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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and the Banking Union (MiFID-MiFIR)
Subject:	MiFID Partial Compromise Table

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/65/EU on markets in financial instruments (021/0384 (COD) ST 14368/21)

Deadline for comments: ***11 May 2022***

N.B: this is a partial compromise. Sections highlighted in grey are not covered by the compromise.

Commission proposal	Compromise	Comments
021/0384 (COD) Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/65/EU on markets in financial instruments (Text with EEA relevance)	021/0384 (COD) Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/65/EU on markets in financial instruments (Text with EEA relevance)	
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,	
Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	
After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	
Having regard to the opinion of the European Economic and Social Committee[1],	Having regard to the opinion of the European Economic and Social Committee[2],	
Having regard to the opinion of the European Central Bank[3],	Having regard to the opinion of the European Central Bank[4],	
Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	

1 OJ C […], […], p. […].
2 OJ C […], […], p. […].
3 OJ C […], […], p. […].
4 OJ C […], […], p. […].

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/65/EU on markets in financial instruments (021/0384 (COD) ST 14368/21)

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Commission proposal	Compromise	Comments
Whereas:	Whereas:	
(1) In its 2020 CMU Action Plan[5], the Commission announced its intention to table a legislative proposal to create a centralised data base which was meant to provide a comprehensive view on prices and volume of equity and equity-like financial instruments traded throughout the Union across a multitude of trading venues ('consolidated tape'). On 2 December 2020, in its conclusion on the Commission's CMU Action Plan[6], the Council encouraged the Commission to stimulate more investment activity inside the Union by enhancing data availability and transparency by further assessing how to tackle the obstacles to establishing a consolidated tape in the Union.	(1) In its 2020 CMU Action Plan[7], the Commission announced its intention to table a legislative proposal to create a centralised data base which was meant to provide a comprehensive view on prices and volume of equity and equity-like financial instruments traded throughout the Union across a multitude of trading venues ('consolidated tape'). On 2 December 2020, in its conclusion on the Commission's CMU Action Plan[8], the Council encouraged the Commission to stimulate more investment activity inside the Union by enhancing data availability and transparency by further assessing how to tackle the obstacles to establishing a consolidated tape in the Union.	
(2) In its roadmap on 'The European economic and financial system: fostering openness, strength and resilience' of 19 January 2021[9], the Commission confirmed its intention to	(2) In its roadmap on 'The European economic and financial system: fostering openness, strength and resilience' of 19 January 2021[12], the Commission confirmed its intention to	

5 COM/2020/590 final.

6 Council Conclusions on the Commission's CMU Action Plan, 12898/1 of /20 REV 1 EF 286 ECOFIN 1023: https://data.consilium.europa.eu/doc/document/ST-12898-2020-REV-1/en/pdf;

7 COM/2020/590 final.

8 Council Conclusions on the Commission's CMU Action Plan, 12898/1 of /20 REV 1 EF 286 ECOFIN 1023: https://data.consilium.europa.eu/doc/document/ST-12898-2020-REV-1/en/pdf;

9 COM/2021/32 final.

Commission proposal	Compromise	Comments
improve, simplify and further harmonise capital markets' transparency, as part of the review of Directive 2014/65/EU of the European Parliament and of the Council[10] and of Regulation (EU) No 600/2014 the European Parliament and of the Council[11]. As part of efforts to strengthen the international role of the Euro, the Commission also announced that such reform would include the design and implementation of a consolidated tape, in particular for corporate bond issuances to increase the liquidity of secondary trading in euro-denominated debt instruments.	improve, simplify and further harmonise capital markets' transparency, as part of the review of Directive 2014/65/EU of the European Parliament and of the Council[13] and of Regulation (EU) No 600/2014 the European Parliament and of the Council[14]. As part of efforts to strengthen the international role of the Euro, the Commission also announced that such reform would include the design and implementation of a consolidated tape, in particular for corporate bond issuances to increase the liquidity of secondary trading in euro-denominated debt instruments.	
(3) Regulation (EU) No 600/2014 was amended by Regulation (EU) XX/XXXX of the European Parliament and of the Council[15] removing the main obstacles that have prevented the emergence of a consolidated tape. That Regulation therefore	***Explanation****: the compromise on the consolidated tape will be proposed and discussed at a future meeting of the working group.*	

12 COM/2021/32 final.

10 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 (OJ L 173, 12.6.2014, p. 349).

11 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).

