bid and offer quotes (including price improvements) for retail orders at any given point in time and for a particular share or ETF, published by systematic internalisers. Data on retail order quotes from SIs would be streamed separately from the data from central limit order books, periodic and closing auctions, to enable market participants to adequately interpret it.

<u>Preliminary Views of the MS:</u>

Several MSs expressed reservations regarding the proposed new provisions for CTs in the EU. In particular, some MSs argued that there is no practical experience with the current legal framework and some others opposed to the introduction of substantial amendments relating to the consolidated tape regime and the definition of core market

Specifically, some MSs, indicated that the consolidated tape framework should first become operational under the existing regulatory framework and that the review process provided for in MiFIR should be followed before any fundamental changes are introduced.

Lastly, certain MS supported the long-term objective of enhancing equity market transparency through an EU-wide consolidated tape, while expressing reservations as to whether the current design is sufficiently calibrated, especially given that the equity tape has not yet been launched and its functioning has not been tested in a real-market environment.

More detail analysis is provided below:

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1. Timing of the proposal

Preliminary Views of the MS:

A large number of MS noted that the proposed amendments to the equity CT framework would be too premature at this stage, given that the framework was only recently introduced through the 2024 MiFIR Review and has not yet been tested in practice. Moreover, several MS indicated that any further legislative action should be supported by concrete empirical evidence, particularly as the consolidated tapes introduced under the MiFIR Review are currently still not operational). In addition, it was argued that that the proposed amendments to the CT framework, including the extension of the scope of data disclosure, lack sufficient evidence.

Commission's clarifications provided in the Council Working Party:

Recital 106 of the Proposal, states that in order to ensure legal certainty and avoid disruption, the CT framework would not apply from the date of entry into force of the MISP Regulation. Article 15 (entry into force and application), fourth paragraph, of the Commission's proposal sets the date of application of these changes from the day following the expiry of the first period of 5 years of operation of the equity CT – which would still operate under the current legal framework (dissemination of the anonymised EBBO for a particular share or ETF). Particularly, "*Article 3, points 2(a)(xiii), (15) and (16) shall apply from [OP insert date = the day following the expiry of the first period of 5 years referred to in Article 27da of Regulation (EU) No 600/2014 with respect to the CTP for shares and ETFs*.". This means that the proposed amendments will not be made applicable before at least the second half of 2031.

According to the Commission's clarifications in the Council Working Party, introducing that 5-year deferral application would give sufficient time for all interested market participants (data contributors and consolidated tape provider itself) to prepare for the new features of the equity CT. Such preparation work could be anticipated through comprehensive discussions within the governance arrangements foreseen by the tape provider (e.g. via an advisory committee that includes members such as industry experts in the area of market data), and, ultimately, through the performance of technical tests to ensure the smooth operationalisation of the expanded notion of core market data, for both the tape provider and its data *contributors*. This could be achieved without disturbing the operation of the tape during the first 5-year period. Furthermore, given the fact that the majority of data contributors are already expected to submit the full depth of the book (i.e. the whole order book and not just the top layer of the EBBO), the adjustments for those data contributors are likely to be minimal, if any (see more on this in the section 4.B on cost implications).

While there is not yet empirical evidence to support any failure nor shortcoming of the consolidated tape's framework in the EU, the Commission's proposal is based on the premise that flaws can already be identified in the current design of the tape, which could make it less relevant for the purpose of best execution verification and thus less attractive for users. Pursuant to the Commission's proposal, this could be addressed by offering the possibility for the equity CT to disseminate more pre-trade information to the potential users (some of them having already expressed strong support for the expansion of the notion of core market data for the equity tape), while also ensuring and strengthening commercial viability of the tape provider.

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2. Cost implications for the equity consolidated tape

Preliminary Views of the MS:

Several MS raised concerns regarding the potential costs associated with expanding core market data from one to five layers for market participants Specifically, it was stated that, increasing the depth of the pre-trade data to the first five layers of the book would unnecessarily add complexity and costs and that extensions of CTP data requirements could reduce regulatory stability for trading venues and impose additional operational, technological, and financial burdens, without clear evidence of corresponding benefits for end investors or overall market efficiency.

Technical input:

Based on exchanges with stakeholders, it is possible to identify **three types of costs** associated to the expansion of the scope of the core market data. Below is a summary of the key conclusions regarding the cost impacts of its proposal.

