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General Secretariat

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From:	Presidency
To:	Working Party on Financial Services and the Banking Union (MiFID-MiFIR) Financial Services Attachés

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Subject:	Working Party on Financial Services and the Banking Union (MiFID-MiFIR), 31 March 2023 - Agenda
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In-person meeting (attachés)

**Working Party on Financial Services and the Banking Union**  
**Review of the Markets in Financial Instruments Regulation**  
**31 March 2023, 10:00–13:30**

Preparatory meeting for the first political trilogue of the MiFIR review.

**1. Introduction (10.00–10.15)**

On 20 December 2022, the Council agreed on a negotiating mandate. The ECON Committee of the European Parliament (EP) adopted its Report on 1 March 2023. The Report was confirmed by the EP Plenary on 15 March. The first trilogue meeting will take place on 18 April 2023 in Strasbourg.

In the Council Working Party, the Presidency would like to get Member States' views on the main divergences between the Council negotiating mandate and the EP mandate. The Presidency would also like to get Member States' input on which issues should be considered to be of a political nature, and therefore discussed in political trilogues.

**2. Key issues for 1st trilogue (18 April) (10.15–13.00)**

Please refer to the **Presidency Note** for a detailed list of the differences between the Council and EP mandates. In the meeting, Member States are invited to comment on the major differences between the mandates, and on details if they are of significant importance. For other comments on details, the Presidency intends to rely on the 4CT comments submitted by Member States in response to the earlier request from the Presidency.

The descriptions in the sections below include proposals on which topics should be discussed in political trilogues (meaning that other topics could be handled on a technical level). For each section, the Presidency would like Member States to contemplate the following questions:

Q1: What are Member States' views on the EP mandate?

Q2: Have Member States' views on the different issues changed in any way since the agreement on the Council mandate in December?

Q3: Do Member States agree with the proposed topics for political trilogues?

### Consolidated tape

Regarding the proposed provisions on the establishment of consolidated tapes, the most important difference between the Council and EP mandates concerns which data should be included in the CT for shares and ETFs and how and when it should be published.

**The Council** proposes that the CT shall publish transaction (post-trade) data as close to real-time as technically possible. Along with each transaction, the CT for shares and ETFs shall also publish information on what the best bid and offer were at the time of the transaction, with corresponding volumes,

- on the trading venue where the transaction was executed (BBO), and
- on trading venues that offer trading in those instruments (EBBO).

**The EP** proposes that the CT for shares and ETFs shall publish transaction data and five layers of pre-trade data as close to real-time as technically possible. According to the EP definition of core market data, SI quotes shall be included in the pre-trade data.

(There are also differences regarding the opt-in mechanism for smaller trading venues and the revenue sharing scheme, but the Presidency does not perceive this to reflect any major differences in the intended outcome.)

After the Council mandate was agreed, a number of exchanges from almost all Member States have communicated their intention to participate in the tender for a CTP for shares and ETFs through a Joint Venture. The Presidency's understanding is that the Joint Venture will aim to win the tender and provide the services required regardless of the outcome of the MiFIR negotiations on the data to be included and how and when it should be published. The Presidency is interested in whether Member States' positions have changed in light of this information.

**Proposed topics for political trilogues:** the data to be included (pre- and/or post-trade data) in the CT for shares and ETFs and how and when data should be published.

#### **Payment for order flow**

Both mandates include a ban on PFOF, but with differences concerning scope and possibility of exemptions.

**The Council** proposes a ban excluding rebates and discounts on transaction fees not resulting in negative fees settled with a payment or non-monetary benefit. A Member State may allow PFOF in respect of clients domiciled or established in that Member State.

**The EP** proposes a ban excluding fees, commissions and non-monetary benefits related to professional clients' orders, where permitted under the approved and public tariff structure of a regulated market or MTF. No national discretion for exemptions.

**Proposed topics for political trilogues:** scope and exemptions of the ban.

#### **Transparency, market structure and SI regime**

For transparency, market structure and SI regime, the EP proposals are more restrictive than the Council proposals.

**The Council** proposes a 3 month volume cap at 10 percent for the reference price waiver (RPW) and the removal of restrictions on SI midpoint matching.

**The EP** proposes a 6 month volume cap at 7 percent including the RPW and negotiated trade waiver (NTW), a minimum size to be determined by ESMA for orders benefitting from the RPW and for SI midpoint matching and up to which SIs pre-trade transparency requirements shall apply.

**The EP** proposal for non-equity transparency regime includes slightly shorter deferrals than the bond transparency regime proposed by the Council, whereas **the Council** proposes a separate regime for derivatives with a possibility for longer deferrals, and a deletion of the non-equity SI regime.

**Proposed topics for political trilogues:** none of the issues in this section.

## **Commodity derivatives**

For commodity derivatives, the EP makes several proposals.

### **The EP proposes**

- a legislative mandate for ESMA and the Commission concerning minimum holding periods for certain derivatives,
- a review of the criteria for the ancillary activity exemption for commodity derivatives, taking into account whether and to what extent the investment services are provided for hedging purposes,
- the addition of emergency situations as a possible motive for applying trading halts,
- a requirement for regulated markets to disclose information on circumstances leading to trading halts and principles for establishing parameters for the use of trading halts,
- a mandate for ESMA to specify those principles, and the information to be disclosed,
- the addition of derivatives on emission allowances to the scope of position limits,
- a new mandate for ESMA and the Commission to review the position limits and position management control regimes, and
- another weekly report on aggregate positions of commodity derivatives – excluding options – for trading venues to publish.

**The Council** makes no similar proposals.

**Proposed topics for political trilogues:** Since Member States' views on the issues in this section have not yet been discussed in the Council, the Presidency's preliminary proposal is to discuss the entire section in political trilogues.

## **4. AOB (13.00–13.20)**

Member States are invited to comment on topics not previously discussed during the meeting.

## **5. Presidency concluding remarks (13.20–13.30)**

The Presidency will inform about the next steps, including the expected (tentative) timelines of negotiations.