13 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 (OJ L 173, 12.6.2014, p. 349).

14 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).

15 Regulation (EU) XX/XXXX 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 727)

Commission proposal	Compromise	Comments
introduced mandatory contributions of market data to the consolidated tape provider and enhanced the data quality including harmonizing the synchronisation of the business clock. In addition, that Regulation reduced the recourse to possibilities to waive pre-trade transparency for venues and systematic internalisers. Furthermore, it introduced enhancements to the trading obligations and the prohibition of the practice of receiving payment for forwarding client orders for execution. Since Directive 2014/65 also contains provisions related to consolidated tape and transparency, the amendments to Regulation (EU) No 600/2014 should be reflected in Directive 2014/65/EU.		
(4) Article 1(7) of Directive 2014/65/EU requires operators of systems in which multiple third-party buying and selling trading interests in financial instruments are able to interact ('multilateral systems') to operate in accordance with the requirements concerning regulated markets ('RMs'), multilateral trading facilities ('MTFs'), or organised trading facilities ('OTFs'). However, market practice, as evidenced by the European Securities and Markets Authority ('ESMA') in its final report on the functioning of the organised trading facility[16]	(4) Article 1(7) of Directive 2014/65/EU requires operators of systems in which multiple third-party buying and selling trading interests in financial instruments are able to interact ('multilateral systems') to operate in accordance with the requirements concerning regulated markets ('RMs'), multilateral trading facilities ('MTFs'), or organised trading facilities ('OTFs'). However, market practice, as evidenced by the European Securities and Markets Authority ('ESMA') in its final report on the functioning of the organised trading facility[17]	

[16] https://www.esma.europa.eu/sites/default/files/esma70-156-4225_mifid_ii_final_report_on_functioning_of_otf.pdf.

Commission proposal	Compromise	Comments
has shown that the principle of multilateral trading activity requiring a license has not been upheld in the Union, which has led to an uneven playing field between licensed and unlicensed multilateral systems. In addition, that situation has created legal uncertainty for certain market participants as to the regulatory expectations for such multilateral systems. To provide market participants with clarity, safeguard a level-playing field, improve the internal market functioning and ensure a uniform application of the requirement that hybrid systems can only perform multilateral trading activities where they are licensed as a regulated market, a multilateral trading facility ('MTF') or an organised trading facility ('OTF'), the content of Article 1(7) of Directive 2014/65/EU should be moved from Directive 2014/65/EU to Regulation (EU) No 600/2014.	has shown that the principle of multilateral trading activity requiring a license has not been upheld in the Union, which has led to an uneven playing field between licensed and unlicensed multilateral systems. In addition, that situation has created legal uncertainty for certain market participants as to the regulatory expectations for such multilateral systems. To provide market participants with clarity, safeguard a level-playing field, improve the internal market functioning and ensure a uniform application of the requirement that hybrid systems can only perform multilateral trading activities where they are licensed as a regulated market, a multilateral trading facility ('MTF') or an organised trading facility ('OTF'), the content of Article 1(7) of Directive 2014/65/EU should be moved from Directive 2014/65/EU to Regulation (EU) No 600/2014.	
(5) Article 2(1), point (d), point (ii), of Directive 2014/65/EU, exempts persons dealing on own account from the requirement to be licensed as an investment firm or credit institution, unless those persons have direct electronic access to a trading venue. Articles 17(5) and 48(7) of Directive 2014/65/EU require that providers of direct electronic access are licensed investment firms or credit institutions. Investment firms	(5) Article 2(1), point (d), point (ii), of Directive 2014/65/EU, exempts persons dealing on own account from the requirement to be licensed as an investment firm or credit institution, unless those persons have direct electronic access to a trading venue. Articles 17(5) and 48(7) of Directive 2014/65/EU require that providers of direct electronic access are licensed investment firms or credit institutions. Investment firms	

[17] https://www.esma.europa.eu/sites/default/files/esma70-156-4225_mifid_ii_final_report_on_functioning_of_otf.pdf.