- ***Costs for the consolidated tape provider***– The expansion of the depth of book data from one to five layers is likely to generate implementation and run costs for the CT provider. Since the shift from one to five layers mechanically increases the data message traffic, this could require additional costs linked to the necessary technical adjustments for both the inbound feed (i.e. when the CT provider collects data from data contributors) and the outbound feed (i.e. when the CT provider disseminates the core market data to the public).
  However, those costs are not expected to be high. Technical adjustments for the inbound/outbound feeds to cater for increased data message traffic would require a one-off purchase of additional hardware (possibly for a total cost of EUR 200,000). Due to the increase of data message traffic, cost of data storage (for audit, supervisory and legal reasons, i.e. the 'run cost') is likely to go up (possibly up to EUR 1 million).

  Overall, it is expected that the future benefits of the expansion of the core market data would outweigh the costs that this would generate, thus improving the viability of the equity CT. In addition, some market participants (both on the buy and sell side) have already expressed interest in buying expanded data, albeit with a higher latency/lower speed (compared to proprietary feeds from trading venues offering lower latency/higher speed), notably for the purposes of performing more efficient transaction cost analysis' activities and for the compliance with the best execution requirements under MiFIR.

  For reference, in the US, the SEC analysed the costs of expanding pre-trade data on the consolidated tape from one to six levels of price (rule introduced in 2020 that is currently being implemented) and considered that "costs for firms that wish to become competing consolidators to implement or upgrade infrastructure to handle dissemination of depth of book information will be limited[1]".

- ***Costs for the data contributors –*** No important costs have been identified for data contributors since most of them are already expected to send the full depth of their order book to the equity CT to comply with the existing MiFIR framework. Even in few cases where data contributors may need to adjust their technical feeds for data submission of four additional layers, those costs are expected to be rather limited (possibly amounting to up to EUR 10,000).

[1] Securities and Exchange Commission 17 CFR Parts 240, 242, and 249, Federal Register / Vol. 86, No. 67 / Friday, April 9, 2021 / Rules and Regulations,

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Among data contributors, there seems to be a common understanding that they would leverage on existing technology (since they already send data feeds to their clients) and therefore would not incur additional costs.

In the US, the SEC also concluded that the "infrastructure investment required by most self-regulatory organizations ('SROs') to provide the elements necessary to generate core data will be limited [by the expansion from one to six layers], because most SROs currently provide all elements of the new definition of core data over their proprietary feed infrastructure".

MiFIR mandates the data contributors to send their data to the consolidated tape free of charge, which could potentially result in a certain loss of revenue for their data services business. Nevertheless, it was confirmed that latency-sensitive consumers of proprietary feeds, such as the sell-side (i.e. banks) and high-frequency traders, would not be expected to substitute the purchase of those proprietary feeds for a consolidated tape as the latter is not appropriate for low-latency trading (notably considering the equity CT's latency of 50 milliseconds). Furthermore, the expanded CT could even increase the revenue of trading venues, as it would increase data contributors' visibility within the tape and this would potentially incentivise data users to subscribe to new proprietary feeds offered by those data contributors (with a lower latency), mainly for trading purposes. Therefore, data contributors could potentially offset the anticipated certain loss of revenues through potential future data subscribers. Finally, MiFIR already provides for a revenue redistribution scheme, whereby data contributors will be remunerated by the equity CT for the data that they transmit.

- ***Costs for data users*** **–** These are mainly costs related to storage space and those would be expected to be outweighed by the benefits of the expanded CT to the users. In any event, MiFIR does not provide for any mandatory consumption of the equity CT. Deployment of AI would potentially lower the cost since this would allow data users to send targeted queries to the equity tape provider. Furthermore, the equity CT provider may charge two separate prices for the one-layer EBBO tape and the five-layer tape, acknowledging the difference in costs of producing and dissemination of the two products. If necessary, this could be further clarified in the legal text.

  In the US, the SEC admitted that it is "*unable to estimate the associated costs because the costs would vary across market participants and depend on each market participant's existing infrastructure*". In addition, costs for infrastructure investment would only be relevant for participants that choose to receive the expanded core market data (see the previous paragraph).