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Commission proposal	Compromise	Comments
or credit institutions that do provide direct electronic access are responsible for ensuring that their clients comply with the requirements laid down in Articles 17(5) and 48(7) of Directive 2014/65/EU. That gatekeeper function is effective and makes it unnecessary for clients of the direct electronic access provider, including persons dealing on own account, to become subject to Directive 2014/65/EU. In addition, removing that requirement would contribute to a level playing field between third country persons accessing EU venues via direct electronic access, for which Directive 2014/65/EU does not require a license, and persons established in the Union.	or credit institutions that do provide direct electronic access are responsible for ensuring that their clients comply with the requirements laid down in Articles 17(5) and 48(7) of Directive 2014/65/EU. That gatekeeper function is effective and makes it unnecessary for clients of the direct electronic access provider, including persons dealing on own account, to become subject to Directive 2014/65/EU. In addition, removing that requirement would contribute to a level playing field between third country persons accessing EU venues via direct electronic access, for which Directive 2014/65/EU does not require a license, and persons established in the Union.	
(6) Due to the removal of multilateral systems from the scope of Article 1(7) of Directive 2014/65/EU and into Regulation (EU) 600/2014, it is equally logic to move the corresponding definition of 'multilateral system' into that Regulation.	(6) Due to the removal of multilateral systems from the scope of Article 1(7) of Directive 2014/65/EU and into Regulation (EU) 600/2014, it is equally logic to move the corresponding definition of 'multilateral system' into that Regulation.	
(7) Article 27(3) of Directive 2014/65/EU contains the requirement for execution platforms to publish a list of details relating to best execution. Factual evidence and feedback from stakeholders has shown that those reports are rarely read and do not enable investors or any users of those reports to make meaningful comparisons based on the information provided in those reports. As a consequence, Directive (EU) 2021/338 of the	***Explanation****: the compromise on best execution will be proposed and discussed at a future meeting of the working group.*	

Commission proposal	Compromise	Comments
European Parliament and of the Council[18] suspended the reporting requirement for two years in order for that requirement to be reviewed. Regulation (EU) XX/XXXX[19] has amended Regulation (EU) 600/2014 to remove the obstacles that have prevented the emergence of a consolidated tape. Among the data that the consolidated tape is expected to provide are post-trade information regarding all transactions in financial instruments. That information can be used for proving best execution. The reporting requirement laid down in Article 27(3) of Directive 2014/65/EU will therefore no longer be relevant and should therefore be deleted.		
(8) The correct functioning of market data consolidation via a consolidated tape depends on the quality of the data the consolidated tape provider receives. Regulation (EU) No 600/2014 sets out requirements for the quality of data that contributors to the consolidated tape should adhere to. In order to ensure that investment firms and market operators operating an MTF or an OTF, and regulated markets, effectively meet those requirements, Member States should require that those	***Explanation**: the compromise on the consolidated tape will be proposed and discussed at a future meeting of the working group.*	

[18] Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 14).

[19] COM 727

Commission proposal	Compromise	Comments
investment firms and market operators have the necessary arrangements in place to do so.		
(9) The receipt of high quality data is of the utmost importance for the functioning of the consolidated tape and the internal market. That includes the need for all market data contributors and the consolidated tape provider to timestamp their data in a synchronized manner and thus to synchronise their business clocks. Regulation (EU) XX/XXX[20] has therefore amended Regulation (EU) 600/2014 to extend that requirement, which under Directive 2014/65/EU only applied to trading venues and their members, to systematic internalisers, APAs and CTPs. Since that requirement is now laid down in Regulation (EU) 600/2014, it can be removed from Directive 2014/65/EU.	*See above.*	
(10) Within the framework regulating the Union's markets in financial instruments, many substantive requirements laid down in Regulation (EU) No 600/2014 are supervised and sanctioned at national level and in accordance with Articles 69 and 70 of Directive 2014/65/EU. Regulation (EU) XX/XXXX[21] has amended Regulation (EU) No 600/2014 to include new rules on the volume cap mechanism, on mandatory contributions of	*See above.*	

20 COM 727
21 COM 727

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/65/EU on markets in financial instruments (021/0384 (COD) ST 14368/21)

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Commission proposal	**Compromise**	**Comments**
core market data to the consolidate tape, on data quality standards to which those contributions are subject and on the ban on receiving payments for forwarding client orders for execution. As the supervision of the relevant entities lies with national authorities, those new substantive requirements should be added to the list in Directive 2014/65/EU of provisions for which the Member States should provide sanctions at national level,		
HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:	
Article 1 Amendments to Directive 2014/65/EU	Article 1 Amendments to Directive 2014/65/EU	
Directive 2014/65/EU is amended as follows:	Directive 2014/65/EU is amended as follows:	
1. in Article 1, paragraph 7, is deleted;	1. in Article 1, paragraph 7, is deleted;	
2. in Article 2(1), point (d), point (ii) is replaced by the following:	2. in Article 2(1), point (d), point (ii) is replaced by the following:	
'(ii) are members of or participants in a regulated market or an MTF;';	'(ii) are members of or participants in a regulated market or an MTF, except for non-financial entities who execute transactions on a trading venue which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of those non-financial entities or their groups;'; ***Explanation****: correction of an error (COM confirmed there was no intention in its proposal to remove this exemption for non-*	