3. Systematic internalisers' contribution to the equity consolidated tape

3.1. The five best prices published by SIs

<u>Preliminary Views of the MS:</u>

Some MS questioned the requirement for the equity CT to disseminate the **five** best bid and offer quotes published by systematic internalisers (SIs)). In particular, it was argued that such pre-trade information would not provide clear added value at this stage and that the SI may not be able to stream 5 levels of price. However, these MS, did not challenge the SIs' contribution to the equity CT per se. Rather they promoted the inclusion of only 1 best bid and offer published by SIs.

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<u>**Commission's clarifications in the Council Working Party:**</u>

The Commission's proposal amends the notion of "core market data" to include, for a given share or ETF at any given timestamp, the five best bid and offer quotes published by SIs with their corresponding volume. Recital 36 of the Master Regulation indicates that the equity CT will disseminate, for a given share or ETF, in addition to the best bids and offers for continuous order books, the five best bid and offer quotes across the Union published by SIs with the indication of the individual SIs where those are offered. Those five best bid and offer quotes should correspond to the five best bid and offer quotes across all quotes for a given share or ETF published in the Union by *different* (and not the same) SIs.

According to Recital 36 of the Master Regulation that the equity CT is not required to disseminate the five best bid and offer quotes from a single SI. Rather, for any given share or ETF and at any point in time, the CT will disseminate the five best bid and offer quotes published by SIs across the Union, such that each of the top five prices will originate from a different SI.

The Commission's proposal to include in the equity CT the dissemination of 5 layers of price level by SIs follows the same reasoning as for the 5 layers for the best bid and offer prices for continuous order books, namely to provide for a more comprehensive view of trading interests for equity instruments, and ensure a better level playing field for pre-trade transparency across trading systems for retail orders.

3.2. Timestamping issue

<u>**Preliminary Views of the MS:**</u>

One MS expressed concerns about reliably generating the five best bid and offer quotes published by SIs for any given moment, due to the requirement of aggregating quotes from various trading venues and SIs at millisecond precision. According to that MS, this level of granularity makes it unlikely for execution venues to update their data with exactly matching timestamps simultaneously.

<u>**Clarifications stemming from the Commission's Proposal:**</u>

MiFIR already provides for rules applicable to all market participants, such as trading venues, SIs, as well as CT providers, regarding business clock synchronisation for the purposes of event reporting. Specifically, Article 12 of Commission Delegated Regulation (EU) 2025/1155 provides that operators of trading venues and systematic internalisers shall ensure that their business clocks adhere to the same levels of accuracy as specified in the table below.

This should ensure that the equity CT's input data follow strict business clock synchronisation rules for both trading venues and systematic internalisers, which would ultimately translate into high-quality output data for the users.

Level of accuracy for operators of trading venues and systematic internalisers

Gateway-to-gateway latency time of the trading system	Maximum divergence from UTC	Granularity of the timestamp
> 1 millisecond	1 millisecond	1 millisecond or better
≤ 1 millisecond	100 microseconds	Increase granularity to 0,1 microseconds or better

Source: Annex IV, Table 1 of Commission Delegated Regulation (EU) 2025/1155 of 12 June 2025 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the input and

output data of consolidated tapes, the synchronisation of business clocks and the revenue redistribution by the consolidated tape provider for shares and ETFs, and repealing Commission Delegated Regulation (EU) 2017/574.

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Finally, as noted above, data (on retail order quotes) from SIs would be streamed separately from the data from central limit order books, periodic and closing auctions, to enable market participants to adequately interpret it.

Questions to MS:

Q13: Do MS agree that, subject to cost minimization, the proposals should address deficiencies identified in the design of the CT now for implementation after the first 5 years of the current CT, in order to provide certainty to market participants to plan for future impact on their businesses?

Q14: In light of the presented above arguments, in particular on the level of cost, do you agree with the Commission's proposal for:

- **a. de-anonymisation of the EBBO;**
- **b. inclusion of five layers of best bid and order prices;**
- **c. inclusion of five best bid and order quotes from different SIs in a stream separately from the order book/auction data?**

Q15: If you consider that any of the above require improvements or clarifications, what should they be?

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E. Significant Trading Venues

1. Criteria for Selecting Significant Trading Venues

1.1. Criteria for selecting significant trading venues and maintaining local supervision for venues that are of less strategic relevance for the EU's capital markets (Articles 38fa and 38fb MiFIR)

Relevant Articles: Article 38fa and 38fb of MiFIR

According to article 38fa of MiFIR, a trading venue shall be considered significant where all of the following conditions are met:1) the trading venue is important for the economy of the Union as referred to in Article 38fb(1); and 2) the trading venue has a significant cross-border dimension as referred to Article 38fb(2).

The method set out in the proposal for determining whether a trading venue is 'significant' relies on two cumulative criteria. These criteria do not merely focus on the 'size' of the venue, they also strive to pinpoint those venues that have a cross-border element, which would warrant their supervision at the EU level. Therefore, the smaller trading venues, which primarily serve local ecosystems and are not part of a wider group comprising other significant infrastructures, should remain under national supervision, thus adhering to the principles of proportionality and subsidiarity.

A 5% threshold in terms of market share (defined as the proportion that the trading on the venue represents within the overall EU trading activity for a given asset class) is employed to target the venues that are the most relevant to the EU's economy. In an environment characterised by the high fragmentation of the trading landscape in the EU, with over 300 venues, this threshold ensures that only venues crucial to the functioning of the EU's capital markets are captured. For trading venues that are part of a group, the 5% threshold is applied at the group level (see the dedicated section). As clarified by the Commission in the Council Working Group, the level of this threshold appears balanced as it targets the venues with substantial trading volumes while excluding the smaller ones (e.g. over half of EU trading venues and two thirds of EU market operators (based on operating MICs) remain outside the ESMA's supervisory remit).

Regarding the cross-border aspect, the proposal builds upon existing legislative concepts. Specifically, for shares, ETFs, and bonds, the proposal applies the criterion similar to the one used for the Mechanism to exchange order data under the Market Abuse Regulation, which allows to identify venues with significant trading activity in the financial instruments listed in another MS. For derivatives, considering their venue-specific nature, the criterion examines whether the venue predominantly serves clients based in another MS (i.e., transactions executed on the venue involve at least one counterparty located in another MS than that where the venue is established), thereby capturing its Union-wide significance. Furthermore, as noted by the Commission in the Council Working Party, recognising the unique characteristics of group operations, the cross-border criterion ensures that the trading venues that are part of a group encompassing financial market infrastructures in other MS, are also captured. Consequently, venues that are not part of a cross-border group or whose activities are not inherently cross-border, are excluded from ESMA's supervisory remit, thereby adhering strictly to the principle of subsidiarity.

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Finally, to avoid the scenario where a very large Union-relevant trading venue is excluded from the ESMA's supervisory remit, the proposal also includes an absolute size criterion for trading venues exceeding the 50% market share in a given asset class.

Preliminary Views of the MS:

Two MS supported the criteria for selecting significant trading venues.

Another MS did not support the centralisation of supervisory powers to ESMA for significant Trading Venues.

Several MS, express the position that smaller trading venues, which primarily serve local ecosystems and are not part of a wider group comprising other significant infrastructures, should remain under national supervision,

One MS questioned the rationale for operators active in only one MS should become subject to ESMA supervision and requested further information in order to understand the rationale for EU supervision.

Another MS express concerns that the operationalisation and calibration of the criteria used for defining the significant trading venue have not yet been tested or demonstrated in practice.

Some MS expressed scrutiny reservations on the automatic attribution of supervisory competence to ESMA where a trading venue belongs to the same group as a CSD or CCP subject to ESMA supervision. Those delegations questioned whether group affiliation alone constitutes a sufficiently objective and proportionate criterion for the transfer of supervisory responsibilities, particularly in cases where the trading venue does not meet the thresholds for being considered significant. They suggested that the allocation of supervisory competences should duly take into account the size, risk profile, cross-border activity and systemic relevance of the trading venue concerned.

Commission's clarifications in the Council Working Party:

As per the Commission's explanations in the Council Working Party, the proposal defines a "significant" trading venue using two cumulative criteria that assess not only its size but also its cross-border dimension, thereby the proposal addresses the aforementioned concerns from several MS that smaller trading venues, which primarily serve local ecosystems and are not part of a wider group comprising other significant infrastructures, should remain under national supervision, thus adhering to the principles of proportionality and subsidiarity.