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	financial entities).	
3. in Article 4(1), point (19) is replaced by the following:		
'(19) multilateral system' means a multilateral system as defined in Article 2(1), point (11), of Regulation EU (No) 600/2014;';		
	3a. in Article 16, the following paragraph is inserted: '10a. An investment firm that is a market data contributor as referred to in Article 2(1)(34a) of Regulation EU (No) 600/2014 shall have arrangements in place to ensure they meet the data quality standards as set out in Article 22b of that Regulation.'; ***Explanation****: to mirror provisions of Art 31(1) below for investment firms acting as market data contributors, i.e. to ensure that not only trading venues but also investment firms are subjet to data standards when they contribute market data.*	
4. Article 27 is amended as follows:	4. Article 27 is amended as follows:	
(a) paragraph 3 is deleted;	(a) paragraph 3 is deleted;	
(b) in paragraph 10, point (a)is deleted;	(b) in paragraph 10, point (a)is deleted;	
5. in Article 31(1), the following sentence is added:	5. in Article 31(1), the following sentence is added:	
'Investment firms and market operators operating an MTF or an OTF shall have arrangements in place to ensure they meet the data quality standards as set out in Article 22b of Regulation (EU) No 600/2014.';	'Investment firms and market operators operating an MTF or an OTF shall have arrangements in place to ensure they meet the data quality standards as set out in Article 22b of Regulation (EU) No 600/2014.';	

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Commission proposal	Compromise	Comments
6. in Article 47(1), the following point (g) is added:	6. in Article 47(1), the following point (g) is added:	
‘(g) to have arrangements in place to ensure they meet the data quality standards as set out in Article 22b of Regulation (EU) No 600/2014.’;	‘(g) to have arrangements in place to ensure they meet the data quality standards as set out in Article 22b of Regulation (EU) No 600/2014.’;	
	6a. Article 49(2) is amended as follows: (a) In subparagraph (b), the period is replaced by a semicolon; (b) The following subparagraph (c) is added: ‘(c) for shares with a non-EEA ISIN, or shares referred to in Article 23(1)(a), for which the venue that is the most relevant market in terms of liquidity is in a third country, have the same tick size that applies on that venue.’ ***Explanation***: *to allow, for third country shares, the use of the prevailing tick size on the main exchange in that third country. This additional provision was supported by MS is their written comments following the April 1st WP.*	
7. Article 50 is deleted;	7. Article 50 is deleted;	
8. in Article 70(3), point (a), point (xxx) is deleted;	8. in Article 70(3), point (a), point (xxx) is deleted;	
9. in Article 70(3), point (b), the following points (iia), (xvia), (xvib), (xvic) and (xxviia) are inserted:	9. in Article 70(3), point (b), the following points (iia), (xvia), (xvib), (xvic) and (xxviia) are inserted:	
‘(iia) Article 5;’;	‘(iia) Article 5;’;	
‘(xvia) Article 22a;’;	‘(xvia) Article 22a;’;	
‘(xvib) Article 22b;’;	‘(xvib) Article 22b;’;	

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Commission proposal	Compromise	Comments
'(xvic) Article 22c ;' ;	'(xvic) Article 22c ;' ;	
'(xxviia) Article 39a ;'.	'(xxviia) Article 39a ;'.	
Article 2 **Transposition**	Article 2 **Transposition**	
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [OP please insert the date = 12 months after the date of entry into force of the CTP Regulation] at the latest.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [OP please insert the date = 12 months after the date of entry into force of the CTP Regulation] at the latest.	
When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	
Article 3 **Entry into force**	Article 3 **Entry into force**	
This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.	This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.	
Article 4 Addressees	Article 4 Addressees	

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/65/EU on markets in financial instruments (021/0384 (COD) ST 14368/21)

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Commission proposal	Compromise	Comments
This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	
Done at Brussels,	Done at Brussels,	
For the European Parliament For the Council	For the European Parliament For the Council	
The President The President	**END**	**END**