As regards to the request of a MS for the reason why operators active in only one MS should become subject to ESMA supervision, in its proposal, the Commission takes the view that some trading venues that are operated by such market operators can also play a critical role for the EU-wide economy. This is for instance the case of venues that actively trade shares listed in a different MS (e.g., CBOE), or derivatives venues that serve clients throughout the Union and have thereby become instrumental to the functioning of capital markets beyond the national borders of the MS in which they are established (e.g., Eurex).

1.2. Groups comprising at least one financial market infrastructure subject to ESMA supervision

Relevant Article 38fa(1) MiFIR

As mentioned above, some MS questioned the proposal to make ESMA the competent authority for all trading venues operated by entities that are part of a group that includes another financial infrastructure

(CSD, CCP or trading venue) that is subject to ESMA supervision. They express concerns over the fact that some of those entities (notably when such infrastructure is a CSD or a CCP) may not be as significant in terms of size as the significant trading venue operated by the market operator or an investment firm, or that such post-trading infrastructures are not supervised in the same way as a trading venue.

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In this regard, Recital 40 of the Master Regulation explains that the rationale behind this approach is "to avoid multiple supervisors for entities within the same group", thus reducing supervisory fragmentation and improving efficiency of supervision. This approach would ensure consistency in supervisory outcomes and avoid excessively complex supervisory arrangements for groups, a necessary step in achieving the SIU. In addition, this set-up is consistent with the subsidiarity and proportionality principles, as ESMA supervision for all trading venues within a group would only be triggered if at least one of the group's financial market infrastructure (other trading venue, CCP or CSD) is significant: the groups that do not include any significant financial market infrastructure will therefore remain subject to local supervision.

1.3. Assessment of significance of market share on an aggregated basis at group level

Relevant Article 38fb(1) MiFIR

The proposal suggests that the assessment of the market share criterion should be conducted at the aggregated group level, that is to say by combining the trading volumes of all venues within a group, and evaluating the market share that this combined volume represents. One MS indicated that the assessment of trading volumes should be performed on a venue-by-venue basis. As explained by the Commission in the Council Working Party, such an approach would, however, represent a fragmented view and would fail to acknowledge the true significance of a group of trading venues in the Union context, disregarding the fact that groups can leverage its network of trading venues across several MS, the same group-level governance and regulatory compliance functions, which are crucial to the Union's capital markets when considered collectively. In addition, this approach would run contrary to the objective of other elements within the proposal that aim to streamline group operations: by facilitating intra-group resource allocation, it will enhance intra-group interdependencies that warrants oversight by a single supervisor when the group holds a substantial market share. Lastly, a venue-by-venue assessment would, as explained above, lead to the same group being subjected to several supervisors, going against the objective of simplifying and rendering more efficient the supervisory environment in which groups of trading venues operate in the Union.

1.4. Commission empowerment to adopt a delegated act to amend any of the threshold relevant to identify a significant trading venue, in light of market developments

Relevant Article 38fb(8) MiFIR

Some MS challenged the possibility for the Commission to adopt a delegated act to amend any of the thresholds used to qualify a trading venue as a significant trading venue, arguing that such power should be vested on the co-legislators through a Level 1 act, in particular considering the substantial impact that the thresholds have on the identification of trading venues subject to the ESMA supervision.

The Commission's proposal is restricting this possibility only to cases where there are market developments that justify the Commission's intervention through a delegated act. While it is not possible at this stage to precisely identify the nature of such market developments, this possibility is designed as a swift and agile tool for the Commission to react specifically in cases where the thresholds become obsolete or inadequate, thus jeopardising the intended policy objective of the proposal. In the alternative

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scenario, if those thresholds were amendable only by a level 1 change, such a change could only be introduced following the standard, rather lengthy, co-legislative proposal, which even in the case of quick fixes, could take up to 12 months to reach a political agreement on (and even more time until it is published on the Official Journal and becomes operational).

In addition, this Commission empowerment remains to be subject to co-legislative scrutiny and agreement: (i) first, before the adoption, the Commission consults on the draft delegated act the Expert Group of the European Securities Committee represented by all 27 MS, and (ii) then, after adoption by the Commission, the co-legislators exercise their scrutiny rights and may object to the adopted delegated act, where necessary.

Questions to MS:

Q16: Do MS agree with the thresholds proposed to determine:

- **Importance of a trading venue to the economy of the European Union; and**
- **Whether that venue has a significant cross border element**

If not, what other criteria could be considered in addition to or instead of the above?

Q17: In the case of a venue located in a single MS but meeting the "significant" criteria, do MS believe that central supervision is still appropriate? If yes, how to adhere to the principle of proportionality?

Q18: Do you agree that the combination of a 5% EU market share threshold and a cross-border relevance criterion appropriately reflects the principles of proportionality and subsidiarity?

Q19: Do you consider the additional absolute 50% market share criterion necessary to avoid the exclusion of highly significant venues?

Q20: Would you require further technical clarification on the methodology for calculating market share or cross-border activity?

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F. Market Structure: Application of the Tick-size Regime

Relevant Articles: Articles 2h and 2u(3) of Master Regulation

The tick size regime under proposed Articles 2h and 2u of MiFIR (directly moved from existing Article 49 of MiFID 2) requires trading venues to implement tick sizes with regard to, *inter alia*, shares and ETFs. It was introduced in MiFID II to harmonise the minimum price increments and to prevent the tendency of competing venues to make ticks ever-finer, and sought to enhance orderly market functioning, liquidity and price formation.

The minimum tick size regime does not apply to the following:

(a) transactions executed in systems that match orders on the basis of a reference price pursuant to Article 4(1)(a) of MiFIR;
(b) negotiated transactions pursuant to Article 4(1)(b) of MiFIR; and
(c) large-in-scale orders that are matched at the mid-point of bid and offer prices.

While, since 2020, pursuant to Article 17a MiFIR, SIs have also been subject to the minimum tick size regime similarly to trading venues (i.e., midpoint matching by SIs was possible only above LIS), the latest 2024 MiFIR review re-introduced flexibility in that regard, allowing SIs to execute at midpoint within the current bid and offer prices, regardless of the size of the trade. This means that SIs, unlike trading venues, may execute transactions at mid-point off-tick, at any size (and not just above LIS).

Preliminary Views of the MS:

Two MS voiced concerns (both in working parties and written replies) regarding the application of the tick-size regime across different execution venues, in particular with respect to SIs and Frequent Batch Auctions conducted on trading venues (FBAs). While one MS suggested to render the application of the tick-size regime stricter for SIs, others argued in favour of greater flexibility across all execution venues, notably for transactions executed in FBAs. Some MS argue that the MiFIR review has created an unlevel playing field for transactions below LIS, skewing the balance in favour of SIs.

Commission's clarifications in the Council Working Party:

Market participants argued that the constraints linked to the tick size regime prevent efficient execution on lit venues (e.g. in FBAs), which is particularly detrimental given the role of lit venues in price formation (less efficient price formation). The frictions lead to suboptimal execution as, when the tick size applies and midpoint is off-tick, one of the parties needs to pay the full spread for a trade to occur (while the spread could be equally shared between the two counterparties to a trade). Similar considerations apply in FBAs or other types of auctions, where less efficient price formation may result in less executed volume compared to a situation where off-tick execution were allowed.

More generally, as suggested by MS, considerations could be given to general application of the tick-size regime across various trading systems, acknowledging the benefit of more efficient price formation and level-field arguments, while preserving the policy objectives of orderly trading.

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<u>**Questions to MS**</u>:

Q21: Do MS see merit in enabling trading venues running frequent batch auctions (FBAs) to match at midpoint off-tick, irrespective of the size of the trade?

Q22: In the affirmative response in question 1, would MS see merit in exploring further the possibility to introduce more flexibility as regard off-tick execution for all trading protocols (e.g., CLOBs, auctions) on lit venues?

As regards CLOBs, such a possibility would imply that:

a) ***orders would be matched when the spread is at one tick, by splitting equally the spread between the buyer and the seller (see below graph);***

b) ***a new type of order that allows market participants to add a flag to their orders to signal their openness to seeing their orders being executed at half a tick higher (for buyers) or lower (for sellers);***

c) ***such a flexibility would preserve the objective of the tick-size regime, as orders would still need to be placed on tick and the flexibility would only allow to signal openness to matching halfway within the tick, when the spread is of one tick.***

Q23: ***If MS disagree with question 1 and 2, do MS believe that the*** **application of the tick-size regime should be re- introduced for SIs?**